



Checks-By-Phone | Merchant Agreement

Bankcard Merchant #: _____
 ISO Name: _____ ISO ID#: _____ Agent Name: _____

Merchant Information	Legal Name: _____	Tax ID# (required): _____
	DBA Name: _____	
	DBA Address: _____	Mailing Address: _____
	City: _____	City: _____
	State: _____ Zip Code: _____	State: _____ Zip Code: _____
	Phone #: (____) ____-_____	Fax #: (____) ____-_____
	Contact Person: _____	Title: _____
	Type of Ownership: <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation	
Type of Goods Sold: _____		
Total Time in Business: _____ Yr(s) _____ Mo(s)	Time in Business at this Location: _____ Yr(s) _____ Mo(s)	

Principal Information	Name (please print): _____	Phone #: (____) ____-_____
	Title: _____	% Equity Ownership: _____
	Address: _____	Date of Birth (mm/dd/yyyy): _____
	City: _____	Social Security #: _____
	State: _____ Zip Code: _____	Driver's License #: _____

Check Info	Average check amount?: _____	Average # of checks monthly?: _____	Maximum check amount requested?: _____	Estimate monthly check volume?: _____
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Schedule of Fees/Charges	<input type="checkbox"/> A. Checks-By-Phone Guarantee		<input type="checkbox"/> B. Checks-By-Phone Non-Guarantee		Required Information
	Checks-By-Phone Gateway Required		Checks-By-Phone Gateway or File Transfer		
	Discount Rate:	_____ %	Discount Rate:	_____ %	
	Transaction Fee:	\$ _____	Transaction Fee:	\$ _____	
	Monthly Service Fee:	\$ _____	Monthly Service Fee:	\$ _____	
	Monthly Minimum Fee:	\$ _____	Monthly Minimum Fee:	\$ _____	
	Return Fee:	\$ _____	Return Fee:	\$ _____	
	Reversal Fee:	\$ _____	Reversal Fee:	\$ _____	
	Gateway Setup:	\$ _____	Gateway Setup:	\$ _____	
	Merchant <input type="checkbox"/> Hosted Recording Service elects: <input type="checkbox"/> In-House Recording (existing)		Recording Service Fees if hosted. (See Recording Service Addendum) Usage Fee: \$0.30 per minute Monthly Recording Service Fee: \$25.00		

Website Info	Website Address: _____
	E-mail address: _____

Merchant Acceptance	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 GETI or any credit reporting agency by GETI or agent of GETI, to make whatever inquiries that GETI 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 GETI acceptance of the Checks-By-Phone Processing Service 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 GETI for any and all funds due from MERCHANT under the terms of this Agreement.
	ACH Debit/Credit Authorization: MERCHANT hereby authorizes GETI 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) One hundred and twenty (120) days after GETI has received written notification from MERCHANT of its termination in such a manner as to afford GETI reasonable opportunity to act on it, and (b) all obligations of MERCHANT to BANK/GETI that have arisen under this agreement have been paid in full.

Notice 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 accurate 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 GETI 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.

_____ Date
 Authorized Merchant Signature

CORPORATE RESOLUTION FOR CORPORATIONS AND LLC'S:
 The officer(s) identified have the authority to execute the Check Services Agreement with GETI on behalf of the corporation or LLC

_____ Date
 Authorized Officer's Signature/Title

Staple Check Here

Voiced check from checking account and a copy of Business License must accompany this agreement.

Application Approved by: _____	Official GETI use only Title: _____	Date: _____
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Merchant Information Form | Check Services

Merchant

Business Name: _____ Date: _____

Contact person: _____ Signature: _____

Phone # (as it will appear on customer bank statements): _____

Sign
here

Authorization Method

1. Which authorization procedure does Merchant utilize to confirm customer's consent to an ACH debit?

A. Signed Written Authorization from customer (Does not apply to Checks-By-Web)

Processor provided Auth Form Merchant created Auth Form

B. Web Authorization (Checks-By-Web only)

Customer provides electronic signature Customer logs in using a username and password

C. Recorded Verbal Authorization (Checks-By-Phone only)

Processor provided script Merchant created script

If utilizing **C. Recorded Verbal Authorization**, check ONE of the following:

Hosted secure verbal recording services offered by processor at a competitive rate.

(Please complete accompanying Recording Service Addendum.)

Merchant has existing recording service to capture verbal customer authorizations.

How are recording accessed?

Via website URL: _____ Login/Username: _____ Password: _____

Via telephone # : _____ Password: _____

Transaction Handling

2. Frequency of transaction submission: Daily Weekly Other

3. Transactions will be submitted via:

A. Internet Gateway: Merchant will create code to interface with the processor API to transmit transaction data.

B. Virtual Terminal: To key in transaction data, Merchant will use:

Processor-provided website. Other Virtual Terminal: _____

C. Certified web service Gateway: Merchant will use a certified web Gateway. (See Certified web service gateway list)

Gateway: _____

D. File Transmission: Merchant will create text file and transmit to processor via FTP. **Not available for Guarantee service.**

Acceptable file formats include: comma delimited, tab delimited, or NACHA standard file.

4. On NSF returns, processor automatically resubmits transaction: Yes No

Product Info

5. Describe the product(s) or service(s) being sold: _____

6. How are products delivered? _____

7. Describe Merchant's return/refund policy? _____

8. Describe advertising/sales/marketing procedures:

Inbound Customer Calls Outbound Customer Calls TV Direct Mail

Print Advertisements Internet Advertisements Web Site Other: _____

Website

9. Merchant's web site meets minimum encryption or secure session requirements? (Minimum 128-bit RC4 encryption) Yes No

10. Website URL: _____

Contact

Please provide Merchant's Technical Contact's information so we may contact them to provide file specs, coordinate a test file, etc.

Name: _____ Email Address: _____ Phone: _____

Additional Persons Authorized to Receive Online Transaction Initiation and/or Reporting Access

Please provide first and last names and clearly indicate whether each person listed should be given access to transaction initiation only, transaction reporting only, or both. Attach a separate page if necessary:

1. Name: _____ Access type: _____ 2. Name: _____ Access type: _____

Notices

- Authorizations must be kept on file for no less than 2 years.
- Existing relationship between Merchant and customer is required to process checks initiated by phone authorization or Bill Pay.
- A relationship exists if the customer has purchased goods/services from the Merchant within the last 2 years OR there is a written agreement in place between the Merchant and the customer for the provision of goods or services. Example: The customer has an insurance policy with the Merchant.
- Service does not include verification if submitting transactions via File Transmission. Verification included with guarantee services or when otherwise selected on merchant agreement.
- Some banks will not honor an ACH transaction from a 'corporate account'.
- Provided that processor continues to receive transactions from Merchant, funds will be released in: 5-7 business days for ACH Debit, 5 business days for Checks-By-Phone, 3 business days for Bill Pay, and 7 business days for eCommerce

Checks-by-Phone service is not applicable for telemarketing businesses (or the like) in which the primary function of the business is outbound sales calls. Unacceptable businesses for this program include cold-calling, "boiler rooms", mail order marketing, credit repair and/or credit establishment opportunities, vacation and/or benefit packages, investment opportunity operations in which there is no pre-existing relationship between the merchant and the customer and whereby merchant is engaging primarily in outbound call and/or outbound mail activity to initiate a check by phone transaction. If merchant violates this agreement by participating in such business practices, processor shall immediately hold all merchant's funds, cancel this agreement, debit merchant's account for all returns, and take other legal action as deemed necessary by processor's legal counsel, the federal trade commission, the United States Postmaster General, and/or NACHA (National Automated Clearing House).

Checks-By-Phone Merchant Rights and Responsibilities

- 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 Global eTelecom, INC. (GETI) 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. The term "Entries" shall have the meaning provided in the Rules and shall also mean the data, which is transmitted by the MERCHANT to GETI to prepare such Entries for processing.
- C. This agreement is only applicable to processing telephone-initiated transactions utilizing the end-customer's checking account data. GETI products and associated software specifically designed for such transactions will be utilized by MERCHANT, and such software will either be hosted and maintained by GETI on GETI equipment, or alternatively, provided directly to MERCHANT for installation on MERCHANT equipment. In all cases where GETI hosts the software for MERCHANT, the various terms and conditions referenced below regarding disclosure, transaction and processing requirements, and all other requirements imposed by either regulatory agency, law, GETI, or otherwise shall have full force and effect, however, in instances where the GETI hosted software already complies with MERCHANT requirements, the MERCHANT shall be relieved of certain of these responsibilities. MERCHANT agrees not to change, modify, or alter such software or product in any way. Upon MERCHANT'S request and GETI's approval, check guarantee services (hereinafter referred to as "CHECKS-BY-PHONE-Gold" service) will also be provided pursuant to provisions below. If MERCHANT has not requested CHECKS-BY-PHONE-Gold service, or if GETI has not accepted the MERCHANT application for CHECKS-BY-PHONE-Gold service, GETI 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 GETI that MERCHANT has taken all necessary legal action and has authority to enter into this Agreement with GETI. It further warrants that the person(s) signing for and on behalf of MERCHANT is specifically authorized and directed to do so by MERCHANT. MERCHANT acknowledges that this Agreement constitutes the legal, valid and binding obligation of MERCHANT, enforceable in accordance with its terms.
- 1.2 **EXCLUSIVE THIRD PARTY PROCESSOR RELATIONSHIP WITH GETI.** MERCHANT agrees to process all electronic ACH transactions related to its business exclusively through GETI and give GETI right of first refusal on any future electronic ACH processing contracts with MERCHANT.
- 1.3 **CHECKS-BY-PHONE-GOLD.** If MERCHANT has marked the CHECKS-BY-PHONE-Gold box on the application form of this Agreement then MERCHANT wishes GETI also to provide ACH Transaction guarantee services to MERCHANT. If MERCHANT has not marked the appropriate box, MERCHANT has engaged GETI to provide for each Checks-By-Phone: verification, electronic funds transfer and certain collection services. Merchant must utilize the GETI Checks-By-Phone Gateway to qualify for CHECKS-BY-PHONE-Gold service.
- 1.4 **CHECKS-BY-PHONE-SILVER.** This program offers no guarantee for checks that are returned unpaid on CUSTOMER'S account. Merchant may utilize the GETI Checks-By-Phone Gateway or an approved method of electronic file transmission to use the CHECKS-BY-PHONE-Silver program. Merchant must submit a file for testing purposes prior to using the Checks-By-Phone Service if Merchant utilizes electronic file transmission. Merchants who utilize electronic file transmission will not receive the benefit of pre-verification services to determine if the CUSTOMER'S account or driver's license is flagged by the national negative database for unpaid items and may result in higher returns or chargebacks to MERCHANT'S account.
- 1.5 **CALIBRUS RECORDING SERVICE.** GETI has established a relationship with Calibrus, Inc. to provide recording services. Recording Services are the primary method of obtaining customer authorizations to access their account in order to process a Checks-By-Phone payment. If MERCHANT has completed the Recording Service Addendum then MERCHANT wishes GETI also to provide Calibrus Recording services to MERCHANT. If MERCHANT has not completed the Recording Service Addendum, MERCHANT must obtain customer's authorization via Written Authorization Form and such form must be approved by GETI in advance, or MERCHANT has retained other recording service and has provided the recording access information on the Merchant Information Sheet submitted with the Checks-By-Phone Service Application. Separate monthly and usage per minute fees apply for use of the Calibrus Recording Service.
- 1.6 **ACH COLLECTION.** MERCHANT authorizes GETI to represent all return items forwarded to GETI and to Originate and electronic entry for the amount of any allowable recovery fee. GETI shall have sixty (60) days from the date of receipt of return ACH transaction item to complete their representation process. If this Agreement is terminated for any reason, GETI will retain the right to complete their electronic representation process for all return ACH Transaction items forwarded to GETI prior to said termination.
- 2.1 **MERCHANT'S PUBLIC DISCLOSURE RESPONSIBILITIES.** MERCHANT agrees to inform the public that MERCHANT will honor electronic ACH processing services provided by GETI. From time to time, GETI may design educational and promotional materials into the software and send such to MERCHANT for MERCHANT to disseminate to customers. MERCHANT further agrees to immediately remove and properly dispose of GETI'S previous version releases of software and to utilize the most current software version releases upon receipt of such from GETI. MERCHANT will discontinue the use of all of GETI'S 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 re-utilize appropriate software upon receipt of written verification of resumption of service by GETI. In the event of termination, MERCHANT immediately shall properly discard all software related to GETI services at MERCHANT'S expense.
- 2.2 **RESTRICTIONS ON USE OF PROMOTIONAL MATERIALS AND REPRESENTATIONS CONCERNING GETI'S SERVICES.** MERCHANT shall make no use of GETI'S software, other than as set forth in paragraph 2.1 above, without GETI'S prior written consent. In no way shall the MERCHANT indicate that GETI'S services are an endorsement of the MERCHANT, its business or its business practices.
- 3.1 **REQUIREMENTS FOR PROCESSING CHECKS-BY-PHONE.** 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 GETI from time to time. CUSTOMER will provide check information via recorded oral telephone authorization or by completing written ACH authorization form. MERCHANT is not authorized to process checks through this service if CUSTOMER does not have a pre-existing relationship with MERCHANT and MERCHANT initiated the call. A pre-existing relationship is established if the CUSTOMER has purchased goods/services from the MERCHANT within the last two years or if there is a written agreement in place between the merchant and the consumer for provision of goods or services (i.e. a service contract). MERCHANT shall accept only the following sources to initiate ACH debit entries through GETI: (a) All demand deposit accounts must be drawn on or payable through a federally insured depository financial institution; be machine-readable MICR-encoded with the bank routing number and account number, and be for an amount less than \$1,000.00 unless otherwise authorized by GETI. (b) MERCHANT shall obtain proper identification in the form of a valid drivers license number from each customer (c) MERCHANT shall obtain a customer authorization in the form of a signed written ACH authorization form or by recorded oral ACH authorization for each transaction submitted for electronic processing; (d) MERCHANT shall authorize each ACH transaction through the GETI Checks-By-Phone Gateway-based system to initiate electronic processing or through approved file transmission. (e) All items, goods and services purchased in a single transaction shall be included in the total amount on a single ACH authorization form or recorded oral authorization; Once GETI authorizes the transaction, if MERCHANT utilizes written ACH authorization form, MERCHANT shall ensure that the customer that presented the electronic check signs the ACH authorization form or has provided recorded oral authorization. To be valid, MERCHANT shall ensure that the ACH Authorization form or recorded oral ACH Authorization contains the correct customer bank routing, account, and check numbers from the MICR data; MERCHANT'S correct name and telephone number; the date of the transaction; 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; Customer's personal information including but not limited CUSTOMER'S full name, address, telephone number, driver's license state and number, last four of social security number or date of birth in YYYY format; disclosure statement that CUSTOMER understands he/she is authorizing MERCHANT to process an ACH debit entry to the CUSTOMER'S account and that if the ACH debit entry is returned unpaid, a fee of \$25.00 or as allowable by law may be charged to CUSTOMER'S account; (f) After customer signs the ACH Authorization form or clearly agrees via Recorded Oral Authorization, MERCHANT shall deliver to the person presenting the ACH transaction a true and completed copy of the sales receipt via email, facsimile, or sales receipt must be included with product shipment; (g) No ACH authorization form or recorded oral ACH authorization may be altered after GETI authorizes acceptance of the ACH transaction. MERCHANT may not resubmit an ACH transaction electronically or deposit the original source document by any means, once GETI authorizes a transaction; (h) MERCHANT'S failure to input the correct routing number, account number, or recording service call sequence number into the Checks-By-Phone Gateway will result in MERCHANT'S loss of guarantee using the Checks-By-Phone program. 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 GETI by MERCHANT pursuant to this Agreement. YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT ACCOUNT HOLDER'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 ACH TRANSACTION (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 GETI AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE GETI FOR THE TRANSACTION (S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE GETI FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND GETI WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY. FURTHERMORE, GETI'S CHECKS-BY-PHONE SERVICE IS NOT APPLICABLE FOR TELEMARKETING BUSINESSES (OR THE LIKE) IN WHICH THE PRIMARY FUNCTION OF THE BUSINESS IS OUTBOUND SALES CALLS. UNACCEPTABLE BUSINESSES FOR THIS PROGRAM INCLUDE COLD-CALLING, "BOILER ROOMS", MAIL ORDER MARKETING, CREDIT REPAIR AND/OR CREDIT ESTABLISHMENT OPPORTUNITIES, VACATION AND/OR BENEFIT PACKAGES, AND INVESTMENT OPPORTUNITY OPERATIONS IN WHICH THERE IS NO PREEXISTING RELATIONSHIP BETWEEN THE MERCHANT AND THE CONSUMER WHEREBY MERCHANT IS ENGAGING PRIMARILY IN OUTBOUND CALL AND/OR OUTBOUND MAIL ACTIVITY TO INITIATE A Checks-By-Phone TRANSACTION. IF MERCHANT VIOLATES THIS AGREEMENT BY PARTICIPATING IN SUCH BUSINESS PRACTICES, GETI SHALL IMMEDIATELY HOLD ALL MERCHANT'S FUNDS, CANCEL THIS AGREEMENT, DEBIT MERCHANT'S ACCOUNT FOR ALL RETURNS, AND TAKE OTHER LEGAL ACTION AS DEEMED NECESSARY BY GETI'S LEGAL COUNSEL, THE FEDERAL TRADE COMMISSION, THE UNITED STATES POSTMASTER GENERAL, AND/OR NACHA (National Automated Clearing House).
- 3.2 **CUSTOMER'S AUTHORIZATION INITIATES DEBIT ENTRY.** MERCHANT acknowledges that the customer's authorization allows MERCHANT to instruct GETI to initiate an ELECTRONIC ACH TRANSACTION DEBIT ENTRY ("ENTRY") for MERCHANT against customer. It further permits GETI to reinitiate an ENTRY where the original ENTRY is returned and to assess a collection fee against CUSTOMER. All such collection fees shall be the sole property of GETI. GETI shall be entitled to multiple re-presentments and to assess a transaction fee as set forth in the schedule against MERCHANT for each re-presentation. If an electronic check is returned unpaid after each re-presentation, GETI shall be entitled to debit the MERCHANT'S account for the amount of the electronic check.
- 3.3 **RESTRICTIONS ON ACCEPTANCE OF ELECTRONIC CHECKS FOR ELECTRONIC PROCESSING.** From time to time, GETI shall establish necessary security and identification procedures for presentment 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. GETI shall establish minimum and maximum amount limitations on electronic checks presented for electronic processing by MERCHANT.

- MERCHANT shall not accept or attempt to process electronic checks below the minimum or in excess of the maximum limitations established by GETI. In no event will GETI accept an electronic Checks-By-Phone greater than \$1,000.00 for processing without prior written authorization by GETI. GETI shall also establish the number of electronic checks that may be submitted on a daily basis by any customer for electronic processing. MERCHANT agrees to provide GETI with any and all information needed to establish such limitations. MERCHANT further agrees to inform GETI 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 for GETI to electronically process any checks. Customer must initiate the transaction and complete the ACH authorization form or recorded oral authorization.
- 3.4 **UNACCEPTABLE TRANSACTIONS.** In addition to the restrictions set out above and in any event, the following transactions are unacceptable for electronic processing. MERCHANT agrees not to submit any of the following transactions to GETI for electronic processing; (a) MERCHANT shall not electronically process any electronic checks drawn on any depository institution that is not federally insured or part of the ACH network, (b) MERCHANT shall not electronically process any electronic checks drawn on the business or personal checking account of MERCHANT or any of its agents or employees, (c) MERCHANT shall not accept any third party items for electronic processing or electronic checks for "cash" or "cash back", (d) 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, a dishonor of an electronic ACH transaction or arising from a credit card, debit card or smart card dispute with the MERCHANT, (e) MERCHANT shall not submit a transaction for processing which represents an attempt to collect a chargeback, (f) MERCHANT shall not submit an electronic check for goods or services that are not provided to the customer, including any electronic ACH transaction 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, (g) MERCHANT shall not submit an electronic check which is altered by the Merchant in any way (h) MERCHANT shall not knowingly submit a check on an account on which GETI 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 or charged back to merchant.
- 3.5 **SURCHARGES AND TAXES.** MERCHANT shall not impose any surcharge on any processed electronic checks. 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 GETI and must be reflected in the face amount of the electronic 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 **SOFTWARE.** MERCHANT shall utilize electronic check software provided by GETI for processing all electronic check transactions. (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 software. (b) MERCHANT shall maintain all equipment necessarily related to electronic check processing, including necessary file servers, computer and telecommunications equipment in good working order at MERCHANT'S sole expense. (c) MERCHANT shall advise GETI immediately in the event of breakdown of related equipment, electronic check software problems or of any other system failure. (d) MERCHANT acknowledges that GETI is not responsible for any related computer and telecommunications equipment used by the Merchant. In this regard, GETI shall not be responsible for any unauthorized tampering or altering to equipment and software specifically installed by GETI on the part the Merchant or Merchant's agent. Additionally, GETI's 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 GETI for the electronic processing of Checks-By-Phone transactions and in a format and medium of transmission acceptable to GETI.
- 5.1 **DAILY SETTLEMENT OF TRANSACTIONS.** "Batch out" shall mean that MERCHANT totals and settles all of the transactions by midnight (12:00 am) of the day GETI authorizes the sale and transmits the information contained in the batch out to GETI. 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 GETI. If MERCHANT account is CHECKS-BY-PHONE-Gold then electronic checks contained in an untimely batch out are not covered under the GOLD program. If so requested by GETI, the signed written ACH Authorization Form or Recorded Oral Telephone Authorization must be sent out and received at GETI's designated location within 48 hours from the request date. Failure to do so will remove GETI's obligations under the GOLD program for such electronic checks at GETI's sole discretion. MERCHANT acknowledges that failure to batch out on a timely basis may be grounds for suspension or termination at GETI's sole discretion. GETI reserves the right to hold additional monies as necessary to reduce any risk associated with daily processing of electronic checks. GETI also reserves the right to move monies into an account of its choosing to hold it against returns to those monies and providing to the merchant a net deposit after a period of time acceptable to GETI. MERCHANT acknowledges that failure to batch out will delay funds being deposited and loss of guarantee coverage on those ACH transactions and GETI may apply a \$25.00 fee for each terminal daily on which MERCHANT fails to transmit a timely batch out.
- 5.2 **NETTING OF TRANSACTIONS.** MERCHANT acknowledges that all transactions between GETI and MERCHANT under this Agreement, except assessment of fees, shall be treated as a single transaction for purposes of daily settlement between MERCHANT and GETI. Settlement shall consist of a 5-business-day net settlement period. Chargebacks may be deducted from net settlement or may be debited from MERCHANT'S account if no pending credits are available to offset the chargeback.
- 5.3 **PROVISIONAL SETTLEMENTS.** MERCHANT acknowledges that all settlements between GETI 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 GETI, MERCHANT endorses and assigns to GETI all right, title and interest to such electronic checks with rights of endorsement. MERCHANT acknowledges that GETI 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 GETI by telephone of the payment, endorse the check, and sign it over to GETI and immediately mail the payment to GETI by certified mail. If customer pays cash, MERCHANT shall reimburse GETI 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 GETI through the ACH and shall normally be electronically transmitted directly to MERCHANT'S designated account. However, GETI 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 the ACH, payment to MERCHANT can be delayed. In such cases, MERCHANT agrees to work with GETI 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 seven (7) banking days from the date of settlement due to problems beyond GETI'S control, GETI 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 there from 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 GETI's sole discretion, without any further notice or demand.
- 5.5 **AUTHORIZATION TO ACCESS MERCHANT'S ACCOUNT.** MERCHANT hereby authorizes GETI to initiate debit and credit entries to MERCHANT'S designated account. MERCHANT'S authorization shall continue in effect for at least 120 days after termination of this Agreement, or for a longer period as determined necessary by GETI in the exercise of its sole discretion in order to properly terminate business. GETI will generally transmit settlement to MERCHANT'S bank within 48 to 72 hours of the agreed upon settlement date. Settlement shall consist of a 5 banking day net settlement unless approved by GETI in writing. In cases where MERCHANT has been approved by GETI in advance to initiate credit entries, the debit to MERCHANT'S account will be initiated first and the credit to the customer may be held until MERCHANT'S debit clears, generally within six (6) banking days or for a longer period as determined necessary by GETI to insure the funds have cleared MERCHANT'S account. GETI may holdback certain amounts where GETI is investigating a transaction for breach of warranty by MERCHANT or for other reasons. GETI shall monitor MERCHANT'S transactional activity and MERCHANT agrees that GETI may delay funds for a reasonable period to investigate account activity. GETI will attempt to notify MERCHANT of any investigation but GETI shall have no liability to MERCHANT or any other party, for any such actions taken by GETI. MERCHANT agrees that GETI may hold, setoff or retain funds to protect against amounts owed GETI or based on MERCHANT'S financial condition. GETI 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 GETI. GETI 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 electronic check refunds to customer after a transaction has been released for settlement. Unless MERCHANT has been approved by GETI in advance to initiate credit entries for a lesser amount than the original electronic check entry, MERCHANT must initiate a credit receipt for the same amount as the debit entry to affect voids, which occur the same day as the day of authorization and prior to closing. MERCHANT shall obtain proper authorization from the Customer whose name is used in the transaction or the customer's authorized representative prior to crediting Customer. The customer or its authorized representative shall approve 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 for GETI to initiate such reversal. MERCHANT shall give GETI enough information to create such reversal. A fee of no more than twenty-five dollars for each transaction reversal may be charged by GETI.
- 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 consumer 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 GETI. With each transaction presented to GETI 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 proof of purchase 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 proof of purchase evidences all goods and services purchased in a single transaction (e) MERCHANT has delivered the goods or completed the services identified in the sale; (f) each sales draft represents a bona fide direct sales transaction between the MERCHANT and the person presenting the electronic 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 electronic 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 electronic 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, nor any of its employees have submitted Electronic checks drawn from their personal or business checking accounts on the MERCHANT'S electronic check software; (k) MERCHANT uses only the name and address shown on the front of the Agreement on all its sales drafts; (l) MERCHANT has not submitted duplicates of any transaction; (m) MERCHANT warrants that the Checks-By-Phone banking information on the printed receipt and written or recorded ACH authorization is correct; and (n) no transaction submitted for authorization to GETI is with or through an entity other than MERCHANT.
- 7.1 **LIMITATION OF LIABILITY AND MERCHANT'S WAIVER OF DAMAGES.** GETI shall be responsible for performance of the ACH services as a third-party provider in accordance with the terms of this Agreement. GETI 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 GETI's communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of GETI. IN NO EVENT SHALL GETI 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 OF ELECTRONIC CHECKS RESULTING FROM GETI'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

- 7.2 **FORCE MAJEURE.** GETI shall not be responsible for delays, nonperformance, damages, lost 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 the direct control of GETI.
- 8.1 **CONFIDENTIALITY OF AGREEMENT AND 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 to GETI. MERCHANT'S agents approved by GETI for the purpose of assisting MERCHANT in its business to GETI, 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 GETI for the amount of any transaction, or other amounts due GETI (including GETI's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, administrative or corporate returns, or any other type of returns, except as set forth in the CHECKS-BY-PHONE-Gold provisions below (provided that MERCHANT has purchased and GETI agreed to provide Gold service). GETI shall have the right to debit MERCHANT'S incoming transactions, designated account or any other funds of MERCHANT in GETI's direct or indirect control by reason of GETI's security interest granted to GETI 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 electronic 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 GETI 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 GETI, 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 or recording was not received by GETI as required herein 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) or effective (As in, but not limited to, R02 return code) on the transaction date or which was made on an altered, fraudulent, or counterfeit check authorization document or recording 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 the check results in a R29 return (Unauthorized ACH entry to Corporate Account) and any collection efforts are not successful; (h) where no signature of the account holder appears on the written ACH authorization form or where customer did not authorize via recorded oral authorization or if MERCHANT failed to obtain specific authorization in advance from GETI 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 GETI or his financial institution that no authorized user made or authorized the transaction; (i) where security procedures were not followed; (j) where the customer's financial institution or GETI 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; (k) 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; (l) a sales authorization was charged back and represented whether or not the customer knows or consents to this representation. If, with respect to any one of MERCHANT'S outlets, the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of GETI; (m) MERCHANT does not provide GETI with a copy of the signed ACH authorization form or recorded oral authorization within forty-eight hours of GETI's 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. GETI shall retain any discount or fee related to a chargeback transaction. MERCHANT agrees that GETI will assess up to twenty-five dollars for each chargeback, or such increased or additional charges as may be established by GETI from time to time. Additionally, GETI 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 or corporate returns, or any other kind of returned transaction. If MERCHANT has requested the CHECKS-BY-PHONE-Gold service, and GETI has accepted the application for Gold service, certain transactions are guaranteed, as listed in the CHECKS-BY-PHONE-Gold provisions below.
- 9.2 **CHARGEBACK AND RETURNS RESERVE ACCOUNT.** Notwithstanding any other language to the contrary contained in this Agreement, GETI 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 GETI's 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 GETI to permit a fully informed decision as to the suitability of MERCHANT for processing through GETI; (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 GETI 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 GETI; (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 GETI, for all obligations on the part of MERCHANT to GETI under this Agreement, MERCHANT may request GETI to disburse to MERCHANT any funds remaining in the Chargeback and Return Reserve Account unless otherwise agreed to by GETI. 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 GETI in its sole discretion has reason to believe that customer chargeback rights may be longer than such period of time or that loss is otherwise likely, in which event GETI will notify MERCHANT of such fact and GETI 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, GETI may utilize an appropriately licensed third party to perform such collection services. MERCHANT further authorizes GETI to perform collection services for MERCHANT. If Collections are unsuccessful after sixty (60) days, GETI shall discontinue collections and be absolved of all responsibility.
- 10.1 **CHECKS-BY-PHONE-GOLD.** The CHECKS-BY-PHONE-Gold provisions are operational only if MERCHANT has marked the CHECKS-BY-PHONE-Gold box on the application form of the Agreement. MERCHANT must utilize the GETI Checks-By-Phone Gateway to qualify for GOLD coverage. If so marked, MERCHANT wishes GETI to provide a guarantee for reimbursement of losses sustained by MERCHANT in accepting Checks-By-Phone for electronic processing. In addition to the provisions previously set forth and notwithstanding any provisions to the contrary, GETI 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. GETI 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 GETI's other published instructions. GETI shall have the right to adjust MERCHANT'S rate including CHECKS-BY-PHONE-Gold rate based upon its sole determination. Each month MERCHANT shall have access to an itemized summary of Checks-By-Phone deposits. GETI 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 transactions types are not included in the CHECKS-BY-PHONE-Gold service, and GETI assumes no liability for and will provide no reimbursement for transactions as follows: Incorrect MICR data entry, unable to locate account or invalid account number returns, (R29) Unauthorized Corporate returns, customer chargebacks or customer revocations of any transaction. Merchant agrees to provide any additional information to GETI on occasion as needed to assist in collection efforts. CHECKS-BY-PHONE-Gold reimbursement shall only serve to cover MERCHANT losses due to Insufficient Funds returns up to the per account guarantee limit placed in the approval section of the contract.
- 10.2 **MERCHANT SHALL PAY.** As per Schedule of Fees, merchant shall pay a Discount Fee based upon a percentage of the face amount of transactions inquired to the database during the month; a per Transaction Fee for network access; A return fee of no more than \$25.00 per returned transaction; A Minimum Monthly Fee (MM) to be paid each month; a Monthly Service (MS) Fee to be paid each month; a Transaction Fee for each ACH deposit; a Transaction Fee for each electronic inquiry to the database that does not result in a electronic transfer of funds; a "batch-out" fee ("batch-out " as described above in section 5.1); A one time set up fee for the Checks-By-Phone Gateway as per the schedule of fees on the front of this agreement; A Network Compliance Fee up to \$4.00 per month; An annual subscription fee up to \$59.95. If Merchant terminates this agreement, a one-time termination fee of one hundred twenty-five dollars (\$125.00) will be assessed and electronically debited from Merchant's account for administrative processing. In addition to the fees listed previously in this section, MERCHANT shall also pay the following if using the Calibus Recording Service to obtain customer's authorization to access their account electronically: \$25.00 Monthly Recording Service Fee and \$0.30 per minute Recording Usage Fee. MERCHANT must examine all statements relating to this Agreement, and promptly notify GETI in writing of any dispute regarding fees owed to GETI. MERCHANT'S written notice must include: (i) MERCHANT name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by GETI no later than ninety (90) days after MERCHANT received from GETI the periodic statement of fees that includes the disputed fees. MERCHANT'S failure to so notify GETI of a dispute regarding any component of the statement and fees owed will waive and bar the dispute.
- 10.3 **AUTHORIZATION RETRIEVAL REQUESTS.** Whereby a financial institution, regulatory or law enforcement agency, or similar authority has demanded from GETI proof of valid consumer authorization, in accordance with NACHA Rules, Merchant shall provide said proof of authorization to GETI within (10) business days. In the event that Merchant cannot provide the appropriate consumer authorization, and GETI suffers a penalty enforced by NACHA, GETI shall have the right to offset such penalty and charge Merchant a minimum of (\$100 up to a maximum of \$10,000) per incident.
- 11.1 **ELECTRONIC CHECK PROCESSING.** GETI shall not be responsible for the payment of any Checks-By-Phone of MERCHANT that GETI has not received for processing from MERCHANT within twenty-four hours of the initial transaction date of said Electronic check(s). MERCHANT shall be required to submit all documentation related to the transactions to GETI at GETI'S

request. MERCHANT shall make its books and records available to GETI.

- 11.2 **ASSIGNMENT OF ELECTRONIC CHECKS.** As of the date of this Agreement and by subscribing to GETI service, MERCHANT shall be deemed to have assigned to GETI, all of MERCHANT's right, title and interest in any and all electronic checks return fees, 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 GETI's rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with GETI in pursuing GETI's rights, including suing or prosecution of the customer under all applicable laws.
- 11.3 **NOTIFICATION OF PAYMENTS RECEIVED.** MERCHANT shall notify GETI pursuant to the provision set forth in Section 5.3.
- 12.1 **ELECTRONIC CHECKS FOR WHICH MERCHANT WILL NOT BE REIMBURSED UNDER CHECKS-BY-PHONE-GOLD.** In addition to the provisions set forth in this Agreement and notwithstanding any other provisions to the contrary, GETI shall have no obligation to reimburse MERCHANT for ACH transactions that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the original source document or electronic check; (b) Fraudulent, whether 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 GETI; (d) Lost, stolen, altered or counterfeit, and GETI 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 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, the closing 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 GETI for such cash back; (j) Checks for which GETI previously denied authorization; (k) Not in compliance with this Agreement and not processed in accordance with the ACH transaction processing provisions of this Agreement; (l) Incorrect Routing and Account Number data entry; (m) unable to locate account or invalid account number returns or unauthorized corporate account returns. 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, not a post office box, and the customer's valid, unexpired driver's license number or non-driver identification number together with the state of issuance, and the last four digits of customer's social security number or year of birth in YYYY format. MERCHANT shall ensure that this identifying information is legibly printed on the ACH Authorization form or clearly captured on the recorded oral authorization; (n) ACH Authorization form or recorded oral authorization must contain a current phone number of customer; (o) ACH authorization forms or recorded oral authorizations must contain the customer's drivers license number; (p) GETI must receive the completed ACH Authorization form or recorded oral authorization within 48 hours of GETI's request; (q) MERCHANT's failure to input into the Checks-By-Phone system the correct routing number, account number, or recording call sequence number will result in MERCHANT's loss of guarantee.
- 12.2 **COMPLIANCE AND DISCLOSURE OF INFORMATION.** MERCHANT shall provide such information and certifications as GETI 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 provide to GETI 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 GETI may request. MERCHANT grants to GETI 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 GETI 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. GETI 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 mail order without providing notice to GETI and provide GETI with the opportunity to terminate this Agreement.
- 12.3 **COMPLIANCE WITH THE RULES AND APPLICABLE LAW.** The Merchant's rights and obligations with respect to any Entry are governed by the NACHA Rules ("the Rules"), this Agreement and applicable law. The Merchant agrees to comply with and be bound by "the Rules". The Merchant agrees to comply with applicable state and federal law or regulation and Merchant warrants that it will not transmit any Entry that violates the laws of the United States, including, without limitation, regulations of the Office of Foreign Asset Control (OFAC).
- 13.1 **DATA RETENTION.** MERCHANT shall retain all records related to authorization, including all sales and credit receipts and recorded or written authorizations for a period of no less than two years following the date of the transaction. If ACH authorization form is handed back to consumer or if recorded oral authorization is lost then MERCHANT acknowledges that GETI will not be able to provide any check collection services beyond the third electronic presentation of the check. Failure to provide the signed ACH authorization form or recorded oral authorization to GETI will result in cessation of collection efforts, and GETI 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 GETI to audit MERCHANT upon reasonable notice. MERCHANT agrees that any outstanding amount(s) owed to GETI 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 collections fees / charges as is allowed by law.
- 15.1 **ADDITIONAL GETI RESPONSIBILITIES.** GETI will accept entries via Checks-By-Phone Gateway on a 24-hour per day basis. GETI is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. GETI will use information provided by MERCHANT to originate its entries in the ACH. MERCHANT understands and agrees that GETI may reject MERCHANT's entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause GETI 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, GETI 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 GETI for any cost, expense, damage, lost profit and/or attorney's fees caused by any breach of its obligations or representations in this Agreement.
- 17.1 **NON-WAIVER.** Neither the failure nor any delay on the part of GETI 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 specifically stated in such writing.
- 18.1 **ASSIGNMENT.** MERCHANT may not assign or transfer any rights under this Agreement unless and until it receives the prior written approval of GETI. GETI may freely assign this Agreement, its rights, benefits and duties hereunder.
- 18.2 **TERMINATION.** This Agreement shall continue indefinitely unless and until terminated by either party. MERCHANT must provide sixty (60) days written notice to GETI of termination and monthly minimum and subscription fees will continue in effect for this time. If either party terminates this agreement a one-time fee of one hundred twenty five dollars (\$125.00) will be assessed and electronically debited from MERCHANTS account. GETI 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 FEES.** Attached to this Agreement and incorporated herein by reference is a Schedule of Fees, which contains the Discount Fee, Transaction Fees, Minimum Monthly Discount Fee, Subscription Fee, and other terms and conditions in effect on the commencement date of this Agreement. GETI 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. MERCHANT must promptly notify GETI in writing of any dispute regarding fees under this Agreement. MERCHANT'S written notice must include: (i) MERCHANT name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by GETI no later than ninety (90) days after the disputed fees have been paid by MERCHANT or charged to MERCHANT'S account by GETI. MERCHANT'S failure to so notify GETI will waive and bar the dispute.
- 20.2 **APPLICATION FEE.** Any application fee paid to GETI is non-refundable whether or not this Agreement is accepted by GETI.
- 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 GETI and the MERCHANT with respect to the subject matter hereof and supersedes any prior agreement(s) between GETI 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 to which GETI, 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 GETI, the ODFI and MERCHANT shall incur no liability as a result of such changes except as provided in the following paragraph.
- 22.1 **AMENDMENTS.** As stated in paragraph 21.1, GETI, 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 NACHA 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 GETI.
- 24.1 **ATTORNEYS' FEES.** In the event that it becomes necessary for GETI to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, or collect a debit from MERCHANT, GETI shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from MERCHANT.
- 25.1 **GOVERNING LAW, VENUE, & JURISDICTION.** 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, laws of the United States of America and the State of Florida as it applies to contracts. 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. MERCHANT acknowledges that this Agreement was formed in Destin, Florida upon its acceptance by GETI. All parties hereby submit to the exclusive jurisdiction and venue of the State of Florida, County of Okaloosa or Federal District Court for the Northern District of Florida for the purposes of any legal action arising in connection with such obligations.
- 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 (or arbitration) 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 GETI.
- 29.1 **IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Checks-By-Phone | Recording Services Addendum

Hosted Recording Services are offered as one cost effective solution available to comply with NACHA's (National Automated Clearing House Association) rules and regulations associated with obtaining a customer's clear and unambiguous verbal authorization to process a Checks-By-Phone payment.

Merchant Name: _____

Address: _____ City: _____ State: _____ Zip: _____

Contact Person: _____ Contact's Phone Number: _____

Standard Package: 3-Way Call Recording for Checks by Phone Service

Merchant's 3-Way Calling Capabilities

(Please select one based on Merchant's telephone capabilities to insure that recording service options are set up appropriately):

Merchant's phone system has 3-way call capabilities. Preferred method: Merchants with 3-way calling options present on their current phone system will dial the recording service with the customer already on the line to complete the transaction authorization process.

Merchant's phone system does not have 3-way call capabilities. Merchants without 3-way calling options on their current phone system will dial the recording service and will then be provided a 3-way call connection to bring customer on the line.

Recording Fees: If merchant desires custom recording services other than the standard 3-Way Call Recording option, set up costs will be assessed at an amount determined by Calibus, Inc. based upon services desired.

\$0.30 Per Minute

\$25.00 Monthly Recording Service Fee

Set Up Fee (Waived! Normally \$99.00)

Merchant Recording Service ID Number & Merchant Call Retrieval Information: provided upon application approval and set up completion.

Merchant desires recording services not offered on this form: This box should only be checked if merchant desires customized recording services beyond the standard package offering detailed above. If selecting this option, do not select one of the options listed in the Merchant 3-way Calling Capabilities section. Processor shall coordinate additional services between Merchant and Calibus, Inc. Additional set up charges will apply.

Merchant Acceptance

This Agreement includes all of the Terms and Conditions stated on this document and on the front and back of the corresponding Checks by Phone Service Agreement. This Agreement has been executed on behalf of and by the authorized management of each party as of the date below. GETI has contracted with Calibus, Inc., GETI's preferred vendor for recording services, to provide recording services for the purpose of obtaining Customer's verbal authorization to process a Check by Phone transaction and Merchant wishes to utilize such recording services to obtain recorded customer's verbal authorization to process a one time Check by Phone payment. Each Check by Phone payment requires a separate recorded authorization to be valid. Merchant agrees that GETI will bill Merchant for use of the recording service. Payment will be debited monthly via ACH to Merchant's bank account provided with the Check by Phone Service Agreement (or Merchant's most recent bank account on file). Usage Fees will be charged at a rate of \$0.30 per minute and a \$25.00 Monthly Recording Service Fee will be assessed. Both GETI and Merchant shall have access to all recorded calls processed under this agreement. All recorded authorizations must be saved for no less than 2 years and Merchant is not authorized to delete any recordings captured under this agreement. GETI shall assign each Merchant location a Merchant Recording ID upon approval of the Checks-By-Phone Service Agreement and the associated set up completion. Merchant shall correctly enter the Merchant Recording ID number when each call recording begins. Merchant shall be provided a Call Sequence ID Number upon initiation of the call via automated response. The Call Sequence ID Number must be correctly entered in the Checks-By-Phone Gateway before the transaction is submitted to GETI for processing. Merchant is responsible for the accurate entry of the Merchant Recording ID and the Call Sequence ID numbers. Inaccurate entries may result in delayed funding and will remove guarantee coverage, if applicable.

Name (Please Print)

Signature

Date

Checks-By-Phone Authorization Form

(This form is only to be used if the merchant is NOT obtaining Customer Authorization via a Recording Service.)

Customer Information:

First Name	Middle Initial (Optional)	Last Name
Street Address (no P. O. Boxes please):		
City:	State:	Zip:
Home Phone:		
Work Phone (preferred but not required):		
Driver's License State:	Driver's License Number:	
Last Four of Social Security Number or 4-digit Year of Birth (required for verification purposes):		

Customer's Bank and Payment Information:

Routing Number (9 digits):	
Account Number:	
Check Number:	Checks-By-Phone Amount: \$

Payment Authorization:

I authorize the above named merchant to process my Checks-By-Phone payment as an electronic funds transfer or paper draft and to debit my account for the amount of the transaction through the ACH network. In the event my EFT or draft is returned from my bank unpaid, I agree that a fee of \$25.00 or as allowed by law may be charged to my account via draft or EFT. Furthermore, I warrant that I am authorized to execute this payment authorization and the above information is true and correct.

Customer Signature

Date

This document must be retained for two (2) years.

Checks-By-Phone | Sample Script

Customer Verbal Authorization (Recorded)

Dear Valued Merchant,

The following sample script has been provided to assist our merchants utilizing the Checks-By-Phone service. It is not required that you use our script, however certain information must be captured on the recorded customer authorization. Also, it is not required that the entire telephone conversation is recorded, but the authorization portion of the call must be recorded and stored for no less than 2 years.

NOTE: Please be aware that Voice Response Units (VRUs) that allow customers to key-entry responses to input data and respond to questions do not meet the “recorded authorization” requirement under this program per NACHA (National Automated Clearing House) Rules.

REQUIRED INFORMATION:

- Customer’s Name, Address, Telephone
- Driver’s License Number
- Last Four (4) digits of the customer’s Social Security Number or Year of Birth in YYYY format for verification purposes
- Customer’s Bank Routing Number, Account Number, Check Number, Amount of Payment
- Date of customer’s oral authorization
- Date on or after which customer’s account will be debited
- Merchant’s telephone number (# answered during normal business hours)
- Merchant must clearly state that the authorization obtained from the customer will be used to originate an ACH debit entry to the customer’s account and the customer must unambiguously express consent.
- Fee of \$25 or as allowable by law shall be charged to customer’s account via draft or ACH in the event the check is returned by customer’s bank unpaid.

SAMPLE SCRIPT:

Merchant: (Customer’s First and Last Name), by providing your bank account information and verbal authorization today, (Current Date MM/DD/YY), you are authorizing (Business Name) to create an ACH debit to your account and that this Checks-By-Phone may be drafted from your account as early as today. In the event your Checks-By-Phone is returned from your bank unpaid, you further agree that a fee of \$25.00 or as allowable by law shall also be charged to your account via draft or ACH debit. Do you authorize (Business Name) to proceed with this Checks-By-Phone?

Customer: “Yes”: proceed with authorization; or “No”: A Checks-By-Phone is not authorized, do not proceed.

Merchant: A Checks-By-Phone will be drafted from your bank account with the following information: (Bank Routing Number, Account Number, Check Number, and Checks-By-Phone Amount). Please allow 12 to 72 business hours for this transaction to post to your account. Should you have any questions regarding your payment, you may reach our office at (Business Telephone that is answered during normal business hours).