



Teleflora Electronic Credit Card Processing Services Agreement

By signing and delivering to Teleflora LLC ("Teleflora") the Schedule of Prices, Terms, Rates and Conditions (the "Schedule") to this Teleflora Electronic Credit Card Processing Services Agreement (this "Agreement") or by submitting credit card transactions to Teleflora, upon acceptance by Teleflora, you ("Merchant") shall be subject to the terms and conditions of this Agreement.

1. Credit Card Processing Service.

- 1.1 *Generally.* As more particularly described in this Agreement and subject to the terms and conditions hereof, the Teleflora electronic credit card processing service to be provided to Merchant hereunder shall consist of authorization and electronic draft capture of Card (as defined in Section 3.1) transactions; out-clearing of such transactions to the appropriate Card associations and/or Card-issuing institutions; payment settlement; and transaction-related reporting, statements and products (collectively, the "Service").
- 1.2 *Relationship of the Parties; Process Center.* Subject to the proviso below, Teleflora shall not serve as, nor be deemed, an agent of Merchant in connection with any sale by Merchant of goods and/or services to a cardholder; *provided; however,* that Teleflora shall serve as an agent of Merchant for the sole purpose of processing Card transactions submitted by Merchant through the Service, including remitting payments due to Merchant in connection with such transactions in accordance with the terms of this Agreement. Notwithstanding the foregoing, any reference herein to any "agent" of Merchant (including, without limitation, as set forth in Section 8.1), shall be deemed to exclude Teleflora. For purposes of processing Card transactions submitted by Merchant through the Service, Teleflora may use the services of a third party data processing service provider (the "Process Center").
- 1.3 *Compliance with Guide, Other Agreements, Etc.* Merchant agrees to comply with and shall be subject to (i) Teleflora's credit card processing policies, procedures and instructions as published in the Teleflora Guide to Credit Card Processing and on www.MyTeleflora.com (or such other website(s) as Teleflora may establish for its members' use) in each case, as may be amended from time to time (collectively, the "Guide"); (ii) the terms and conditions of Merchant's Contract for Membership with Teleflora, as may be amended from time to time (the "Membership Contract"); (iii) Teleflora's Rules and Regulations published in the Teleflora Resource Guide and/or on www.MyTeleflora.com (or such other resource guide or website(s) as Teleflora may publish or establish for its members' use), in each case, as may be amended from time to time; (iv) the terms and conditions on Merchant's periodic transaction statement (the "Statement"); (v) all applicable rules and regulations of Card associations and member banks, as such rules and regulations may be amended from time to time (collectively, the

"Association Rules"); and (vi) all applicable state, federal and local laws, rules and regulations. To the extent consistent with Teleflora's agreement with the Process Center, Teleflora agrees to use commercially reasonable efforts to provide Merchant, upon Merchant's reasonable request, with information relating to specific Association Rules.

2. Credit Card Processing Equipment.

- 2.1 *Description; Delivery; Risk of Loss.* If indicated on the Schedule, Merchant shall purchase draft capture and credit card authorization equipment from Teleflora, which equipment shall consist of a terminal, printer, and/or certain proprietary software (the "Software") (such terminal, printer and Software are each, and collectively, the "Equipment"). Merchant acknowledges and agrees that shipment to Merchant of any Equipment purchased is subject to availability of the Equipment and Teleflora shall not be liable to Merchant for any failure or delay in meeting any estimated, quoted or acknowledged delivery times or dates for such Equipment. Merchant shall be responsible for, and bear, any and all risk of loss or damage to the Equipment from any cause whatsoever upon delivery of the Equipment by the common carrier to Merchant.
- 2.2 *Software.* Merchant acknowledges and agrees that it shall not obtain any title, copyrights or any other proprietary right to the Software. Teleflora or its suppliers, as applicable, shall at all times retain all rights to the Software, including, but not limited to, updates, enhancements and additions. Merchant shall not disclose or convey the Software to any third party or copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, or create any derivative work based on, the Software. Merchant's use of the Software shall be limited to that expressly authorized in any license agreement accompanying the Software or by Teleflora in writing. Teleflora's suppliers are intended third party beneficiaries of this Agreement to the extent of any terms herein pertaining to the proprietary rights of any such suppliers in and to any Software. Such suppliers shall have the right to rely on and directly enforce such terms against Merchant.
- 2.3 *Installation.* Merchant, at its sole cost and expense, shall be responsible for connecting the Equipment to a compatible telephone access line, including a dedicated telephone line, if necessary, preparing the site where the Equipment will be installed, and installing the Equipment and/or Software. Teleflora shall not be responsible for the acceptability of Merchant's site for, or the installation, maintenance or repair of, the Equipment or Software.

3. Processing of Credit Card Transactions.

3.1 *Cards Generally.* The following credit cards may be accepted and processed through the Service: Visa, MasterCard, American Express, Carte Blanche, Diners Club, Novus and JCB. Teleflora reserves the right to remove or add, in its sole and absolute discretion, to such list of accepted credit cards at anytime upon written notice to Merchant (each such accepted credit card, as may be amended from time to time by Teleflora, a "Card"). Merchant will honor all valid and properly tendered Cards. Merchant shall not establish dollar limitations below which it will not honor Cards, assess a surcharge against a cardholder for the use of a Card, or dispense cash to a cardholder in connection with any Card transaction. Teleflora reserves the right to establish a floor limit for any and all Cards processed through the Service.

3.2 *Authorizations.* Merchant agrees to follow the Card verification and transaction authorization procedures outlined in the Guide. Merchant acknowledges and agrees that an authorization of a Card transaction does not guarantee that such transaction will be collectible, whether in whole or in part, that the cardholder is actually authorized to use the Card or that such transaction will not be subject to Chargeback (as defined in Section 3.3)

3.3 Chargebacks.

3.3.1 *Generally.* The amount of a Card transaction submitted by Merchant through the Service may be charged back by Teleflora to Merchant (each, a "Chargeback") if the transaction is disputed, is charged back for any reason by the Card issuing institution or Process Center, is not authorized, or is allegedly unlawful, suspicious or otherwise questionable. Set forth in the Guide is a list of some common reasons for Chargebacks, which list is not exhaustive and does not limit the generality of the foregoing.

3.3.2 *Collection.* Pursuant to its rights under Sections 4.5 and 4.6, Teleflora may deduct the amount of any Chargeback (and any related fees, fines, and penalties) from the Gross Funds or the Net Funds (as such terms are defined in Section 4.5) or the funds held in any Reserve Account (as defined in Section 5.1). If any Chargeback (or related fee, fine or penalty) is uncollectible, in whole or in part, from such Gross Funds, Net Funds or Reserve Account, Merchant, upon demand by Teleflora, shall pay to Teleflora the full amount or balance, as applicable, of the Chargeback.

3.3.3 *Excessive Chargebacks.* If Teleflora determines, in its sole and absolute discretion, that Merchant is incurring an excessive amount of Chargebacks, in addition to all other remedies to which Teleflora may be entitled under this Agreement or applicable law, Teleflora may take any or all of the following actions without the obligation to comply with the terms and conditions of Section 12.3: (i) review Merchant's internal procedures relating to the acceptance of

Cards and notify Merchant of suggested new or different procedures to avoid the incidence of future Chargebacks; (ii) establish a new rate that Teleflora shall charge Merchant to process its Chargebacks, effective immediately upon notice to Merchant; (iii) collect from Merchant an amount reasonably determined by Teleflora to be sufficient to cover anticipated Chargebacks (and related fees, fines, and penalties) for deposit into a Reserve Account; (iv) if Merchant is enrolled in the direct deposit plan, transfer Merchant to a check payment plan; and (v) terminate this Agreement pursuant to Section 7.2.

3.4 *MOTO Transactions.* When accepting a Card number in connection with a transaction in which the purported cardholder is not present, including a mail, telephone, or Internet transaction (each, a "MOTO Transaction"), Merchant agrees to use commercially reasonable efforts to obtain as much information on the purported cardholder as possible, subject to the provisions of the Guide with respect to MOTO transactions. Merchant acknowledges and agrees that any MOTO Transaction may result in a Chargeback notwithstanding prior authorization of the underlying transaction.

3.5 *Account Reconciliation.* As more particularly described in the Guide, Merchant shall be solely responsible for monitoring Card transactions submitted by it through the Service and ensuring that any payments made to it by Teleflora in connection with such transactions are correct.

3.6 *Receipts; Records.* As more particularly described in the Guide, Merchant shall be solely responsible for compiling and retaining permanent records of all Card transactions submitted by it through the Service, including, without limitation, sales records and other related data and documentation. Merchant acknowledges and agrees that upon the termination of this Agreement for any reason or for no reason, Teleflora shall have no obligation to Merchant to store, retain, report or otherwise provide any copies of, or access to, any records, documentation or other information in connection with Card transactions submitted by Merchant through the Service. Teleflora has the right to investigate any Card transaction submitted by Merchant through the Service, and Merchant agrees to assist Teleflora with any such investigation, at Merchant's sole cost and expense.

3.7 *Chargeback Disputes.* In the event that Merchant disputes a Chargeback, Merchant must comply with the Chargeback dispute resolution procedures set forth in the Guide (including, without limitation, the notice requirements set forth therein) and applicable Association Rules. If Merchant, in connection with any such dispute, (i) complies with the requirements in the Guide and (ii) the data and documentation submitted

by Merchant to Teleflora supports the reversal of the disputed Chargeback by the Card-issuing institution pursuant to the Association Rules, Teleflora shall, on Merchant's behalf, resubmit the disputed Card transaction to the Card-issuing institution for payment. If the Card-issuing institution agrees to pay for the resubmitted Card transaction, Teleflora shall, upon receipt of payment from the Card-issuing institution, credit Merchant the amount received by Teleflora for such transaction less applicable fees and charges as provided herein. If the Card-issuing institution refuses, or otherwise fails, to pay Teleflora for any or all of the resubmitted transaction, Teleflora shall not credit Merchant for such transaction or the portion thereof not paid by the Card-issuing institution, as applicable, and Merchant's sole recourse shall be to such Card-issuing institution.

4. Payment Terms; Fees.

- 4.1 *Fees; Charges.* Merchant shall pay to Teleflora the fees and charges described in this Section 4 and as indicated on the Schedule and such increased, amended, new or different fees and charges as Teleflora may notify Merchant from time to time pursuant to the terms and conditions of Section 12.3 (collectively, the "Fees").
- 4.2 *Equipment Charges.* If Merchant indicates on the Schedule that it will purchase Equipment from Teleflora, Merchant shall pay to Teleflora the fees and charges set forth therein for such Equipment and all delivery, shipping and/or handling charges in connection with the shipment of such Equipment to Merchant. In addition, Merchant shall pay to Teleflora any and all applicable use, sales or excise taxes, tariffs or other assessments (and related interest and penalties) imposed on the purchase and sale of the Equipment and agrees to reimburse Teleflora for any such amounts paid by Teleflora on Merchant's behalf.
- 4.3 *Interest on Unpaid Balances.* If Merchant fails to pay any amount owing to Teleflora hereunder when due and payable, such past due amounts shall bear interest at the maximum interest rate permitted by law in the state where Merchant is located.
- 4.4 *Other Charges.* Merchant shall pay for all fees, charges, fines or penalties assessed by any Card association or member bank, the Process Center or other third party arising from, or in connection with, any Card transaction submitted by Merchant through the Service in violation of this Agreement.
- 4.5 *Funds Remittance to Merchant.* Subject to the terms of this Agreement and in accordance with the payment plans selected on the Schedule, Teleflora shall pay to Merchant the amounts actually received by Teleflora from the applicable Card-issuing institutions for Card transactions submitted by Merchant through the Service (collectively, the "Gross Funds") less all applicable Fees and all other amounts (i) owing by Merchant to Teleflora under this Agreement, Merchant's Membership Contract or other contract with Teleflora or otherwise and (ii) arising out of any

Card transaction submitted by Merchant through the Service and rejected by the Card-issuing institution or the Process Center for any reason whatsoever (including Chargebacks or other payment reversals, and any related fees, charges, fines or penalties assessed pursuant to Section 4.4) ((i) and (ii) are collectively, the "Other Permitted Deductions"). As used herein, such Gross Funds less all applicable Fees and Other Permitted Deductions, are collectively, the "Net Funds").

- 4.6 *Set-Off Rights for Past Due Amounts.* If Merchant, at any time, fails to pay any amount owing to Teleflora hereunder when due and payable, including, without limitation, any uncollectible Chargebacks, Teleflora, in its sole and absolute discretion, may retain, and offset against, the Net Funds or funds in the Reserve Account the amount of any such past due amounts and any interest thereon pursuant to Section 4.3. Accordingly, Merchant hereby assigns to Teleflora, for the purpose of paying any such past due amounts and interest and funding any Reserve Account pursuant to Section 5.1 all of its right, title and interest in and to the Net Funds and the funds in the Reserve Account. The rights set forth in this Section 4.6 are in addition to, and not exclusive of, any other rights Teleflora may have under this Agreement, the Association Rules or applicable law. Teleflora may accept any check or other form of payment from Merchant for any past due amount without prejudice to Teleflora's rights to recover the balance due or to pursue any other right or remedy. No endorsement or statement on any check or other payment, or any correspondence accompanying any check or payment or elsewhere, will be construed as an accord or satisfaction.

4.7 Direct Deposit.

- 4.7.1 *Deposit Account.* If indicated by Merchant on the Schedule or in a subsequent writing to Teleflora, Merchant may receive the Net Funds by automatic deposit of such Net Funds to Merchant's account with a financial institution that accepts automated clearinghouse transfers (each, a "Deposit Account"). Teleflora may use one or more depository banks (collectively, the "Teleflora Bank") to deposit, on Teleflora's behalf, the Net Funds due to Merchant hereunder to Merchant's Deposit Account. Merchant agrees to execute and/or deliver to Teleflora or the Teleflora Bank, as applicable, such additional documents as may be required by the Teleflora Bank to deposit such Net Funds to Merchant's Deposit Account. Subject to the terms and conditions of this Agreement, Teleflora shall cause the Net Funds due to Merchant hereunder to be deposited into Merchant's Deposit Account within three (3) business days from the date that the applicable Card transaction(s) are settled.

4.7.2 Verification/Change of Account. Merchant acknowledges and agrees that its receipt of any Net Funds due to it hereunder by automatic deposit to any Deposit Account is contingent upon Teleflora's confirmation of the availability of such Deposit Account, which confirmation may take up to five (5) business days from Teleflora's receipt of Merchant's written designation and all other required documentation to establish such Deposit Account. During such five (5) business-day period, Teleflora may retain any and all Net Funds due to Merchant hereunder without an obligation to pay to Merchant interest on such retained Net Funds. In the event that Teleflora determines that Merchant's Deposit Account is not available to receive any or all of the Net Funds, Teleflora shall promptly notify Merchant, and it shall be Merchant's sole responsibility to designate to Teleflora a substitute Deposit Account in accordance with the terms of this Section 4.7 or to request an alternative form of payment of the Net Funds; provided; however, that in the event that Merchant fails to promptly designate such substitute Deposit Account or alternative form of payment of the Net Funds, Teleflora shall pay the Net Funds to Merchant by means of a check and mail the same to Merchant. In no event shall Teleflora be liable to Merchant for any claims, liabilities, damages (including, without limitation, indirect, special, consequential or punitive damages), losses, costs or expenses, (including, without limitation, actual attorneys' fees and costs and allocable fees of in-house counsel), penalties, fines, or actions or suits of any kind or description (collectively "Losses") against or incurred by Merchant as a result of, or in connection with, the unavailability, regardless of the cause, of any Deposit Account to receive any or all of the Net Funds due to Merchant hereunder.

4.8 Billing and Deposit Errors. Merchant shall notify Teleflora in writing of any billing error (other than Chargeback-related errors, which shall be governed by Section 3.7) or direct deposit error with respect to any Net Funds or other funds deposited into the Deposit Account, in each case, within ninety (90) days of the date of Merchant's Statement (in the case of a billing error) or Merchant's receipt of the Net Funds or other deposit (in the case of a direct deposit error). In no event shall Teleflora be liable to Merchant for any Losses incurred by Merchant as a result of, or in connection with, any billing or direct deposit error, whether resulting from the acts or omissions of Teleflora, the Teleflora Bank, the Process Center or otherwise, which is not reported by Merchant to Teleflora within such ninety (90)-day period as provided herein.

4.9 Payment Plans; Name Changes. Subject to Teleflora's approval, which may be withheld in its sole and absolute discretion, Merchant may request to change its payment plan designations, including, without limitation, the direct deposit designation, as set forth on the Schedule, by

providing to Teleflora written notice of such request and any and all additional information and documents requested by Teleflora to effectuate such change. All approved changes to Merchant's payment plan designations shall be implemented by Teleflora within five (5) business days following Teleflora's receipt of Merchant's written notice and all such additional information and documents requested by Teleflora to effectuate such change. In addition, Merchant agrees to (i) notify Teleflora in writing of any change to its company or shop name or other contact information set forth on the Schedule and (ii) subject to the terms and conditions of Section 12.3, execute and deliver to Teleflora a new Agreement reflecting the new company or shop name and such additional documents and information as Teleflora may require.

5. Reserve Account/Security Interest.

5.1. Creation. Teleflora may, at any time, establish a reserve account (a "Reserve Account") to secure the performance of Merchant's obligations under this Agreement. Teleflora may fund the Reserve Account through any or all of the following, in each case, at such times and in such amounts as reasonably determined by Teleflora to be sufficient to secure Merchant's obligations under this Agreement: (i) funds deposited by Merchant in such Reserve Account at the reasonable request of Teleflora; (ii) Net Funds due to Merchant hereunder; and (iii) funds withdrawn by Teleflora from any Deposit Account or any other account(s) maintained by Merchant (or its Guarantor, as defined in Section 5.2, if any), including, without limitation, certificates of deposit with any depository or other financial institution designated for such purpose by Merchant or its Guarantor(s) (each, a "Merchant Account"). Teleflora may hold funds in a Reserve Account until the expiration of any potentially applicable Chargebacks, which holding period may extend beyond termination of this Agreement. Funds held in any Reserve Account shall be non-interest bearing.

5.2 Grant of Security Interest; Default. Each of Merchant and each guarantor executing the Schedule (each, a "Guarantor"), for the purpose of funding any Reserve Account pursuant to Section 5.1, hereby (i) grants to Teleflora a security interest in all funds held in any Merchant Account or Deposit Account and (ii) authorizes Teleflora to make withdrawals or debits from any such Merchant Account or Deposit Account as Teleflora may deem reasonably necessary to fund a Reserve Account pursuant to Section 5.1 without prior notice to Merchant or Guarantor. Merchant and each Guarantor agree to execute, and hereby authorize Teleflora to file and record, any additional documentation required for Teleflora to perfect the foregoing security interests and hereby instruct the financial institution(s) where any such Merchant Account or Deposit Account is held to honor all withdrawal, debit or related requests made by

Teleflora pursuant to the terms of this Section 5.2. Merchant and each Guarantor acknowledge and agree that in no event shall Teleflora or said financial institution(s) be liable to Merchant or any Guarantor for any Losses against or incurred by any of them as a result of, or in connection with, any such withdrawal, debit or related request from Teleflora.

6. Representations, Warranties and Covenants. Merchant represents, warrants and covenants to Teleflora that (i) the company and shop names identified by Merchant on the Schedule constitute Merchant's exclusively floral and/or gardening business operation for the sale of flowers or plants and directly-related goods and services (Merchant's "Floral Business"); (ii) each Card transaction submitted by Merchant through the Service will represent a bona fide sale to a cardholder by Merchant for the amount shown on the sales slip for such transaction as the total sale and will constitute the binding obligation of the cardholder, free from any claim, demand, defense, setoff or other adverse claim whatsoever; (iii) the sales slip (or other applicable evidence of indebtedness) for each Card transaction submitted by Merchant through the Service will accurately describe the goods and/or services sold and delivered to the cardholder; (iv) Merchant will completely fulfill all of its obligations to each cardholder for whom or for which Merchant submits a Card transaction through the Service and will resolve any consumer dispute or complaint directly with the cardholder; (v) each Card transaction submitted by Merchant through the Service will be authorized by the cardholder and any signature on the sales slip (or other applicable evidence of indebtedness) for such transaction will be genuine and authorized by the cardholder and not forged; (vi) each Card transaction submitted by Merchant through the Service shall be consummated, and the sales slip (or other applicable evidence of indebtedness) for such transaction prepared, in full compliance with the provisions of the Guide and the Association Rules; (vii) except as required in the ordinary course of business, no Card transaction submitted by Merchant through the Service will represent a sale to any principal, partner, proprietor, or owner of Merchant; (viii) all of the information provided to Teleflora in connection with this Agreement is true and correct; and (ix) Merchant will not use the Equipment or Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to disrupt, destroy or unreasonably interfere with, the use of the Service or the Equipment by one or more other authorized users or customers of Teleflora.

7. Term and Termination.

7.1 Term. The term of this Agreement shall commence on the date that Teleflora provides Merchant with notice of acceptance of this Agreement or otherwise accepts any Card transaction submitted by Merchant through the Service and shall continue in full force and effect until terminated as set forth below.

7.2 Termination. Either party may terminate this Agreement at any time, and for any reason or for no reason, upon thirty (30) days prior written notice to the other party. In addition, Merchant may terminate this Agreement

pursuant to its rights under Section 12.3, and Teleflora may terminate this Agreement immediately upon the occurrence of an Event of Default (as defined in Section 8.1). MERCHANT ACKNOWLEDGES AND AGREES THAT ANY SUCH EVENT OF DEFAULT SHALL CONSTITUTE A BREACH OF THIS AGREEMENT WHICH MERCHANT SHALL NOT HAVE THE RIGHT TO CURE HEREUNDER.

7.3 Effect of Termination; Survival of Provisions. Merchant acknowledges and agrees that the termination of this Agreement for any reason or for no reason shall not release it of any liability for amounts due hereunder, including, without limitation, any amounts due in connection with Equipment purchased, which shall become immediately due and payable upon such termination unless Merchant returns the Equipment to Teleflora within thirty (30) days of such termination. Any Card transaction submitted by Merchant through the Service after the effective date of the termination of this Agreement shall not be processed by Teleflora and will be returned to Merchant. In addition, the following sections of this Agreement, except as otherwise expressly provided therein, shall survive the termination of this Agreement in accordance with their terms (together with all related terms and conditions set forth on the Schedule and the Guide): Sections 1.2, 1.3, 2, 3.2, 3.3.1, 3.3.2, 3.4, 3.5, 3.6, 3.7, 4, 5, 6, 7.2, 7.3, 8, 9, 10, 11, 12.1, 12.3, 12.4, 12.5, 12.6, 12.7, and 12.8.

8. Events of Default; Remedies; Affiliate Liability.

8.1 Events of Default. Each of the following shall constitute an "Event of Default" under this Agreement: (i) a breach by Merchant (or any of Merchant's employees, agents or representatives) of any representation, warranty, covenant or other term or condition of this Agreement; (ii) breach by Merchant (or any of Merchant's employees, agents or representatives) of any representation, warranty, covenant or other term or condition of the Membership Contract or other agreement with Teleflora or any of its affiliates; (iii) determination by Teleflora, in its sole and absolute discretion, that Merchant is incurring an excessive amount of Chargebacks; (iv) commencement of proceedings in bankruptcy or reorganization, whether voluntary or involuntary, by or against Merchant, under any law relating to bankruptcy, the appointment of a receiver, trustee or custodian for Merchant or for any substantial part of Merchant's assets, or the institution of proceedings for Merchant's dissolution or Merchant's full or partial liquidation; (v) failure by Merchant to make any payment hereunder (or under the Membership Contract) when due; (vi) submission by Merchant through the Service of any Card transaction from, or in connection with, a business other than its Floral Business; (vii) submission by Merchant through the Service of any Card transaction which is not for the

sale and purchase of flowers or plants (or directly-related goods or services); and (viii) good faith determination by Teleflora that it or its business is insecure in any material respect or that the prospect of performance by Merchant of its obligations hereunder is materially impaired.

8.2 *Remedies.* Upon the occurrence of an Event of Default, Teleflora shall have the following rights and remedies, each of which shall be independent of the other and severally enforceable, and all of which shall be in addition to such other rights and remedies as Teleflora may have under this Agreement, the Guide, the Association Rules and applicable law: (i) the right and remedy to refuse, or revoke the acceptance of, and initiate a Chargeback of any Card transaction submitted by Merchant through the Service that results from, relates to, or arises out of, any Event of Default; (ii) the right and remedy to impose special terms and conditions on Merchant's continued participation in the Service without the obligation to comply with the terms and conditions of Section 12.3; (iii) the right and remedy to terminate this Agreement pursuant to Section 7.2; and (iv) the right and remedy to list Merchant on any terminated merchants or similar list in accordance with the Association Rules.

8.3 *Merchant Affiliate Liability.* If Merchant, directly or indirectly, owns, is owned by, or is under common control with, any other person or entity, whether in whole or in part, that is a member of Teleflora or a subscriber of the Service (each, a "Merchant Affiliate"), Teleflora shall have the right, but not the obligation, to treat all of such Merchant Affiliates, together with Merchant, as one merchant for purposes of collecting any amounts owed by Merchant under this Agreement, the Membership Contract or any other agreement with Teleflora or its affiliates, and Merchant, together with, and on behalf of, each such Merchant Affiliate, agrees to be jointly and severally liable to Teleflora for any amounts which are due or shall become due under this Agreement, the Membership Contract or any other agreement with Teleflora or its affiliates.

9. Indemnification.

Merchant agrees to indemnify and hold harmless Teleflora and its past, present and future affiliates, the Process Center and the Teleflora Bank, and its and their respective officers, directors, shareholders, partners, members, managers, trustees, employees, agents, suppliers, representatives, successors and assigns (collectively, the "Teleflora Parties") from and against any and all Losses incurred by any or all of the Teleflora Parties as a result of, or in connection with, any (i) Event of Default; (ii) negligent act or omission of Merchant (or any of Merchant's employees, agents or representatives); (iii) Card transaction submitted by Merchant through the Service; (iv) claim or dispute by a cardholder or other third party regarding Merchant's products or services; (v) withdrawal, debit or related request by Teleflora to a financial institution holding any Merchant Account or Deposit Account pursuant to Section 5; or (vi) act of fraud or misrepresentation by Merchant.

10. Disclaimer; Limitation of Liability.

10.1 *WARRANTY DISCLAIMER.* EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE GUIDE, TELEFLORA SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR TITLE, WITH RESPECT TO THE SERVICE, THE EQUIPMENT, ANY RELATED DOCUMENTATION AND MANUALS, AND ANY OTHER SERVICES AND GOODS PROVIDED TO MERCHANT UNDER THIS AGREEMENT. TELEFLORA DOES NOT REPRESENT OR WARRANT THAT THE SERVICE, THE EQUIPMENT OR ANY RELATED DOCUMENTATION OR MANUALS, OR ANY OTHER GOODS OR SERVICES PROVIDED TO MERCHANT UNDER THIS AGREEMENT WILL MEET MERCHANT'S REQUIREMENTS OR WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR-FREE.

10.2 Limitation of Liability.

10.2.1 *DAMAGES CAP.* THE MAXIMUM AGGREGATE LIABILITY OF ANY TELEFLORA PARTY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT AND ACTUAL DAMAGES IN AN AMOUNT NOT TO EXCEED THE AVERAGE FEES AND CHARGES PAID BY MERCHANT IN A SIX (6) MONTH PERIOD FOR THE SERVICE DURING THE PREVIOUS TWELVE (12) MONTHS (OR SUCH LESSER NUMBER OF MONTHS AS SHALL HAVE ELAPSED SINCE THE EFFECTIVE DATE OF THIS AGREEMENT).

10.2.2 *INDIRECT DAMAGES.* IN NO EVENT SHALL ANY TELEFLORA PARTY BE LIABLE TO MERCHANT UNDER THIS AGREEMENT FOR ANY CONSEQUENTIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES (WHETHER ARISING IN TORT, NEGLIGENCE, CONTRACT, PRODUCT LIABILITY, STRICT LIABILITY, OR OTHERWISE), INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF REVENUE, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION, LOSS OF DATA, LOSS OF USE OF THE EQUIPMENT OR SERVICES, OR PLACEMENT OF MERCHANT'S NAME ON A TERMINATED MERCHANTS OR SIMILAR LIST FOR ANY REASON, IN EACH CASE, EVEN IF THE TELEFLORA PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2.3 *Failure or Delay in Performance.* Notwithstanding anything to the contrary contained herein, in no event shall Teleflora be liable to Merchant, or be deemed to have breached any provision of this Agreement, for any failure or delay by Teleflora (or any employee, agent or representative of Teleflora) in performing any obligation of Teleflora under this Agreement, if such failure or delay is caused by an event or condition beyond Teleflora's control, including, without limitation, errors or omissions of the Process Center or the Teleflora Bank.

11. Guarantee; Credit Checks; Exchange of Information.

11.1 *Guarantee.* Each Guarantor, hereby jointly and severally, guarantees, unconditionally, the full and faithful performance by Merchant of all of its obligations to the Teleflora Parties under this Agreement and agrees to pay any and all costs and expenses (including, without limitation, actual attorneys' fees and costs) incurred by any Teleflora Party in enforcing its rights under this Section 11.1. Each Guarantor hereby waives and agrees not to assert or take advantage of (i) any right to require any Teleflora Party to proceed against Merchant or any other person or to proceed against or exhaust any security held by such Teleflora Party at any time or to pursue any other remedy in its power before proceeding against such Guarantor; (ii) the defense of the statute of limitations in any action hereunder or for the collection of any indebtedness or the performance of any obligation hereby guaranteed; (iii) demand, protest, notice of dishonor, notice of the sale of any collateral held for any indebtedness or obligation hereby guaranteed and all notices of any other kind; and (iv) any defense based on election of remedies by any Teleflora Party. Without limiting the generality of the foregoing or any other provision hereof, each Guarantor hereby expressly waives any and all benefits which might otherwise be available to such Guarantor under California Commercial Code Section 3605, California Civil Code Sections 2809, 2810, 2819, 2825, 2839, 2845 through 2850, 2899 and 3433, or any comparable provision of any other applicable law. With or without notice to Guarantor(s), Teleflora and Merchant, subject to the terms of this Agreement, may modify the terms hereof, including, without limitation, the terms of payment, grant additional extensions of credit, or otherwise change Merchant's obligations under this Agreement, in each case, without releasing any Guarantor from its liability hereunder. No exercise or non-exercise by any Teleflora Party of any right hereby given to it, no dealing by any Teleflora Party with Merchant or any Guarantor, and no change, impairment or suspension of any right or remedy of any Teleflora Party, shall in any way affect the obligations of Guarantor hereunder or give any such Guarantor recourse against any Teleflora Party. Each Guarantor acknowledges and agrees that it shall be responsible for keeping itself informed of the financial condition of Merchant and of all other circumstances bearing upon the risk of nonperformance by Merchant of the

obligations guaranteed hereby, which diligent inquiry would reveal, and agrees that the Teleflora Parties shall have no duty to advise any such Guarantor of information known to any of them regarding such condition or other circumstances. The bankruptcy or insolvency of Merchant shall not release any Guarantor of its obligations hereunder. Each Guarantor agrees to promptly provide to Teleflora any and all information requested by Teleflora, from time to time, concerning its financial condition, business history, business relationships and employment information.

11.2 *Credit Checks; Exchange of Information.* Merchant and each Guarantor, respectively, authorize Teleflora to obtain one or more credit reports, from time to time, on Merchant (or any owner, proprietor, shareholder, partner, member, manager, officer, or director of Merchant) and each Guarantor (or any owner, proprietor, shareholder, partner, member, manager, officer, or director of such Guarantor) for the purpose of establishing, updating or renewing the business relationship with Teleflora hereunder or in the event of a dispute between Teleflora (or any other Teleflora Party) and Merchant or such Guarantor relating to this Agreement. Merchant and each Guarantor, respectively, further authorize Teleflora to exchange information, including, without limitation, information relating to any default of this Agreement, from time to time, as Teleflora may deem necessary or desirable, about Merchant (or any owner, proprietor, shareholder, partner, member, manager, officer, or director of Merchant) and such Guarantor (or any owner, proprietor, shareholder, partner, member, manager, officer, or director of such Guarantor) with financial institutions, credit card associations, network organizations, credit bureaus and any other third party, without liability to Teleflora whatsoever. Upon the reasonable written request of the person or entity that is the subject of any credit report obtained by Teleflora pursuant to its rights hereunder, Teleflora will provide to such person or entity the name and address of the credit reporting agency furnishing such credit report.

12. Miscellaneous.

12.1 *Choice of Law; Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law provisions. Any action, suit or proceeding brought hereunder, or in connection with this Agreement, shall be brought in the appropriate state or federal court sitting in the County of Los Angeles, California, the parties hereto hereby waiving any defense that such forum is not convenient or proper. Each party hereby agrees that any such court shall have in personam jurisdiction over it, consents to service of process over it in any manner permitted under applicable law (in the case of Merchant, each Guarantor and

Merchant Affiliate) or as provided in Section 12.6 (in the case of Teleflora) and agrees that a final judgment in any such action shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner permitted under applicable law.

12.2 *Assignment; Binding Effect.* Merchant may not assign any of its rights or obligations under this Agreement unless (i) Teleflora has provided its prior written consent therefor, which may be withheld by Teleflora in its sole and absolute discretion; (ii) the assignee, at Teleflora's option, agrees in writing to be bound by the terms and conditions of this Agreement or executes and delivers to Teleflora a new Agreement; and (iii) Merchant agrees in writing to be a Guarantor of assignee's obligations under this Agreement or the new Agreement, as applicable. Teleflora may assign any of its rights or obligations under this Agreement at any time with or without notice to Merchant. For purposes of this Section 12.2, an assignment shall also include any change in the controlling ownership of a party's business, whether by stock sale, merger or otherwise.

12.3 *Amendment.* Except as expressly authorized in this Agreement, any waiver, amendment, modification, or acquiescence with respect to any provision of this Agreement shall be set forth in writing and duly executed and signed by the party to be bound thereby. Notwithstanding the foregoing, Teleflora may amend this Agreement, including, without limitation, the policies, procedures and instructions governing the Service contained herein and increase or otherwise amend any or all of the Fees, or charge different or additional fees for Merchant's use of the Service, at any time upon written notice to Merchant. Unless otherwise indicated in such notice to Merchant, any such amendment by Teleflora shall be effective on the earlier of (i) the date that is fifteen (15) days from Merchant's receipt of Teleflora's notice or (ii) the date of Merchant's Statement immediately following Merchant's receipt of the notice. If Merchant does not agree with any such amendment, Merchant, as its sole and exclusive remedy, may immediately terminate this Agreement, without cause, upon written notice to Teleflora. Merchant will be deemed to have accepted any such amendment if Merchant submits any Card transaction through the Service after the effective date of the amendment. Notwithstanding the foregoing, Teleflora shall have the right, at any time and without Merchant's consent, to remove or add to the list of accepted credit cards pursuant to the terms of Section 3.1, or to change the supplier of the Equipment or its third party data processing services provider.

12.4 *Waiver.* No waiver by any party of any breach under this Agreement shall be deemed a waiver of any other or subsequent breach.

12.5 *Attorneys' Fees.* In the event of any litigation between the parties in connection with this Agreement, the unsuccessful party to such litigation shall pay to the successful party all costs and expenses, including, without limitation, actual attorneys' fees and costs incurred by such successful party, which costs and expenses shall be included as a part of any judgment rendered in such action in addition to any other relief to which the successful party may be entitled.

12.6 *Notices to Teleflora.* Any communication, notice or demand required to be made by Merchant to Teleflora in writing hereunder shall be delivered (i) personally (including by nationally recognized courier service or professional messenger service), (ii) by registered or certified mail, postage prepaid, return receipt requested or (iii) Federal Express (or other nationally recognized overnight mail delivery service) and addressed as follows (or to such other address or addresses as Teleflora may specify to Merchant in writing from time to time):

Teleflora LLC
3309 East Kings Highway
Paragould, Arkansas 72451-9998
Attention: Credit Card Operations Director

Each such communication, notice or demand shall be deemed to have been given as of the date so delivered, or, in the case of mailing, on the date indicated in the return receipt.

12.7 *Entire Agreement.* This Agreement (including the Schedule), the Guide, and all policies, rules and regulations referenced herein and therein, contain the entire agreement between the parties with respect to the subject matter hereof. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, the remaining provisions shall nonetheless be given full force and effect.

12.8 *Capacity; Authority.* Each individual and entity executing the Schedule represents and warrants that he, she, or it has the power and authority to bind the party on whose behalf he, she or it is executing the Schedule to the terms of this Agreement.