



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

# TeleCheck® Service Agreement

## SERVICES OFFERED

ECA®/Check Warranty  Check Warranty  BASX<sup>SM</sup>/Verification  Small Ticket  Other \_\_\_\_\_

### SERVICE PROVIDED TO:

### BILL TO:

COMPANY NAME		COMPANY NAME	
DBA		DBA	
CONTACT NAME	E-MAIL ADDRESS	CONTACT NAME	E-MAIL ADDRESS
PHONE NUMBER ( )	FAX NUMBER ( )	PHONE NUMBER ( )	FAX NUMBER ( )
ADDRESS		ADDRESS	
CITY	STATE	ZIP	
CITY		STATE	ZIP
MID:		SIC:	SIC Description:
Equipment Type:	Quantity:	Credit Card Processor:	

### MERCHANT TRANSACTION INFORMATION

Monthly Check Volume	Average Dollar Amount	Number of Locations	Setup Fee (per location)	Warranty Maximum	Other Fees
				<input type="checkbox"/> \$ _____ <input type="checkbox"/> Face Amount	

### SERVICE FEES

Inquiry Rate	Charge Per Transaction	December Risk Surcharge	Monthly Processing Fee	Monthly Minimum (per location)	Flat Fee (per location)
		<b>0.10%</b>	<b>\$5 ACH</b>		

### ECA PROCESSING

Fund Subscriber	Summarize Funding	ECA Funding Report Fee (Monthly Included at No Charge)	Closing Options
<input type="checkbox"/> Per Location <input type="checkbox"/> Per Bill To	<input type="checkbox"/> Per Location <input type="checkbox"/> Per Batch	(Choose Only One) <input type="checkbox"/> \$10 Per Month for Weekly <input type="checkbox"/> \$15 Per Month for Daily	Time Zone: <input type="checkbox"/> AM <input type="checkbox"/> PM <input type="checkbox"/> ET <input type="checkbox"/> CT <input type="checkbox"/> MT <input type="checkbox"/> PT

### FUNDING INFORMATION

Payments to TeleCheck by Merchant	Financial Transaction - Debits and Credits to Merchant by TeleCheck
Merchant Bank Name:	Merchant Bank Name:
Merchant Bank Phone #:	Merchant Bank Phone #:
ABA Transit #:	ABA Transit #:
Account #:	Account #:
Bank City:	Bank City:
Bank State:	Bank State:

### REFERENCE AND CREDIT CHECK INFORMATION

Legal Structure (check one):  Corporation\*  Sub S Corporation  Sole Proprietorship  Non-Profit  Partnership  LLC  
\*Corporations must provide Federal Tax ID #.  Other (please specify) \_\_\_\_\_

State Incorporated: \_\_\_\_\_ Month/Year Started: \_\_\_\_\_ # of Employees: \_\_\_\_\_ State/Federal Tax ID #: \_\_\_\_\_

Principal One For Verification Purposes	Principal Two For Verification Purposes
First Name: _____ Last Name: _____ Title: _____	First Name: _____ Last Name: _____ Title: _____
Social Security #: _____ Home Address: _____	Social Security #: _____ Home Address: _____
City: _____ State: _____ Zip Code: _____ Home Phone #: _____	City: _____ State: _____ Zip Code: _____ Home Phone #: _____

### Supplier/Trade References

Business Name: _____	Contact Name: _____	Contact Phone #: _____
Business Name: _____	Contact Name: _____	Contact Phone #: _____

### Bank Reference

Merchant Bank Name: _____	Bank Contact Name: _____	Bank Phone Number: _____
Merchant Bank Account #: _____	City: _____	State: _____ Zip Code: _____

### SPECIAL INSTRUCTIONS:

I (we) understand that a Consumer Report of each of the officers/partners/proprietors/owners of the applicant may be requested from a Consumer Reporting Agency. A Consumer Report is a routine report on credit worthiness, frequently used by creditors. If the business is approved for Electronic Check Acceptance, subsequent Consumer Reports may be required or used in connection with the maintenance, updating, renewal or extension of the service. I (we) agree that all business reference, including banks, may release any and all credit and financial information to TeleCheck. I (we) agree and acknowledge that the information provided in this Merchant Application Form and other relevant credit data, may be supplied to TeleCheck.

**Personal Guarantee (ECA Service Only):** To induce and in consideration of TeleCheck's acceptance of this Agreement, the undersigned unconditionally personally guarantees performance of the Subscriber obligations under this Agreement and payment of all sums due thereunder and in the event of default, hereby agrees to personally indemnify TeleCheck for any and all funds due from Subscriber pursuant to the terms of this Agreement.

**ACH Debit and Credit Authorization:** I authorize my Financial Institution to pay and charge to my account by electronic fund transfer the amount due TeleCheck under this Agreement and to accept all credits and debits made to my account by electronic fund transfer as a result of TeleCheck's check authorization processing services. This authorization shall remain in effect until thirty days after revoked in writing.

**The undersigned Subscriber, at the rates set forth above** (plus all applicable taxes, shipping and handling fees), and for the covered location(s), hereby employs the TeleCheck® authorization services for an initial period of **12 months**; (initial here for an initial term of 24 months \_\_\_\_\_) subject to the terms of this Agreement. Activation and charges to Subscriber Account will begin no later than 10 days from shipment of Training Materials.

**THIS AGREEMENT INCLUDES ALL OF THE TERMS AND CONDITIONS ON THE ATTACHED SIDES. THIS AGREEMENT HAS BEEN EXECUTED ON BEHALF OF AND BY THE AUTHORIZED MANAGEMENT OF EACH PARTY AS OF THE EFFECTIVE DATE AND IS SIGNED IN MULTIPLE COPIES EACH BEING EFFECTIVE AS AN ORIGINAL.**

Signature \_\_\_\_\_ Date: \_\_\_\_\_ Signature \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_ Printed Name \_\_\_\_\_ Title \_\_\_\_\_

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

If your application for business credit is denied you have the right to a written statement of the specific reason for the denial. To obtain the statement, please contact Credit Initiation, TeleCheck, 5251 Westheimer Rd., Houston, TX 77056, 1-800-366-1054 within 60 days from the date you are notified of our decision. We will send you a written statement of reason for the denial within 30 days of receiving your request.

Notice: The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract), because all or part of the applicant's income derives from public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is the Federal Trade Commission, Equal Credit Opportunity, Washington, D.C. 20580.

Market Channel Sales	FOR INTERNAL USE ONLY
Market Channel Name: _____	Approved/TeleCheck Management (Signature): _____
Rep. Name: _____	Rep. ID#: _____
Rep. or Sales Office	Effective Date: _____
E-mail address: _____	

# TERMS AND CONDITIONS

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

**2. Definitions.** As used herein the following definitions apply: "check writer" means the drawer of a check; "Claim" means any arbitration award, assessment, charge, citation, claim, damage, demand, directive, expense, fine, interest, joint or several liability, lawsuit or other litigation, notice, infringement or misappropriation of any patent, trademark, copyright or other intellectual property right or violation of any law, and any consequential, indirect, special, incidental or punitive damages and any attorney's fees and expenses incurred in connection therewith. For purposes of the foregoing Claim definition, a Claim shall be considered to exist even though it may be conditional, contingent, indirect, potential, secondary, unaccrued, unasserted, unknown, unliquidated, or unmatured; "consumer" means a check writer, person, or entity that authorizes an Item; "Dishonored Item" means an Item having received a valid TeleCheck Approval Code pursuant to a Warranty Service Business Transaction, but which is dishonored upon presentation for payment; "Item" means an outstanding financial obligation pursuant to a check, including a check processed as an ECA® Business Transaction; "ECA Business Transaction" means a transaction for the contemporaneous purchase of goods or services (including, without limitation, taxes), the payment for which is processed as an ECA transaction; provided, however, it does not include any ECA transactions for cash or payment on an account, debt or check already due Subscriber; "ECA batch" means a collection of saved ECA transactions; "Operational Procedures" means TeleCheck's published policies and procedures contained in various documents provided to Subscriber concerning the services, equipment and maintenance provided pursuant to this Agreement, the terms of which are incorporated in this Agreement as if fully set forth herein; "Returned Item" means any Item not paid by Subscriber's financial institution or that fails to comply with the terms and conditions of this Agreement, including the Warranty Requirements; "TeleCheck Approval Code" means that TeleCheck has authorized an Item for warranty coverage under this Agreement pursuant to a Warranty Service Business Transaction; "TeleCheck Parties" means TeleCheck and its officers, directors, employees, shareholders, agents and attorneys; "Warranty Maximum": (a) for an Item processed as a non-ECA transaction means the lower of (i) the face amount of the Item; or (ii) the lesser amount set forth on the face of this Agreement; and (b) for an Item processed as an ECA transaction means the lower of (i) the face amount of the Item; or (ii) \$20,000.00; and "Warranty Service Business Transaction" means a transaction for the contemporaneous purchase of goods or services pursuant to TeleCheck's warranty service program and shall not include checks written for cash or for payment on an account, debt or check already due Subscriber.

**3. Fees, Rates and Warranty Changes.** Subscriber shall pay TeleCheck the fees and rates set forth on the face of this Agreement, attached Rate Schedule, if any, or in the terms and conditions herein, as changed from time to time by TeleCheck, plus all applicable taxes. The Set Up Fees First Location and Additional Location(s) are fees related to the establishment and set up of the first and subsequent locations on the TeleCheck service. The ECA Conversion Fee is the fee charged to convert an existing Subscriber to the ECA service. The "Inquiry Rate" is the percentage rate set forth in the Rate Schedule which shall apply to each Item which is entered into the TeleCheck system whether by telephone, electronically or otherwise. "December Risk Surcharge" is an additional charge for each December that is: (i) 10 basis points (0.10%); or (ii) the percentage set forth on the face of this Agreement. The "Monthly Minimum Fee" is the minimum amount of inquiry fees that Subscriber shall pay on a monthly basis. If the total fees for Subscriber's inquiries for any month are less than the Minimum Monthly Fee, then the Minimum Monthly Fee shall apply. "Additional Inquiry Fees" are those fees for inquiries exceeding the dollar volume of inquiries included in the Monthly Minimum Fee. The "Processing Fee" is a monthly fee for handling Subscriber's account. The "Charge Per Transaction" is the per transaction charge for all transactions determined by the method by which the transaction is delivered to TeleCheck. The "ECA Charge Per Transaction" is the additional per transaction charge for all ECA transactions for an ECA Subscriber. The "Non-Imaging Surcharge" is a per transaction charge for every ECA transaction that is not processed using a TeleCheck approved imaging device. The "POS Support Charge" is a monthly fee for point of sale support services. The "Transaction Surcharge" is an additional charge for transactions going over third party networks. The "ECA Chargeback Fee" is a \$5.00 handling fee for each chargeback of an ECA transaction. The "ECA Funding Report Fee" is an additional fee to receive daily or weekly ECA funding reports. The "ECA Correction Fee" is a \$5.00 fee payable on each item in an ECA batch that must be corrected due to Subscriber error or at the request of the Subscriber. The "Customer Requested Operator Call Charge" is an additional charge of \$2.50 per operator-assisted call not requested by TeleCheck. The "Recovery Processing Fee" is a \$5.00 charge for each check that fails to meet Warranty Requirements for which TeleCheck elects, in its discretion, to reimburse Subscriber as a "Goodwill Item" for a specific Returned Item. A "Warranty Research Fee" of \$7.50 will be charged each time Subscriber requests substantiation of a warranty payment/non-payment. These above fees are in addition to any fees charged by TeleCheck to Subscriber under any other agreement.

**4.1 Payment, Reserve Account, Security Interest.** All fees and charges are due upon receipt. Subscriber authorizes TeleCheck to debit from Subscriber's financial institution account as provided to TeleCheck by Subscriber, all payments and other amounts owed (including, without limitation, all chargebacks, ECA Chargeback Fees and Returned Item Fees) to TeleCheck or its affiliates under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates, and to credit all amounts owing to Subscriber under this Agreement to Subscriber's financial institution account. If there are insufficient funds in Subscriber's financial institution account to pay amounts owed to TeleCheck or its affiliates, or if there are any amounts otherwise not paid by Subscriber when due, including, without limitation, delinquent fees, chargebacks or rejected and reassigned warranty Items, Subscriber shall immediately reimburse TeleCheck or its affiliates upon demand, or at TeleCheck's option, TeleCheck may offset such amounts against any amounts due Subscriber from TeleCheck or its affiliates under this Agreement or any other agreement between Subscriber and TeleCheck or its affiliates. A delinquency charge of 1-1/2% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account over fifteen (15) days delinquent. TeleCheck shall have the right to suspend all services and obligations to Subscriber, including the payment of all warranties due and all transactions previously authorized, during any period in which Subscriber's account is delinquent. Subscriber agrees to pay to TeleCheck a \$25.00 fee for any check or ACH debit that is not paid by Subscriber's financial institution upon presentation.

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

**4.3** The Reserve Account shall be fully funded upon three (3) days' notice to Subscriber, or in instances of fraud or breach of this Agreement, the Reserve Account may be funded immediately at TeleCheck's election. The Reserve Account may be funded by all or any combination of the following: (i) one or more debits to Subscriber's financial institution (and TeleCheck is hereby authorized to make such debits); (ii) one or more deductions or offsets to any payments otherwise due to Subscriber from TeleCheck or any of its affiliates; or (iii) Subscriber's delivery to TeleCheck of a letter of credit. Any such letter of credit shall be issued or established by a financial institution acceptable to TeleCheck and in a form satisfactory to TeleCheck, both in TeleCheck's discretion. In the event of termination of this Agreement by either Subscriber or TeleCheck, an immediate Reserve Account may be established without notice in the manner provided above. Any Reserve Account will be held by TeleCheck for ten (10) months after termination of this Agreement. Subscriber's funds held in a Reserve Account may be held in a commingled Reserve Account for the reserve funds of TeleCheck's Subscribers, without involvement by an independent escrow agent, and shall not accrue interest.

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

**4.5** To secure Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement for the provision of related equipment or services (including any check or credit card processing services), Subscriber grants to TeleCheck a lien and security interest in and to any of Subscriber's funds pertaining to the transactions contemplated by this Agreement now or hereafter in the possession of TeleCheck or its affiliates, whether now or hereafter due or to become due to Subscriber from TeleCheck. Any such funds, money or amounts may be commingled with other funds of TeleCheck, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other Subscribers of TeleCheck. In addition to any

rights now or hereafter granted under applicable law and not by way of limitation of any such rights, TeleCheck is hereby authorized by Subscriber at any time and from time to time, without notice or demand to Subscriber or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of Subscriber's obligations to TeleCheck and its affiliates under this Agreement and any other agreement with TeleCheck or any of its affiliates, including, without limitation, fees for any related equipment or related services (including any check or credit card processing services, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured). Subscriber agrees to duly execute and deliver to TeleCheck such instruments and documents as TeleCheck may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement.

**5. Equipment.** Title to all rental equipment, if any, or equipment loaned to Subscriber is retained by TeleCheck. Upon termination of this Agreement, Subscriber, at Subscriber's expense, shall return all equipment to TeleCheck in good repair, ordinary wear and tear excepted. Monthly rental fees will apply to all months or fractions of a month any equipment remains in use by or in the actual or constructive possession of Subscriber. TeleCheck will replace or repair equipment rented or supported by TeleCheck upon Subscriber's request; provided, however, that a swap fee of \$39.95 shall be charged per equipment item replaced for the Eclipse Payment Terminal and a swap fee of \$59.95 shall be charged per equipment item replaced for any other type of equipment. If replacement equipment is mailed to Subscriber, it is Subscriber's responsibility to return replaced equipment to TeleCheck's office within twenty (20) business days or Subscriber shall be deemed to have purchased and be billed for such equipment. A fee of \$40.00 per hour, plus the cost of parts, shall be charged for repair of any damage to the equipment rented or supported by TeleCheck, ordinary wear and tear excepted. A reprogramming fee of \$25.00 will be charged for each occasion that a piece of equipment is reprogrammed for additional features or different information. Subscriber shall not permit persons other than authorized representatives of TeleCheck to adjust, maintain, program or repair any equipment. Subscriber shall bear the entire risk of loss, theft or damage of or to equipment, whether or not owned by Subscriber. There is a 90-day manufacturer's warranty on purchased equipment. A fee for the shipping and handling of equipment and parts will be charged to the Subscriber.

## Terms Applicable Only to the TeleCheck® Warranty Service Program

**6.1 Warranty.** The sole purpose of the TeleCheck warranty service program is to provide information and processing services to Subscriber. TeleCheck warrants the accuracy of its information provided that all requirements set forth in the Warranty Requirements in paragraph 13.1 are strictly met. A Dishonored Item shall be deemed to be a breach of the warranty and as Subscriber's sole and exclusive remedy for such breach, Subscriber may receive payment of the face amount of the Dishonored Item up to the Warranty Maximum, subject to the terms, conditions, and limitations contained in this Agreement and any addenda hereto. The warranty does not apply where payment has been stopped due to a dispute over goods or services between Subscriber and consumer, or where Subscriber has contacted TeleCheck for a TeleCheck Approval Code on more than one check per Warranty Service Business Transaction. This Agreement is solely between the Subscriber and TeleCheck; the Subscriber shall not provide or resell, directly or indirectly, the services provided by TeleCheck to any other third party. Subscriber is not authorized to, and shall not in any manner, utilize the TeleCheck services in connection with any transaction conducted, in whole or in part, over the Internet or in any other non-face to face transaction.

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

**7. "Goodwill" of a Returned Item.** TeleCheck, in its discretion, may voluntarily reimburse a Subscriber for a specific Returned Item. TeleCheck's election to reimburse a Returned Item(s) shall not act as a waiver of TeleCheck's right to decline to pay any other Returned Item.

## Terms Applicable Only to the TeleCheck Electronic Check Acceptance® Service

**8. ECA® Service.** The terms in paragraphs 9 and 10 apply only if Subscriber uses the TeleCheck Electronic Check Acceptance® service. The terms in paragraphs 9 and 10 do not apply to Warranty Service Business Transactions that are not ECA Business Transactions.

**9. ECA Processing.** Subscriber shall not submit to TeleCheck for processing any ECA transaction exceeding \$20,000.00. For each ECA Business Transaction that TeleCheck issues a TeleCheck Approval Code, TeleCheck shall, via an electronic funds transfer, effect a credit to Subscriber's financial institution account for the amount of such transaction as part of an ECA batch. Such credit shall occur: (i) within two banking days following Subscriber's regular close-out of the point of sale terminal and transmission to TeleCheck for processing the saved ECA Business Transaction, provided that the ECA batch is closed and received by TeleCheck by 12:00 midnight Central Standard Time; and (ii) regardless of whether or not consumer's ECA transaction is paid by consumer's financial institution. TeleCheck reserves the right to decline to process any transaction as an ECA Business Transaction.

**10. Retention of ECA Authorization Receipts.** Subscriber shall cause the consumer to sign an ECA authorization receipt in a form approved by TeleCheck prior to submission of each ECA Business Transaction to TeleCheck for processing. Subscriber shall maintain the signed ECA authorization receipt for a minimum period of two (2) years from the date of the transaction or for the period specified by the rules of the National Automated Clearing House Association, whichever is longer. Within seven (7) days of TeleCheck's request, Subscriber shall physically deliver either the original or a legible copy of the signed ECA authorization receipt to TeleCheck. Subscriber shall, upon reasonable notice and during normal business hours, permit TeleCheck to audit Subscriber for its compliance with this requirement.

## Terms Applicable Only to the TeleCheck Verification Service

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

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

## General Terms

**13.1 Warranty Requirements and ECA Representations.** TeleCheck will reimburse Subscriber for one Item, up to the Warranty Maximum, per Warranty Service Business Transaction which meets all of the following applicable requirements, and Subscriber represents and warrants with respect to all Warranty Service Business Transactions and ECA Business Transactions submitted to TeleCheck for processing under this Agreement the following applicable representations:

- The check must be a first party check drawn on a United States, Canadian, Puerto Rican or U.S. Virgin Islands financial institution and must be made payable to Subscriber. The name of the individual or company must be imprinted or typed on the check by the check manufacturer. If P.O. Box is used or address is not imprinted by the check manufacturer, a physical address description must be written on the check according to Operational Procedures;
- Subscriber received a completely filled out paper check from the consumer;
- The consumer authorized the debiting of consumer's account and the ECA debit entry is in all respects properly authorized and in an amount agreed to by the consumer;
- Subscriber shall have made an inquiry to TeleCheck in strict accordance with Operational Procedures and Subscriber must have obtained a TeleCheck Approval Code;
- TeleCheck Subscriber Number, check writer's telephone number (including area code), a physical address description, identification type and number and TeleCheck Approval Code must all be printed or written on the check for Warranty Service Business Transactions;
- The Warranty Service Business Transaction represents an obligation of the person who is presenting the respective Warranty Service Business Transaction and the respective transaction is for merchandise actually sold or rented or services actually rendered for the actual price of such merchandise or services (including tax and shipping) and does not involve any element of credit for any purpose;
- The signature and physical description of the check writer or consumer on the check and the ECA authorization receipt, if applicable, must reasonably correspond to any signature and description contained in the piece of identification;
- The signature in the signature block on the check must not be substantially different from the name imprinted on the check;
- The date of the check and the ECA Business Transaction, if applicable, must accurately coincide within one calendar day of both (1) the date of the inquiry call to TeleCheck and (2) the date the transaction actually occurred. (Checks may not pre-date or post-date by more than one calendar day the date of the inquiry call and the transaction date.);
- The amount shown in words and figures on the check, and the ECA receipt, if applicable, must match exactly. The amount shown in words and figures on the check must be: (i) less than or equal to the amount entered into the TeleCheck system; or (ii) no more than \$1.00 over the amount entered into the Telecheck system;
- The paper check must have been deposited in Subscriber's financial institution account and received by TeleCheck for purchase within thirty (30) days of the date of the check;

- (l) Subscriber must have contacted TeleCheck for a single TeleCheck Approval Code on only one check per Warranty Service Business Transaction;
- (m) Subscriber received a signed ECA authorization receipt from consumer and either consumer or Subscriber voided the signed paper check to which the ECA Business Transaction relates;
- (n) Subscriber has no reason to question or have notice of any fact, circumstance or defense which would impair the validity or collectibility of the consumer's obligation or relieve the consumer from liability;
- (o) The paper check to which the ECA Business Transaction relates is a personal check and not a business check; and
- (p) The consumer shall have signed a separate ECA authorization receipt for each ECA Business Transaction submitted to TeleCheck.

**13.2 All of the above requirements and representations are material terms of this Agreement.** By execution of this Agreement, Subscriber acknowledges Subscriber's full knowledge and understanding of the above requirements and representations as they pertain to the services provided to Subscriber under this Agreement. Subscriber shall not be entitled to recover any amounts under this Agreement if Subscriber fails to timely satisfy any of the terms or conditions of or breaches any representation contained in: (i) paragraph 13.1, or (ii) any other terms, conditions or limitations in this Agreement.

**14. Collection and Returned Item Fees.** TeleCheck shall be entitled to collect from the consumer and retain any fees or exemplary damages in addition to the amount of the check or ECA Business Transaction, if applicable, which are allowed by law. Subscriber shall follow all TeleCheck policies and procedures and post at TeleCheck's direction any notices which in TeleCheck's opinion may be required for TeleCheck to collect any such amounts arising from returned, dishonored or unpaid checks or ECA Business Transactions.

**15. Assignment of Checks and ECA Business Transactions.** By the execution of this Agreement, Subscriber ASSIGNS, TRANSFERS AND CONVEYS to TeleCheck all of Subscriber's rights, title and interest in any: (i) check submitted to TeleCheck for coverage under the warranty service program; or (ii) ECA Business Transaction submitted by Subscriber to TeleCheck under this Agreement. Subscriber shall, at TeleCheck's request, in TeleCheck's discretion, endorse such check and take any action reasonably deemed necessary by TeleCheck to aid in the enforcement of TeleCheck's rights hereunder.

**16.1 Reassignment and Chargeback.** TeleCheck, as applicable, may: (i) reassign to Subscriber any check purchased by TeleCheck pursuant to the warranty service program provisions of this Agreement; or (ii) chargeback to Subscriber and debit Subscriber's financial institution account any ECA Business Transaction submitted to TeleCheck for processing pursuant to this Agreement, in any of the following circumstances:

- (a) The goods or services, in whole or in part, for which the check was issued or for which the ECA Business Transaction was submitted, have been returned to Subscriber, have not been delivered by Subscriber or are claimed by the check writer to have been unsatisfactory or are subject to any dispute, set-off or counterclaim;
- (b) Subscriber has received full or partial payment or security in any form whatsoever to secure payment of the: (i) check or the ECA Business Transaction; or (ii) goods or services for which the check or ECA Business Transaction was issued or authorized;
- (c) The transaction for which the check or the ECA Business Transaction was tendered, or transfer to TeleCheck of the check writer's check or the ECA Business Transaction, is for any reason: (i) not permitted by applicable law; or (ii) a court of law determines that the check or ECA Business Transaction is, in whole or in part, not due and payable by the consumer, unless such determination results from the check writer's bankruptcy proceeding;
- (d) The check or funds transfer was not issued in connection with a Warranty Service Business Transaction or an ECA Business Transaction;
- (e) Any of the representations made by Subscriber as set forth in paragraph 13.1 are or become false or inaccurate;
- (f) Subscriber failed to comply with any of the Terms or Conditions of this Agreement;
- (g) Subscriber, or any of its owners, agents or employees: (i) materially altered either the check or the ECA authorization receipt; or (ii) accepted the check or processed the ECA Business Transaction with reason to know that the check or the ECA Business Transaction was likely to be dishonored or that the identification used to authorize the check or the ECA Business Transaction was forged, altered or did not belong to the check writer;
- (h) The ECA authorization receipt was incomplete or unsigned;
- (i) A duplicate ECA Business Transaction relating to the same ECA Business Transaction was received and processed or the original paper check was deposited, thereby creating a duplicate entry against the check writer's financial institution account;
- (j) A legible copy of the ECA authorization receipt is not received by TeleCheck within seven (7) days of a request by TeleCheck;
- (k) The consumer disputes authorizing the ECA Business Transaction or the validity or accuracy of the transaction; or
- (l) Subscriber receives notice that the check writer of a dishonored item filed bankruptcy and Subscriber failed to notify TeleCheck of the bankruptcy within three business days of Subscriber's receipt of such notice.

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

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

**18. Credit Law Compliance.** Subscriber certifies that: (i) it has a legitimate business need, in connection with a business transaction initiated by the consumer, for the information provided by TeleCheck under this Agreement regarding such consumer; and (ii) the information provided by TeleCheck will only be used for permissible purposes as defined in the Fair Credit Reporting Act, and applicable state and federal laws, with the exception that the information will not be used for employment purposes, and will not be used by Subscriber for any purpose other than a single business transaction between Subscriber and consumer occurring on the date of the inquiry call to TeleCheck. Neither Subscriber, nor its agents or employees, shall disclose the results of any inquiry made to TeleCheck except to the consumer about whom such inquiry is made and in no case to any other person outside the Subscriber's organization. If Subscriber decides to reject any transaction, in whole or in part, because of information obtained from TeleCheck, Subscriber agrees to provide the consumer with all information required by law and TeleCheck.

**19. Use of TeleCheck Materials and Marks.** TeleCheck grants to Subscriber, and Subscriber accepts, a nonexclusive, nonassignable and nontransferable temporary permission, uncoupled with any right or interest, to use TeleCheck's marks: TELECHECK®, TELECHEQUE®, TELECHECK ELECTRONIC CHECK ACCEPTANCE®, ECA®, and the TELECHECK LOGO® (collectively, the "TeleCheck Marks") and to use and display decals, identification data and other materials provided by TeleCheck during the term of this Agreement solely in connection with the offering of the TeleCheck services authorized under this Agreement. In addition, the following shall appear at least once on every piece of advertising or promotional material used by Subscriber. "(insert applicable TeleCheck Mark) is a trademark owned by TeleCheck International, Inc. and is licensed for use by (insert Subscriber name)"; provided, however, that no such advertising or promotion using any TeleCheck Mark or TeleCheck name shall be done without the prior written consent of TeleCheck. Subscriber shall use the designation "@®" and "SM" in conjunction with those TeleCheck Marks which are registered trademarks and service marks, respectively, of TeleCheck. Upon termination of this Agreement, Subscriber shall either return or destroy all TeleCheck materials (including, without limitation, the prompt removal of decals or other materials that are affixed and displayed to the public). The monthly fees payable by Subscriber under this Agreement shall apply for all months or fractions of a month any materials or TeleCheck-owned equipment remain in use by Subscriber. Subscriber shall maintain the confidentiality of this Agreement and any information provided to it by TeleCheck, including, without limitation, Operational Procedures, pricing or other proprietary business information, whether or not such information is marked confidential. Subscriber shall not permit any persons other than its own officers or employees at Subscriber's locations to use the TeleCheck Subscriber Number assigned by TeleCheck. **SUBSCRIBER SHALL NOT USE ANY TELECHECK MARKS IN CONJUNCTION WITH OR ON THE INTERNET.** Subscriber shall take all actions reasonably required by TeleCheck to ensure that the TeleCheck Marks and other TeleCheck materials do not become part of the public domain or are otherwise appropriated by any person or entity to the detriment of TeleCheck. Subscriber acknowledges TeleCheck's ownership of the TeleCheck Marks and agrees that it will do nothing inconsistent with such ownership. Subscriber shall promptly notify TeleCheck of any unauthorized use of the TeleCheck Marks by third parties of which Subscriber becomes aware.

**20. Use of Information.** Subscriber agrees that: (i) any data and other information relating to an Item or consumer obtained by TeleCheck in connection with any service provided hereunder (including any electronic or other image of all or any portion of any check or Driver's License or other identification) shall be owned by TeleCheck with all right, title, and interest thereto; (ii)

TeleCheck may use any credit information provided to a TeleCheck affiliate or a First Data Corp. alliance for TeleCheck's credit review; (iii) TeleCheck may provide or receive any experiential information regarding Subscriber or Subscriber's customers to or from any TeleCheck affiliate or First Data Corp. alliance; and (iv) TeleCheck is entitled to obtain Subscriber's credit card sales data from point of sale equipment or from any TeleCheck affiliate or First Data Corp. alliance for use in TeleCheck's aggregate reporting of retail sales trends.

**21. TeleCheck Procedures.** Subscriber shall strictly follow all Operational Procedures provided to Subscriber, as may be amended from time to time by TeleCheck, in its discretion, including the Operational Procedures relating to the TeleCheck Marks. To the extent that there is any conflict between the Operational Procedures and the terms of this Agreement, the terms of this Agreement shall govern. Subscriber is authorized to use TeleCheck-owned or -supplied equipment and/or ECA services pursuant to this Agreement only for the processing of completely filled out checks (i.e., negotiable instruments). Any other use of TeleCheck-owned or -supplied equipment or ECA services is unauthorized and Subscriber covenants not to make any such use of the equipment or ECA services. Should Subscriber make any use of TeleCheck-owned or -supplied equipment or ECA services other than those expressly authorized by this Agreement, Subscriber agrees to indemnify, defend and hold harmless TeleCheck as set out in paragraph 23.

**22. Assignment of Agreement.** This Agreement may be assigned by Subscriber only with the prior written consent of TeleCheck. TeleCheck may freely assign this Agreement, its rights, benefits or duties hereunder. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and assigns of TeleCheck and the heirs, executors, administrators, successors and assigns of Subscriber.

**23. Legal Responsibility.** In the event Subscriber violates any terms or conditions of this Agreement, Subscriber shall indemnify, defend and hold harmless TeleCheck and its affiliates from and against any and all Claims arising therefrom, including, payment of all costs and reasonable attorneys' fees, for actions taken by TeleCheck, whether by suit or otherwise, to defend TeleCheck or its affiliates from any Claim related thereto or to preserve or enforce TeleCheck's rights under this Agreement, and TeleCheck shall have the right to immediately repossess all equipment owned by TeleCheck. In the event of any legal action with third parties or regulatory agencies concerning any transaction or event arising under this Agreement, Subscriber shall: (i) promptly notify TeleCheck of the Claim(s) or legal action; (ii) reasonably cooperate with TeleCheck in the making of any Claim(s) or defense(s); and (iii) provide information, assist in the resolution of the Claim(s) and make available at least one employee or agent who can testify regarding said Claim(s) or defense(s). Subscriber shall indemnify, defend, and hold harmless the TeleCheck Parties from any Claim(s) arising from any false or inaccurate representation made by Subscriber or from Subscriber's failure to strictly comply, in whole or in part, with any: (i) terms and conditions pursuant to this Agreement and any addenda hereto or Operational Procedures; or (ii) applicable law. Upon written notice from TeleCheck to Subscriber, Subscriber shall immediately undertake the defense of such Claim by representatives of its own choosing, subject to TeleCheck's reasonable approval; provided, however, that TeleCheck shall have the right to control and undertake such defense by representatives of its own choosing, but at Subscriber's cost and expense, if the Claim arises out of patent, trademark, or other intellectual property rights or laws. **In no event shall TeleCheck be liable to Subscriber, or to any other person or entity, under this Agreement, or otherwise, for any punitive, exemplary, special, incidental or consequential damages, including, without limitation, any loss or injury to earnings, profits or goodwill. Notwithstanding anything to the contrary contained in this Agreement, in no event shall TeleCheck's liability under this Agreement for all Claims arising under, or related to, this Agreement exceed, in the aggregate (inclusive of any and all Claims made by Subscriber against TeleCheck, whether related or unrelated), the lesser of: (i) the total amount of fees paid to TeleCheck by Subscriber pursuant to this Agreement during the 12-month period immediately preceding the date the event giving rise to such Claim(s) occurred; or (ii) \$75,000.00.**

**24. DISCLAIMER. EXCEPT AS EXPRESSLY SET FORTH IN PARAGRAPH 6.1, TELECHECK MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND NO IMPLIED AT LAW WARRANTY SHALL ARISE FROM THIS AGREEMENT, THE SALE OF ANY EQUIPMENT BY TELECHECK TO SUBSCRIBER, OR FROM PERFORMANCE BY TELECHECK, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, ALL OF WHICH ARE EXPRESSLY WAIVED BY SUBSCRIBER.** All decisions to reject any check or ECA transaction, driver's license or other form of identification or payment for Subscriber's products or services are solely Subscriber's responsibility. Subscriber assumes all risks that any and all checks (including checks processed as ECA Transactions) accepted by Subscriber may be dishonored, whether or not TeleCheck has issued a TeleCheck Approval Code with respect to such check(s).

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

**26. Force Majeure.** TeleCheck shall not be held responsible for any delays in or failure or suspension of service caused by mechanical or power failure, computer malfunctions (including, without limitation, software, hardware and firmware malfunctions), strikes, labor difficulties, fire, inability to operate or obtain service for its equipment, unusual delays in transportation, act of God, or other causes reasonably beyond the control of TeleCheck.

**27. Governing Law and Integration.** Subscriber shall comply with all applicable laws, regulations and rules, including NACHA rules and guidelines, relating to the services provided hereunder. This Agreement, plus any addenda attached hereto, constitute the entire Agreement between the parties concerning subject matter hereof and supersedes all prior and contemporaneous understandings, representations and agreements in relation to its subject matter. **THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT REGARD TO THE CONFLICT OF LAWS PRINCIPLES THEREOF.**

**28. Severability and Interpretation.** If any provision, in whole or in part, of this Agreement is held invalid or unenforceable for any reason, the invalidity shall not affect the validity of the remaining provisions of this Agreement, and the parties shall substitute for the invalid provision a valid provision which most closely approximates the intent and economic effect of the invalid provision. Neither this Agreement, nor any addenda or Operational Procedures, shall be interpreted in favor or against any party because such party or its counsel drafted this Agreement, or such addenda or Operational Procedures. No course of dealing, usage, custom of trade or communication between the parties shall modify or alter any of the rights or obligations of the parties under this Agreement. This Agreement is solely for the benefit of TeleCheck (and its affiliates) and Subscriber and no other person or entity shall have any right, interest or claim under this Agreement. As used in this Agreement, (i) the term "include," or any derivative of such term, shall not mean that the items following such term are the only types of such items; (ii) the term "shall" indicates a mandatory obligation; (iii) the term "may" indicates a permissive election and does not imply any duty to exercise such election; and (iv) the term "discretion" means the sole and absolute discretion of the party granted the discretion, absent an express limitation on such discretion.

**29. Amendment and Waiver.** No modification, amendment or waiver of any of the terms and conditions of this Agreement shall be binding upon TeleCheck, whether written, oral, or in any other medium, unless made in writing and approved and signed by TeleCheck. All rights and duties within this Agreement are material and time is of the essence; no waiver of any rights hereunder shall be deemed effective unless in writing executed by the waiving party; no waiver by either party of a breach or any provision of this Agreement shall constitute a waiver of any prior or subsequent breach of the same or any other provision of this Agreement; no failure to exercise, and no delay in exercising, any right(s) hereunder on the part of either party shall operate as a waiver of any such right; all of TeleCheck's rights are cumulative; and, no single or partial exercise of any right hereunder shall preclude further exercise of such right or any other right.

**30. Damages.** Upon Subscriber's breach or unauthorized termination of this Agreement, TeleCheck shall be entitled to recover from Subscriber liquidated damages in an amount equal to ninety percent (90%) of the total aggregate charges payable for the unexpired portion of the then current term of this Agreement. TeleCheck and Subscriber hereby acknowledge and agree that, after giving due consideration to the costs TeleCheck may incur by reason of Subscriber's breach or unauthorized termination of this Agreement, to the possibility that TeleCheck will not be able to mitigate its damages, and to the expense savings that TeleCheck may obtain by not having to provide services, equipment or maintenance, the liquidated damages specified herein constitute a realistic pre-estimate of the loss to TeleCheck in the event of such breach or unauthorized termination of this Agreement and will not be construed as a penalty.

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