

**CONCORD EFS NATIONAL BANK
GIFT CARD ADDENDUM
TO MERCHANT AGREEMENT**

This Gift Card Addendum (the "Addendum") is dated as of _____, between Concord EFS National Bank, a national banking association ("CEFS") and _____, a _____ corporation ("Merchant"). This Addendum is a supplement to and incorporated into the Merchant Agreement dated _____, between CEFS and Merchant (the "Merchant Agreement").

Background

CEFS offers processing services for stored value gift cards ("Gift Card"), which may be used by Merchant's customers to purchase products or services (each a "Cardholder"). Gift Card processing is an additional service to the services and products specified in the Merchant Agreement. Merchant desires to participate in the Gift Card processing service on the terms and conditions described in this Addendum.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CEFS and Merchant agree to be legally bound by the terms and conditions of this Addendum.

Merchant's Duties.

- 1) **Issuance and Activation.** Merchant will issue Gift Cards to Cardholders in exchange for Cardholder's payment of the desired Gift Card amount. Gift Cards will be activated according to proper procedures at the time of issuance. Merchant will take and retain Cardholder's payments for Gift Cards, and no transfers of funds will occur in connection with Gift Card issuance or transactions.
- 2) **Internal Control and Error Reporting.** Merchant will be responsible for implementing procedures to safeguard and monitor its inventory of Gift Cards, and to incorporate issuance and payment for Gift Cards into its daily reconciliation and balancing of transactions. Merchant will utilize the periodic usage reports provided by CEFS to confirm that the CEFS Gift Card records are correct. Merchant will report any errors in the Gift Card records to CEFS within 30 days of receipt of the periodic usage reports.
- 3) **Terms and Conditions.** Merchant will inform Cardholders in writing of the terms and conditions for use of Gift Cards, including without limitation, the amount of transaction charges that will be assessed against the value of the Gift Card each time it is used, procedures to report lost or stolen Gift Cards and the Merchant's policy concerning whether lost or stolen Gift Cards will be replaced, and any expiration period for the Gift Card. Merchant is solely responsible for ensuring that its terms and conditions for Gift Card use comply with Applicable Law as defined in **Exhibit A**.
- 4) **Gift Card Guidelines.** Merchant may issue, activate, and accept Gift Cards at all Merchant locations by following the procedures and technical specifications provided in the CEFS Gift Card Guidelines, as may be amended from time to time which are attached to this addendum as **Exhibit A**. Merchant acknowledges that CEFS may supplement the Gift Card Guidelines with additional reference material from time to time, including without limitation information on the VRU/ARU system, and such supplemental material shall have the same effect as the Gift Card Guidelines.
- 5) **Record Retention.** Merchant will retain all records of Gift Card issuance and activation and all records of daily balancing or any adjustments to Gift Cards, for the period required by Applicable Law. CEFS will have the right, upon reasonable notice, to examine the Gift Card records during normal business hours.
- 6) **Customer Disputes.** In the event that a Cardholder disputes a Gift Card transaction or the balance reported on a Gift Card, Merchant will be responsible for resolving any such dispute or alleged error and notifying CEFS of the dispute. CEFS will cooperate with Merchant in attempting to resolve Cardholder disputes or alleged errors related to Gift Cards. CEFS will only act as a source of information and will not be responsible for any losses suffered by Merchant due to Cardholder disputes.
- 7) **Exclusivity.** During the term of this Addendum, Merchant agrees to use CEFS as its sole and exclusive source for services of the type contemplated within this Addendum.

- 8) **Cooperation and Further Assurances.** Merchant will cooperate with CEFS as necessary for CEFS to fulfill its obligations under this Addendum. Merchant agrees to promptly and accurately furnish such documents, information, instructions, execute such documents or instruments, or take such other actions as may be necessary from time to time for CEFS to provide the services contemplated herein in accordance with this Addendum.
- 9) **Compliance with Law.** Merchant and CEFS hereby agree that CEFS is acting solely as a processor of Merchant's Gift Card transactions, and at no time does CEFS hold funds, as deposits or otherwise, of Merchant or Merchant's Cardholders pursuant to the terms of this Addendum. Merchant hereby assumes all responsibility for compliance with state abandoned property or escheat laws, and agrees to indemnify and hold CEFS harmless for any costs, losses, or expenses incurred by CEFS in the event that CEFS is required to take actions, for any reason whatsoever, in order to comply with Applicable Law, including without limitation, the abandoned property or escheat laws of any state, in connection with its activities as processor pursuant to the terms of this Addendum.

CEFS' DUTIES

- 10) **Transaction Authorization and Processing.** CEFS will screen all Gift Card transactions submitted against such databases or parameters as are mutually agreed upon by the parties from time to time. An approval code will be returned if the Gift Card has been activated and the Gift Card has available funds. The purchase amount will be deducted from the Gift Card's value, or available balance, and any remaining balance will be printed on the transaction receipt.
- 11) **Reports.** CEFS will provide such monthly reports as necessary for daily balancing of Gift Card activity. CEFS will also provide weekly or monthly reports as mutually agreed by the parties for Merchant's further verification of the status of outstanding Gift Cards.
- 12) **Cards.** All Gift Cards shall identify the Merchant as the issuer, and shall be compatible with CEFS' technical requirements.
- 13) **Use of Customer Forms.** CEFS may, from time to time, provide Merchant with forms of Cardholder disclosures, advertisements or other forms ("Customer Forms") for use in connection with the Gift Cards. All such Customer Forms are exemplars for Merchant's consideration and review only, and CEFS makes no representation or warranty, express or implied, including without limitation those of merchantability or fitness for particular purpose, regarding such Customer Forms or of compliance of the forms with Applicable Law. Merchant assumes all liability for the use, with or without modification, of such Customer Forms.
- 14) **Record Retention.** CEFS will retain all records of Gift Card Issuance and activation and all records of daily Gift Card transactions or any adjustments to Gift Cards, for the period required by Applicable Law. Merchant will have the right, upon no less than forty-eight hours prior written notice, to examine the Gift Card records during normal business hours.
- 15) **Integration with Merchant Agreement.** This Addendum supplements the terms and conditions of the Merchant Agreement with respect to Gift Cards. All capitalized terms used in this Addendum and not otherwise defined herein shall have the meanings set forth in the Merchant Agreement. In the event of any conflict between the terms and conditions of this Addendum and the terms and conditions of the Merchant Agreement, this Addendum shall govern. The following provisions of the Merchant Agreement shall apply to the Gift Card transactions initiated hereunder as if set forth fully herein and as if the Gift Card transactions were transactions under the Merchant Agreement:
 - a) (Authorization)
 - b) (Term and Termination)
 - c) (Exclusive Agreement)
 - d) (Miscellaneous)
 - e) (Indemnification)
 - f) (Limitation of Liability)
 - g) (Confidentiality)

In the event that the subject matter of a section of the Merchant Agreement as indicated above corresponds to a different numbered section in the Merchant's Merchant Agreement, then the section corresponding to the subject matter titles set forth above shall apply to Gift Card transactions initiated hereunder as if set forth fully herein, notwithstanding the discrepancy in section numbers.

MERCHANT'S REPRESENTATIONS AND WARRANTIES. Merchant warrants and represents to CEFS that:

- 16) **Binding Agreement.** This Addendum and the Merchant Agreement are valid, binding agreements, enforceable against the Merchant in accordance with their terms.
- 17) **Authorized Entry or Draft.** Each Gift Card transaction initiated by Merchant under this Addendum has been submitted by a person who is an owner or authorized user of the Gift Card on which the transaction is drawn, and the authorization has not been revoked or terminated, and no authorization from any other person is required to make the transaction lawful. Each Gift Card transaction initiated by or through Merchant's Terminals is lawful, is for an amount which, at the time of origination is due and owing to Merchant from the Cardholder who authorized the transaction and whose Gift Card account is to be reduced by the transaction, and is for a sum specified to be paid to the Merchant. Any fee or charge to a consumer processed by CEFS hereunder has been duly authorized and is permissible according to this Addendum, the Merchant Agreement and all Applicable Law.

TERM; TERMINATION. Notwithstanding any shorter term of the Agreement, this Addendum shall become effective as of the date set forth in the first paragraph of this Addendum, and shall continue for an initial term of _____ years, unless earlier terminated pursuant to the Term provision of the Agreement. Following the expiration of the initial term of this Addendum, this Addendum shall remain in effect for renewal terms coterminous with the Agreement unless either party provides written notice of non-renewal of this Addendum to the other party sixty (60) days in advance of the expiration of the initial term or any such renewal term. CEFS may terminate this Addendum in the event that CEFS ceases to offer the Gift Card service, upon ninety (90) days written notice to Merchant. In the event of a termination pursuant to this paragraph, Merchant shall immediately cease using all devices and materials related to the Gift Cards.

SECURITY. Merchant acknowledges that it accepts credit cards, as payment for Gift Cards purchased and that CEFS will process such credit card transactions pursuant to the Merchant Agreement. CEFS is subject to a higher risk of charged back transactions, which may potentially result in losses, for Gift Cards that have been purchased in a credit card transaction settled by CEFS. In consideration of the assumption of this additional risk, Merchant acknowledges that CEFS' right to establish a chargeback reserve as set forth in the Merchant Agreement, shall also be extended to Gift Card transactions.

FEES AND CHARGES. Merchant shall pay CEFS the fees and charges set forth in **Exhibit B** to this Addendum in connection with the Gift Card service. Such fees may be deducted from any payment due to Merchant pursuant to any provision of the Agreement, and are subject to modification as provided in the Agreement. Notwithstanding any provision of this Addendum to the contrary, Merchant is ultimately responsible to pay any processing fees for transactions subject to Cardholder disputes regardless of the ultimate resolution of such dispute.

IN WITNESS WHEREOF, the parties have executed this Addendum by and through their duly authorized representatives as of the date set forth in paragraph 1, page 1 of this Addendum.

CONCORD EFS NATIONAL BANK

MERCHANT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT "A"

To Gift Card Processing Agreement

GIFT CARD GUIDELINES

Capitalized terms in these Gift Card Guidelines have the meaning set forth in the Gift Card Processing Agreement between Merchant and CEFS.

1. Merchant's Responsibilities. In addition to any other requirements necessary to comply with Applicable Law, in order for Merchant to properly use the Gift Card Service, Merchant must follow these Guidelines:

(a) Creation of Gift Cardholder Record: First Transaction. Merchant shall enter the following information necessary to enable Merchant to create or order a Gift Card and for CEFS to create a Cardholder record.

- (i) Whether the Gift Card is being issued for a specific dollar amount (a disposable Gift Card) or is being issued as a reusable Gift Card, whereby the Cardholder may add value to the Gift Card over the period that the Gift Card is active;
- (ii) The value of the Gift Card; and
- (iii) The Gift Card expiration date, if any
- (iv) Any other information required by Applicable Law.

(b) Card. All Gift Cards shall identify the Merchant as the issuer, and shall be compatible with CEFS technical requirements. Each Gift Card shall have all appropriate information printed on the face or reverse side as may be required by Applicable Law, including without limitation, Merchant's name, address and telephone number which the Cardholder may use to make inquiries or to provide notice of an error concerning transactions made with the Gift Card.

(c) Authorization. Merchant must obtain approval of each Gift Card transaction by swiping a Card through a POS Terminal unless Merchant and CEFS have agreed that Merchant may access and use the VRU/ARU voice activated system for authorizations and other Gift Card related activities. Except as permitted through use of the VRU/ARU system described previously, voice authorizations are not permitted for Gift Card transactions. Gift Card transactions will be authorized and an approval code sent if (i) the Gift Card has been activated and (ii) the Gift Card has available funds.

(d) Give Transaction Receipt to Customer. Merchant shall provide each Cardholder with a receipt containing information about the purchase transaction and the amount of any remaining balance on the Gift Card. A Cardholder may also obtain an available balance on a Gift Card from a cashier. The transaction receipt shall include the Merchant's name, address and telephone number to be used for account inquiries, notice of error, or to report the loss or theft of a Gift Card.

(e) Error Resolution Procedures. In the event a Cardholder provides Merchant with an oral or written notice of error or otherwise disputes a Gift Card entry, Merchant agrees to use all commercially reasonable efforts to resolve such error allegation or dispute. Once a transaction has been authorized and processed for a particular Gift Card, any dispute by the Cardholder concerning returns, refunds, the amount charged to the Gift Card, or similar disputes shall be resolved between the Merchant and the Cardholder. The Merchant may elect to add the disputed amount back to a reusable Gift Card, or issue a new Gift Card in the case of a disposable Gift Card. CEFS shall only serve as a processor of information and shall not be responsible for any losses suffered by Merchant or Customer due to disputes.

(f) Notification. Merchant shall provide to its Gift Card Cardholders a reasonable means and time requirement for providing Merchant with notice of loss or theft of a Gift Card after the Cardholder learns of the loss or theft.

2. Expired Cards. Merchant shall, as required by Applicable Law, inform Cardholders of the expiration date of Gift Cards and, include such expiration date on the Gift Card. Subject to the foregoing, Merchant may elect to issue a disclaimer that Gift Cards will automatically expire if not used for a certain period as determined by Merchant. Merchant shall provide to CEFS all necessary information to process such Gift Cards and deny authorization within the appropriate time period.

3. Reports. CEFS shall make reports available to Merchant on a weekly or monthly basis that include information on Gift Card usage. Daily reports will be issued for balancing by Merchant. Merchant is responsible for all reconciliation of Gift Card transactions to CEFS reports.

4. Limitation on Dollar Amount. CEFS may, from time to time, establish maximum dollar amounts for Gift Card entries by notice to Merchant.

5. **Applicable Law**. For the purposes of this Addendum, “Applicable Law” shall mean any federal, state or local law, regulation, rule or ordinance and all other applicable judicial and administrative judgments, orders, stipulations, awards, writs, injunctions and consent decrees, in each case as in effect and applicable to the subject matter referenced. In the event of any conflict between the terms of this Agreement and Applicable Law, Applicable Law shall govern.

EXHIBIT "B"

To Gift Card Processing Agreement

PRICING SCHEDULE

Gift Card Processing

Set up charges

Plastics Costs

See attached grid if applicable

Set Up Fee (per location)

\$ _____

Included in terminal activation fee for new termi

Transaction Fee

\$ _____

per transaction

Card Storage Fee (per card)

\$ _____

For inactive cards on the system >12 months

VRU & Internet Transactions

\$ _____

per transaction

Monthly Service Fee (per location/per month)

\$ _____

Gift Card Packages:

A-\$ _____ 1000 cards

B-\$ _____ 500 cards

C-\$ _____ 250 cards