



REMOTE DEPOSIT CAPTURE AGREEMENT TERMS AND CONDITIONS

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

By selecting "Check Services" on the Merchant Application and Agreement this Agreement containing the Terms and Conditions of the Remote Deposit Capture Service is agreed to by the Merchant and becomes part of the Merchant Application and Agreement.

1. Term, Termination and Amendments. This Agreement shall have a term of one (1) year from the date of acceptance by an authorized representative of EZCheck. This Agreement will renew for successive one year terms unless terminated by either party with written notice to the other at least thirty (30) days prior to the termination of the then existing term. In the event EZCheck changes the rates or fees, Merchant may terminate this Agreement upon thirty (30) days written notice to EZCheck. EZCheck may terminate this Agreement at any time upon written notice to Merchant. This Agreement, plus any addenda, including fees and charges, may be changed or amended from time to time by EZCheck by providing Merchant with written notice. Amendments to fees and charges shall take effect immediately. Other such amendments shall be effective thirty (30) days from mailing. If Merchant terminates this Agreement prior to the termination date of the then existing term, for any reason except as expressly set forth above, Merchant shall be subject to pay EZCheck an amount equal to the greater of (a) \$295, or (b) six (6) months of the current Monthly Minimum for each Merchant account. Except as specifically provided herein, this Agreement may not be altered, amended, or otherwise varied except by written mutual agreement of the parties.

2. Service Fees. Merchant shall pay EZCheck for its Remote Deposit Capture Services, ("EZDeposit ") as set forth on the Merchant Application and Agreement, plus all applicable taxes. Merchant agrees to utilize EZDeposit solely for eligible transactions at its location(s) provided on the Merchant Application and Agreement.

MERCHANT ACCEPTANCE

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

Personal Guarantee: To induce and in consideration of EZCheck acceptance of this Agreement, the signer of the Merchant Application and Agreement unconditionally, personally, individually, jointly and severally guarantees performance of the Merchant's obligations under this Agreement and payment of all sums due hereunder and hereby continues to personally indemnify EZCheck for any and all funds due from Merchant under the terms of this Agreement.

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

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

"ACH" means the Federal Reserve Bank's Automated Clearing House, governed by the NACHA operating rules, that provides for the inter-bank clearing of electronic entries for participating financial institutions.

"ACH Transaction" means an electronic payment transaction originated by Merchant and processed through the ACH Network in the Federal Reserve System.

"Bank of First Deposit" In a Check 21 Entry, the financial institution which receives the Entry from EZCheck and transmits the Entry through the Federal Reserve Bank system for transmittal to the Merchant's financial Institution for debit or credit to the Merchant Account.

"Check 21" means the Federal Reserve Bank's Image Check clearing system.

"Check 21 Transaction" means electronic remotely created or captured checks ("RCC"), image replacement documents ("IRD") or substitute checks processed through the Check 21 system to move funds to and from depository accounts.

"Check 21 Files" means an electronic series or batch of Check 21 Entries which contain debit and credits of equal or offsetting value.

"Checkwriter" means the individual or business that writes a check or authorizes a RCC or ACH Transaction.

"Deposit" means an electronic deposit to an account containing the aggregate of Check 21 Entries.

"EZDeposit" means the ACH processing services and/or the Check 21 processing services provided by EZCheck to Merchant under this Agreement

"EFT" means Electronic Funds Transaction, electronic debits and credits processed through the ACH Network.

"Image" means an electronic record of all information on the face of the paper Check.

"Initiation" means the initial presentation by EZCheck of a transaction to Settlement.

"Merchant" means the business customer sponsored and underwritten by EZCheck for participation in Services.

"Merchant Account" means the commercial demand deposit checking account designated by Merchant for use in conjunction with the EZDeposit services.

"NACHA Rules" means the then-current rules, regulations and procedural guidelines published by the National Automated Clearing House Association ("NACHA") and/or all regional payment alliances associated with NACHA.

"ODFI" means the bank acting as the Originating Depository Financial Institution as defined by NACHA rules.

"Re-initiation" or "Representation" means the second or third attempt at Settlement by EZCheck of a previously Returned ACH or paper check transaction.

"Returns" means those checks (IRD or RCC) that are deposited and subsequently returned by the drawer Bank.

"Returned Check Service Charge" means the fee charged to Checkwriter as allowed by applicable law for a transaction that is returned unpaid by the Checkwriter's bank or ACH Network.

4. EZDeposit Transaction Processing. EZCheck will provide to Merchant processing Services. EZCheck will first attempt to process a transaction as an ACH Transaction, unless the transaction has clearly been designated to be processed as a Check 21 Transaction, provided that the transaction fully qualifies to be processed as an ACH Transaction according to applicable NACHA Rules and EZCheck has received all of the required information from the Image or paper check necessary to process the transaction as an ACH Transaction. If the transaction cannot be processed as an ACH Transaction for any reason, then EZCheck will process the transaction as a Check 21 Transaction. Prior to submitting a transaction to EZCheck for processing, Merchant shall secure all authorizations and approvals from the Checkwriter and deliver any notifications pertaining to that transaction that are required by the NACHA Rules and/or applicable laws and regulations. Merchant shall be responsible for the accuracy and propriety of all transactions submitted to EZCheck for processing

5. Fees and Rates. Merchant shall pay EZCheck the fees and rates set forth in this Agreement plus all applicable taxes, as amended from time to time by EZCheck. The Transaction Fee is the charge per transaction for all transactions charged to EZCheck by reason of Merchant's use of the Service. The Base Discount Rate shall apply to the face amount of all checks processed through EZCheck. EZCheck reserves the right to change at its discretion, any fees, rate and/or charges by giving written notice to Merchant. Such changes shall be effective as of the date of the notice. Merchant's failure to give EZCheck written notice of termination of this Agreement after such notice of changes shall be deemed to constitute acceptance of the changes.

6. Payment. All fees and charges are due and payable upon receipt. Unless otherwise agreed by EZCheck in writing, Merchant authorizes EZCheck to debit all payments owing to EZCheck under this Agreement and to credit all amounts owing to Merchant under this Agreement to the Merchant Account. If there are

insufficient funds in the Merchant Account to pay amounts owed to EZCheck, Merchant shall immediately reimburse EZCheck upon demand. EZCheck may, at its option, offset such amount against any amounts due Merchant from EZCheck under this or any other agreement between Merchant and EZCheck. A delinquency charge of 1-1/2 percent per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account 20 days delinquent. Without prejudice to its rights, EZCheck reserves the right to suspend its services and obligations to Merchant, including the payment of RCC transactions due and all RCC transactions previously authorized, during any period that the Merchant Account is delinquent. Continuance of service and payment during any period of delinquency shall not constitute a waiver of EZCheck rights of suspension or termination. For any check or ACH debit in payment of services or charges provided herein, Merchant agrees to pay EZCheck a Returned Item Fee of \$25 for each such payment that is not paid by merchant's bank upon presentation. Merchant agrees that the Returned Item Fee may be debited from its Merchant Account.

7. Processing Deadlines. Merchant acknowledges that EZCheck has specific processing deadlines imposed by its ODFI and the ACH Operator for ACH Transactions and by the Bank of First Deposit for Check 21 Transactions. Files received by the deadline will be transmitted that day to the Federal Reserve Bank for settlement on the effective entry day. Files received after the deadline will be processed the next Banking Day as defined in the NACHA Rules

8. Eligible Transactions. All checks deposited electronically by Merchant through use of the EZDeposit Services shall be subject to the following requirements:

(1) The original paper check will not be deposited through the EZDeposit Services more than once; (2) All checks will conform to the requirements of Merchant's deposit agreement with its financial institution; and (3) Merchant shall review and validate the accuracy and completeness of the check data being captured including but not limited to the amount of the check and the legibility of the check image generated from use of the Remote Deposit Capture Services;

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

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

11. Merchant Funds. For any EZCheck Service provided under this Agreement, EZCheck will Submit all Merchant transactions to Settlement for deposit to Merchant Account. Availability of such deposits to Merchant will be: (a) if Merchant Account is maintained with ODFI, two business banking days following, but not including, the day the transaction is Submitted to EZCheck for processing, or (b) if Merchant Account is maintained at a financial institution other than ODFI, three business banking days following, but not including, the day the transaction is Submitted to EZCheck for processing. EZCheck will not be liable for any delays in receipt of funds or errors in credits or debits caused by third parties including but not limited to ACH Network providers or the Merchant's financial institution.

12. Merchant Account. Merchant agrees to immediately reimburse EZCheck and ODFI for any shortfalls that occur due to non-sufficient funds in Merchant Account that are covered by EZCheck. Merchant also agrees to authorize EZCheck to suspend Settlement of all funds to Merchant Account, without prior notice to Merchant, if Merchant should breach or fail to comply with any terms of this Agreement, or if either EZCheck or ODFI in its sole opinion deems itself at risk relative to any services performed under this Agreement.

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

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

15. Returns. For transactions provided for under this Agreement, unless otherwise provided herein, Returns for non-sufficient funds and uncollected funds will be electronically Re-initiated by EZCheck as applicable and allowed by current rules and regulations. Merchant agrees to be liable for all EFT items that are returned, dishonored, reversed or that cannot be collected through Checkwriter's account and that are not subsequently covered by debit against Merchant Account. In the event that funds in Merchant Account are not sufficient to cover Returns, Merchant shall immediately upon request from EZCheck or ODFI, deposit sufficient funds in Merchant Account to cover such Returns. EZCheck may deduct or offset returns against amounts to be paid Merchant for any unpaid transactions. With regards to any Returns, Merchant shall promptly notify EZCheck if: (a) a Checkwriter makes any payment to Merchant on said transaction; (b) a Checkwriter returns Goods or Services in whole or in part which were paid by said transaction, or (c) there is a dispute concerning the Goods or Services or amount of said transaction.

16. Returned Check Service Charges. EZCheck will assess Returned Check Service Charges to Checkwriters as allowed by applicable law. As partial compensation for its services under this Agreement, EZCheck will retain such Returned Check Service Charges.

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

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

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

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

21. Third Party Partners. EZCheck's third party processing services partner, JHA is providing some of the processing Services specified in this Agreement, and as a result, JHA shall be an intended third party beneficiary of this Agreement between EZCheck and the Merchant. Each third party services partner shall

have the right to enforce directly against Merchant the terms of this Agreement which relate to the provision of the third party services partner's processing services to Merchant and the ownership and protection of the intellectual property rights of the third party services partner and its licensors in and to its processing services. Merchant acknowledges that the third party services partners shall have no responsibility or liability with regard to EZCheck's obligations to Merchant under this Agreement."

22. Confidential Information. Merchant acknowledges that the Services and Software provided by EZCheck under this Agreement incorporates trade secrets of JHA and its licensors, and as such is protected by civil and criminal law. Merchant shall notify EZCheck immediately of the unauthorized possession, use or knowledge of any item supplied under this Agreement by any person or organization not authorized by this Agreement to have such possession, use or knowledge. EZCheck and JHA shall have, in addition to any other remedies available to it at law or equity, the right to seek injunctive relief enjoining any wrongful use or possession of the trade secrets contained in the Services or Software by any party. Merchant acknowledges that irreparable harm will occur to JHA in the event of such wrongful use or possession of the trade secrets contained in the Services or Software and that other remedies are inadequate.

23. Security Procedures. Merchant understands that the password and Services access and use instructions provided by EZCheck are confidential and agrees to assume all risks of accidental disclosure or inadvertent or wrongful use by any party whatsoever except for EZCheck, whether such disclosure of use are on account of Merchant's negligence or are deliberate acts. Merchant shall change its password periodically and whenever anyone who has had access to a password is no longer employed or authorized by Merchant to use the Services. EZCheck may require Merchant to change its password at any time. EZCheck may deny access to the Services without prior notice if it is unable to confirm to its satisfaction any person's authority to access the Services or if EZCheck believes such action is necessary for security reasons.

24. Assignment of Agreement. Merchant may assign this Agreement only with prior written consent of EZCheck. EZCheck may freely assign this Agreement, its rights, benefits of duties hereunder. This Agreement shall inure to the benefit of and be binding upon the successors and assigned of EZCheck and the heirs, executor, administrators, successors, and assigns of Merchant.

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

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

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

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

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

30. Covering Law and Jurisdiction. Merchant agrees to comply with all application laws, rules and regulations relating to the services provided hereunder. This Agreement plus any addenda attached herein is the entire Agreement between the parties concerning the processing of electronic and paper checks, and supersedes all previous understanding, representations and agreements in relation to its subject matter. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. Any suit relating to this Agreement MUST be brought in Houston, Harris County, Texas.

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

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

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

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