

## Loyalty Program Application

Business Information	
<b>Merchant's DBA/Outlet Name:</b>	<b>Merchant's Legal Name:</b>
Address:	Address:
City, State, Zip:	City, State, Zip:
Phone, Fax:	Phone, Fax:
Contact Name at this Address:	Contact Name at this Address:
E-mail:	Email:
Business Type: <input type="checkbox"/> Corporation <input type="checkbox"/> LLC <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Tax Exempt 501C Organization <input type="checkbox"/> Other	
Bank account(s) on file with Mercury Payment Systems, LLC ("Mercury") will be used for Loyalty Program Services and Fees	

Fees			
	Plan Level		
Please Check Desired Plan Level	<input type="checkbox"/> <b>Silver</b>	<input type="checkbox"/> <b>Gold</b>	<input type="checkbox"/> <b>Platinum</b>
Setup Fee	\$ 99.99	\$ 99.99	\$ 99.99
Monthly Service Fees	\$ 99.99	\$ 149.99	\$ 249.99
<u>Discount w/ Credit Card Processing</u>			
1 yr credit card processing agreement	\$ 49.99	\$ 99.99	\$ 199.99
2 yr credit card processing agreement	\$ 44.99	\$ 89.99	\$ 179.99
Included Messages	-	1,000	3,000
Message Fees (per message over included messages)	\$ 0.0600	\$ 0.0550	\$ 0.0500
Other: _____			
_____			

1. Participating Merchants
1) _____
2) _____
3) _____
4) _____
5) _____
Name of Participating Merchant Group _____
Merchant agrees to be grouped with the above listed Participating Merchant(s) as well as any subsequently added Participating Merchant(s) so that Mercury may provide the Services, as that term is defined in the Loyalty Program Terms and Conditions, to Merchant and the Participating Merchant(s) as a group.

Acceptance of Merchant Loyalty Program Application and Loyalty Program Terms and Conditions / Payment Authorization
Merchant acknowledges and agrees that the Services and Loyalty Program Accounts provided to Merchant by Mercury and/or its third-party service providers shall be governed by and subject to this Loyalty Program Application and the Loyalty Program Terms and Conditions attached hereto (collectively, this "Agreement"). By executing this Agreement below, Merchant agrees to be bound by this Agreement and authorizes Mercury and/or its third-party service providers to charge Merchant's credit card account and/or debit via ACH Merchant's bank or other financial account(s), on file with Mercury, and if applicable, withdraw from the credit card processing proceeds due to Merchant under the Card Services Agreement set forth in Section 15(B) of the Loyalty Program Terms and Conditions, for any obligation owing from Merchant under this Agreement. Merchant agrees that the financial institution(s) that hold Merchant's bank or other financial accounts(s) shall not be liable for any loss or damage incurred as a result of any ACH debit made pursuant to this authorization.
Merchant Legal Name: _____
Merchant Signature: _____
Printed Name and Title of Signer: _____
Date: _____

## Loyalty Program Terms and Conditions

The following are the terms and conditions upon which Mercury will provide Merchant the Services and/or Loyalty Program Accounts. Upon signing a Loyalty Program Application, Merchant agrees to be bound by these terms and conditions and the Loyalty Program Application.

1. **Definitions.** In addition to the capitalized terms defined elsewhere in this Agreement, the following terms when used in this Agreement will have the meanings set forth in this section.

**Card Services Agreement** shall have the meaning set forth in Section 15.B.

**Loyalty Card** means any card encoded with a magnetic stripe and bearing the name or trade name of Merchant or the name or trade name of any other Participating Merchant issued as part of the Loyalty Program.

**Loyalty Program** means the loyalty program of Merchant administered by Mercury as set forth in this Agreement that allows Members to receive and redeem Rewards from Participating Merchants.

**Loyalty Program Account** means an electronic account maintained by Mercury associated with a: (a) Loyalty Card issued to a Member; or (b) Member's cell or other phone number or e-mail address.

**Loyalty Program Processing Fees** shall have the meaning set forth in Section 9.A.

**Loyalty Program Transaction** means a transaction in which a Member via a Mercury Integration (a) purchases goods or services from a Participating Merchant that qualify toward the receipt of Rewards, (b) receives or otherwise redeems a Reward.

**Member** means a person who is a member of or otherwise utilizes the Loyalty Program.

**Member Data** means any consumer profile information of any Member collected by Mercury in connection with the Loyalty Program (including, without limitation, during the enrollment process).

**Messages** has the meaning given thereto in Section 5.

**Mercury Integration** means the integrated or stand-alone POS terminals, on-line gateways, or other integrated manual or automated transaction processing systems necessary to electronically transmit Loyalty Program Transaction information between Mercury and Merchant.

**Participating Merchant** shall have the meaning set forth in Section 6.

**POS** means point-of-sale.

**Reward** means a reward to be redeemed for the purchase of goods or services from Merchant.

**Rules** shall have the meaning set forth in Section 4.D.

**Services** shall have the meaning set forth in Section 3.

2. **Loyalty Program.** Merchant hereby requests and authorizes Mercury to provide the Services so that Merchant and, if applicable, any other Participating Merchant, may process Loyalty Program Transactions under the Loyalty Program.
3. **Services.** Under the terms of this Agreement and any user documentation that may be furnished to Merchant by Mercury from time to time, Merchant will subscribe to, and Mercury will provide to Merchant, the services as set forth in this section (collectively, the "Services"). Mercury shall implement the Services at each of Merchant's locations listed or referenced on the Loyalty Program Application in accordance with an implementation schedule to be jointly developed by Mercury and Merchant, as such schedule may be amended by the parties from time to time.
  - A. Mercury shall host and operate a website for the Loyalty Program that is Merchant branded.
  - B. Mercury shall provide Merchant with Loyalty Program Accounts for its Members.
  - C. Mercury will increase or decrease, as applicable, the Rewards balance of a Members Loyalty Program Account upon the completion of a Loyalty Program Transaction.
  - D. Mercury will provide the capability for Members to check their Rewards balances online.
  - E. Mercury will provide Merchant an online reporting package detailing the Loyalty Program Transactions for and the then-current Rewards balance on each Loyalty Program Account.
  - F. Mercury will provide Merchant access to help desk support for Loyalty Program Transactions over the telephone.
  - G. In the event that Merchant qualifies to receive Mercury's Custom Data Collection feature, Mercury shall collect specific Member Data and Loyalty Program Transaction data requested by Merchant ("Custom Data"); provided,

however, that in no event shall (i) the collection of any such Custom Data violate any Rule; or (ii) Mercury be obligated to collect more than ten (10) items of Custom Data for any Member. Merchant shall indemnify and hold harmless Mercury and its officers, directors, employees, agents and representatives from any loss, damage or claim relating to or arising from any collection or Merchant's use of Custom Data.

- H. In the event that Merchant qualifies to receive Mercury's Third-Party Email Service Provider Synchronization feature, Mercury shall enable synchronization of Member Data with email marketing lists managed on behalf of Merchant, by certain third-party email marketing service providers; provided, however, that Mercury shall have the right, in its sole discretion, to change any third-party email marketing service provider with which Mercury enables such synchronization. In no event shall Mercury be liable for any loss, damage or claim relating or arising from any action or inaction of any third-party service provider.
- I. Pursuant to the terms of this Agreement, including Section 5, Mercury will support some or all of Merchant's transmission of Loyalty Program Messages to Members. Mercury may add to or discontinue all or part of such support at any time.

#### 4. Merchant Obligations.

- A. Transactions. Merchant will honor, in accordance with the terms and conditions set forth in this Agreement, any Loyalty Program Account properly tendered or presented by a Member for use in a Loyalty Program Transaction. Merchant will not discriminate as to price, service or other conditions of sale with respect to any tendered Loyalty Program Transaction. Merchant will not present for processing any Loyalty Program Transaction not originated as a result of a transaction directly between Merchant and the Member except as otherwise permitted by Merchant in its loyalty program terms and conditions governing the relationship between Merchant and its Members. Merchant will not request additional identification or information from a Member unless necessary in order to complete the Loyalty Program Transaction or under the Rules. All disputes between Merchant and any Member relating to any Loyalty Program Transaction will be settled between Merchant and the Member. Mercury bears no responsibility for such disputes.
- B. Verification of Reward. Merchant will obtain a Loyalty Program Account verification via a Mercury Integration before authorizing any Reward under the Loyalty Program which Reward when accepted by Member shall post as a Loyalty Program Transaction. Upon receipt of Loyalty Program Account verification that such account is due a Reward, Merchant may consummate only the Reward transaction authorized.
- C. Process. Merchant, at its sole cost and expense, shall maintain and be responsible for the Mercury Integration.
- D. Rules. Merchant will comply with all rules and instructions provided to Merchant by Mercury. Merchant is responsible for ensuring that its Loyalty Program complies with all applicable local, state and federal laws, rules and regulations, including, but not limited to, the Credit Card Accountability Responsibility and Disclosure Act of 2009, the Bank Secrecy Act of 1970, as amended, and its implementing regulations (collectively, the "Bank Secrecy Act"), and unclaimed property laws (individually, a "Rule" and, collectively, the "Rules"). Merchant will redeem Rewards only for goods or services provided by Merchant and will not redeem Rewards for cash unless required under any Rule.
- E. Exclusivity. During the term of this Agreement, Merchant will not participate in any program similar to the Loyalty Program not administered or otherwise provided by Mercury or contract with any entity other than Mercury that provides services similar to the Services.
- F. Information. Merchant will provide Mercury with financial information as requested from time to time. Merchant will not use, sell, exchange, or provide to any third party, and will keep strictly confidential, any information related to the Loyalty Program, including, but not limited to, sales slips, monthly statements, Mercury documents, and this Agreement.
- G. Errors. Merchant will notify Mercury immediately of any duplicative or erroneous Loyalty Program Transactions.
- H. Rewards. Merchant agrees to redeem Rewards for eligible purchases of goods and services and accept use of the Loyalty Program Account during all normal business hours.
- I. Audit. Merchant agrees to cooperate and provide all information requested as reasonably necessary for Mercury and/or its third-party service providers to audit or review the Loyalty Program and/or Loyalty Program Transactions and furthermore agrees that Mercury may adjust such audited or reviewed Loyalty Program Transactions and take such other actions or steps as it deems reasonable as a result of any finding from such audits or reviews.
- J. Payments. Merchant does hereby agree and authorize any obligation owing under this Agreement (including, without limitation, any Loyalty Program Processing Fees) to be charged and deducted from Merchant's account(s) by Mercury or its third-party processor under the terms of the Card Services Agreement, defined below in Section 15.B, and/or deducted via an ACH debit from Merchant's bank or other account(s) on file with Mercury. Merchant's payment obligations under this Agreement shall survive termination of this Agreement.

- K. **Membership Qualification and Collection of Member Information.** Merchant agrees that an individual must be at least thirteen (13) years of age in order to become a Member. Merchant hereby authorizes Mercury, as its agent, to collect Member information from public sources, including data storage and social media websites, for use in the Loyalty Program and Merchant agrees to indemnify and hold Mercury harmless from any claim, loss or damage resulting from the collection or use such information.
5. **Responsibility For Content and Transmitting Messages.** Merchant further represents and warrants that: (a) it is solely responsible for all personalized content (“Content”) and it has the legal right to use all Content and send all messages, whether by e-mail, text or other methodology (“Messages”) to its Members (including obtaining any required consents from the Members) and the content, timing and purpose of all Messages, and Merchant’s campaigns and programs are in compliance with all applicable laws, rules and regulations; (b) it is the transmitter of all Content and Messages and Mercury is merely acting at Merchant’s direction as a technology conduit for the transmission of the Content and the Messages; (c) Mercury’s use of the Content shall not violate the rights of any third party or any law, rule or regulation; (d) it has obtained prior express consent to contact each cell phone number delivered by Merchant to Mercury in connection with the provision of the Services; (e) it has (1) incorporated an interactive opt-out mechanism as part of any program relating to any Services or (2) the contacts that are the subject of such Services are not initiated to induce the purchase of goods or services or to solicit a charitable contribution (“Solicitations”); (f) it has obtained from the recipient of any Solicitation an express written agreement that meets the requirements set forth in Section 310.4(b)(1)(v)(A) of the FTC’s Telemarketing Sales Rule; and (g) Merchant will not transmit or allow to be transmitted any Content or Messages that: (i) it does not have a right to make available under any law or under contractual or fiduciary relationship; (ii) are false, inaccurate, misleading, unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another’s privacy, hateful, or racially, ethnically, or otherwise objectionable; harmful to minors in any way; (iii) infringe any patent, trademark, trade secret, copyright, or other proprietary rights or rights of publicity or privacy of any party; (iv) utilize any unsolicited or unauthorized advertising, promotional materials, “junk mail”, “spam”, or any other forms of solicitation; or (v) interfere with or disrupts the Services or servers or network operator networks. Upon request, Merchant shall provide reasonable proof of compliance with the provisions set forth in this section and where Mercury reasonably believes that Merchant may not have complied with such provisions or with all laws, rules and regulations, Mercury may, at its option, not provide any Services. Merchant shall indemnify, defend and hold Mercury, its affiliates and their officers, directors, employees and agents harmless from and against any and all claims of loss, damages, liability, costs, and expenses (including reasonable attorneys’ fees and expenses) arising out of or resulting from: (i) Mercury following Merchant’s instructions in sending the Messages or any breach of its obligations in this section; (ii) Merchant’s failure to obtain the required consent to contact each of the cell phone numbers delivered by Merchant to Mercury in connection with the provision of Services or the failure of such consent to comply with any law, rule or regulation; (iii) the failure to provide an opt-out mechanism in connection with any Solicitation or the failure of any opt-out mechanism to comply with any law, rule or regulation; or (iv) Merchant’s failure to comply with any third party rights or law, rules or regulations applicable to Merchant’s systems, materials or programs relating to the Services.
6. **Participating Merchants.** Merchant requests and authorizes Mercury to provide the Services to Merchant and to each of the merchants set forth on the Loyalty Program Application as well as any subsequently added merchant as set forth in Section 7 (Merchant, each merchant set forth on the Loyalty Program Application, and any and all such added merchants shall be referred to individually as a “Participating Merchant” and collectively as the “Participating Merchants”) so that Loyalty Program Accounts issued by one Participating Merchant may be used by Members at all of the Participating Merchants. Merchant agrees to indemnify and hold harmless Mercury and its officers, directors, employees, agents and representatives from any loss, damage or claim relating to or arising from any action or inaction of any Participating Merchant. Mercury agrees to provide the Services to the Participating Merchants as a group under the terms of this Agreement; provided, however, that each Participating Merchant shall execute a Loyalty Program application subject to loyalty program terms and conditions.
7. **Additional Participating Merchants.** Merchant agrees that Mercury may, at any time and without notice to Merchant, add as a Participating Merchant any merchant that (A) uses the same or similar trade name as Merchant or (B) is a part of a chain of independently owned stores, independently owned franchisees or some other group of merchants commonly connected by or through a brand, web-site, club, affiliation or some other commonality. Merchant additionally agrees that Mercury may add as a Participating Merchant any merchant approved in writing by Merchant.
8. **Bank Secrecy Act Compliance.** In the event that the Loyalty Program qualifies as a “prepaid program” (as defined in the Bank Secrecy Act), Merchant agrees that it shall serve as the “provider of prepaid access” (as defined in the Bank Secrecy Act) and comply with all of the requirements of a provider of prepaid access under the Bank Secrecy Act, including, without limitation, the requirement to register as a money services business with the Financial Crimes Enforcement Network of the United States Department of the Treasury and identify the prepaid programs for which it is serving as the provider of prepaid access. Merchant shall indemnify and hold harmless Mercury and its officers, directors, employees, agents and representatives from any loss, damage, or claim relating to or arising out of any failure by Merchant to comply with any applicable Rule (including, without limitation, the Bank Secrecy Act) in connection with any Reward, the Loyalty Program, or this Agreement (including, without limitation, any requirement applicable to providers of prepaid access or sellers of

prepaid access under the Bank Secrecy Act). Merchant further acknowledges and agrees that, other than Mercury's obligation to provide an online reporting package in accordance with Section 3.E, Mercury shall have no obligation to provide any information or assistance to Merchant in connection with Merchant's compliance with any Rule.

9. **Fees.**

- A. Merchant agrees to pay Mercury the fees set forth on the Loyalty Program Application (collectively, the "Loyalty Program Processing Fees"). Mercury shall have the right to determine and modify the Loyalty Program Processing Fees in its sole discretion upon notice to Merchant.
- B. In addition to the Loyalty Program Processing Fees, Merchant agrees to pay Mercury all fees (including, without limitation, any shipping or handling fees) set forth in any Loyalty Card order form submitted by Merchant. The fees specified in a Loyalty Card order form are based on Merchant's representations as to the anticipated number of Loyalty Cards under the Loyalty Program.

10. **Integration.** Not all POS systems or terminals are integrated with Mercury's Loyalty Program processing system. Merchant agrees that Mercury shall have no obligation to integrate its Loyalty Program processing system with any POS system or terminal or for any cost associated with a Mercury Integration or any upgrades or service fees charged by any POS developer or dealer. Furthermore, not all POS systems or terminals integrated with the Mercury Loyalty Program support all of the features offered by the Loyalty Program and Merchant agrees that Mercury shall have no obligation to require a POS system or terminal provider to support all program features.

11. **Information Security.**

- A. Information Security. Merchant shall be responsible for maintaining security for its own systems, servers, and communications links as necessary to (i) protect the security and integrity of Mercury's systems and servers on which Member Data or Loyalty Program Transaction data is stored and (ii) protect against unauthorized access to or use of Mercury's systems and servers on which Member Data or Loyalty Program Transaction data is stored.
- B. Data Backup. Merchant shall maintain, for the longer of ten (10) business days or the number of days required under any Rule, adequate records, including backup on magnetic tape or other electronic media, of Loyalty Program Transactions from which lost or damaged items or data can be reconstructed. Merchant assumes all responsibility and liability for any loss or damage resulting from failure to maintain such records.
- C. Transmission of Data. The responsibility and expense for transmission of Loyalty Program Transaction and other data between Mercury and Merchant, and the risk of loss for data and media transmitted between Mercury and Merchant, shall be borne by Merchant. Data lost by Mercury following receipt shall, at Mercury's election, either be (i) restored by Mercury from its backup media or (ii) reconstructed from Merchant's backup media at no additional charge to Merchant.
- D. Reliance on Data. Mercury will provide the Services on the basis of information furnished by Merchant. Mercury shall be entitled to rely upon any such information or instructions as provided by Merchant. In no event shall Merchant transmit any Member's credit card or debit card number to Mercury in connection with the Loyalty Program. If any error results from incorrect input supplied by Merchant, Merchant shall be responsible for discovering and reporting such incorrect input and/or error and supplying the data necessary to correct such input and/or error to Mercury for processing at the earliest possible time. Mercury will rely on the instructions and directions of Merchant in administering the Loyalty Program and will not be responsible for any liability arising from Mercury's performance in accordance with Merchant's instructions.

12. **Confidentiality.**

- A. Mercury Systems and Information. Merchant acknowledges and agrees that it has no rights in any Mercury software, systems, documentation, guidelines, procedures and similar related materials used to administer the Loyalty Program or provide the Services or any modifications thereto provided by Mercury, except with respect to Merchant's use of the same in accordance with and during the term of this Agreement to process the Loyalty Program Transactions. Merchant acknowledges and agrees that Mercury shall own all Member Data and Loyalty Program Transaction data during and after the term of this Agreement and may share such data with third parties, including, but not limited to, Mercury's third-party service providers. Merchant further acknowledges and agrees that Mercury may aggregate the Member Data and Loyalty Program Transaction data and that Mercury shall be the sole owner of such aggregated data and may rent, license, sell or otherwise use such aggregated data with third parties.
- B. Confidentiality. Except as otherwise set forth in this Agreement, each of the Merchant and Mercury agrees that it will not use for its own purposes, will not disclose to any third party, and will retain in strictest confidence all information and data owned by the other party (or for which the other party has an obligation of confidentiality) (including, without limitation, the terms of this Agreement and any other information related to Mercury's administration of the Loyalty Program and the Services, all of which the parties agree Mercury owns) and that it will safeguard such information and data by using the same degree of care and discretion that it uses to protect its own confidential information, which shall

in no case be less than a commercially reasonable standard of care. No party will be obligated to maintain the confidentiality of information: (i) that is or is released in the public domain through no act of the receiving party in breach of this Agreement, (ii) that was in the possession of the receiving party prior to its disclosure under this Agreement, and the receiving party can prove such possession, (iii) that is received from another source that has no restriction on use or disclosure, or (iv) that is required to be disclosed by any Rule, provided that the receiving party provides the disclosing party with notice and an opportunity to oppose or condition the disclosure. Mercury shall have the right to inspect Merchant's premises to ensure that confidential information is properly protected from disclosure, damage or theft. Each party agrees to destroy or return any confidential information of the other party, upon the request of the other party or the termination of this Agreement, except that either party may retain a copy to comply with applicable Rules so long as such party continues to maintain the confidentiality of such confidential information.

13. **Loyalty Card Production.** The Loyalty Card order form specifies certain production-related prices for magnetic stripe Loyalty Cards that may be used in connection with certain Loyalty Program Accounts under the Loyalty Program. Pricing for Loyalty Card orders shall be at Mercury's applicable pricing in effect at the time of the order (which shall be available from Mercury upon request at the time of the order). Notwithstanding anything to the contrary set forth in Section 4.E, Merchant shall not be obligated to purchase Loyalty Cards from Mercury. If Merchant elects to purchase Loyalty Cards from Mercury, Mercury will arrange for the Loyalty Card production, and Merchant will be charged for the Loyalty Cards. The form and content of, and any language on the Loyalty Cards shall be subject to Mercury's approval, which approval shall not be unreasonably withheld. To the extent permitted by applicable Rules, Merchant may provide for an expiration date for any Loyalty Card, so long as that expiration date is clearly printed on the Loyalty Card in compliance with all applicable Rules. Merchant shall be solely responsible for complying with all applicable Rules relating to the Loyalty Cards and the Loyalty Program. Mercury's approval of any or all limits, policies or procedures pertaining to the Loyalty Program or any language on, or content or form of, any Loyalty Cards shall in no way constitute or be construed as Mercury's warranty or endorsement that the Loyalty Program or such Loyalty Cards comply with any Rule. Merchant agrees to indemnify and hold harmless Mercury and its officers, directors, employees, agents and representatives from any loss, damage, or claim relating to or arising out of any failure of the Loyalty Program, any Loyalty Card, or this Agreement to comply with any applicable Rule.
14. **Warranties.** EXCEPT AS EXPRESSLY SET FORTH HEREIN TO THE CONTRARY, THE LOYALTY PROGRAM AND SERVICES, PRODUCTS, APPLICATIONS AND MERCURY INTEGRATION INCIDENT THERETO ARE PROVIDED BY MERCURY WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. NEITHER THIS AGREEMENT NOR ANY DOCUMENTATION FURNISHED UNDER IT (INCLUDING, WITHOUT LIMITATION, ANY LOYALTY CARD ORDER FORM) IS INTENDED TO EXPRESS OR IMPLY ANY WARRANTY BY MERCURY THAT THE LOYALTY PROGRAM AND SERVICES, PRODUCTS, APPLICATIONS AND MERCURY INTEGRATION INCIDENT THERETO WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS. ANY SECURITY MECHANISMS INCORPORATED IN THE LOYALTY PROGRAM AND LOYALTY PROGRAM ACCOUNTS (AS WELL AS THE SERVICES, PRODUCTS, APPLICATIONS AND MERCURY INTEGRATION INCIDENT THERETO) HAVE INHERENT LIMITATIONS, AND MERCHANT AGREES THAT IT HAS INDEPENDENTLY DETERMINED THAT SUCH MECHANISMS ADEQUATELY MEET ITS SECURITY AND RELIABILITY REQUIREMENTS.
15. **Term and Termination.**
  - A. The term of this Agreement shall commence on the date of execution of the Loyalty Program Application by Merchant and, except as otherwise set forth in this section, shall continue in effect for a period of twelve (12) months and automatically renew for consecutive twelve (12) month terms unless either party provides written notice of termination to the other no less than sixty (60) days prior to the end of the then-current twelve (12) month term.
  - B. In the event that Merchant is a party to a tri-party credit card processing services agreement with Mercury (or Mercury's third-party processor) and a member bank (the "Card Services Agreement") that expires or terminates during the term of this Agreement, (i) Merchant shall notify Mercury in writing of such expiration or termination within five (5) days, and (ii) Mercury may, in its sole discretion, terminate this Agreement immediately upon written notice to Merchant. Mercury may, in its sole discretion, terminate this Agreement at any time upon thirty (30) days' prior written notice to Merchant. It is the sole responsibility of Merchant to accomplish the conversion of its Loyalty Program processing upon the termination of this Agreement.
16. **Post-Termination Duties.** Following the termination of this Agreement for any reason, Merchant will immediately cease issuing Loyalty Program Accounts and otherwise using the Mercury administered Loyalty Program. Mercury shall provide Merchant, at Merchant's expense, assistance to facilitate the orderly transition of the Loyalty Program to Merchant or its designee ("Conversion Assistance"). Before providing any Conversion Assistance, Mercury will provide a good faith estimate of all conversion charges, including charges for custom programming services. The Conversion Assistance may include Mercury's providing Merchant access to the personal information of Merchant's Members collected under the Loyalty Program but such access shall only be available during the first thirty (30) days after the date of termination of this Agreement at which time Mercury may permanently delete such personal information. Merchant shall be solely responsible

for complying with all Rules relating any and all use of Member personal information and will indemnify and hold Mercury harmless from any claim, loss or damage due to a violation of such Rules resulting from the Conversion Assistance or use of the Member personal information other than by Mercury. Merchant agrees that upon any termination of this Agreement, Merchant shall remain solely liable for unused Rewards to the Members and: (a) responsible for the transfer of the unused Rewards balance of each Member to another loyalty program that provides the Member with access to such unused Rewards balance; or (b) discontinue the Loyalty Program in compliance with Merchant's loyalty program terms and conditions governing the relationship between Merchant and its Members. Merchant agrees and acknowledges that solely it is liable to the Members for all partially or fully accrued Reward balances during and after the term of this Agreement.

17. **Merchant's Responsibility for Loyalty Program Account and Rewards Usage.** Merchant understands and agrees that it shall be solely responsible and liable for all Loyalty Program Account and Rewards usage including usage resulting from stolen, lost, expired or unauthorized Loyalty Program Accounts or Rewards. Notwithstanding anything in this Agreement to the contrary, Merchant further hereby understands and agrees that Mercury will not be responsible or liable for any Rewards incorrectly or not transferred as a result of: (A) errors that directly result from information provided by Merchant, any of the other Participating Merchants, or any other third party or (B) other unintentional errors or omissions made by Mercury in providing the Services.
18. **Limitation of Liability.** Neither Mercury nor anyone acting on Mercury's behalf shall be liable for failure to provide the Services if such failure is due to any cause or condition beyond such party's reasonable control, which shall include, but shall not be limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, breakdowns, operational failures, electrical power failures, communications failures, unavoidable delays, the errors or failures of third-party systems, or other similar causes beyond such party's control. Furthermore, the liability of Mercury and anyone acting on Mercury's behalf for any loss arising out of or relating in any way to this Agreement, including, but not limited to, the unavailability or malfunction of the Loyalty Program and Services, products, applications, and Mercury Integration incident thereto, shall, in the aggregate, be limited to actual, direct, and general money damages in an amount not to exceed the greater of: (A) \$100.00 or (B) the aggregate amount of Loyalty Program Processing Fees paid by Merchant to Mercury for Services during the previous twelve (12) months or such lesser number of months as shall have elapsed subsequent to the effective date of this Agreement. This shall be the extent of liability of Mercury and anyone acting on Mercury's behalf arising out of or relating in any way to this Agreement, including alleged acts of negligence, breach of contract, or otherwise and regardless of the basis on which any legal or equitable action may be brought against Mercury or anyone acting on Mercury's behalf, and the foregoing shall constitute Merchant's exclusive remedy. UNDER NO CIRCUMSTANCES SHALL Mercury OR ANYONE ACTING ON Mercury's BEHALF BE LIABLE FOR ANY LOST PROFITS, LOST INTEREST, OR SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT. It is agreed that in no event will Mercury or anyone acting on Mercury's behalf be liable for any claim, loss, error, damage, or expense arising out of or relating in any way to this Agreement that is not reported in writing to Mercury by Merchant within forty-five (45) days of the act or omission to act that resulted in such claim, loss, error, damage, or expense. Merchant expressly waives any such claim not brought within the time period set forth in the immediately preceding sentence.
19. **Taxes.** All fees and prices charged to Merchant in connection with this Agreement or any Loyalty Card order form are exclusive of sales tax. Merchant shall be responsible for any federal, state, and local sales, use, property, and other taxes that may be imposed as a result of this Agreement, any Loyalty Card order form, or the Loyalty Program (except taxes imposed upon Mercury's taxable net income).
20. **Choice of Law/Attorneys' Fees/Venue/Jury Trial Waiver.** If Mercury defends or enforces any of its rights under this Agreement in any collection or legal action, Merchant agrees to reimburse Mercury for all costs and expenses, including reasonable attorneys' fees, as a result of such collection or legal action. Merchant waives trial by jury with respect to any litigation arising out of or relating to this Agreement. Mercury and Merchant agree that any and all disputes or controversies of any nature whatsoever (whether in contract, tort or otherwise) arising out of or in connection with or relating to (A) this Agreement, (B) the relationships that result from this Agreement, or (C) the validity, scope, interpretation or enforceability of the choice of law and venue provisions of this Agreement, shall be governed by the laws of the State of Colorado notwithstanding any conflicts of laws rules and shall be brought in the state and federal courts sitting in La Plata County, Colorado and Mercury and Merchant expressly agree to the exclusive jurisdiction of such courts. Mercury and Merchant also agree that any and all such disputes or controversies shall be resolved on an individual basis without resort to any form of class action and shall not be consolidated with the claims of any other parties. Merchant further agrees that Mercury may provide a copy of this Agreement and any and all amendments to any other Participating Merchant, who will be deemed a third-party beneficiary of this Agreement for the purpose of bringing an action under this Agreement in the name of such Participating Merchant solely to enforce any breach by Merchant of a representation, warranty, term or provision in this Agreement.
21. **Complete Agreement.** This Agreement embodies the parties' final, complete and exclusive agreement with respect to the Loyalty Program and the Services. This Agreement shall supersede all prior and contemporaneous agreements,

understandings and representations, written or oral, with respect to the Loyalty Program and the Services. If any provision of this Agreement or portion thereof is held to be unenforceable, such a determination will not affect the validity or enforceability of the remainder of this Agreement.

22. **Notices.** All notices required by this Agreement shall be in writing. All notices sent to Mercury shall be sent by facsimile, overnight courier, or regular or certified mail and shall be effective upon actual receipt by the General Counsel of Mercury at 10 Burnett Court, Suite 300, Durango, Colorado 81301 or 970-385-3431 (or at such other address or facsimile number provided in writing by Mercury to Merchant). All notices sent to Merchant shall be sent by email, facsimile, overnight courier, or regular or certified mail and shall be effective upon actual receipt at the email address, facsimile number, or physical address provided by Merchant in the Loyalty Program Application (or at such other email address, facsimile number, or physical address for Merchant on file with Mercury).
23. **Amendments.** This Agreement may only be amended in a writing signed by Mercury and Merchant. Notwithstanding the previous sentence: (a) any and all fees and charges payable under this Agreement may be changed immediately by Mercury upon notice to Merchant in accordance with Section 9.A; and (b) Mercury may provide Merchant either an amendment to this Agreement or an entirely new Loyalty Program Terms and Conditions, which amendment or new Loyalty Program Terms and Conditions will be binding upon Merchant if Merchant or any other Participating Merchant submits to Mercury a Loyalty Program Transaction after the effective date of such amendment or new Loyalty Program Terms and Conditions.