

## GIFT CARD SERVICES AGREEMENT

This Gift Card Services Agreement ("Agreement") is made by and between Harbortouch Payments, LLC ("Harbortouch"), with its principal place of business at 2202 North Irving Street, Allentown, PA 18109, and the business indicated on the Gift & Loyalty Card Application ("Merchant" or "you") on the date the Application is signed by Merchant ("Effective Date"). Harbortouch administers a gift and loyalty card processing program. You desire to participate in the program by accepting cards from valid cardholders. Therefore, in consideration of the mutual promises set forth below, the parties agree as follows:

### I. DEFINITIONS

"Application" means the Gift & Loyalty Card Application signed by Merchant, which is incorporated into this Agreement.

"Card" means any valid unexpired card bearing the name or corporate logo of Harbortouch or Merchant or such other name or corporate logo authorized by Harbortouch from time to time.

"Card Program" means the gift card program operated by Harbortouch that allows Cardholders to purchase goods or services with Cards containing Stored Value.

"Card Transaction" means a transaction in which a Cardholder purchases goods or services from you with a Card.

"Cardholder" means a person possessing a Card.

"Merchant Account" means the deposit account designated and owned by you which will accommodate the transactions set forth in this Agreement.

"Program Fees" means all fees set forth on the Application.

"Stored Value" means the amount of money, in U.S. dollars, associated with a Card. You may redeem Stored Value for goods and services.

### II. HONORING CARDS

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

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**2.2 Authorizations.** You will obtain a prior authorization via a Harbortouch-approved electronic terminal before completing any Card Transaction. Upon receipt of authorization, you may consummate only the transaction authorized. Authorizations are not a guarantee of payment, and will not validate a fraudulent transaction or a transaction involving the use of an expired Card.

**2.3 Sales Procedure.** You will enter the data related to a Card Transaction into a terminal approved by Harbortouch at the time of each Card Transaction. You will use a sales slip or other form approved by Harbortouch to document each Card Transaction. You will deliver a complete copy of the sales slip to the Cardholder at the time of the transaction. You will retain the "merchant copy" of the sales slip for at least 3 years following the date of completion of the Card transaction. If Harbortouch requests a copy of the sales slip, you will provide it within 3 business days following the request.

**2.4 Intra-Program Settlement (Chain Merchant).** If you issue a Card and that Card is used at a chain location, Harbortouch will debit the issuing merchant and credit the activity location. Reloads at a location, other than the initiating issuing location, will be debited the load amount and credited to the original issuing merchant location. If for some reason a merchant location closes and has outstanding card balances, those balances will be transferred to the merchant chain headquarters location. If any location of a chain is closed, all remaining active card balances will be transferred to the chain headquarters.

**2.5 Harbortouch Obligations.** In addition to other obligations set forth in this Agreement, Harbortouch will authorize and settle all Card Transactions. Harbortouch will provide training to your employees on the Card Program.

**2.6 Cards.** Delivery of ordered Cards will be complete upon Harbortouch's delivery to the carrier. Following such delivery, Harbortouch will have no liability with regard to such Cards.

Harbortouch will produce cards in conformity with applicable card production standards. Your sole remedy for a violation of the previous sentence shall be replacement of Cards. Cards will be shipped approximately 3 to 5 business days from the time Harbortouch receives completed forms and your approval of artwork. Delivery time may vary based upon quantity, types of cards ordered and shipping method.

**2.7 Performance.** Harbortouch will use its reasonable best efforts to provide the services set forth in this Agreement; provided, however, that nothing in this Agreement shall create any obligation on the part of Harbortouch to provide services (including the timing of delivery of such services) that it is unable to provide under the contract with its service provider. Harbortouch does not warrant or represent that its services will be uninterrupted or error free nor will it be liable for damages resulting therefore, except where any interruption or error is due to the gross negligence or willful misconduct of Harbortouch. The warranties set forth above constitute the only warranties with respect to the services and are in lieu of any other warranties, written or oral, statutory, express, or implied, including without limitation the warranties of merchantability and fitness for a particular purpose. In no event will Harbortouch be liable for any special, incidental, consequential or punitive damages of any nature or for any reason whatsoever regardless of the form or action, whether in contract, tort, or otherwise even if advised of that possibility. The total cumulative liability of Harbortouch in the aggregate for damages arising from any breach of this Agreement or for any other claims under this Agreement shall not exceed an amount equal to the lesser of fees retained by Harbortouch attributable to this Agreement over the previous 4 month period, measured from the date the liability is incurred. You agree the previous sentence is a necessary allocation of risk and is an integral part of the inducement to Harbortouch to perform the services under this Agreement.

### III. MERCHANT OBLIGATIONS

**3.1 Merchant Advertising.** You acknowledge that Harbortouch owns the copyright in all Harbortouch materials and to the extent that the Merchant would, but for this paragraph, own such copyrights, you hereby assign all such copyright to Harbortouch. Harbortouch will work with you to create the design of your Card for the fees set forth on the Application. Merchant owns its trademarks, name and logo, and grants to Harbortouch a license to use such intellectual property in Harbortouch promotional materials. While Harbortouch will use its best efforts to ensure the accuracy of all information used, Harbortouch shall not be held responsible for any error or omission relating to you.

**3.2 Rules.** You will comply with all rules and instructions provided to you by Harbortouch. You are responsible for ensuring that your Card Program complies with all applicable state and federal laws and regulations, including but not limited to laws relating to gift and loyalty cards. You will indemnify and hold Harbortouch harmless from any claim by any third party or government agency that such program violates any law. You will redeem Stored Value only for goods or services provided by you, and will not redeem Stored Value for cash. During the term of this Agreement you will not participate in any program similar to the Card Program.

**3.3 Financial Information and Errors.** You will provide Harbortouch with financial information as requested from time to time. You will notify Harbortouch immediately of any duplicative or erroneous Card Transactions.

**3.4 Card Program Promotion.** You will display materials provided by Harbortouch promoting the Card Program. You will cease displaying, and will return to Harbortouch or destroy, such materials immediately upon termination of the Agreement for any reason. You understand that the Card Program is wholly-owned by Harbortouch, and that your participation in the Card Program does not grant to you any rights in the Card Program.

**3.5 Representations.** In addition to the representations and warranties provided in the Agreement, you represent and warrant to Harbortouch that: (A) all sales slips represent a bona fide Card Transaction; and (B) all sales slips are in compliance with this Agreement and all of the applicable laws and regulations governing the same.

**3.6 Indemnification.** You will indemnify and hold Harbortouch harmless from any claims, demands, loss, damage, liabilities, costs, fees, increased taxes or expenses (including without limitation, court costs and reasonable attorneys' fees): A) which may be incurred by Harbortouch; or B) which may be claimed against Harbortouch by any third party arising out of or related directly or indirectly to this Agreement, including but not limited to claims arising out of a breach of Harbortouch's or your data systems; or C) arising out of your acts or omissions under this Agreement relating to the exercise of, or the failure to exercise, your obligations under this Agreement.

#### IV. PAYMENTS, MERCHANT ACCOUNT, MONTHLY STATEMENT

**4.1 Payment.** You will owe to Harbortouch the Program Fees and you authorize Harbortouch to withhold from your deposits or to debit the Merchant Account for such amount. You will pay any taxes on the services provided under this Agreement.

**4.2 Merchant Account.** Harbortouch will credit or debit the Merchant Account via ACH the net amount due to you. All sales slips are subject to audit and final checking by Harbortouch, and may be adjusted for inaccuracies. You authorize Harbortouch to debit via ACH the Merchant Account for any amounts owed under this Agreement. You will provide Harbortouch with 5 days advance notice of any change to the Merchant Account.

**4.3 Monthly Statement.** Harbortouch will provide you with a monthly statement or online access to such information. You will examine all monthly statements and notify Harbortouch in writing of any alleged errors within 15 days of receipt. The notice must include: (A) Merchant name and account number, (B) dollar amount and description of the asserted error, and (C) an explanation of why the error exists and the cause of it, if known. If Harbortouch is not so notified, you agree that the statement shall be accepted by you as correct. You will accept Harbortouch's records as conclusive proof of the status of your account with Harbortouch.

#### V. INFORMATION

**5.1 Harbortouch Systems and Information.** You acknowledge that you have no rights in any software, systems, documentation, guidelines, procedures and similar materials or any modifications provided by Harbortouch, except with respect to your use of the same during term of this Agreement. You will not use, sell, exchange, or provide to any third party, and will keep strictly confidential, any information related to the Card Program, including but not limited to sales slips, monthly statements, Harbortouch documents, and this Agreement. You acknowledge that Harbortouch is the sole owner of, and that you have no rights in, all transaction data.

**5.2 Information Security.** You shall be responsible for maintaining security for your own systems, servers, and communications links as necessary to: (A) protect the security and integrity of Harbortouch's systems and servers on which Card Transaction information is stored; and (B) protect against unauthorized access to or use of Harbortouch's systems and servers on which Card Transaction information is stored.

**5.3 Data Backup.** You shall maintain adequate records for at least 10 business days including backup on magnetic tape or other electronic media where transactions are being transmitted to Harbortouch, from which reconstruction of lost or damaged items or data can be made. You assume all responsibility and liability for any loss or damage resulting from failure to maintain such records.

**5.4 Transmission of Data.** The responsibility and expense for transportation of Cards and transmission of data between Harbortouch and you, and the risk of loss for, data and media transmitted between Harbortouch and you, shall be borne by you. Data lost by Harbortouch following receipt shall either be restored by Harbortouch from its backup media or shall be reprocessed from your backup media at no additional charge to you.

**5.5 Reliance on Data.** Harbortouch will provide the Card Program on the basis of information furnished by you. Harbortouch shall be entitled to rely upon any such data, information or instructions as provided by you. If any error results from incorrect input supplied by you, you shall be responsible for discovering and reporting such error and supplying the data necessary to correct such error to Harbortouch for processing at the earliest possible time. Harbortouch shall be relying on your instructions and directions in administering the Card Program, and shall not be responsible for any liability arising from Harbortouch's proper performance in accordance with your instructions.

#### VI. TERM AND TERMINATION

**6.1 Term.** This Agreement shall become effective on the Effective Date and shall remain in effect for 3 years ("Initial Term"). Unless terminated as set forth below, this Agreement shall automatically renew for successive 2 year periods ("Renewal Term"). Either party may terminate this Agreement effective at the end of a Term upon 30 days prior written notice to the other.

**6.2 Suspension.** Harbortouch may suspend or terminate the Card Program and take such other steps as it deems necessary: (A) if you fail to observe any provision of this Agreement; (B) Harbortouch's agreement with its service provider terminates; (C) upon the commencement of bankruptcy, receivership, insolvency or similar action or proceeding initiated by or against you, or you are insolvent; or (D) if you damage the goodwill of Harbortouch.

**6.3 Termination Assistance.** Upon termination of this Agreement, you will immediately cease selling Cards. Following such termination, Harbortouch shall provide you, at your expense, all necessary assistance to facilitate the orderly transition of the stored value services to you or its designee ("Termination Assistance"). Before providing any Termination Assistance, Harbortouch will deliver to you a good faith estimate of all transition charges including charges for custom programming services. Further, for 120 days following termination of this Agreement, you will maintain the Merchant Account with sufficient funds to cover all trailing activity.

**6.4 Early Termination.** You acknowledge that Harbortouch shall suffer a material adverse impact on its business if the Card Program is terminated prior to the expiration of the then-current Term, and that the resulting damages may not be susceptible of precise determination. You acknowledge that a termination fee of \$250 is a reasonable approximation of such damages and shall be deemed to be liquidated damages and not a penalty. If you cancel this Agreement prior to delivery of Cards and installation, any monies collected up to that time are non-refundable.

#### VII. GENERAL

**7.1 Assignability.** Merchant may not assign this Agreement to any third party without Harbortouch's prior written consent, and any unauthorized assignment will be null and void.

Harbortouch may assign its rights under this Agreement provided that any assignee will take subject to all of the obligations of Harbortouch. Harbortouch will notify you of an assignment within 60 days after the date of the assignment.

**7.2 Notice.** All communications under this Agreement will be in writing and will be delivered in person or by mail courier, return receipt requested, addressed at the addresses indicated in the opening paragraph. The parties may, from time to time, designate different persons or addresses to which subsequent communications will be sent by sending a notice of such designations in accordance with this Section.

**7.3 Entire Understanding, Amendment.** This Agreement, including the Application which is incorporated by reference, sets forth the entire understanding of the parties relating to its subject matter. Harbortouch may amend this Agreement and the attached Application upon notice to you. Such notice may be provided in your monthly statement.

**7.4 Severability.** If any provision of this Agreement is illegal, the invalidity of such provision will not affect any of the remaining provisions, and this Agreement will be construed as if the illegal provision is not contained in the Agreement. This Agreement will be deemed modified to the extent necessary to render enforceable the provisions hereunder.

**7.5 No Waiver of Rights.** No failure or delay on the part of any party in exercising any right under this Agreement will operate as a waiver of that right, nor will any single or partial exercise of any right preclude any further exercise of that right.

**7.6 Successors and Assigns.** This Agreement will inure to the benefit of and will be binding upon the parties and their respective permitted successors and assigns. This Agreement will not be deemed to be for the benefit of any third party. Harbortouch and you will be deemed to be independent contractors and will not be considered to be agent, servant, joint venturer or partner of the other.

**7.7 Binding Arbitration Agreement.**

(i) **Harbortouch and Merchant agree to resolve all claims and disputes of every kind between them or their respective owners, partners, shareholders, affiliates (including parents, subsidiaries, and other related entities), predecessors, successors, or assigns only through binding individual arbitration before the American Arbitration Association ("AAA").** This Arbitration Agreement is to be broadly interpreted. It includes: (A) claims or disputes relating to any aspect of the relationship between Harbortouch and Merchant including claims or disputes relating to this Service Agreement, the Equipment, the Software, the Processing Agreement, any Harbortouch product or service, and any agreement to which Merchant and Harbortouch are parties (even if the claim or dispute does not involve the Service Agreement), whether based in contract, tort, statute, fraud, misrepresentation, omission, or any other theory; (B) claims or disputes that arose before this Service Agreement or any other agreement became effective (including claims or disputes relating to advertising); (C) claims or disputes that are subject of purported class action litigation on the date this Service Agreement becomes effective but Merchant is not a member of a certified class on that date; and (D) claims or disputes that arise after the termination of this Service Agreement but relate to it or to the Equipment or Software.

(ii) **Class Action Waiver.** Merchant and Harbortouch waive their rights to sue before a judge or jury and to participate in a class action, class-wide arbitration, private attorney general action, or any other proceeding in which a party acts in a representative capacity. Instead, any claim or dispute will be resolved on an individual basis by a

**attorney general action, or any other proceeding in which a party acts in a representative capacity.** Instead, any claim or dispute will be resolved on an individual basis by a neutral arbitrator whose decision (called an "award") will be final except for a limited right of appeal under the Federal Arbitration Act. **The arbitrator may not join or consolidate proceedings together without the consent of all parties to all proceedings.**

(iii) Before seeking arbitration, Harbortouch or Merchant must first send to the other, by certified mail return receipt requested or a courier service that requires a signature upon delivery, a written Notice of Dispute ("**Notice**"). A Notice to Harbortouch must be addressed to: Harbortouch Legal Department, 2202 N. Irving Street, Allentown, PA 18109. A Notice to Merchant must be addressed to its address in Harbortouch's records. The Notice must (A) describe the nature and basis of the claim or dispute; and (B) set forth the specific relief sought. If Harbortouch and Merchant do not reach an agreement to resolve the claim or dispute within 30 days after the Notice is received, Merchant or Harbortouch may commence an arbitration.

(iv) Harbortouch or Merchant may bring an individual suite in a small claims court instead of sending a Notice or arbitrating. Merchant may sue in the small claims court in the county of Merchant's principal place of business or Lehigh County, Pennsylvania; Harbortouch may sue in the small claims court in Merchant's principal place of business. This Arbitration Agreement does not preclude Merchant from bringing issues to the attention of federal, state, or local agencies (including an attorney general or the Office of the Comptroller of the Currency). Such agencies can, if the law allows, seek relief against Harbortouch on Merchant's behalf.

(v) The AAA's Commercial Arbitration Rules, as modified by this Arbitration Agreement, apply. To commence an arbitration, submit a Demand for Arbitration with the required fee to the AAA and send a copy to Harbortouch at the address in Section 7.7(iii). For information, visit [adr.org](http://adr.org) or call 1-800-778-7879. For disputes involving \$25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing. Any in-person hearing will be held in the county of Merchant's principal place of business.

(vi) For disputes involving \$75,000 or less, Harbortouch will pay all AAA and arbitrator's fees and promptly refund Merchant's filing fee, unless the arbitrator finds the arbitration frivolous or brought for an improper purpose. For disputes involving more than \$75,000, AAA rules govern fees. Harbortouch will not seek its attorney's fees or expenses in any arbitration.

(vii) The arbitrator may award the same relief as a court could but may award declaratory or injunctive relief only to the individual party and only to the extent necessary to provide relief for that party's individual claim. Any court with jurisdiction may enforce the arbitrator's award.

(viii) If the class action waiver in Section 7.7(ii) is found to be illegal or unenforceable as to all or any part of a claim or dispute, then the Arbitration Agreement is null and void as to that part, which shall proceed in court with the rest proceeding in individual arbitration. If any other provision of the Arbitration Agreement is found to be illegal or unenforceable, that provision shall be severed and the rest will continue to apply in individual arbitration.

(ix) Notwithstanding any provision to the contrary, if Harbortouch makes any future change to the Arbitration Agreement (other than address changes) during the Initial Term or a Renewal Term, Merchant may reject that change by sending Harbortouch written notice within 30 days of receiving notice of the change to the address in Section 7.7(iii). The version of the Arbitration Agreement in force just before the rejected change will govern.

**7.8 Applicable Law.** The Agreement will be deemed to be a contract made under the laws of the Commonwealth of Pennsylvania, and will be construed in accordance with the laws of Pennsylvania without regard to principles of conflicts of law. The exclusive forum and venue for the adjudication of any rights, claims or disputes arising out of or in connection with this Agreement shall be the federal or state courts of Pennsylvania.

**7.9 Force Majeure.** Neither party will be liable to the other for any failure or delay in its performance of this Agreement in accordance with its terms if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

**7.10 Survival.** All agreements that by their context are intended to survive the termination of this Agreement, including but not limited to Sections 2.7, 3.1, 3.2, 3.6, 4.1, Article V, and Section 6.4, will survive termination of this Agreement.

**7.11 Counterparts/Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile copies reflecting the party's signature, and any such facsimile copy shall be sufficient to evidence the signature of such party as if it were an original signature.