

The following are the terms and conditions upon which Valutec Card Solutions, LLC, a Delaware limited liability company (“Valutec”) will provide Merchant Gift Cards and Services. Upon signing or otherwise accepting a Valutec Gift Card Merchant Application (“Application”), Merchant agrees to be bound by these Terms and Conditions and the Application effective as of the execution of the Application.

1. Program. Merchant hereby requests and authorizes Valutec to provide the Services so that Merchant and, if applicable, any other Participating Merchant may utilize the Services which include but are not limited to processing Gift Card Transactions under the Program.

2. Services. Under the terms of this Agreement and any user documentation that may be furnished to Merchant by Valutec from time to time, Merchant will subscribe to, and Valutec will provide to Merchant, the services as set forth in this Section (collectively, the “Services”). As applicable, Valutec shall implement the Services at each of Merchant’s locations listed or referenced on the Application or a subsequent add location form or otherwise in accordance with an implementation schedule jointly developed by Valutec and Merchant. Merchant understands and agrees that some or all of the Services may be performed by Valutec’s third-party service providers and that Valutec may provide any and all data and information reasonably necessary for such service providers to provide the Services so long as such service providers are bound by the same or similar confidentiality obligations as set forth below in Section 12 applicable to Valutec. In the event (a) Merchant checks the box for any or all of the Valutec Services on the Application or any Valutec provided order form; or (b) Merchant is provided additional services by or through Valutec and Merchant does not object in writing to the provision of such services, Merchant subscribes to the applicable services, and Merchant agrees to be bound by and accept any and all terms and conditions provided or made available to Merchant applicable to the provision of the services, which services are part of the Services and may be provided directly by Valutec’s third-party service providers, Valutec, or a combination of Valutec’s third-party service providers and Valutec. Certain of the Services may require Merchant to have an active credit card processing service agreement with Valutec’s affiliated third-party processor and a member bank. Certain Program features which are part of the Services include those set forth in the Application or any Valutec provided order form. Merchant acknowledges and agrees that Valutec may from time to time modify, expand, restrict, suspend, or terminate the Services or products that it offers to Merchant without obligation or liability to Merchant. As part of the Services Valutec will:

- i. Offer Merchant an electronic stored value payment instrument in the form of an electronic Gift Card and/or plastic Gift Card encoded with a magnetic stripe;
- ii. Increase or decrease, as applicable, the balance of a Gift Card upon the completion of a Gift Card Transaction;
- iii. Provide the capability for Cardholders to check their Gift Card balances online;
- iv. Decline a Gift Card Transaction if the then-current balance on the Gift Card is less than the transaction amount;
- v. Provide Merchant an online reporting package detailing the Gift Card Transactions for each Gift Card; and
- vi. Provide Merchant access to help desk support for the Program over the telephone.

3. Merchant Obligations.

A. Transactions. Merchant will honor, in accordance with the terms and conditions set forth in this Agreement, any Gift Card properly tendered by a Cardholder for use in a Gift Card Transaction. Merchant will not discriminate as to price, service or other conditions of sale with respect to any tendered Gift Card Transaction. Merchant will not present for processing any Gift Card Transaction not originated as a result of a transaction directly between Merchant and the Cardholder. If applicable, Merchant will check the signature and expiration date of each Gift Card presented and will not complete a Gift Card Transaction if the signature on the sales draft does not correspond with the signature on the Gift Card or if the Gift Card is not valid or has expired. Merchant will not request additional identification, or information, from a Cardholder unless necessary in order to complete the Gift Card Transaction or under the Rules. All disputes between Merchant and any Cardholder relating to any Gift Card Transaction will be settled between Merchant and the Cardholder. Valutec bears no responsibility for such disputes.

B. Authorizations. Merchant will obtain an authorization via a Valutec Integration when processing a Gift Card Transaction. Authorizations are not a guarantee of payment from a Participating Merchant and will not validate a fraudulent transaction.

C. Process. Merchant or its POS developer or other Merchant service provider, at its sole cost and expense, shall maintain and be responsible for the Valutec Integration.

D. Rules. Merchant will comply with all rules and instructions provided to Merchant by Valutec. Merchant is responsible for ensuring that its Gift Cards, including the verbiage and terms contained on and that apply to the Gift Cards and Merchant’s issuance and usage of the Gift Cards, complies with all applicable local, state, provincial, and federal laws, rules and regulations, including, but not limited to, the Credit Card Accountability Responsibility and Disclosure Act of 2009 and the Bank Secrecy Act of 1970, as amended, and its implementing regulations (collectively, the “Bank Secrecy Act”) (individually, a “Rule” and, collectively, the “Rules”). Merchant will redeem Gift Cards only for goods or services provided by Merchant and will not redeem Gift Cards for cash unless required under any Rule. Furthermore, Merchant specifically acknowledges and agrees that Valutec has not and is not expected to provide Merchant with any analysis, interpretation or advice regarding the compliance of any aspect of Merchant’s or Cardholder’s use of the Program or other systems, services, products or programs of Merchant, with any third-party rights or Rules. Upon request, Merchant shall provide reasonable proof of compliance with the Rules and Valutec shall have no obligation to provide its services where Valutec reasonably believes that Merchant has not so complied.

E. Content; Royalty Free License. By Merchant’s submission to Valutec of images, brands, marks, verbiage, terms and/or other graphics (collectively the “Content”), Merchant, hereby authorizes and permits Valutec and its affiliated entities to reproduce such Content on Gift Cards and other collateral used by Merchant under the Program. This authorization and permission is granted royalty-free. Merchant represents and warrants that it has the requisite ownership, license, and/or rights to the Content for its use and reproduction of same by Valutec and that such use and reproduction will not violate any third party intellectual property rights.

F. Exclusivity. During the term of this Agreement, Merchant will not participate in any program similar to the Program not administered or otherwise provided by Valutec or contract with any entity other than Valutec that provides services similar to the Services.

G. Information. Merchant will provide Valutec 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 Program, including, but not limited to, sales

slips, monthly statements, Valutec documents, and this Agreement.

H. Review and Reconciliation of Accounts. Merchant agrees to review its Gift Card Transactions, Valutec’s reports (including those made available online), notices, and invoices, and balance and reconcile Merchant’s bank account(s) associated with the Program on a daily and monthly basis. Merchant agrees to notify Valutec immediately of any error in or dispute with any report, notice, invoice, Service deficiency, and/or billing or payment error. Valutec has no obligation to correct any errors, disputes, or Service deficiencies that flow from Merchant’s failure to comply with the duties and obligations in this section.

I. Gift Cards. Merchant agrees to redeem Gift Cards for eligible purchases of goods and services during all normal business hours. Merchant shall not condition the purchase or reload of any Gift Card on the purchase of another good or service and shall accept all forms of payment for purchases or reloads of Gift Cards, except a Gift Card, that it accepts for purchases of any other goods or services. Merchant agrees that Gift Cards may be used repeatedly by a Cardholder for a retail purchase of any amount less than or equal to the then-current Gift Card balance. Merchant furthermore agrees that Gift Cards may be redeemed by a Cardholder at any Participating Merchant location for up to the dollar amount loaded on the Gift Cards and may be reloaded at any Participating Merchant location.

J. Non-Clearing; Unauthorized Purchases. Merchant agrees that Valutec is not responsible for the non-clearing payment of a Gift Card purchase or for any subsequent unauthorized purchases or Gift Card Transactions and that Merchant is solely liable for these events. Merchant agrees that non-electronic authorizations are not permitted.

K. Audit. Merchant agrees to cooperate and provide all information requested as reasonably necessary for Valutec and/or its third-party service providers to audit or review the Program and/or loyalty transactions and Gift Card Transactions and furthermore agrees that Valutec may adjust such audited or reviewed loyalty transactions and/or Gift Card Transactions and take such other actions or steps as it deems reasonable as a result of any finding from such audits or reviews.

L. Payments. Merchant does hereby agree and authorize any obligation owing under this Agreement (including, without limitation, any Fees) to be charged and deducted from Merchant’s bank or other account(s) on file with Valutec by Valutec via an ACH debit. Merchant’s payment obligations under this Agreement shall survive the termination of this Agreement.

4. Participating Merchants. Merchant requests and authorizes Valutec to provide the Services to Merchant and to each of the merchants set forth on the Application as well as any subsequently added merchant as set forth in Section 5 (Merchant, each merchant set forth on the 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 Gift Cards issued by one Participating Merchant may be redeemed by Cardholders at all of the Participating Merchants. Merchant agrees to indemnify and hold harmless Valutec 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. Valutec 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 an Application.

5. Additional Participating Merchants. Merchant agrees that Valutec 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 Valutec may add as a Participating Merchant any merchant approved in writing by Merchant.

6. Bank Secrecy Act Compliance. In the event that the 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 acknowledges and agrees that it shall be solely responsible for limiting the associated value of a Gift Card to \$2,000 per day and implementing any and all policies and procedures reasonably adapted to prevent the sale of prepaid access to funds of more than \$10,000 to one individual per day and that failure to so limit such associated value and/or implement such policies and procedures may result in additional data collection, reporting, registration and other requirements being applicable to Merchant under the Rules. Merchant further acknowledges and agrees that, other than Valutec’s obligation to provide an online reporting package in accordance with Section 2, Valutec shall have no obligation to provide any information or assistance to Merchant in connection with Merchant’s compliance with any Rule.

7. ACH Transfer Services.

A. Use of ACH Transfer Services. In the event (a) Valutec provides ACH Transfer Services to Merchant; and (b) Merchant accepts, permits, or does not object in writing to Valutec’s provision of such services, Merchant subscribes to the ACH Transfer Services, and the Services shall include the ACH Transfer Services. As part of Merchant’s subscription to the ACH Transfer Services, Merchant agrees to provide Valutec with its banking and bank account information to facilitate ACH transfers from the bank account of Merchant to the bank account of another Participating Merchant (directly or vis-à-vis a central merchant pooling bank account owned by Merchant, a Participating Merchant or another third party) in connection with Gift Card Transactions. In order to protect the Participating Merchants and their customers, Merchant agrees that it shall, at all times, have available funds in its bank account(s) to cover all outstanding Gift Card liability (directly or vis-à-vis a central merchant pooling bank account owned by Merchant, a Participating Merchant or another third party). Merchant authorizes Valutec to credit or debit Merchant’s bank account(s) for all payments on Valutec’s or a Participating Merchant’s behalf and to debit or credit Merchant’s bank account(s) for all Gift Card Transactions. If any type of overpayment to Merchant or other error occurs, Merchant’s bank account(s) may be

debited or credited, without notice, and, if Merchant's bank account(s) do not contain sufficient funds, Merchant agrees to immediately fund into such account(s) the amount owed. Merchant agrees not to, directly or indirectly, prevent, block or otherwise preclude any debit by Valutec to Merchant's bank account(s) permitted hereunder. For purposes of this Agreement, the term "bank account" includes a financial account at a bank, a credit union or another financial institution.

B. Non-Use of the ACH Transfer Services. In the event that Merchant does not subscribe to the ACH Transfer Services, Merchant shall be solely responsible for reconciling and paying any amounts owed to any other Participating Merchant in connection with any Gift Card Transactions.

C. General Terms, ACH Transfers. Whether or not Merchant subscribes to the ACH Transfer Services, Merchant agrees that (i) it shall hold harmless and indemnify Valutec and its officers, directors, employees, agents, and representatives from any loss, damage, or claim relating to or arising out of any failure by Merchant or any other Participating Merchant to pay any amounts, or have adequate funds for ACH transfers, in connection with any Gift Card Transactions and (ii) Valutec, in the event of any such failure by Merchant or any other Participating Merchant, shall have no obligation to pay Merchant or any other Participating Merchant for any amounts owed to Merchant or any other Participating Merchant in connection with any Gift Card Transactions and shall have no liability for any failure of Merchant or any other Participating Merchant to pay such amounts.

8. Fees.

A. Application. Merchant agrees to pay Valutec the fees set forth on the Application and any Valutec provided order form (collectively, the "Fees"). Valutec shall have the right to determine and modify the Fees in its sole discretion upon notice to Merchant.

B. Gift Card and Other Order Forms. In addition to the Fees, Merchant agrees to pay Valutec all fees (including, without limitation, any shipping or handling fees) set forth in any Gift Card or other Valutec provided order form submitted by Merchant. The fees specified in a Gift Card or other Valutec provided order form are based on Merchant's representations as to the anticipated number of Gift Cards under the Program and the Program features selected by Merchant.

9. Integration. Not all POS systems or terminals are integrated with Valutec's Program processing systems. Merchant agrees that Valutec shall have no obligation: (A) to integrate its Program processing system(s) or any or certain of its features with any POS system or terminal; and (B) for any cost associated with a Valutec Integration or any upgrades or service fees charged by any POS developer or reseller.

10. 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 Valutec's systems and servers on which Cardholder Data or Gift Card Transaction data is stored and (ii) protect against unauthorized access to or use of Valutec's systems and servers on which Cardholder Data or Gift Card 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 Gift Card 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 Gift Card Transaction and other data between Valutec and Merchant, and the risk of loss for data and media transmitted between Valutec and Merchant, shall be borne by Merchant. Data lost by Valutec following receipt shall, at Valutec's election, either be (i) restored by Valutec from its backup media or (ii) reconstructed from Merchant's backup media at no additional charge to Merchant.

D. Reliance on Data. Valutec will provide the Services on the basis of information furnished by Merchant. Valutec shall be entitled to rely upon any such information or instructions as provided by Merchant. 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 Valutec for processing at the earliest possible time. Valutec will rely on the instructions and directions of Merchant in administering the Program and will not be responsible for any liability arising from Valutec's performance in accordance with Merchant's instructions.

11. Proprietary Interests. Merchant shall have no interest whatsoever, including copyright interests, franchise interests, license interests, patent rights, property rights or other interest in the Program and/or Services. This Agreement is not to be construed as granting to Merchant any patent rights or patent license in any patent which Valutec may obtain in respect of the Program, Services or Valutec's software or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any Valutec provided equipment or software.

12. Confidentiality.

A. Valutec Systems and Information. Merchant acknowledges that it has no rights in any Valutec software, systems, documentation, guidelines, procedures and similar related materials or information used to administer the Program or provide the Services or any modifications thereto provided by Valutec, except with respect to Merchant's use of the same in accordance with and during the term of this Agreement to process the Gift Card Transactions. It is acknowledged and agreed that Merchant is the owner of its Cardholder Data and Gift Card Transaction data and that Valutec shall have the right to freely use such data during and after the term of this Agreement to administer and operate the Program, perform its obligations under this Agreement and for any other legal purpose and may share such data with third parties, including, but not limited to, the Participating Merchants and Valutec's third-party service providers. Merchant agrees that Valutec may aggregate the Cardholder Data and Gift Card Transaction data with other Valutec data and that Valutec shall be the sole owner of such aggregated data and may rent, license, sell or otherwise use such aggregated data with third parties. Furthermore, by Merchant selecting or using the Go Mobile, Social Sharing or other Online Gifts and/or loyalty Program features, Merchant agrees that Valutec may provide Merchant's name, contact information, location, website address, and other Merchant credentials to Facebook for use in Facebook's gift card marketplace or other online social media program designed to drive consumers to local merchants.

B. Confidentiality. Except as otherwise set forth in this Agreement, Merchant and Valutec each 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 Valutec's administration of the Program and the Services, all of which the parties agree belong to Valutec) 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 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. Valutec 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. Gift Card Production. The Gift Card order form specifies certain production-related prices for magnetic stripe Gift Cards to be used in connection with the Program. Pricing for Gift Card orders shall be at Valutec's applicable pricing in effect at the time of the order (which shall be available from Valutec upon request at the time of the order). Notwithstanding anything to the contrary set forth in Section 3.F, Merchant shall not be obligated to purchase Gift Cards from Valutec; provided, however, that Gift Card data, transaction and other Fees, as applicable, still apply to such Gift Cards. If Merchant elects to purchase Gift Cards from Valutec, Valutec will arrange for the Gift Card production, and Merchant will be charged for the Gift Cards. The form and content of, and any language on, Gift Cards shall be subject to Valutec'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 Gift Card, so long as that expiration date and any other required disclosures are clearly printed on the Gift Card in compliance with all applicable Rules. Merchant shall be solely responsible for complying with all applicable Rules relating to the Gift Cards and the Program. Valutec's approval of any or all limits, policies or procedures pertaining to the Program or any language on, or content or form of, any Gift Cards shall in no way constitute or be construed as Valutec's warranty or endorsement that the Program or such Gift Cards comply with any Rule.

14. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN TO THE CONTRARY, THE SERVICES AND PRODUCTS ARE PROVIDED BY VALUTEC WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER THIS AGREEMENT NOR ANY DOCUMENTATION FURNISHED UNDER IT (INCLUDING, WITHOUT LIMITATION, ANY GIFT CARD ORDER FORM OR OTHER FORM PROVIDED BY VALUTEC TO MERCHANT) IS INTENDED TO EXPRESS OR IMPLY ANY WARRANTY BY VALUTEC THAT THE SERVICES OR PRODUCTS WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS. ANY SECURITY MECHANISMS INCORPORATED IN THE SERVICES HAVE INHERENT LIMITATIONS, AND MERCHANT AGREES THAT IT HAS INDEPENDENTLY DETERMINED THAT SUCH MECHANISMS ADEQUATELY MEET ITS SECURITY AND RELIABILITY REQUIREMENTS. FURTHERMORE, MERCHANT AGREES THAT IN THE EVENT THE CERTAIN OR ALL OF THE SERVICES AND/OR PROGRAM IS DOWN OR OTHERWISE NON-FUNCTIONAL AND NOT ABLE TO VERIFY GIFT CARD TRANSACTIONS FOR CUSTOMERS, VALUTEC WILL NOT PROCESS SUCH TRANSACTIONS. MERCHANT ACKNOWLEDGES THAT VALUTEC SHALL NOT BE RESPONSIBLE FOR LOST PROFITS OR SALES DUE TO THE MALFUNCTION OF THE SERVICES AND/OR PROGRAM. MERCHANT AGREES THAT IT WILL BE SOLELY RESPONSIBLE FOR ANY TRANSACTIONS THAT ARE AUTHORIZED BY MERCHANT WITHOUT THE KNOWLEDGE OR WRITTEN CONSENT OF VALUTEC, AND, IN ADDITION TO THE PROVISIONS OF SECTION 15, WILL WHOLLY INDEMNIFY AND HOLD HARMLESS VALUTEC FROM AND AGAINST ANY AND ALL DAMAGE, LOSS, LIABILITY, CONSEQUENTIAL DAMAGE, EXPENSE, CLAIM OR OBLIGATION ARISING IN CONNECTION THEREWITH.

15. Indemnification. Valutec and Merchant agree that they shall, as the "Indemnifying Party", each indemnify and hold harmless the other party and its officers, directors and shareholders, as the "Indemnified Party", from any and all loss, cost, expense, claim, damage and liability (including attorney's fees and court costs) paid or incurred by the Indemnified Party, to the extent it arises from third party claims, caused by, or is attributable to (a) the failure or breach by the Indemnifying Party or its representatives to abide by the terms and/or provisions of this Agreement; (b) the violation by the Indemnifying Party or its representatives, of any applicable laws, regulations or court orders relating to this Agreement; or (c) gross negligence, willful misconduct or any act or omission by the Indemnifying Party or its representatives.

16. Term and Termination.

A. Term. The term of this Agreement shall commence on the date of execution of the Application by Merchant and continue in effect for the initial term set forth in the Application or where no such initial term is expressly provided in the Application, for a period of thirty-six months (36 months) (the "Initial Term") and, after the Initial Term, 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. Early Termination Fee. If Merchant terminates this Agreement before the end of the Initial Term or any renewal term, unless otherwise prohibited by law, Merchant shall be liable for and charged an early termination fee of an amount equal to the average monthly fees assessed to Merchant under the Agreement for months during which Merchant processed any transactions multiplied by the number of months remaining in the then-current Initial Term or renewal term, as applicable.

C. Valutec Termination, and Conversion. Valutec may, in its sole discretion, terminate this Agreement at any time upon thirty (30) days' prior notice to Merchant. It is the sole responsibility of Merchant to accomplish the conversion of its Gift Card processing upon the termination of this

Agreement.

17. Post-Termination Duties. Following the termination of this Agreement for any reason, Merchant will immediately cease selling Gift Cards. Valutec shall provide Merchant, at Merchant's expense, assistance to facilitate the orderly transition of the Program to Merchant or its designee ("Conversion Assistance"). Before providing any Conversion Assistance, Merchant agrees to pay Valutec a conversion assistance fee equal to the greater of: (a) \$495.00 per location; or (b) up to a maximum of \$1,500.00, 10% of the aggregate amount of all unused account balances of all Gift Cards issued by Merchant for Valutec's standard conversion assistance plus, where applicable, the amount of Valutec's good faith estimate for any custom programming or other custom services requested by Merchant. Merchant agrees that, prior to or upon the termination of this Agreement, Merchant must either (A) refund the unused account balances of Gift Cards issued by Merchant to the Cardholders, (B) transfer the unused account balance of each Gift Card issued by Merchant to another gift card program providing the Cardholder with access to such unused account balance, or (C) reach a mutual agreement with Valutec to provide continuation of the Program; provided, however, that, in the event there are one or more other Participating Merchants, Merchant must, prior to or upon the termination of this Agreement, pay the aggregate amount of all unused account balances of all Gift Cards issued by Merchant, in the form of a lump sum payment, to any other Participating Merchant or other third party designated by Valutec, for the benefit of the other Participating Merchants, so that funds will be available for all unused account balances of Gift Cards issued by Merchant to be redeemed at the other Participating Merchants. Merchant agrees and acknowledges that solely it is liable to the Cardholders of Gift Cards issued by Merchant for all account balances during and after the term of this Agreement.

18. Merchant's Responsibility for Gift Card Usage. Merchant understands and agrees that it shall be solely responsible and liable for all Gift Card usage including usage resulting from stolen, lost, expired or unauthorized Gift Cards. Notwithstanding anything in this Agreement to the contrary, Merchant further hereby understands and agrees that Valutec will not be responsible or liable for any funds incorrectly or not transferred as a result of: (A) insufficient funds in the account of Merchant or any of the Participating Merchants; (B) any change or changes in banking or bank account information of Merchant or any of the Participating Merchants; (C) errors that directly result from information provided by Merchant, any of the other Participating Merchants or any other third party; or (D) other unintentional errors made by Valutec in providing the Services.

19. Limitation of Liability. Neither Valutec nor anyone acting on Valutec'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. The liability of Valutec and anyone acting on Valutec'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 Services, shall, in the aggregate, be limited to actual, direct, and general money damages in an amount not to exceed the greater of: (A) \$900.00; or (B) the aggregate amount of Fees paid by Merchant to Valutec 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 Valutec and anyone acting on Valutec'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 Valutec or anyone acting on Valutec's behalf, and the foregoing shall constitute Merchant's exclusive remedy. Under no circumstances shall Valutec or anyone acting on Valutec's behalf be liable for any lost profits, lost interest, or special, consequential, punitive or exemplary damages arising out of or relating in any way to this Agreement. It is agreed that in no event will Valutec or anyone acting on Valutec'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 Valutec 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.

20. Taxes. All fees and prices charged to Merchant in connection with this Agreement, any Gift Card order form, or any other form provided by Valutec to Merchant, are exclusive of sales tax. Merchant shall be responsible for any federal, state, provincial, and local sales, use, property, and other taxes that may be imposed as a result of this Agreement, any Gift Card order form, or other form provided by Valutec to Merchant, or the Program (except taxes imposed upon Valutec's taxable net income).

21. Attorneys' Fees /Jury Trial Waiver /Choice of Law/Venue. If Valutec defends or enforces any of its rights under this Agreement in any collection or legal action, Merchant agrees to reimburse Valutec 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. Valutec 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 Ohio notwithstanding any conflicts of laws rules and shall be brought in either the state or federal courts in Cincinnati, Ohio or Hamilton County, Ohio, and Valutec and Merchant expressly agree to the exclusive jurisdiction of such courts. Valutec 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 Valutec 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.

22. Complete Agreement. This Agreement (including any Gift Card order forms or other form provided by Valutec to Merchant subsequently submitted by Merchant and accepted by Valutec) embodies the parties' final, complete and exclusive agreement with respect to the Program and the Services. This Agreement shall supersede all prior and contemporaneous agreements, understandings and representations, written or oral, with respect to the Program and the Services.

23. Notices. All notices required by this Agreement shall be in writing. All notices sent to Valutec shall be sent by overnight courier, or regular or certified mail and shall be effective upon actual receipt by the General Counsel of Valutec at 8500 Governors Hill Drive, Symmes Township, Ohio 45249 (or at such other address provided in writing by Valutec 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 Application (or at such other email address, facsimile number, or physical address for Merchant on file with Valutec).

24. Assignability. Merchant shall not assign, subrogate or transfer any interest, obligation or right arising out of this Agreement without prior written consent from Valutec, which shall not be unreasonably withheld.

25. Amendments. This Agreement may only be amended in a writing signed by Valutec and Merchant. Notwithstanding the previous sentence: (a) any and all fees and charges payable under this Agreement may be changed immediately by Valutec upon notice to Merchant in accordance with Section 8; and (b) Valutec may provide Merchant either an amendment to this Agreement or an entirely new Terms and Conditions, which amendment or new Terms and Conditions will be binding upon Merchant if Merchant or any other Participating Merchant submits to Valutec a Gift Card Transaction after the effective date of such amendment or new Terms and Conditions.

26. 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.

ACH Transfer Services means the processing by Valutec of ACH transfers between accounts of Participating Merchants in connection with Gift Card Transactions pursuant to the terms set forth in Section 7.

Cardholder means a person possessing a Gift Card.

Cardholder Data means the consumer profile information, if any, collected by the Gift Card Program software.

Gift Card means any valid unexpired stored value card (in physical or digital form) bearing the name or trade name of Merchant issued as part of the Program or the name or trade name of any other Participating Merchant issued as part of such Participating Merchant's Program administered by Valutec.

Gift Card Transaction means a transaction in which a Cardholder via a Valutec Integration (i) purchases a Gift Card, (ii) adds monetary value to a Gift Card, (iii) debits the monetary value on a Gift Card by purchasing goods or services from Participating Merchants, and/or (iv) returns goods for a credit to the Gift Card.

Participating Merchant shall have the meaning set forth in Section 4.

POS means point-of-sale.

Program means the programs and systems administered and services provided by Valutec as set forth in this Agreement that allow (i) Cardholders to purchase goods or services from Participating Merchants using Gift Cards and consists of a POS-based authorization system for activating Gift Cards and authorizing subsequent Gift Card Transactions and (ii) Merchant to select certain or all of the Services and features set forth in the Application or other form provided by Valutec to Merchant.

Rules shall have the meaning set forth in Section 3.D.

Valutec 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 Gift Card Transaction information to Valutec and to route Valutec's electronic authorization response to Merchant.