

## SERVICE AGREEMENT

THIS AGREEMENT (this "Agreement") is entered into as of the effective date of the Merchant Transaction Processing Agreement ("Merchant Agreement") between the parties (the "Effective Date") by and between **Central Payment Co., LLC dba TSYS Independent Partner Sales**, with a business address at 2350 Kerner Blvd., Ste 300, San Rafael, CA 94901 (hereinafter referred to as "TSYS") and "**Customer,**" name of which is set out in the Merchant Agreement.

### **RECITALS:**

WHEREAS, TSYS's affiliate company has developed a proprietary prepaid software and service program known as the "Opticard®". The Opticard® service and product (together with its related software, cards and documentation, as updated from time to time, herein, the "TSYS Service") integrates with various retail store locations to provide a prepaid/stored value tracking system for anonymous activity at a retail business; and

WHEREAS, Customer desires to purchase the Service from TSYS for use in its retail business, and TSYS desires to provide the TSYS Service to Customer; and

WHEREAS, TSYS and Customer would like to specify herein the terms and conditions upon which Customer will purchase the TSYS Service.

### **AGREEMENTS:**

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, TSYS and Customer agree as follows:

#### **1. TSYS LICENSE.**

- (a) TSYS hereby grants to Customer a limited non-exclusive revocable license and right to use, order and purchase from TSYS the TSYS Service at locations to be determined at a later date. Customer may submit requests for TSYS Service in a form designated by TSYS (a "Service and Pricing"). The Merchant Agreement sets forth any applicable Service and Pricing under this Agreement. Each additional order shall contain the duration for which TSYS Service is ordered and the number of TSYS cards requested. Pricing for TSYS Service shall be as provided in the Merchant Agreement. TSYS will notify Customer of acceptance (in writing or electronically) of each additional order and the date by which TSYS will initiate such additional TSYS Service.
- (b) If access to non-TSYS facilities is required for the installation, maintenance or removal of equipment, Customer shall, at its expense, secure such right of access and shall arrange for the provision and maintenance needed for the proper operation of such equipment.
- (c) If Customer fails to perform any of its obligations hereunder or shall commit an act of bankruptcy within the meaning of the Federal Bankruptcy Act or if bankruptcy, receivership, insolvency, liquidation, or other similar proceedings shall be instituted by or against Customer on all or any part of its property, TSYS may terminate the limited license granted in this Section 1 upon ten (10) days written notice if such proceeding is instituted voluntarily by Customer, or, if such proceeding is instituted involuntarily against Customer and such proceeding is not dismissed within sixty (60) days of such notice. In the event of such termination, TSYS shall have no obligation to continue to maintain or support the TSYS Service; no payments made to TSYS by Customer hereunder shall be refunded to it; and the obligations of Customer under this Agreement shall survive any termination thereof.

#### **2. FEES, PAYMENT AND TAXES.**

- (a) The fees required under the terms of this Agreement are as indicated in the Merchant Agreement. Payment of monthly recurring charges for the TSYS Service will be collected via ACH from Customer's designated bank account under the Merchant Agreement on or about the 5th of each month. Transactions performed outside the 48 contiguous states may incur a communications surcharge per transaction. Billing for partial months will be prorated. Past due amounts bear interest at 1.5% per month or the highest rate allowed by law (whichever is less). Customer is responsible for all charges respecting the Service, even if incurred as the result of unauthorized use.
- (b) If Customer reasonably disputes an invoice or a monthly recurring charge, Customer must pay the undisputed amount and submit written notice of the disputed amount (with details of the nature of the dispute and the TSYS Services and invoice(s) or charge(s) disputed). Disputes must be submitted in writing within 90 days from the date of the invoice or billing. If the dispute is resolved against Customer, Customer shall pay such amounts plus interest from the date originally due.
- (c) Except for taxes based on TSYS net income, Customer will be responsible for all taxes that arise in any jurisdiction, including value added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges or surcharges imposed on or incident to the provision, sale or use of the TSYS Service. Charges for TSYS Service are exclusive of taxes. Customer may present TSYS a valid exemption certificate and TSYS will give effect thereto prospectively.

#### **3. SERVICE PROVIDED.** TSYS will provide the following facilities and capabilities necessary in order to provide Customer with the following level of service:

- (a) Authorization. TSYS will provide authorization of a TSYS transaction requested and initiated by the retail location via a dial telephone, IP or other network structure and will respond to each request with an approval or decline.
- (b) Cards. Each TSYS card issued pursuant to this Agreement will contain an account number and magnetic stripe encoded to TSYS's specifications, and an approved Opticard® logo will be incorporated into the design of the card.

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- (c) Reports. TSYS will provide periodic reports and/or file transfers for the purpose of enabling Customer to better monitor and manage the program implemented at each of its affiliated retail store locations. Customer will have access to TSYS's online web site through a username and password.
- (d) Emergency Service. In the event an act of God, a drastic machine failure, or clerical error renders Customer's system using the TSYS Service inoperable, TSYS agrees to use its best efforts to provide whatever reasonable service is required and requested by Customer within the scope of TSYS's ability to restore the TSYS Service to operation. The highest priority shall be given to the situation by TSYS.
- (e) Help Desk. TSYS will provide a telephone Help Desk, which will be used for response to Customer inquiries and for receiving notification of problems, defects, and malfunctions.
- (f) Remote Support. TSYS will establish remote support for problem diagnosis and provide file transfer capabilities for downloading and uploading software. Customer agrees to install a TSYS approved device(s) on their premises to facilitate such remote support.
- (g) Response Time. TSYS agrees to provide to Customer within forty-eight (48) hours of the problem reporting time an estimated date and time that a material reported problem will be resolved.
- (h) Host Availability. TSYS commits to availability of its host server between 6:00AM MST and 1:00AM MST. During that time period, TSYS commits its host server will be 99.5% functional and serviceable, with such time computed on an average monthly basis. Further, TSYS reserves the time-frame outside those hours specified above (that time period is referred to as the "Service Period") to perform routine and standard maintenance of its system. Although outages during the Service Period are rare, TSYS will not be required to advise Customer of scheduled or unscheduled outages during the Service Period. If a scheduled shutdown is required out of the Service Period, TSYS will advise customer at least seven (7) days in advance.

#### **4. AUTHORITY OF PARTIES**

- (a) Each party represents and warrants that it is a corporation duly authorized, validly existing, and in good standing under the laws of the jurisdiction under which it is incorporated and the execution of this Agreement and that this Agreement is valid and binding upon the party and is enforceable in accordance with its terms.
- (b) Customer acknowledges and agrees that the marks or trade names of TSYS are valid logos, service marks, trademarks, and/or trade names owned by TSYS and its affiliates (the "TSYS Marks") and that TSYS and its affiliates have the sole right to use the TSYS Marks and that valuable good will is attached to the TSYS Marks. Customer will not use the TSYS Marks unless specifically agreed to in writing in advance by TSYS.

#### **5. WARRANTY/LIMITATION OF REMEDY**

- (a) TSYS warrants that any maintenance or other services rendered to Customer in accordance with the terms of this Agreement will be performed in a professional manner by qualified personnel.
- (b) OTHER THAN THOSE WARRANTIES SET FORTH SECTION 5(a), BOTH PARTIES SPECIFICALLY DISCLAIM ALL WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE TSYS SERVICE, DEFECTS IN THE DISKETTE OR OTHER PHYSICAL MEDIA AND DOCUMENTATION, OPERATION OF THE PROGRAMS AND/OR HARDWARE, AND ANY PARTICULAR APPLICATION OR USE OF THE PROGRAMS AND/OR HARDWARE CONSTITUTING A PART OF THE OPITCARD SERVICE.
- (c) If TSYS does not achieve a service level commitment contained in Section 3, a credit will be issued to Customer as set forth in the applicable order upon Customer's request. TSYS's maintenance log and trouble ticketing systems will be used for calculating any service level events. To request a credit, Customer must contact TSYS (with sufficient detail necessary to identify the affected service) within sixty 60 days after the end of the month in which the credit was earned. In no event shall the total credits issued to Customer per month exceed the non-recurring and monthly recurring charges for the affected TSYS Service for that month. The foregoing shall be Customer's sole remedy for any outages in TSYS Service or failure to meet a service level commitment.

#### **6. LIMITATION OF LIABILITY**

- (a) TSYS and Customer agree to indemnify and hold each other harmless from any liability, expense, cost, damage settlement obligation arising from any claim, suit, or cause of action relating to the use of the TSYS Service resulting from gross negligence or willful, knowing and intentional misconduct of either itself or any of its agents or employees.
- (b) TSYS's liability under this Agreement shall not exceed the fees paid by Customer to TSYS under this Agreement. TSYS will not be liable for lost profits or other consequential or incidental damages, even if TSYS has been advised of the possibility of such damages.
- (c) Customer shall have no claim for any liability that is brought more than two (2) years from the occurrence of any events that may rise to such liability.
- (d) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OR PROFIT OR ANY OTHER COMMERCIAL DAMAGE, INCLUDING BUT NOT LIMITED TO SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES. ALL LIABILITY BY EACH PARTY HEREUNDER IS EXPRESSLY LIMITED TO THE AMOUNTS PAID TO SUCH PARTY UNDER THIS AGREEMENT.

- 7. CANCELLATION AND TERMINATION CHARGES** Customer may terminate the TSYS Service upon 30 days' written notice to TSYS identifying the terminated TSYS Service. If Customer does so, or if TSYS Service is terminated by TSYS as the result of an uncured default by Customer, Customer shall pay TSYS a termination charge equal to the sum of: (i) all unpaid amounts for TSYS Service provided through the date of termination; (ii) any off system third party termination charges paid by TSYS for the TSYS Service; and (iii) 75% of the remaining monthly recurring charges for remaining term of this Agreement. The parties agree that the charges in this Section 7 are a genuine estimate of TSYS's actual damages and are not a penalty.
- 8. ASSIGNABILITY** Customer may not assign its rights and obligations hereunder to a third party, without prior written consent of the other party, which consent shall not be unreasonably withheld, provided that such consent shall not relieve the assigning party of any of its obligations hereunder. Notwithstanding the foregoing, either party may assign this Agreement to a parent, affiliated or subsidiary corporation, or a partnership, limited liability company or other entity consisting of some of the existing shareholders without consent upon notice to the other party and so long as the TSYS product may only be installed in those stores as agreed between the parties.
- 9. TERM AND TERMINATION**
- (a) This Agreement shall be effective the Effective Date and shall have a term of thirty-six (36) months. Thereafter, this agreement will automatically renew for additional 1 year terms, unless notice is provide in writing by either party sixty (60) days prior to the termination then current term of this Agreement. As long as this Agreement is in force, all TSYS cards issued pursuant to this Agreement shall continue to be maintained on the TSYS system.
- (b) Grounds for Termination. This Agreement may be terminated under any of the following conditions: (i) expiration of the term set forth in Section 9 (a) above; (ii) mutual agreement of the parties; (iii) by Customer as set forth in Section 7 above; (iv) if Customer does not pay TSYS within thirty (30) days from receipt of an invoice and after written notice from TSYS, Customer does not make payment within ten (10) business days; or (v) the default of either party of any term of this after receipt of written notice from the non-breaching Party.
- (c) Impact of Termination. In the event of the termination of this Agreement, TSYS shall no longer provide the TSYS Service on the cards but upon the request of Customer within ninety (90) days of such termination or cancellation, TSYS will download information on the active issued TSYS cards, including the full card number and balance for any card with a balance greater than zero, to a new card provider.
- (d) Notice of Breach. In the event of a breach of this Agreement (other than a monetary breach) by either party, the non-breaching party shall be entitled to terminate this Agreement upon thirty (30) days written notice, describing the breach, except that if the breaching party remedies the default in good faith within the thirty (30) day notice period, this Agreement shall not terminate.
- 10. MISCELLANEOUS**
- (a) Binding Forces. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the administrators, legal representatives, agents, successors, and permitted assigns of the parties hereto.
- (b) Notices. All notices provided for by this Agreement shall be made in writing and shall be deemed received by the intended recipient: (i) on the business day that such notice is sent by telecopy or facsimile to the intended recipient provided that such notice is also sent by United States Mail, be certified mail, return receipt requested and postage paid thereon; (ii) the third business day after the date placed in United States Mail, certified mail, return receipt requested and postage paid thereon; and (iii) the first day after notice is sent by express mail or other overnight mail service. All notices shall be delivered to the address indicated in the Merchant Agreement, unless the party giving any such notice has been notified, in writing, of a change of such address.
- (c) Entire Agreement. This Agreement and Exhibits attached hereto shall constitute the entire agreement between the parties with respect to the subject matter of this Agreement and the parties represent that there are no collateral agreements or side agreements not otherwise provided for within the terms of this Agreement. The terms and conditions of this Agreement supersede those of all previous agreements, if any, between the parties with respect to the subject matter of this Agreement.
- (d) Modifications and Amendments. No modification or amendment of this Agreement shall be effective or binding upon the parties unless in writing and signed by both parties.
- (e) Governing Law. The situs for all transactions covered by this Agreement shall be Boston, Massachusetts. This Agreement shall be governed and construed and enforced in accordance with the laws of the State of Massachusetts. Any claims or charge made hereunder shall be brought in state or federal court in Boston, Massachusetts. The parties hereto irrevocably consent to the jurisdiction and venue of such court and waive any present or future objection to venue or jurisdiction in such court. The parties agree that service of process may be made upon them by certified or registered mail or any other method authorized under local rules of civil procedure.
- (f) Waiver. Failure of either party to demand strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment by either party of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any other time or times.
- (g) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- (h) Section Headings. The section headings contained in this Agreement are inserted for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

- (i) Partnership. Nothing contained in this Agreement shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture, co-ownership or similar relationship by or between TSYS and Customer.
- (j) Force Majeure. Neither party shall be liable, nor shall any credit allowance or other remedy be extended, for any failure of performance or equipment due to causes beyond such party's reasonable control ("force majeure event"). In the event TSYS is unable to deliver TSYS Service as a result of a force majeure event, Customer shall not be obligated to pay TSYS for the affected TSYS Service for so long as TSYS is unable to deliver the affected TSYS Service.
- (k) Affiliates. Service may be provided to Customer pursuant to this Agreement by an affiliate of TSYS, but TSYS shall remain responsible to Customer for the delivery and performance of the TSYS Service. Customer's affiliates may purchase TSYS Service pursuant to this Agreement. Customer shall be jointly and severally liable for all claims and liabilities related to TSYS Service ordered by any Customer affiliate, and any default under this Agreement by any Customer affiliate shall also be a default by Customer.
- (l) Confidential Information. TSYS and Customer acknowledge that in the course of dealings between parties, each party will acquire information about the other party, its business activities, pricing and operations, its technical information and trade secrets, of a highly confidential and proprietary nature. Each party shall hold such information in strict confidence and shall not reveal the same except for any information generally available to or known to the public, known prior to the negotiations leading to this Agreement, independently developed outside the scope of this Agreement or lawfully disclosed by or to a third party or tribunal. The confidential information of each party shall be safeguarded by the other to the same extent that it safeguards its own confidential materials or data relating to its own business. Further, any information or documentation disclosed between the parties during the performance of this Agreement (including this Agreement) shall be subject to the terms and conditions of the applicable non-disclosure agreement then in effect between the parties.
- (m) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute the same instrument. A document signed and transmitted electronically is to be treated as an original and shall have the same binding effect as an original signature on an original document.