



508 Main Street Marble Falls, TX 78654 Phone 830.693.1699 Toll Free 877.733.2432 Fax 830.265.4117 email: clientservices@redcheck.com

Merchant # _____ New Merchant Additional Location Agent # _____ Agent Name _____

CHECK SERVICES AGREEMENT

Legal Name: _____ DBA Name: _____
Address: _____ City: _____ State: _____ Zipcode: _____
Contact: _____ Phone: _____ Fax: _____ eMail: _____
Type of Business: Sole Proprietorship Partnership Corporation Tax ID: _____
Years in Business: _____ Years at this Location: _____ Goods Sold: _____

OWNER INFORMATION

Name: _____ Title: _____ Ownership %: _____ Birthdate: _____
SSN #: _____ DL #: _____ Phone: _____ eMail: _____
Address: _____ City: _____ State: _____ Zipcode: _____

CHECK INFORMATION

Average Check Amount \$ _____ Largest Check Amount \$ _____ # Checks Returned per month: _____ Monthly Check Volume \$ _____

PROGRAM SELECTION

eCheck - Consumer (ECC) Recurring Debit Payroll - Business Remote Deposit
 Gold Silver Gold Silver Gold Silver Gold Silver
Discount % _____ Per Item \$ _____ Monthly \$ _____ Minimum \$ _____ Returns \$ _____

Merchant's Initials: _____ I hereby acknowledge, understand & agree to the service fees listed above.

IMPORTANT NOTICE

THIS AGREEMENT INCLUDES ALL OF THE TERMS AND CONDITIONS CONTAINED ON THE FRONT AND ATTACHED RECITALS OF THIS AGREEMENT. THIS AGREEMENT HAS BEEN EXECUTED ON BEHALF OF AND BY THE AUTHORIZED MANAGEMENT OF EACH PARTY AS OF THE DATE BELOW. MERCHANT AUTHORIZES RCS OR ANY CREDIT REPORTING AGENCY BY RCS OR AGENT OF RCS, TO MAKE WHATEVER INQUIRIES THAT RCS DEEMS APPROPRIATE TO INVESTIGATE, VERIFY OR RESEARCH REFERENCES, STATEMENTS OR DATA OBTAINED FROM MERCHANT FOR THE PURPOSE OF THIS APPLICATION FOR ACCOMPANYING POS TERMINAL(S) OR EQUIPMENT FINANCING.
PERSONAL GUARANTEE: TO INDUCE AND IN CONSIDERATION OF RCS ACCEPTANCE OF THE ELECTRONIC CHECK TRANSFER PORTION 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 THEREUNDER AND HEREBY CONTINUES TO PERSONALLY INDEMNIFY RCS FOR ANY AND ALL FUNDS DUE FROM MERCHANTS UNDER THE TERMS OF THIS AGREEMENT.
ACH DEBIT/CREDIT AUTHORIZATION: MERCHANT HEREBY AUTHORIZES BANK IN ACCORDANCE WITH THIS CHECK GUARANTEE AGREEMENT TO INITIATE DEBIT/CREDIT ENTRIES TO MERCHANT'S CHECKING ACCOUNT, AS INDICATED PER THE ATTACHED COPY OF A VOIDED CHECK FROM SAME. THE AUTHORITY IS TO REMAIN IN FULL FORCE AND EFFECT UNTIL (A) BANK HAS RECEIVED WRITTEN NOTIFICATION FROM MERCHANT OF ITS TERMINATION IN SUCH A MANNER AS TO AFFORD BANK REASONABLE OPPORTUNITY TO ACT ON IT, AND (B) ALL OBLIGATIONS OF MERCHANT TO BANK/RCI THAT HAVE ARISEN UNDER THIS AGREEMENT HAVE BEEN PAID IN FULL.

MERCHANT ACCEPTANCE

ALL INFORMATION CONTAINED ON THIS APPLICATION WAS COMPLETED BY OWNERS AND/OR OFFICERS OF MERCHANT AND THEY WARRANT THAT ALL CHECK INFORMATION AND SALES VOLUME INDICATED THROUGHOUT THIS APPLICATION ARE ACURATE AND ACKNOWLEDGE THAT ANY VARIANCE TO THIS INFORMATION COULD RESULT IN DELAYED AND/OR WITHHELD SETTLEMENT OF FUNDS AS WELL AS THE LOSS OF ALL GUARANTEE PRIVILEGES OF ALL CHECKS. NO BLANK SPACES WERE LEFT INCOMPLETE. N/A OR NONE HAS BEEN FILLED IN ANY SPACES WHERE APPLICABLE.THIS AGREEMENT SHALL NOT BE BINDING OR TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY A RCS OFFICER AND A MERCHANT NUMBER HAS BEEN ISSUED WITH CHECK LIMIT AND GUARANTEE LIMIT.

MERCHANT AGREED AND ACCEPTED: I have read and agree to the terms of this agreement

CORPORATE RESOLUTION FOR CORPORATIONS "ONLY" The officer(s) identified have the authority to execute the Check Service Agreement with RCS on behalf of the corporation or LLC

Signature _____ Date _____ Signature _____ Date _____

TERMINAL INFORMATION

Terminal Type: _____ Reader Type: _____ Printer Type: _____
 New Existing New Existing New Existing

SITE VERIFICATION

Inspector Name: _____ Inspector Signature: _____ Date: _____

RED CHECK USE ONLY

Approved By: _____ Signature _____ Title _____ Date _____ Check Limit _____ Guarantee Limit _____

RECITALS

- A. MERCHANT wishes to initiate debit and credit entries pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association (the "Rules"), and Red Check Solutions ("RCS") is willing to act as the third party processor for MERCHANT, subject to the terms and conditions set forth in this Agreement with respect to such Entries.
- B. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules except for sections 30.1 to 50.2. The term "Entries" shall have the meaning provided in the Rules and shall also mean the data which is transmitted by the MERCHANT to RCS to prepare such Entries for processing.
- C. This agreement is only applicable to processing point of sale transactions utilizing the end-customer's Checking account data. Upon MERCHANT'S request and RCS' approval, electronic check conversion guarantee services (hereinafter referred to as "RCS Gold" service) will also be provided pursuant to provisions below. If MERCHANT has not requested RCS Gold service, or if RCS has not accepted the MERCHANT application for RCS Gold service, RCS will not be liable in any way for any returned checks of MERCHANT or its customers, for any reason.

AGREEMENT

- 1.1 **MERCHANT'S AUTHORITY.** MERCHANT specifically warrants to RCS that MERCHANT has taken all necessary legal action and has authority to enter into this Agreement with RCS. If further warrants that the person(s) signing for and on behalf of MERCHANT is specifically authorized and directed to do so by MERCHANT. MERCHANT agrees that this Agreement constitutes a legal, valid and binding obligation of MERCHANT, enforceable in accordance with its terms.
- 1.2 **EXCLUSIVE THIRD PARTY PROCESSOR RELATIONSHIP WITH RCS.** MERCHANT agrees to process all transactions related to its business, exclusively through RCS and give RCS first right of refusal on any future check processing contracts with MERCHANT.
- 1.3 **RCS GOLD.** If MERCHANT has marked the guarantee box on the application form of this Agreement then MERCHANT wishes RCS also to provide check guarantee services to MERCHANT and this service shall be named RCS Gold. If MERCHANT has not marked the appropriate box, MERCHANT has engaged RCS to provide for each check: verification, electronic funds transfer and certain collection services only.
- 1.4 **CHECK COLLECTION.** Merchant authorizes RCS to represent all return items forwarded to RCS and to originate an electronic entry for the amount of any allowable recovery fee. Merchant agrees to complete a return item authorization form and forward it to MERCHANT's bank. RCS shall have sixty (60) days from the date of receipt of a return check item to complete their electronic representation process. All paper checks forwarded to RCS from the Merchant (or it's bank) will be collected on a contingency basis unless the Merchant has previously enrolled in a Gold service. RCS will pay the Merchant a maximum rate of seventy percent of the face amount upon collection. If this Agreement is terminated for any reason, RCS will retain the right to complete their electronic representation process for all return check items forwarded to RCS prior to said termination.
- 2.1 **MERCHANT'S PUBLIC DISCLOSURE RESPONSIBILITIES.** RCS shall provide signage to be displayed at the point of sale (POS) which informs customers of the MERCHANT'S use of RCS Electronic Check Processing Service. MERCHANT agrees to display these materials in the best visible and unobstructed location so as to inform the public that MERCHANT will honor electronic check processing service by RCS. From time to time, RCS may design educational and promotional materials and send such to MERCHANT for MERCHANT to distribute to customers. MERCHANT further agrees to immediately remove and properly dispose of RCS' state promotional materials and to display the most current materials upon receipt of such from RCS. MERCHANT will discontinue the use of all RCS' promotional materials and properly remove said materials upon receipt of written notification of suspension or termination of this Agreement. In the event of suspension, MERCHANT shall redisplay appropriate materials upon receipt of written verification of resumption of service by RCS. In the event of termination, MERCHANT immediately shall properly discard all promotional materials related to RCS services at MERCHANT'S expense.
- 2.2 **RESTRICTIONS ON USE OF PROMOTIONAL MATERIALS AND REPRESENTATIONS CONCERNING RCS'S SERVICES.** MERCHANT shall make no use of RCS' promotional materials or marks, other than as set forth in paragraph 2.1 above, without RCS' prior written consent. In no way shall the MERCHANT indicate that RCS' services are an endorsement of the MERCHANT, its business or its business practices.
- 3.1 **REQUIREMENTS FOR PROCESSING ELECTRONIC CHECKS.** MERCHANT shall comply with the following conditions when processing electronic checks and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established by RCS from time to time. MERCHANT shall accept only the following checks as source documents to initiate ACH debit entries through RCS: (a) All demand deposit account checks must be drawn on or payable through a federally insured depository financial institution; be machine-readable MICR-encoded with the bank routing number, account number and check serial number printed on the check, and be for an amount less than \$2500 unless otherwise authorized by RCS. (b) MERCHANT shall obtain proper identification from the customer so as to verify that the customer is authorized to negotiate the check before submitting the check to RCS for authorization. (c) MERCHANT shall obtain a customer authorization in the form of a signed sales receipt for each check transaction submitted for electronic processing; (d) MERCHANT shall scan each check through its POS terminal to initiate electronic processing. MERCHANT shall use an electronic printer connected to a POS terminal to generate and print all electronic check sales receipts; (e) All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales receipt; (f) At the time MERCHANT initiates authorization with RCS, MERCHANT warrants that the person presenting the check has been properly identified and is legally authorized to present the check for payment. Once RCS authorizes the transaction, MERCHANT shall ensure that the customer that presented the check signs the receipt and legibly prints his/her correct full name and telephone number by hand. To be valid, MERCHANT shall ensure the following: 1. That the sales receipt contains the following correct information: (a) the customer's bank account number and the check number from the MICR data; (b) MERCHANT'S correct name and business address; (c) the date of the transaction; (d) the total cash price of the sale (including all applicable state, federal or local surcharges and taxes) or the amount to be charged if a partial payment is made in cash or by credit card or the amount to be charged as the remaining balance owing after the deposit has been made; (e) After customer signs the receipt, MERCHANT shall deliver to the person presenting the check a true and completed copy of the sales receipt; (f) No check may be altered after RCS authorizes acceptance of the check. MERCHANT may not resubmit a check electronically or deposit it by any means, once RCS authorizes a transaction. 2. (a) MERCHANT shall write the authorization number from the transaction on the face of the check for each transaction. (b) MERCHANT shall write the current phone number of the customer on the face of the check. Failure to comply with the above requirements will, in addition to other penalties (such as but not limited to loss of guarantee of ALL transactions), subject MERCHANT to chargebacks or withholding of funds and may be grounds for immediate suspension/termination of services and indemnification of RCS by MERCHANT pursuant to this Agreement. YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT THE ELECTRONIC CHECK WRITER'S EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY A MAXIMUM OF A \$10,000 FINE, IMPRISONMENT FOR A TERM OF TEN YEARS, OR BOTH. IT IS SPECIFICALLY UNDERSTOOD BY YOU THAT ANY TRANSACTION EVENT INITIATED AS AN UNAUTHORIZED MANUAL ENTRY OR DEPOSIT BY YOU AFTER YOU HAVE RECEIVED APPROVAL FOR ELECTRONIC DEPOSIT OF CHECK(S) OR IS INTENDED FOR ELECTRONIC DEPOSIT SHALL BE INTERPRETED AS AN UNLAWFUL DEBIT TRANSACTION PURSUANT TO THIS NOTICE. IN THE EVENT OF SUCH A VIOLATION, MERCHANT AGREES AND WARRANTS TO HOLD RCS AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE RCS FOR THE TRANSACTION(S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE RCS FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND RCS WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.
- 3.2 **CUSTOMER'S AUTHORIZATION INITIATES DEBIT ENTRY.** MERCHANT acknowledges that the customer's authorization allows MERCHANT to instruct RCS to initiate an ELECTRONIC CHECK DEBIT ENTRY ("ENTRY") for MERCHANT against customer. If further permits RCS to reinitiate an ENTRY where the original ENTRY is returned and to assess a collection fee against CUSTOMER. Any collection fees received by RCS in collecting returned checks shall be the sole property of RCS. RCS shall present the ENTRY no more than three times. RCS, for non-RCS Gold service shall be entitled to assess a transaction fee as set forth in the schedule against MERCHANT for each representation. If a check is returned unpaid after the third presentation, RCS shall be entitled to debit the MERCHANT'S account for the amount of the check (non-Gold service only).
- 3.3 **RESTRICTIONS ON ACCEPTANCE OF CHECKS FOR ELECTRONIC PROCESSING.** From time to time, RCS shall establish necessary security and identification procedures for presentation of checks for electronic processing pursuant to the Rules and applicable law. MERCHANT agrees to comply with such procedures and to accept such "properly presented" checks for electronic processing. RCS shall establish minimum and maximum amount limitations on checks presented for electronic processing by MERCHANT. MERCHANT shall not accept or attempt to process checks in excess of the maximum limitations established by RCS. In no event, will RCS accept a check greater than \$2500 for processing without prior written authorization by RCS. RCS shall also establish the number of checks, which may be submitted on a daily basis by any customer for electronic processing. MERCHANT agrees to provide RCS with any and all information needed to establish such limitations. MERCHANT further agrees to inform RCS immediately of any changes in business activities, rules or regulations, which may affect these limitations. MERCHANT further agrees to abide by these limitations as a condition to RCS electronically processing any check. MERCHANT shall scan each check submitted for processing through no more than one POS terminal. MERCHANT agrees that sales completed at one location cannot be processed through a terminal at another location. In no event is MERCHANT allowed to process checks manually by keying in the MICR number.
- 3.4 **UNACCEPTABLE TRANSACTIONS.** In addition to the restrictions set out above and in any event, the following transactions are unacceptable for electronic processing, and MERCHANT agrees not to submit any of the following transactions to RCS for electronic processing: (a) MERCHANT shall not process any temporary checks or checks that do not have the customer's current name, address and phone number preprinted on its face, (b) MERCHANT shall not electronically process any checks drawn on any depository institution that is not federally insured or part of the ACH network, (c) MERCHANT shall not electronically process any checks drawn on the personal checking account of MERCHANT or any of its agents or employees, (d) MERCHANT shall not accept any third party items for electronic processing or checks made payable to "cash" or "bearer", (e) MERCHANT shall not accept a traveler's check, money order, payroll check, counter check or sight draft, (f) MERCHANT shall not submit for processing any transaction representing the financing of an existing obligation whether previously owed to MERCHANT, arising from the dishonor of a check or arising from a credit card, debit card or smart card dispute with the MERCHANT, (g) MERCHANT shall not submit a transaction for processing which represents an attempt to collect a chargeback, (h) MERCHANT shall not submit a check written for goods or services that are not concurrently provided to the customer, including any check given for a service contract, gift certificate, a layaway (except for the final payment) or for a similar transaction, or for goods or services provided to a third party, (i) MERCHANT shall not submit a check which contains erasures, or which is altered, unless the alteration is initiated by the customer at time of presentation, (j) MERCHANT shall not knowingly submit a check on an account which RCS previously denied authorization. MERCHANT'S submission of any of the above transactions for electronic processing may subject the MERCHANT to immediate suspension or termination, and all funds of MERCHANT, including those in MERCHANT'S account, may be placed on hold. This will also remove RCS Gold coverage from ALL checks.
- 3.5 **SURCHARGES AND TAXES.** MERCHANT shall not impose any surcharge on any electronically processed check transaction. MERCHANT shall collect all required taxes at time of sale. All required taxes must be included in the total transaction amount at the time such is submitted for authorization by RCS and must be reflected in the face amount of the check. In any event, MERCHANT shall not collect any required taxes separately in cash, or otherwise. MERCHANT is responsible for paying all taxes collected to the appropriate authorities in a timely manner.
- 4.1 **EQUIPMENT.** MERCHANT shall furnish each outlet, retail location, or business entity with a POS terminal, electronic printer and a check reader. RCS shall assign each MERCHANT'S POS terminal an identification number. (a) MERCHANT is responsible for all telecommunication fees and charges, including but not limited to telephone fees, associated with and related to the use of the POS terminals. (b) MERCHANT shall maintain all equipment related to electronic check processing in good working order at MERCHANT'S expense. (c) MERCHANT shall advise RCS immediately in the event of a breakdown of a POS terminal, electronic printer, or check reader or of any other system failure. (d) MERCHANT acknowledges that RCS is not responsible for any POS terminal or related equipment. Moreover, RCS' approval of such equipment does not constitute an express or implied warranty, representation or endorsement of such equipment.
- 4.2 **USE OF EQUIPMENT.** MERCHANT agrees to utilize only equipment approved by RCS for the electronic processing of checks and in a format and medium of transmission acceptable to RCS.
- 5.1 **DAILY SETTLEMENT OF TRANSACTIONS.** MERCHANT agrees to "batch out" each POS terminal used on a daily basis. "Batch out" shall mean that MERCHANT totals and settles all of the transactions on each POS terminal used by midnight (12:00 am) of the day RCS authorizes the sale and transmits the information contained in the batch out to RCS. RCS may assess a \$5.00 fee for each terminal daily on which MERCHANT failed to transmit a timely batch out, at RCS' sole discretion. In addition, any transactions contained in an untimely batch out may be refused or become subject to chargeback or held until after a sixty day period for consumer chargebacks by RCS. If merchant account is GOLD then checks contained in an untimely batch out are not covered under the GOLD program. If so requested by RCS, the signed Electronic Check Authorization receipt must be sent out and received at RCS' designated location within 48 hours from the request date. Failure to do so will remove RCS' obligations under the RCS Gold program for such checks at RCS' sole discretion. MERCHANT acknowledges that failure to batch out on a timely basis may be grounds for suspension or termination at RCS' sole discretion. MERCHANT acknowledges that failure to batch out will delay funds being deposited and loss of guarantee coverage on those checks.
- 5.2 **NETTING OF TRANSACTIONS.** MERCHANT acknowledges that all transactions between RCS and MERCHANT under this Agreement, except assessment of fees, shall be treated as a single transaction for purposes of daily settlement between MERCHANT and RCS.
- 5.3 **PROVISIONAL SETTLEMENTS.** MERCHANT acknowledges that all settlements between RCS and MERCHANT are provisional and are subject to the customer's rights to dispute the charges against the customer's account. In submitting electronic checks to RCS, MERCHANT endorses and assigns to RCS all right, title and interest to such checks with rights of endorsement. MERCHANT acknowledges that RCS has the right to receive payment on all electronically processed checks acquired and MERCHANT will not attempt to collect on any such transactions. If any payment is tendered to MERCHANT, MERCHANT will notify RCS by telephone of the payment, endorse the check, sign it over to RCS and immediately mail the payment to RCS by certified mail. If customer pays cash, MERCHANT shall reimburse RCS by MERCHANT'S check.
- 5.4 **PAYMENT.** MERCHANT acknowledges that this Agreement provides for the provisional settlement of MERCHANT'S transactions, subject to certain terms and conditions, fees, credit transactions, contingent claims for chargebacks, adjustments and final settlement including but not limited to those enumerated herein. All payments to MERCHANT for legitimate and authorized transactions shall be made by RCS through the ACH and shall normally be electronically transmitted directly to MERCHANT'S designated account. However, RCS cannot guarantee the timeliness with which any payment may be credited by MERCHANT'S bank. MERCHANT understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to an ACH, payment to MERCHANT can be delayed. In such cases, MERCHANT agrees to work with RCS to help resolve any problems in crediting MERCHANT'S designated account. In the event that a payment is rejected by MERCHANT'S bank or fails to arrive within five (5) days from the date of settlement due to problems beyond RCS' control, RCS may periodically wire transfer all funds due MERCHANT until the problem is corrected, at MERCHANT'S EXPENSE. All payments to MERCHANT shall be made after first deducting therefrom any discount fee, transaction fee, credit, chargeback, reserve or other fee or charge for which MERCHANT is responsible pursuant to this Agreement. Said charges and fees shall be deducted from incoming transactions or may be debited against MERCHANT'S designated Account at RCS' sole discretion, without any further notice or demand.
- 5.5 **AUTHORIZATION TO ACCESS MERCHANT'S ACCOUNT.** MERCHANT hereby authorizes RCS to initiate debit and credit entries to MERCHANT'S designated account. MERCHANT'S authorization shall continue in effect for at least 180 days after termination of this Agreement, or for a longer period as determined necessary by RCS in the exercise of its sole discretion in order to properly terminate business. Unless a reserve or delay is placed on the MERCHANT'S account, RCS will transmit settlement to MERCHANT'S bank by the fifth bank business day following the day MERCHANT batches out a terminal's transactions. RCS may hold back certain amounts where RCS is investigating a transaction for breach of warranty or transactional requirements by MERCHANT or for other reasons. RCS shall monitor MERCHANT'S transactional activity and MERCHANT agrees that RCS may divert funds for a reasonable period to investigate account activity. RCS will attempt to notify MERCHANT of any investigation, but RCS shall have no liability to MERCHANT or any other party, for any such actions taken by RCS. MERCHANT agrees that RCS may hold, setoff or retain funds to protect against amounts owed RCS or based on MERCHANT'S financial condition. RCS will not be liable for any dishonor of any item as a result of actions taken hereunder. Any account is subject to review, verification, audit and acceptance by RCS. RCS may return any item to MERCHANT for correction or proper processing.
- 5.6 **RETURNS AND CREDITS.** MERCHANT shall maintain a fair policy permitting refunds, exchanges, returns and adjustments. During the term of this Agreement, MERCHANT shall be responsible for making all cash or check refunds to customer after a transaction has been batched out for settlement. MERCHANT must initiate a credit receipt for the same amount as the debit entry to effect voids, which occur the same day as the day of authorization and prior to batching out. MERCHANT must use the POS equipment to transmit the credit. MERCHANT shall obtain proper written authorization from the Customer whose name is printed on the face of the check or the customer's authorized representative prior to crediting Customer's account. The customer or its authorized representative shall sign the completed credit receipt and a copy of the credit receipt shall be delivered to the customer at the time of each cancellation of a transaction. Each debit and credit entry shall constitute a separate transaction for which a processing fee will apply. If it becomes necessary for a reversal of a transaction to be initiated, MERCHANT shall request in writing to RCS to initiate such reversal. MERCHANT shall give RCS enough information to create such reversal. A fee of no more than twenty dollars for each transaction reversal may be charged by RCS.
- 6.1 **WARRANTIES BY MERCHANT.** MERCHANT warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to customer protection. MERCHANT also warrants not to change the nature of its business as indicated on the Application attached hereto and submitted herewith or to modify the ownership of the business without the prior written consent of RCS. With each transaction presented to RCS by MERCHANT for authorization, MERCHANT specifically warrants and represents that: (a) each customer has authorized the debiting or crediting of its checking account, that each debit or credit is for an amount agreed to by the customer; (b) each debit or credit entry was authorized by the person named on the checking account or the authorized representative or agent of such person; (c) the sales receipt is valid in form and has been completed in accordance with all applicable laws and all of the provisions set forth in this Agreement; (d) the total amount of each sales receipt evidences all goods and services purchased in a single transaction (No splitting check transactions to multiple checks); (e) MERCHANT has delivered the goods or completed the services identified in the authorized sales receipt draft; (f) each sales receipt draft represents a bona fide direct sales transaction between the MERCHANT and the person presenting the check in the MERCHANT'S ordinary course of business and that the amount of the sales draft evidences the customer's total indebtedness for the transaction involved; (g) the person presenting the check has no claim, defense, right of offset, or dispute against MERCHANT in connection with the purchase of the goods or services and MERCHANT will provide adequate services to the person presenting the check and will honor all warranties applicable thereto; (h) MERCHANT has not charged any separate or additional fee(s) in connection with the transaction other than as may be required by law. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying by cash or by any means other than electronic check processing; (i) all of MERCHANT'S business locations engage in the business activity listed on the face of this Agreement; (j) MERCHANT warrants that ALL types of its business are clearly and precisely stated on this application; (k) the percentage of mail order sales listed by MERCHANT for each location is consistent with the information provided in the application; (l) MERCHANT, nor any of its employees have submitted checks drawn from their personal checking accounts on the MERCHANT'S POS terminal; (m) MERCHANT uses only the name and address shown on the front of the Agreement on all its sales drafts; (n) MERCHANT has not submitted duplicates of any transaction; (o) MERCHANT warrants that check banking information on the printed receipt is correct; and (p) no transaction submitted for authorization to RCS is withheld or omitted.
- 7.1 **LIMITATION OF REMEDY AND MERCHANT'S WAIVER OF DAMAGES.** RCS shall be responsible for performance of the ACH services as a third-party provider in accordance with the terms of this Agreement. RCS shall not be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct, including without limitation entities such as RCS' communication carrier or clearing houses, and such entity shall be deemed to be a representative or an agent of RCS. IN NO EVENT SHALL RCS BE LIABLE TO MERCHANT FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHICH MERCHANT OR ITS CUSTOMERS, AFFILIATES, PARENT COMPANIES, ASSOCIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM RCS' ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.
- 7.2 **FORCE MAJEURE.** RCS shall not be responsible for delays, nonperformance, damages, loss profits or other losses caused directly or indirectly by any Act of God, including, without limitation, fires, earthquakes, tornadoes, hurricanes, wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss or failure, incorrect data transmission or any other event outside of the direct control of RCS.
- 8.1 **CONFIDENTIALITY OF CUSTOMER INFORMATION.** MERCHANT further warrants and agrees that it shall not sell, purchase, provide, or exchange checking account information in the form of sales drafts, mailing lists, tapes, or any other media obtained by reason of a transaction or otherwise, to any third party other than RCS, MERCHANT'S agents approved by RCS for the purpose of assisting MERCHANT in its business to RCS, the financial institution named on the check, or pursuant to lawful government demand without the account holder's explicit written consent. All media containing checking account numbers must be stored in an area limited to selected personnel until discarding and must be destroyed prior to or in connection with discarding in a manner that will render the data unreadable. MERCHANT will not disclose and will keep confidential the terms and conditions of this Agreement.
- 9.1 **CHARGEBACKS AND RETURNS.** MERCHANT shall bear all risk of loss, without warranty or recourse to RCS for the amount of any transaction, or other amounts due RCS (including RCS' actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, administrative returns, or any other type of returns, except as set forth in the RCS GOLD provisions below (provided that MERCHANT has purchased and RCS agreed to provide GOLD service). RCS shall have the right to debit MERCHANT'S incoming transactions, designated account or any other funds of MERCHANT in RCS' direct or indirect control by reason of RCS' security interest granted to RCS by MERCHANT hereunder, and to chargeback such transactions to MERCHANT including, but not limited to any of the following situations: (a) where goods have been returned or service canceled by the person submitting the check for electronic processing and that person has requested a credit draft and such credit draft was not processed by MERCHANT; (b) where the sales draft or purchaser breaches any representation, warranty or covenant or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance by the authorization center as required hereunder; (c) where the transaction is for a type of goods or services sold other than as disclosed in the merchant application or approved in advance by RCS or the amount shown on the sales receipt differs from the copy given to the customer; (d) where a customer contends or disputes in writing to RCS, or the customer's financial institution named on the check that: (1) Goods or services were not received; or (2) Goods or services received do not conform to the description on the sales receipt; or (3) Goods or services were defective or the customer has a claim, dispute or defense to payment related to the transaction; or (4) The dispute reflects a claim or defense authorized by a relevant statute or regulation; (e) where a check authorization document was not received by RCS as required hereunder or is subject to indemnification charged back by the customer's financial institution; (f) where the transaction was generated through the use of an account that was not valid (As in, but not limited to, R03, R04 return codes) effective (As in, but not limited to, R02 return code) on the transaction date or which was made on an altered or counterfeit check authorization document or of which MERCHANT had notice not to honor and failed to reject the transaction or if MERCHANT disregarded any denial of authorization; (g) where no signature of the transaction appears on the sales check authorization document or if MERCHANT failed to obtain specific authorization in advance from RCS to complete the transaction and/or a valid authorization number was not on the sales receipt and/or the customer has certified in writing to RCS or his financial institution that no authorized user made or authorized the transaction; (h) where security procedures were not followed; (i) where the customer's financial institution or RCS has information that MERCHANT fraud occurred at the time of the transaction(s), or the transaction is not a sale by MERCHANT whether or not such transaction(s) was authorized by the customer; (j) in any other situation where the check authorization was executed or a credit was given to MERCHANT in circumstances constituting a breach of any representation or warranty of MERCHANT or in violation of applicable law or where MERCHANT has not provided documents or resolved a customer dispute whether or not a transaction is charged back, and (k) a sales receipt was charged back on a returned check by the customer, or if the customer, or any representative of the customer, or any number of any counterfeiter or fraud incidents becomes aware, in the sole determination of RCS, (L) MERCHANT does not provide copy of the signed authorization receipt as requested by RCS within forty-eight (48) hours from the time of such request. MERCHANT may be charged back for all transactions, this Agreement may be terminated immediately without notice, and MERCHANT'S funds, including but not limited to those in incoming transactions and in MERCHANT'S designated account, shall be held pursuant to the provisions herein. RCS shall retain any discount or fee related to a chargeback transaction. MERCHANT agrees that RCS will assess up to twenty-five dollars for each chargeback, or such increased or additional charges as may be established by RCS from time to time.

Additionally, RCS shall have the same rights to debit Merchant's account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative returns, or any other kind of returned transaction. If MERCHANT has requested the RCS GOLD Service, and RCS has accepted the application for GOLD service, certain transactions are guaranteed, as listed in the RCS GOLD provisions below.

9.2 **CHARGEBACK AND RETURNS RESERVE ACCOUNT.** Notwithstanding any other language to the contrary contained in this Agreement, RCS reserves the right to establish, without notice to MERCHANT, and MERCHANT agrees to fund a non-interest bearing Chargeback and Return Reserve Account, or demand other security and/or to raise any discount fee or transaction fee hereunder, upon RCS' reasonable determination of the occurrence of any of the following: (a) MERCHANT engages in any processing of charges which create an overcharge to the customer by duplication of charges; (b) Failure by MERCHANT to fully disclose the true nature or percentage of its actual or expected losses due to insufficient funds transactions, fraud, theft or deceit on the part of its customers, or due to administrative chargebacks/returns, or chargebacks or rejections by customers; (c) Failure by MERCHANT to fully disclose the true nature of its business to RCS to permit a fully informed decision as to the suitability of MERCHANT for processing through RCS; (d) Failure by MERCHANT to fully disclose the true ownership of MERCHANT'S business entity or evidence of fraud; (e) Processing by MERCHANT of unauthorized charges or any other action which violates applicable risk management standards of RCS or is likely to cause loss; (f) Any misrepresentation made by MERCHANT in completion of the Merchant Application or breach of any other covenant, warranty, or representation contained in this Agreement or applicable law including a change of type of business without prior written approval by RCS; (g) MERCHANT has chargebacks or returns of any kind which exceed 1% of the total number of transactions completed by MERCHANT in any thirty (30) calendar day period; (h) Excessive number of requests from customers or issuing banks for retrieval of documentation; (i) MERCHANT'S financial stability is in question or MERCHANT ceases doing business; or (j) Upon notice of or termination of this Agreement. After payment or adequate provision for payment is made by RCS, for all obligations on the part of MERCHANT to RCS under this Agreement, MERCHANT may request RCS to disburse to MERCHANT any funds remaining in the Chargeback and Return Reserve Account unless otherwise agreed to by RCS. Such funds will not be disbursed to MERCHANT until the end of one hundred eighty (180) days after termination of this Agreement or ninety (90) days from the date of the last chargeback or return activity, whichever is later, unless RCS in its sole discretion has reason to believe that customer chargeback rights may be longer than such period of time or that less is otherwise likely, in which event RCS will notify MERCHANT of such fact and RCS will set the date when funds shall be released. No monies held in the Chargeback and Return Reserve Account shall bear interest. Provisions applicable to the designated account are also applicable to this account.

9.3 **COLLECTIONS.** MERCHANT acknowledges and agrees that when collection services are required, RCS may perform such collection services. MERCHANT further authorizes RCS to continue collection efforts for MERCHANT.

If collections are unsuccessful, RCS shall be absolved of all responsibility. Any collection of checks after electronic presentment(s) shall be paid to the MERCHANT at percentage of the collected amount as set forth by RCS. Fees excluded.

10.1 **RCS GOLD.** The RCS GOLD provisions are operational only if MERCHANT has marked the Guarantee box on the application form of the Agreement. If so marked, MERCHANT wishes RCS to provide a guarantee for reimbursement of losses sustained by MERCHANT in accepting checks for electronic processing. In addition to the provisions previously set forth and notwithstanding any provisions to the contrary, RCS has established a per account Guarantee Limit, as per the Schedule (located in the Application Approval Box), based on a percentage of the face amount of any and all checks (and a local access [Transaction fee] fee) as set forth in the pricing section of the agreement) presented at MERCHANT'S place of business or at other locations which are listed in any attachments to this Agreement, subject to the terms and conditions set forth in this Agreement. RCS shall reimburse Merchant per Schedule, up to the Guarantee Limit, as measured from the date of verification of non-payment, subject to Merchant's compliance with all of the terms and conditions contained in this Agreement or any of RCS' other published instructions. RCS shall have the right to adjust MERCHANT'S rate including RCS Gold rate based upon its sole determination. Each month MERCHANT shall have access to an itemized summary of electronic check deposits. RCS shall process up to the check limit established for MERCHANT, but will not be responsible for reimbursement of checks exceeding the merchant's approved guarantee limit. The following transaction types are not included in the RCS GOLD service, and RCS assumes no liability for and will provide no reimbursement for transactions as follows: Incorrect MICR data reads, unable to locate account or invalid account number returns, customer chargebacks or customer revocations of any transaction. Gold reimbursement shall only serve to cover merchant losses due to, NSF returns, and Insufficient Funds returns up to the per account guarantee limit placed in the approval section of the contract.

10.2 **MERCHANT SHALL PAY.** A Discount Fee, as per Schedule, based upon a percentage of the face amount of checks guaranteed by RCS GOLD during the month. A transaction fee for network access. A Minimum Monthly Discount (MMD) to be paid each month, as per Schedule: A per transaction fee of twenty-five cents for each ACH deposit. A per transaction fee of twenty-five cents for each electronic inquiry to the database that does not result in an electronic transfer of funds. A "batch out" fee (Batch Out as defined above in section 5.1) A Subscription Fee as per Schedule. If a MERCHANT terminates this service within the first sixty (60) days of the contract, a one time termination fee of one hundred fifty dollars (\$150.00) will be assessed and electronically debited from the MERCHANT'S account. A fee up to twenty dollars may be assessed for each reversal request by MERCHANT at RCS' sole discretion.

10.3 **CHECK PROCESSING.** MERCHANT shall submit all documentation related to the GOLD guaranteed transactions to RCS within forty-eight hours of RCS' receipt.

10.4 **ASSIGNMENT OF CHECKS.** As of the date of this Agreement, MERCHANT shall be deemed to have assigned to RCS, without recourse, all of MERCHANT'S rights, title and interest in any and all checks or drafts, including any rights to treble or punitive damages permitted under applicable law. MERCHANT shall execute and deliver endorsements, instruments, and papers and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend RCS' rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with RCS in pursuing RCS' rights, including suing or prosecution of the customer under all applicable laws.

10.5 **NOTIFICATION OF PAYMENTS RECEIVED.** MERCHANT shall notify RCS pursuant to the provision set forth in Section 5.3

11.1 **CHECKS FOR WHICH MERCHANT WILL NOT BE REIMBURSED UNDER RCS GOLD.** In addition to the provisions set forth in this Agreement and notwithstanding any other provisions to the contrary, RCS shall have no obligation to reimburse Merchant for checks that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the check; (b) Fraudulent and Merchant, its employees or agents are involved, either as a principal or as an accessory, in the issuance; (c) Accepted by merchant or its employees with advance knowledge of the likelihood of its being dishonored even though authorized by RCS; (d) Lost, stolen, altered or counterfeit, and RCS has reason to believe that Merchant failed to use reasonable care in verifying the customer's identity; (e) Given as a substitute for a previously accepted check, whether or not the previous check was authorized by Company or, any check upon which Merchant has accepted full or partial payment; (f) One of multiple checks presented to Merchant in a single transaction for electronic processing; (g) For goods, if the goods are subsequently returned by customer or repossessed by merchant or lien holder, within 65 days of date of purchase; (h) Not honored by the customer's financial institution because of the failure of, or government-imposed restrictions on withdrawals from the financial institution; (i) Checks for which Merchant returns cash back to the customer, unless Merchant is approved in writing by RCS for such cash back; (j) Checks for which RCS previously denied authorization; (k) Not in compliance with this agreement and not processed in accordance with the check processing provisions of this Agreement; (l) Incorrect MICR data scans or reads; (m) unable to locate account or invalid account number returns; (n) In addition, before processing the check and as a condition to honoring the check, MERCHANT shall obtain sufficient personal information to locate the person presenting the check, including but not limited to a current home or business telephone number including area code, a current home address consisting of a street or rural route address, and the customer's valid, unexpired driver's license number or non-driver identification number together with the state of issuance. In the case of a business check the company's phone number must be on the check. MERCHANT shall ensure that this identifying information is legibly printed on the check. (n) Checks must have a current phone number of customer imprinted or written on them. (o) Checks must have drivers license written on them.

12.1 **COMPLIANCE AND DISCLOSURE OF INFORMATION.** MERCHANT shall provide such information and certifications as RCS may reasonably require from time to time to determine MERCHANT'S compliance with the terms and conditions of this Agreement and applicable law. MERCHANT further agrees to produce and make available for inspection by RCS or its officers, agents, attorneys, accountants, or representatives, such books and records of MERCHANT as RCS may deem reasonably necessary to be adequately informed of the business and financial condition of MERCHANT, or the ability of MERCHANT to observe or perform its obligations to RCS pursuant to this Agreement. MERCHANT further agrees to provide to RCS from time to time such information including, but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as RCS may request. MERCHANT grants to RCS continuing authority to conduct credit checks and background investigations and inquiries concerning MERCHANT and MERCHANT'S owner(s) including, but not limited to, character and business references and the financial condition of MERCHANT and MERCHANT'S owner(s). MERCHANT expressly authorizes RCI or its agents, attorneys, accountants, and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of MERCHANT. RCS may share with others its credit, sales and other information. MERCHANT will not transfer, sell, or merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to RCS and provide RCS with the opportunity to terminate this Agreement.

13.1 **DATA RETENTION.** MERCHANT shall retain all records related to authorization, including all sales and credit receipts for a period of no less than two years following the date of the transaction. According to RCS' current policy for RCS, MERCHANT shall hand the check back to the check writer. If check is handed back to check writer then MERCHANT acknowledges that RCS will not be able to provide any check collection services beyond the third electronic presentment of the check (unless an imaging check reader is used and RCS receives that image in a usable fashion). Failure to provide the signed authorization receipt to RCS will result in cessation of collection efforts, and RCS will be entitled to immediately debit MERCHANT'S account for any previously processed and returned transactions.

14.1 **ADDITIONAL MERCHANT REPRESENTATIONS.** MERCHANT agrees to permit RCS to audit MERCHANT upon reasonable notice. Merchant agrees that any outstanding amount(s) owed to RCS shall be subject to a 1.5% finance charge monthly. Any outstanding sums will be sent to an outside collection agency and charged the maximum amount of civil, legal, and collection fees/charges as is allowed by law.

15.1 **ADDITIONAL RCS RESPONSIBILITIES.** RCI will accept entries via check reader hardware on a 24-hour per day basis. RCI is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. RCI will use information provided by MERCHANT to originate its entries in the ACH. MERCHANT understands and agrees that RCI may reject MERCHANT'S entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause RCI to potentially violate any federal, state or local law, rule statute, or regulation, including without limitation any Federal Reserve or other regulatory risk control program. At MERCHANT'S written request, RCI will make reasonable efforts to reverse or delete an entry, but will under no circumstance be liable for the failure to comply with such request.

16.1 **INDEMNIFICATION.** MERCHANT agrees to indemnify RCS for any cost, expense, damage, lost profit and/or attorneys' fees caused by any breach of its obligations or representations in this Agreement.

17.1 **NON-WAIVER.** Neither this waiver nor any delay on the part of RCS to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent explicitly stated in such writing.

18.1 **ASSIGNMENT.** MERCHANT may not assign or transfer any rights under this Agreement without the prior written approval of RCS. This Agreement shall be binding upon successors and assigns and shall inure to the benefit of the parties and their respected permitted successors and assigns. We may assign or transfer this Agreement and our rights and obligations hereunder, in whole or in part, to any third party without the necessity of obtaining your consent. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, debtor in possession, sheriff or any other officer of a court, or other person charged with taking custody of a party's assets or business, shall have any right to continue or to assume or to assign this Agreement.

18.2 **TERMINATION.** This Agreement shall continue indefinitely unless and until terminated by any party. MERCHANT may terminate after a two year period upon one hundred twenty (120) days written notice to RCS sent by certified mail. Monthly minimum and subscription(statement) fees will continue in effect for this time. Upon termination, Merchant shall be responsible for a cancellation fee equaling the total of the monthly subscription(statement) fee and monthly minimum (\$25) fees for the remaining months of the contract. If MERCHANT terminates within the first sixty (60) days of this contract, a one time fee of one hundred fifty dollars (\$150.00) will be assessed and electronically debited from MERCHANT'S account. The contract will automatically renew for the full term if not terminated as set forth above. RCS shall have the right to suspend or terminate this Agreement immediately and without notice to MERCHANT.

19.1 **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, such counterparts to constitute but one and the same instrument.

20.1 **SCHEDULE OF SERVICE RATES & FEES.** On the front of this Agreement and incorporated herein by reference are the Service Rates & Fees, which contains the Discount Fee, Transaction Fees, Monthly Minimum Discount Fee, Subscription (Statement) Fee, Set-up Fee, Installation Fee, Online Access Fee, and Stop Payment coverage Rate and other terms and conditions in effect on the commencement date of this Agreement such as the Termination fees. Other Rates & Fees will be charged to the Merchant per the terms of this agreement such as a Daily Batch Out Fee (equal to the assigned transaction fee), a \$10 Reversal Fee, Terminal Reprogramming Fee, Research Fee, and \$1 Returned Item Fee. RCS reserves the right at all times to unilaterally change all or part thereof, or any other terms of this Agreement upon written notice to MERCHANT.

20.2 **APPLICATION FEE.** Any application fee paid to RCI is non-refundable whether or not MERCHANT and this Agreement are accepted by RCS.

21.1 **ENTIRE AGREEMENT.** This Agreement, including the attached Schedules, together with the Account Agreement, is the complete and exclusive statement of the agreement between RCS and the MERCHANT with respect to the subject matter hereof and supersedes any prior agreement(s) between RCS and the MERCHANT with respect to the subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event the performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy which restricts, the Originating Depository Financial Institution (ODFI) or MERCHANT is subject, and which governs or affects transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and RCS, the ODFI and MERCHANT shall incur no liability as a result of such changes except as provided in the following paragraph.

22.2 **AMENDMENTS.** As stated in paragraph 21.1, RCS, the ODFI or MERCHANT may amend operations or processing procedures in order to conform to and comply with any changes in the Rules or applicable Federal or State Regulations. The changes would be, without limitation, those relating to any cut-off time and the close of any business day. Such amendments to operations or procedures shall become effective upon receipt of written notice to the other party, as provided for herein, or upon such date as may be provided in the Rules or applicable law or regulation referenced in the written notice, whichever is earlier in time. Use of the ACH services after any such changes shall constitute acceptance of the changes by the parties. No other amendments or modifications to this Agreement will be effective unless such changes are reduced to writing and are signed by the duly authorized party or parties to this Agreement and such Amendments are incorporated into and made a part of this document.

23.1 **BINDING AGREEMENT-BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person or entity and no other person or entity shall have any right against RCS.

24.1 **ATTORNEYS' FEES.** In the event that it becomes necessary for RCS to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, or collect a debt from MERCHANT RCS shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from MERCHANT.

25.1 **CHOICE OF LAW.** Notwithstanding any language to the contrary, all issues related to the electronic processing of checks under the terms of this Agreement shall be determined in accordance with the NACHA Rules. In the event of a conflict between the Rules and applicable local, state or federal law, the Rules shall prevail unless otherwise prohibited by law. To the extent that an issue arises which is not covered by the Rules, this Agreement shall be governed by and construed in accordance with Texas law and it is expressly agreed that venue and jurisdiction for all such matters shall lie in Burnet County, Texas. MERCHANT acknowledges that this Agreement was formed in Marble Falls, TX, upon its acceptance by RCS.

26.1 **SEVERABILITY.** If any provision of the Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, by court decision, statute, or rule such holding shall not affect any other provisions of this Agreement. All other provisions or parts thereof shall remain in full force and effect and this Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provision hereof.

27.1 **HEADINGS.** The headings in this Agreement are used for referenced purposes only. They shall not be deemed as part of this Agreement and shall not affect its interpretation.

28.1 **EFFECTIVE DATE.** This Agreement shall be effective only upon acceptance by RCS.

29.1 **IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed by their duly authorized officers.

30.1 **COLLECTION PROGRAMS.** Any check or draft that isn't eligible for a guarantee, will automatically be processed by RCS, and reimbursed on a contingency collection basis at seventy-five percent. These items, will be assigned and will remain at RCS until such items are returned to the Merchant. Upon RCS' acceptance of the Merchant application, a reimbursement schedule will be determined. All applicable rules and fees aforementioned will apply with the contingency collection programs. Any pre-existing check or draft received by RCS by or on behalf of the Merchant shall be assigned at a rate of fifty percent upon collection.

30.2 **OTHER TERMS.** The guarantor of this agreement is responsible for all amounts due from the Merchant to RCS in the event that a balance remains outstanding for more than thirty days. RCS may report unpaid balances to a third party credit reporting agency if necessary. Merchant authorizes RCS to share credit and other information about the Merchant with RCS' affiliates. RCS shall not be held responsible for any checks lost while in transport by any postal/delivery service. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, by rule, court decision, or statute such holding shall not affect any other provisions of this Agreement. All other provisions or parts thereof shall remain in full force and effect and this Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provision hereof.