

9. Chex Collect<sup>®</sup> does not guarantee the collection or payment of any return item presented to Chex Collect<sup>®</sup> for electronic representation. Further, Chex Collect<sup>®</sup> makes no representation or warranty as to the collectivity or validity of any return item

10. Chex Collect<sup>®</sup> retains the right to refuse to process any transaction submitted by Merchant.

11. All disputes between Merchant and its customers relating to a check transaction shall be settled between Merchant and said customer. Merchant agrees to indemnify and hold Chex Collect<sup>®</sup> harmless from any claim, liability, loss or expenditure resulting from Merchant's actions or in-actions, including but not limited to failing to obtain written authorizations or post notices as required by this Agreement. Notwithstanding the foregoing, Chex Collect<sup>®</sup> agrees to indemnify and hold Merchant harmless from any claim, liability or loss by Chex Collect<sup>®</sup> actions or in-actions while processing return check items from Merchant. 12. All transactions covered by this Agreement are governed by the National Automated Clearing House Association's Operating Rules, Regulation CC and E established by the Federal Reserve Board, UCC Article 4, The Electronic Funds Transfer Act and other applicable laws and regulations.

13. If Chex Collect<sup>®</sup> is unable to electronically recover your returned check in accordance with the RCK Rules of NACHA within the sixty (60) days allowed as per sub-paragraph 6 herein, then Chex Collect<sup>®</sup> will automatically activate our Secondary Collection process, unless you have checked your disapproval in the box provided at the bottom of the first page of the Merchant Service Agreement.

14. Secondary Collection includes instituting our collection activity through one of our affiliated collection agencies in the first instance, and if the check remains uncollected after sixty (60) days, then referral to a collection attorney who has the ability to commence a lawsuit in the home state of the check writer. While this Agreement authorizes referral to an attorney for collection, no relationship of attorney-client can be created without a written attorney engagement agreement between Merchant and the attorney so engaged.\*

15. If it is necessary to engage an attorney to commence a lawsuit, Chex Collect<sup>®</sup> can provide an attorney for you at no additional fee, as the attorney's fee will be included in the collection fees outlined below. While collection fees for Secondary Collection are contingent and not paid by Merchant unless an actual recovery is completed, any and all legal disbursements, court costs, and expenses shall remain the sole obligation of the Merchant and must be paid whether a recovery is completed or not.

16. These legal disbursements, court costs and expenses will be debited from the Merchant's account in accordance with the Merchant Approval signed by you on the first page of the Merchant Service Agreement.

17. Contingency fees for Secondary Collection are as follows:

2-3 months past due	15%
3-6 months past due	20%
6-12 months past due	25%
over 1 year past due	30%
Consumer Accounts	30%
Judgment Accounts	50%
Out-of-Business Accounts	50%

18. If Merchant fails to comply with any term of this Agreement or any applicable laws or regulations cited in this Agreement, then Chex Collect<sup>®</sup> may terminate this Agreement immediately by giving notice to Merchant.

19. Either party to this Agreement may cancel this Agreement as per terms stated in Cancellation hereinafter.

20. Chex Collect<sup>®</sup> may change the terms of this Agreement at any time by giving Merchant ten (10) days notice of said change. If Merchant does not agree to the change then Merchant may cancel this Agreement.

21. The laws of the State of New York shall govern this Agreement.

**OTHER TERMS AND CONDITIONS:**

Pricing and payment. We will notify you in writing of and you agree to pay promptly, the fees we establish from time to time for our Services. Your current rate is on the reverse hereof for CCFS funds transfer, pre-note, returned item or change item. Additionally, there is a monthly access fee which is stated on the reverse hereof. A \$25.00 fee will be assessed if our debit to your account is returned. There are no additional fees for data storage. You agree that we may obtain payment for these fees and any other amounts due us under this Agreement by debiting your Account. CCFS shall have, and you acknowledge that CCFS has, the right to set off against any amount payable by CCFS to you under any provision of this Agreement, any amounts owed CCFS by you, or any damages sustained by CCFS as a result of your violation, breach or non-performance of your obligations under this Agreement.

**Governing Law**

This Agreement is governed by, and shall be construed under, the law of the State of New York, without regard for the principles and conflicts of law.

**Arbitration**

Any dispute between us shall be submitted to binding arbitration, to be conducted pursuant to the Rules of the American Arbitration Association. Any award may include an award for reasonable attorney's fees and costs.

**Agreement Modification, Term and Cancellation**

We will notify you in writing before we modify this Agreement. Your use of the CCFS services after any such modification will evidence your acceptance of the modifications. You or we may cancel this Agreement at any time by written notice as provided below. Any cancellation will not affect your or our rights or obligations arising before the termination or cancellation.

**Damage Waiver**

We will not be liable to you and you will not be liable to us for any special, consequential, indirect or punitive damages, whether or not (i) any claim for these damages is based on tort or contract or (ii) we or you knew or should have known the likelihood of these damages in any situation. We make no representations or warranties other than those expressly made in this Agreement.

**Entire Agreement**

This Agreement makes up the entire Agreement between you and us concerning our ACH services. If any provisions of this Agreement are deemed unenforceable, the remaining provision will still be enforceable. The word "you" in this Agreement means each Merchant named on the reverse hereof, and/or all such Merchants, as the context requires. If there is more than one Merchant named on the reverse hereof, the person signing this Agreement for all of you has the power to bind each of you.

**Continuing Guaranty**

For valuable consideration, the officers named and executing the Merchant Service Agreement (hereinafter called Guarantor(s)) unconditionally guarantee and promise to pay CCFS or order, on demand, in lawful money of the United States, any and all indebtedness. The word "indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debt, charge-backs for any reasons, and liabilities of Merchants or any one or more of them previously incurred, now existing or hereafter made, incurred or created, whether voluntary or involuntary. Guarantor(s) waive any right to require CCFS to:

- (a) proceed against individuals;
- (b) proceed against or exhaust any security for originators' indebtedness; or
- (c) pursue any other remedy in CCFS' power whatsoever.

Guarantor(s) waive any defense arising by reason of any act or omission of the Merchant and/or the Guarantor(s) in any legal action by CCFS to recover an indebtedness. Guarantor(s) shall have no right of subrogation, and waive any right to enforce any remedy, which CCFS now has or may hereafter have against individuals, and waive any benefit of, and any right to participate in any security now or hereafter held by CCFS. Guarantor(s) waive all presentments, demand for performance, notices of non-performance, protests, notices of dishonor, and notices of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional indebtedness. In the event CCFS consults a lawyer or incurs any cost or expenses in connection with enforcing this Guaranty, or otherwise as a result of any transaction(s) arising out of or related to this Guaranty, Guarantors agree to pay all such costs, expenses and reasonable attorneys' fees.

**Cancellation**

Any party may cancel this contract with 15 days written notice to the other which will allow the completion of prior transactions which may be in process. In the event the Merchant exercises its right to cancel, cancellation will be subject to a cancellation fee of \$249.

**Investigative Report**

An investigative or Consumer Report may be made in connection with the applications. Applicants authorize CCFS or any credit bureau or any credit reporting agency employed by CCFS or any agents of CCFS to investigate the references given or any other statements or data obtained from Merchant, or any of the principals, for the purpose of this application.

**Security Deposit**

In the event a security deposit or "Reserve" is required, these funds will be held by CCFS for sixty (60) days beyond the date of the last item processed by CCFS on your behalf. These funds will be used by CCFS to offset any returned items or charge-backs that occur after the termination of this Agreement. In the event the reserve or security deposit is not sufficient to cover the items that are returned after the termination of this Agreement, CCFS will debit your account(s) for the amounts owed.

**Re-evaluation**

CCFS reserves the right to re-evaluate the Merchant after the initial approval of this Application.

**Binding Agreement**

This Agreement shall be binding on the parties only upon execution by an authorized representative of CCFS.

**CCFS USE ONLY**

**Binding signature by CCFS:**

Signed: \_\_\_\_\_

Title: \_\_\_\_\_

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

PRO: \_\_\_\_\_ ADMIN: \_\_\_\_\_ COO: \_\_\_\_\_

Merchant: \_\_\_\_\_ ISO: \_\_\_\_\_

Rep: \_\_\_\_\_ CCFS: \_\_\_\_\_

\*A copy of the Standard Attorney Engagement Agreement can be viewed and downloaded on ChexCollect.com