Subject:

FORM NUMBER P-37 (version 5/8/15)

Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

## AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

## GENERAL PROVISIONS

**1. IDENTIFICATION.**

| | | | |
|---|---|---|---|
| 1.1 State Agency Name<br>Department of Administrative Services | | 1.2 State Agency Address<br>25 Capitol Street, Room 120<br>Concord, NH 03301 | |
| 1.3 Contractor Name<br>GIVEX USA Corporation | | 1.4 Contractor Address<br>Givex USA Corporation<br>1341 Estes Street<br>Gurnee, IL 60031-2242 | |
| 1.5 Contractor Phone Number<br>877-478-7733 | 1.6 Account Number | 1.7 Completion Date<br>May 5, 2019 | 1.8 Price Limitation<br>$2,500,000 |
| 1.9 Contracting Officer for State Agency<br>Lisa Pollard | | 1.10 State Agency Telephone Number<br>(603) 271-7272 | |
| 1.11 Contractor Signature<br>Province CITY | | 1.12 Name and Title of Contractor Signatory<br>BRITTAIN BROWN, PRESIDENT | |

1.13 Acknowledgement: ~~State of~~ ONTARIO, ~~County of~~ TORONTO

On APRIL 20, 2016, before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.

1.13.1 Signature of Notary Public or Justice of the Peace

[Seal]

1.13.2 Name and Title of Notary or Justice of the Peace

ESTHER M. AMADEO, DIRECTOR & CORPORATE COUNSEL

| | |
|---|---|
| 1.14 State Agency Signature<br>Date: 4/27/16 | 1.15 Name and Title of State Agency Signatory<br>~~Vicki V. Quiram, Commissioner~~<br>Joseph Bouchard, Assistant Commissioner |

1.16 Approval by the N.H. Department of Administration, Division of Personnel *(if applicable)*

By: Director, On:

1.17 Approval by the Attorney General (Form, Substance and Execution) *(if applicable)*

By: On: 4/27/16

1.18 Approval by the Governor and Executive Council *(if applicable)*

By: MAY 04 2016

DEPUTY SECRETARY OF STATE

NOTARY PUBLIC ONTARIO

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.
5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.



Contractor Initials BJB
Date 4/20/16

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

**8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

**9. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

**14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than $1,000,000 per occurrence and $2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.



Contractor Initials BB
Date 4/20/16

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**
15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A *("Workers' Compensation")*.
15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

**16. WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

**17. NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

**18. AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

**19. CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

**20. THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

**21. HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**22. SPECIAL PROVISIONS.** Additional provisions set forth in the attached Merchant Agreement, EXHIBIT A, EXHIBIT B, and EXHIBIT C are incorporated herein by reference.

**23. SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

**24. ENTIRE AGREEMENT.** This Agreement, including the Merchant Agreement and any Exhibits, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.



Contractor Initials BB
Date 4/20/16

give

# USA MERCHANT AGREEMENT

## EXHIBIT A

**Merchant Information**

Legal Name (herein referred to as the *"Merchant"*): State of New Hampshire

Trade Name(s): New Hampshire State Liquor Commission; Liquor & Wine Outlets; etc.

Address: 25 Capitol Street, Room 102

City, State and Zip Code: CONCORD NH 03301

Phone: 603-271-7272 Fax: 603-271-2700

**Contact Information**

Lead Contact Name, Phone and Email: Mike Connor, 603-271-6899, Michael.connor@nh.gov

Secondary Contact Name, Phone and Email: Lisa Pollard, 603-271-7272 Lisa.pollard@nh.gov

Technical Contact Name, Phone and Email: Theresa Pare'-Curtis, 603-230-3458, Theresa.Curtis@doit.nh.gov

Financial Contact Name, Phone and Email: Robin Parkhurst, 603-271-7410, Robin.parkhurst@nh.gov

**Givex Dealer Information (complete only if applicable)**

Company Name:

Contact Name, Phone and Email:

In this Agreement, *"Givex"* shall mean Givex USA Corporation and *"Merchant"* shall mean the above-referenced Merchant, all of its affiliates, subsidiaries, employees, agents and participating locations. Givex and Merchant shall be collectively referred to as the *"Parties"* and each as a *"Party"*. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Givex and Merchant agree to be legally bound by the terms and conditions set forth in this Agreement.

## 1. DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

*"Confidential Information"* means all proprietary, confidential and non-publicly available information provided by or on behalf of each party (the *"Disclosing Party"*) to the other party (the *"Receiving Party"*), whether before or after the date hereof, and extends to all confidential, proprietary and non-publicly available information, whether in oral, written, graphical, schematic or electronic form, which may include, but is not limited to, technical, technological and operational information, customer lists and customer proprietary information, financial information, sales, costs and business concepts and plans, processes, methods, drawings, samples, devices, demonstrations, trade secrets, know-how, computer systems, hardware and software, results of research, Givex Documentation, Intellectual Property, and other proprietary information. Notwithstanding the foregoing, information will not be considered "Confidential Information" to the extent, but only to the extent, that such information:

(a) is already in the possession of Receiving Party at the time such Confidential Information was disclosed by Disclosing Party, as established by sufficient evidence;

(b) is or becomes generally available to the public other than as a result of a disclosure directly or indirectly by Receiving Party in violation of this Agreement;

(c) is or becomes available to Receiving Party, in good faith, on a non-confidential basis from a source other

than Disclosing Party, which, to the knowledge of Receiving Party, is not prohibited from disclosing such information by contractual, legal or fiduciary obligation; or

(d) has been independently developed by Receiving Party without use of the Confidential Information and without violating any of its obligations under this Agreement.

(e) Is governed by N.H. RSA chapter 91-A or other existing applicable law.

*"Effective Date"* means the date on which all Parties, including the New Hampshire Governor and Executive Council, execute this Agreement.

*"Givex Documentation"* means the manuals, guides, integration and service specifications, promotional and marketing materials, and other documentation provided by Givex in connection with the Givex Services and the Givex System, as modified from time to time.

*"Givex Services"* means the gift and loyalty card processing services described in Schedule A.

*"Givex System"* means the servers, datacenters, computer systems, hardware, software and processes utilized by Givex to perform the Givex Services.

*"Intellectual Property"* means, without limitation, the trade names, trademarks, copyright, patents, patents pending, concepts, ideas, computer hardware, software and systems of each party, and the Givex Services, Givex System and Givex Documentation in the case of Givex.

*"Issuer Identification Number"* and *"IIN"* is a unique 6-digit number that is used to identify the card issuer or merchant.

*"Merchant Program"* means the gift and/or loyalty card program operated by Merchant using the Givex Services.

*"Participating Franchisee"* means a franchisee or affiliated company of Merchant that has opted to receive the Givex Services in connection with the Merchant Program.

*"Personally Identifiable Information"* means any information that identifies an individual, including an individual's name, address, credit card information, or social security number, regardless of the media on which such information is stored, in connection with the Merchant Program and as part of this Agreement.

## 2. TERM AND TERMINATION

**2.1 Term.** This Agreement shall commence on the Effective Date and continue for a period of thirty-six (36) months (the *"Term"*).

**2.2 Termination.** This Agreement shall remain in full force and effect unless terminated as provided in Section 2.1 (Term) or this Section 2.2. Either party shall have the right, on written notice to the other party, and without prejudice to any other remedies which the parties may have under this Agreement, in law or in equity, to terminate this Agreement if the other party defaults in the performance of any material obligation or is in breach of any representation or warranty under this Agreement, and such default or breach is not cured within thirty (30) days after written notice thereof has been given to the defaulting party by the non-defaulting party. If the subject default or breach has not been cured, the termination will take effect thirty (30) days after the date on which written notice was given to the defaulting party by the non-defaulting party. Either party may terminate this Agreement by written notice to the other party, and may regard the other party as being in default of this Agreement, if the other party ceases to conduct business in the ordinary course, makes an assignment for the benefit of creditors, has appointed a receiver or trustee in bankruptcy, or makes a filing under any federal, provincial or state bankruptcy or insolvency law. Givex may also deactivate or terminate any portion or all of the Givex Services or terminate this Agreement if Merchant fails to pay any undisputed fees or charges when due, and such default is not cured within ten (10) days after receipt of written notice from Givex that payment has not been received.

2.3 **Transition Period.** Upon written request by Merchant at least thirty (30) days prior to the expiration of the Term, and provided that Merchant has paid all undisputed accounts in full, Givex will continue performing the Givex Services in connection with the Merchant Program during a transition period of no longer than six (6) months following the expiration or termination of this Agreement (the ***"Transition Period"***). Givex shall cooperate fully and promptly with the transition of the services to another provider if applicable. Givex shall be entitled to limit the scope of the Givex Services during the Transition Period to the processing of redemption, cancellation and balance inquiry transactions in connection with the Merchant Program. If Merchant decides to request that Givex perform the Givex Services during the Transition Period, Merchant agrees to continue paying the applicable fees and charges as set forth in Schedule B (Pricing) hereto.

2.4 **Effect of Expiration or Termination.** Following the expiration or termination of this Agreement, both parties shall promptly return any and all Confidential Information of the other party, including copies and reproductions of such Confidential Information, at the returning party's sole expense. Provided that the Merchant has paid all undisputed fees and charges owing to Givex, Givex will provide Merchant or Merchant's authorized representative with a transaction and historical data file for the Merchant Program within thirty (30) days of notice of the expiration or termination of this Agreement. Givex will provide Merchant or Merchant's authorized representative with periodic data until all transaction and historical data is parsed. Such transaction data file will be provided to Merchant in comma separate value (***"CSV"***) or tab delimited format. Merchant understands and acknowledges that Givex will not be required to provide Merchant with any information or data relating to the operation, processes or functionality of the Givex Services or the Givex System, as such information is proprietary and confidential to Givex.

## 3. PRICING AND TERMS OF PAYMENT

3.1 **Pricing.** Merchant and Givex agree to the pricing for the Givex Services as set forth in the attached Schedule B (Pricing). Pricing and payments shall be made in US dollars (US$). The Givex Services to be performed during the Term of this Agreement shall be stated in the order forms entered into by Merchant and Givex from time to time (the ***"Order Form(s)"***). Each Order Form shall be governed by the terms and conditions of this Agreement. Upon acceptance of an Order Form by Givex, Merchant will be bound to purchase, and Givex will be bound to perform, the Givex Services described in such Order Form, subject to the terms and conditions of this Agreement.

3.2 **Deposits.** Not applicable.

3.3 **Payment Terms.** Monthly service charges will be invoiced in advance on the 1st day of every month. Givex shall debit payment from the Merchant's bank account by electronic funds transfer (EFT) between the 1st and 15th day of every month using the bank account information provided by Merchant in Schedule C (Direct Debit Authorization). There shall be a fifteen thousand dollar ($15,000) per month cap for debiting the fees only. Any supplies or additional charges shall be direct billed. Merchant is responsible for providing Givex with correct bank account information. Merchant must notify Givex of any changes to its bank account information before the 25th day of every month in order for such change(s) to be applied to payments for the following month. Notices of bank account changes must be sent by email to support.givex.com and addressed to the attention of "Accounting Department". Merchant will be charged an administration fee of US$20.00 for each instance of funds transfer errors resulting from incorrect banking information, insufficient funds, and other errors caused by Merchant. Givex will not be liable for any funds incorrectly transferred as a result of the bank account information provided by Merchant. Shipping costs, if applicable, will be invoiced to Merchant at cost on a monthly basis. Givex shall continue to allow a pass through from Merchant's acquiring bank to Givex for processing of gift cards.

## 4. GIVEX'S OBLIGATIONS

4.1 **Givex Services.** Givex shall perform the applicable Givex Services described in Schedule A attached hereto and set out in each accepted Order Form during the Term of this Agreement. Givex shall perform the Givex Services in a professional and workmanlike manner, consistent with generally accepted practices and procedures in the gift and loyalty card industry. Givex agrees to provide Merchant with secure access to an online management and reporting website which Merchant may utilize to monitor the operation of

the Merchant Program (the *"Web Portal"*). Givex shall maintain accurate customer information in its database at all times, including the stored value and expiration dates corresponding to each gift and/or loyalty card number (the *"Givex Number"*) that is used in connection with the Merchant Program, and shall provide this information in a format reasonably acceptable to the Merchant, within ten (10) business days or sooner, upon Merchant's request.

## 5. MERCHANT'S OBLIGATIONS

**5.1 Merchant Program.** Merchant agrees to utilize the Givex Services in connection with the Merchant Program at each of its participating locations. Merchant agrees to use the Givex Services and operate the Merchant Program only for lawful purposes, and Merchant further agrees not to use the Givex Services to transmit any unsolicited electronic messages. Merchant shall promptly notify Givex in writing of each and every Merchant customer or client 'opt-out' and 'unsubscribe' from receiving commercial electronic messages and if Merchant is cited for violation of any privacy or anti-spam law, rule or regulation. Merchant will establish its own policies and procedures for the Merchant Program, including, but not limited to, policies and procedures for determining the stored value limits, usage fees, and expiration dates of gift and/or loyalty cards, if any, the handling of sold, redeemed and unredeemed gift card funds, and the management of card inventories at its participating locations. Merchant shall be responsible for operating the Merchant Program in compliance with the applicable laws and regulations in its jurisdiction and

shall obtain all necessary consents from its customers before sending or causing to send any commercial electronic messages in connection with the Merchant Program. Merchant agrees to obtain an Issuer Identification Number for use in the Merchant Program and acknowledges that the IIN is an essential element of card numbers generated by the Givex System for the Merchant Program. Any and all Participating Franchisees will be required to enter into a franchisee participation agreement with Givex.

**5.1.1** Givex acknowledges that Merchant may opt to use a point-of-sale (POS) system function called 'Store and Forward' (SAF) or 'Offline Mode' (OM) to establish a connection to the Givex host when a connection cannot be established and Merchant nevertheless wants to accept a transaction, in which case Merchant's system will store the transaction information and subsequently send it to the Givex host. Merchant hereby acknowledges and agrees that if it opts to use the SAF or OM POS function: (i) though Merchant has accepted a transaction at a POS site the given transaction may nevertheless be subsequently declined by the Givex host; and (ii) Merchant shall be solely responsible and liable for any and all SAF or OM transaction issues, disputes, claims, losses and liabilities.

**5.2 Settlement of Card Transaction(s).** Unless stated otherwise in an Order Form, Merchant shall be responsible for the collection and settlement of all funds resulting from the use, sale or redemption of gift and/or loyalty cards at its participating locations in connection with the Merchant Program. Merchant will also be responsible for the payment of all processing costs incurred at its participating locations, including, but not limited to, credit card charges and bank service charges.

**5.3 Equipment and Communication Lines.** Merchant shall install, operate and maintain, at its sole expense, all point-of-sale systems, terminals, computers, hardware and software necessary for operating the Merchant Program in conjunction with the Givex Services (the *"Merchant Equipment"*). Merchant will ensure that the Merchant Equipment at its participating locations is configured to communicate gift and/or loyalty card transactions to Givex via a secure internet communication means. Merchant may purchase, rent or otherwise lease point-of-sale terminals from Givex at Givex's then prevailing pricing. Merchant is under no obligation to purchase, rent or otherwise lease the point-of-sale terminals from Givex.

**5.4 Exclusivity.** Not Applicable.

## 6. PRIVACY

**6.1 Limited Use of Personally Identifiable Information.** Each party agrees to comply with all applicable privacy laws and regulations relating to the protection, collection, use, and distribution of Personally Identifiable Information. Merchant shall be solely responsible for ensuring that the proper legal notices are provided to its customers at the time of the collection of any Personally Identifiable Information. Givex may use the Personally Identifiable Information obtained, collected or stored in connection with the Merchant Program in aggregate form for the purpose of performing the Givex Services and developing statistical

information relating to the performance of the Givex Services for internal use only. Givex will not disclose any Personally Identifiable Information obtained, collected or stored in connection with the Merchant Program without the prior written consent of Merchant.

## 7. CONFIDENTIALITY

**General.** The Parties agree to hold in the strictest confidence all Confidential Information of the other party and shall not disclose, publish, divulge or make same available to any third party whatsoever, whether directly or indirectly, nor shall it use or exploit same for the purposes of unfair competition or to further any third party relationship, whether tangible or implied. Confidential Information furnished by either party in connection with this Agreement and all reproductions and copies of such Confidential Information shall remain the property of the Disclosing Party. Both Parties agree to take reasonable and prudent actions to protect the confidentiality of the Confidential Information of the other party, including, but not limited to, implementing and operating procedures to minimize the possibility of unauthorized use or copying of the Confidential Information and limiting the disclosure of Confidential Information to those employees who have a legitimate need to know such Confidential Information in order to fulfill their obligations under this Agreement. No right or license, whether express or implied, is granted hereunder with respect to Confidential Information. Each party acknowledges that any disclosure of the Confidential Information will cause the other party significant economic harm for which monetary damages may be inadequate. In the event of any breach of this Section 7, the breaching party agrees that the non-breaching party shall be entitled to an injunction restraining it, its affiliates and subsidiaries, employees and agents and others from disclosing or misusing the Confidential Information. Nothing in this Section shall be construed as prohibiting the non-breaching party from pursuing any other available remedies, in law or equity, in respect to such breach or threatened breach, including the recovery of damages. It is understood and agreed that the obligations of this Section shall survive the expiration or termination of this Agreement or any section thereof. Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

7.1 **Court Orders.** If Receiving Party is required by a court order, interrogatory, subpoena, civil investigative demand or similar process or law to disclose any Confidential Information, Receiving Party will promptly notify Disclosing Party hereunder of such request or requirement so that Disclosing Party may seek to avoid or minimize the required disclosure and/or to obtain an appropriate protective order or other appropriate relief to ensure that any information so disclosed is maintained in confidence to the maximum extent possible by the court, agency or other person receiving the disclosure or, in the discretion of Disclosing Party, to waive compliance with the provisions of this Section 7. Receiving Party will use its reasonable efforts, in cooperation with Disclosing Party or otherwise, to avoid or minimize the required disclosure and/or to obtain such protective order or other relief. If, in the absence of a protective order or the receipt of a waiver hereunder, Receiving Party is compelled to disclose the Confidential Information or else stand liable for contempt or such other similar sanctions, censure or penalty, Receiving Party will disclose only so much of the Confidential Information to the party compelling disclosure as it believes in good faith on the basis of advice of legal counsel is required by law. Receiving Party shall give Disclosing Party prior notice of the Confidential Information it believes it is required to disclose.

7.2 **Return or Destruction of Confidential Information.** Upon the written request of Disclosing Party, Receiving Party will promptly deliver to Disclosing Party all documents and other materials furnished by Disclosing Party to Receiving Party constituting Confidential Information. Receiving Party may, upon written approval of Disclosing Party, destroy certain documents and materials constituting Confidential Information in lieu of its delivery to Disclosing Party, with such destruction certified by Receiving Party in writing to the Disclosing Party. Notwithstanding the delivery or destruction of Confidential Information, Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder. Receiving Party is not required to destroy any computer records or files containing Confidential Information which have been created pursuant to automatic archiving and back-up procedures which cannot be reasonably accessed or deleted.

## 8. INTELLECTUAL PROPERTY

8.1 **Intellectual Property of Givex.** Nothing in this Agreement or otherwise shall give Merchant any right, title to, or interest in the Intellectual Property of Givex and Merchant acknowledges and agrees that Givex is the owner of the Givex Services, Givex System, Givex Documentation and Givex software.

8.2 **Intellectual Property of Merchant.** Except for the limited license granted to Givex in Section 8.3 of this Agreement, nothing in this Agreement or otherwise shall give Givex any right, title, or interest in the Intellectual Property of Merchant. Provided that Merchant has paid all undisputed fees and charges due under this Agreement, Givex acknowledges and agrees that Merchant shall own all transaction data recorded in connection with the Merchant Program.

8.3 **Use of Merchant's Name and Trademarks.** Use of Merchant's trade name, logos and trademarks in Givex's advertising, marketing and promotional materials and activities including on Givex's websites and social media sites, and in presentations, case studies, trade show materials, and other advertising, marketing and promotional media and collateral, during the Term of this Agreement (including any extensions and renewals hereof), must be authorized in writing by Merchant and provided that such use does not adversely affect the good name and reputation of Merchant.

## 9. REPRESENTATIONS AND WARRANTIES

9.1 **By Givex.** Givex hereby represents and warrants to Merchant that: (a) it has all requisite corporate power to enter into this Agreement and to carry out the terms of this Agreement; (b) all corporate action on the part of Givex, its affiliates and subsidiaries, officers, directors and stockholders necessary for the performance of its obligations under this Agreement has been taken; (c) this Agreement constitutes its valid and legally binding obligation, enforceable against it in accordance with the terms hereof; and (d) it is a corporation in good standing in its jurisdiction of incorporation.

9.2 **By Merchant.** Merchant hereby represents and warrants to Givex that: (a) it has all requisite power by statute to enter into this Agreement and to carry out the terms of this Agreement; (b) all corporate action on the part of Merchant, its affiliates and subsidiaries, officers, directors and stockholders necessary for the performance of its obligations under this Agreement has been taken; (c) this Agreement constitutes a valid and legally binding obligation, enforceable against it in accordance with the terms hereof; (d) it is a business in good standing, or duly authorized governmental entity in its jurisdiction of registration or incorporation; and (e) it has not received or is not subject to any bankruptcy notice or proceeding which would in any manner prohibit Merchant from operating the Merchant Program. Merchant hereby further covenants that it will operate the Merchant Program and will obtain, use and disclose Personally Identifiable Information in compliance with all applicable laws, rules and regulations, including without limitation, privacy and anti-spam laws, rules and regulations.

9.3 **No Additional Representations or Warranties.** THE GIVEX SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. GIVEX MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE GIVEX SERVICES AND PRODUCTS TO BE PROVIDED HEREUNDER OR THEIR CONDITION, MERCHANTABILITY, NON- INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE BY MERCHANT OR ANY THIRD PARTY.

## 10. INDEMNITY; LIMITATION OF LIABILITY

10.1 The Parties agree to be liable for their own respective negligent acts and omissions, and intentional misconduct.

10.2 **Limitation of Liability.** IN NO EVENT AND UNDER NO CIRCUMSTANCE SHALL EITHER PARTY HEREIN BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OR LOSS OF INCOME, PROFIT, OR SAVINGS OF ANY PARTY OR PARTIES, INCLUDING THIRD PARTIES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE, CONTRACT, EQUITY, INTENDED CONDUCT, TORT, OR OTHERWISE), ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER OR NOT SUCH PARTY OR PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 11. GENERAL

11.1 **Notice.** Unless otherwise specified, all notices required to be given under this Agreement shall be

made in writing, by registered mail, or facsimile, and shall be addressed as follows:

(a) in the case of Givex, to Givex USA Corporation, 1341 Estes Street, Gurnee, IL 60031, USA, Attention: President. Fax (416) 350-9661.

(b) in the case of the Merchant, to the address or fax number set forth in this Agreement, Attention: Deputy Commissioner, Michael Connor, Department of Administrative Services, 25 Capitol Street, Concord, NH 03301, fax: 603-271-2700.

**11.2 Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.

**11.3 Modifications.** No modifications or amendments of any right, obligation or default shall be effective unless documented in a written instrument duly signed by both Parties, and approved by the New Hampshire Governor and Executive Council if applicable.

**11.4 Waivers.** The waiver by any party hereto of any provision, default or breach of this Agreement shall not operate or be construed as a modification of this Agreement or waiver of any other breach. No waiver of any provision, default or breach of this Agreement shall be effective unless documented in writing and duly signed by the party waiving any such provision, default or breach.

**11.5 Severability.** If any provision contained herein shall be declared invalid, illegal or unenforceable by a court of competent jurisdiction, such invalid, illegal, or unenforceable provision shall be severed from this Agreement and will be ineffective only to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof.

**11.6 No Partnership or Joint Venture.** The Parties to this Agreement are and shall remain independent contractors. The Parties confirm that they are not carrying on business in partnership or as a joint venture and that no aspect of this Agreement should be construed so as to constitute a partnership or joint venture.

**11.7 Force Majeure.** Neither party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations due to any causes or conditions which are beyond such party's reasonable control and which such party is unable to overcome by the exercise of reasonable diligence.

**11.8 Survival.** The obligations, representations, warranties, indemnities and limitations herein shall survive the expiration and termination of this Agreement.

**11.9 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire, and the federal laws applicable therein. Any and all disputes or controversies relating to or arising out of this Agreement shall be settled by the courts in the State of New Hampshire, with the exclusion of any other, even if more privileged.

**11.10 Entire Agreement.** This Agreement, the attached P-37 contract document, and any Exhibits and Schedules referred to herein, Order Forms, and Statements of Work entered into by and between the Parties hereto constitute the entire agreement between the Parties relating to the subject matter herein and supersede all prior written or oral agreements, representations and other communications between the Parties relating to the subject matter hereof.

**11.11 Counterparts and Electronic Signatures.** The Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement. The counterparts of the Agreement may be executed and delivered by facsimile or other electronic means, and the receiving party may rely on the receipt of such document so executed and delivered as if the original had been received.

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# USA MERCHANT AGREEMENT

## ACCEPTANCE

**IN WITNESS WHEREOF**, the Parties, hereby represented by their respective duly authorized legal representatives,
have executed this Agreement this 20TH day of APRIL, 2016

STATE OF NEW HAMPSHIRE

Name: Joseph Bouchard
Title: Assistant Commissioner

GIVEX USA CORPORATION

Name: BRITTAIN BROWN
Title: PRESIDENT

NH Attorney General's Office

Name: Nancy J. Smith
Title: Sr. Asst. Atty General

NH Governor and Executive Council

Name:
Title:

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# USA MERCHANT AGREEMENT

## SCHEDULE A - GIVEX SERVICES

### GIVEX SERVICES

Subject to the terms and conditions of accepted Order Form(s), the Givex Services will enable Merchant to process transactions for the activation, issuance, redemption, and cancellation of such gift and/or loyalty cards, and to initiate balance inquiry transactions in connection with the Merchant Program. Data packets transmitted from the Merchant's point-of-sale system following the initiation of a gift and/or loyalty card transaction will be processed by the Givex System in real time. Each data packet will consist of a service-type code, a monetary or point value, and a Givex Number. The service-type code contains the instructions required by the Givex System to process and record the card transactions. The Givex Number represents a unique numerical code consisting of a string ranging from 10 to 22 digits that identifies whether the subject transaction has been initiated using a Givex-enabled gift and/or loyalty card assigned to the Merchant Program. The Givex Number, as a whole, is confidential and must not be disclosed by Merchant to any third party and for any purposes. A subset of the Givex Number, known as the certificate number, will be disclosed to Merchant for the purpose of printing point-of-sale receipts and generating transaction reports. After the processing of each data packet has been completed the Givex System will then transmit a reply data packet to the Merchant's point-of-sale system to complete the subject card transaction. In the event that the Merchant's point-of-sale system is temporarily unable to process gift card transactions, Merchant may initiate gift card transactions using Givex's telephone-based interactive voice response system.

### TRAINING SERVICES

(a) *Self-Training Module*. Givex shall provide the Merchant with 24/7 access to a web-based self training module and Givex Documentation explaining the use of the Givex Services. The web-based self training module may be accessed by the Merchant's designated representatives at any time during the Term of this Agreement. The self training module and Givex Documentation will explain the policies and procedure for initiating gift and loyalty card transactions at the Merchant's locations and facilities and for generating transaction reports through Web Portal. The documentation will also explain the use of the Givex Services on standalone and WebPOS point-of-sale systems.

(b) *Train-the-Trainer Sessions*. Upon request, up to twelve (12) representatives of the Merchant may participate in web-based training session(s) with Givex representatives to address specific issues relating to the use of the Givex Services. Each Train-the-Trainer Session will be subject to the fees set forth in Schedule "B". Train-the-Trainer Sessions are conducted remotely via the Internet and are designed to provide representatives of the Merchant with further guidance concerning the use of the Givex Services.

### MONITORING AND REPORTING

Givex agrees to provide the Merchant with secure access to the Web Portal for the purpose of enabling the Merchant to monitor and generate reports in connection with the Merchant Program. Merchant shall receive one or more personal identification numbers and passwords for accessing the Web Portal. Merchant agrees to maintain the personal identification numbers and passwords confidential at all times and to allow no unauthorized persons to access Merchant's account on the Web Portal. Merchant acknowledges and agrees that Givex may access Merchant's account for the purpose of performing routine maintenance and responding to support inquiries from Merchant. Merchant may utilize the Web Portal to generate transaction reports showing the details of gift and/or loyalty cards that have been activated, sold, redeemed and/or cancelled at the Merchant's participating locations. Merchant may also generate customized reports showing the outstanding balances, expiration dates and transaction histories of activated gift and/or loyalty cards on a location-by-location basis. All reports generated through the Web Portal may be scheduled for delivery on a daily, weekly, quarterly or monthly basis in html, xml, pdf, text file (data) or comma separate value (csv) format. Givex reserves the right to change the scheduling of any ordered reports, from time to time. All changes to the scheduling of ordered reports will be made by Givex, in good faith, with the aim of enhancing the performance of the Web Portal and the Givex Services, as a whole.

### SUPPORT SERVICES

Givex agrees to maintain a help desk during the Term of this Agreement using which Merchant may obtain assistance with the operation of the Givex Services at its participating locations (the ***"Support Services"***). The Support Services shall include diagnosing and resolving problems identified by Merchant with the initiation of gift and/or loyalty card transactions at its participating locations. The Support Services will be made available to Merchant on a 24/7 basis via telephone and electronic mail. Merchant shall be solely responsible for providing support services to its customers in connection with the Merchant Program.

1. PROJECT DELIVERABLES:

Givex (inclusive of its contractors and sub-contractors) shall assist to deploy, install, maintain, service and support on behalf of the Merchant, a hosted gift card services system in conjunction and partnership with Merchant agencies or Merchant business partners; an e-Commerce and business-to-business portal system and any associated services as required; documentation and training for personnel and to provide support and maintenance services for all gift card services. Deployment services shall include but are not limited to providing and assisting to install all required hardware and software, training, technical documentation, maintenance and supporting hardware and software. Except as noted below, Givex shall provide all services and products as proposed and required for a fixed price cost.

**Givex agrees to provide:**

a) Givex shall establish and maintain Gift Card Data on the Database.

b) Upon receipt of transaction information from a Designated Location by the Database, Givex will compare the proposed transaction amount with the account balance maintained on the Database corresponding to the Gift Card or Gift Card Number that was presented at the Designated Location. If the account balance is greater than or equal to the amount of the proposed transaction, Givex will authorize the transaction. If the account balance is less than the amount of the proposed transaction, Givex will decline the transaction. If Merchant's Gift Card Equipment supports "split tender," and the account balance is less than the amount of the proposed transaction, Givex will authorize the transaction for the amount of the account balance, and return a message and/or receipt to the Gift Card equipment showing the remaining amount of the transaction to be collected by Merchant. Merchant understands and agrees that an Authorization by Givex only indicates the availability of sufficient value on a Gift Card account at the time of Authorization and does not warrant that the person presenting the Gift Card or Gift Card Number is authorized to use such Gift Card or Gift Card Number.

c) Givex will provide Merchant with Gift Card transaction reports, accessible by Merchant through a designated Internet site.

CUSTOMER SUPPORT

a) Givex shall provide a semi-annual business review report to provide information and guidance on the Merchant's performance including, but not limited to, processing, and suggestions on how and where the Merchant may improve performance.

b) Givex shall provide a website portal for use by Merchant authorized personnel.

DEPLOYMENT & INTEGRATION

- Merchant will at all times own all right, title and interest in and to all Card Data generated or held under the Program.
- During the contract term, Givex will retain the Card Data for each Card on the Database for a period of thirty-six (36) months following the date that the account balances reaches zero. Thereafter, during the term, Givex may remove the Card Data from the Database and archive such Gift Card Data in any manner determined by Givex in its reasonable business judgment. Notwithstanding the foregoing, within ninety (90) days of Merchant's written request, during the first twelve (12) months following the expiration or termination of the Card Services, Givex will compile a data report of the Card Data stored in the Database, in Givex's standard format at no fee. Givex shall deliver Card Data to Merchant in a mutually agreeable format.
- Givex shall be able to process existing Bin ranges and number scheme.

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## SCHEDULE B - PRICING

| Contract Term | |
|---|---|
| Term of Contract, in months | 36 months |
| **Setup and Administration (Gift Card Services)** | |
| ~Gift Card Program Set-Up / database Import and Administration -Includes administrative set- | $5,000 |
| Premium Loyalty Set Up (Includes 3 rules) | $5,000 |
| Loyalty Member Site | $1,000 Annually |
| Loyalty - Per additional Rule (e.g. Member tier, Variable rules, etc.) | $750 per rule |
| Gift or Loyalty Program Givex Number Re-order Processing Fee | $250 |
| Givex Numbers Generation Fee (*NOTE - if not producing cards through | $0.02 per number |
| **Per Transaction – Gift (Across ALL locations)** | |
| Based on 1,500,000 gift card transactions over 3 years or 500,000 transactions per year | $0.09 per transaction, over 500,000 transactions per year with an overage fee of $0.08 per transaction ($3,750 per month) |
| Online Reporting | Online Reporting |
| 1 GIVEX TRANSACTION FEES INCLUDE ONLINE REPORTING, ONLINE PROGRAM ADMINISTRATION, 24///365 MERCHANT SUPPORT, AND SELF DIRECTED TRAINING. "TRANSACTIONS" INCLUDE: ACTIVATIONS, BALANCE TRANSFERS TO, BALANCE TRANSFERS FROM, CANCELLATIONS, INCREMENTS, ADJUSTMENTS, REDEMPTIONS, DEDUCTIONS AND REGISTRATIONS. POINTS ISSUANCE, POINTS REDEMPTION, POINTS CANCEL, POINTS BALANCE TRANSFER AND AUTO CONVERSION OF POINTS TO MONEY. MERCHANT SHALL BE SOLELY RESPONSIBLE FOR ALL COMMUNICATION EXPENSES ASSOCIATED WITH CONNECTING TO THE GIVEX HOST OR IVR SYSTEM, INCLUDING, BUT NOT LIMITED TO, EXPENSES ASSOCIATED WITH INSTALLING AND MAINTAINING FRAME RELAY CONNECTIONS, ANALOG PHONE LINES, TOLL-FREE PHONE LINES, LONG DISTANCE AND INTERNET SUBSCRIPTIONS. MERCHANTS CONNECTING TO THE GIVEX HOST VIA DIRECT DIAL DATA CONNECTIONS SHALL BE CHARGED AN ADDITIONAL FEE OF $0.035 PER TRANSACTION. ALL GIFT CARD SERVICE AND TRANSACTION FEES WILL BE BILLED TO MERCHANT ON A MONTHLY BASIS. | |
| **Card Manufacturing* - Up to 5 card faces per order.** | |
| Production cost, per card, 1,000 to 4,999 Gift Cards – 30 mil card | $0.65 per card |
| Production cost, per card, 5,000 to 9,999 Gift Cards – 30 mil card | $0.50 per card |
| Production cost, per card, 10,000 to 24,999 Gift Cards – 30 mil card | $0.35 per card |
| Production cost, per card, 25,000 to 49,999 Gift Cards – 30 mil card | $0.24 per card |
| Production cost, per card, 50,000 to 99,999 Gift Cards – 30 mil card | $0.20 per card |
| Shrink Wrapping - In lots of 50 cards | $0.03 per card |
| Gift Card Design Fees - Logo provided by Merchant | Minimum $500 fee per two (2) renditions |
| Gift Card Design Fees - No logo provided | Minimum $1000 fee per two (2) renditions |
| * BASED ON 2 1/8" X 3 3/8" X .030 PLASTIC CARD, 4 COLOR FRONT, 1 COLOR BACK, ENCODED LO-CO MAGNETIC STRIPE, FILM LAMINATE FINISH, PERSONALIZATION OF THE GIVEX NUMBER ON THE BACK OF THE CARD, BULK SHIPPED IN SLEEVES OF 500 CARDS. ADDITIONAL COSTS WILL APPLY FOR METALLIC OR PREMIUM CARD FINISHES, COLOURED MAGNETIC STRIPES, EMBOSSING, SPECIAL PACKAGING, PICK AND PACK REQUIREMENTS, SPECIAL LABELS OR BAR CODE LABEL REQUIREMENTS. PRICING DOES NOT INCLUDE SHIPPING EXPENSES. MERCHANT SHALL BE INVOICED FOR ALL SHIPPING EXPENSES AT A LATER DATE. | |
| **(OPTIONAL) Card Presenters** | |
| Production cost, per presenter (Various options available) | Various options available |
| 4 Slot Acrylic Holder – Holds 100 cards | $23 per holder |
| * PRESENTER/CARRIER SPECIFICATIONS TO BE DETERMINED. MERCHANT AND GIVEX TO CONFIRM PRICE ONCE CARRIER DESIGN AND FINISHARE PRESENTED FOR PRODUCTION. | |

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## SCHEDULE B - PRICING

| | |
|---|---|
| **(OPTIONAL) Settlement Service** | |
| Reconciliation/Compensation Report (available through online portal site) | No charge |
| Settlement Service Set Up - Direct bank integration | $4,500 |
| Monthly Management Fee | $100 per transfer |
| NSF Administration Fees (Rejections) | $20 per incident |
| **(OPTIONAL ) Customer WebSuite – Gift & Loyalty** | |
| WebSuite Setup (includes Card Registration / Loss Protection and Online Balance Check / Google Analytics / Threatmetrix) | $3500 |
| Add Gift Card Purchase Module | $3500 |
| Add E-Certificate Module | $3500 |
| Add Reload / Top-up Module | $3500 |
| Fraud Mitigation Tool | $1,950 set-up + $150 per month monitoring fee |
| Annual Hosting Fee with SSL certificate | $1000 per year |
| Change requests | $150 per hour, minimum two (2) hours |
| Pricing is exclusive of credit card fees, processing fees, taxes, shipping and fulfillment | |
| **(OPTIONAL) Email Campaign Manger** | |
| Set Up Fee | $1,000 per year |
| 0 – 500 active email accounts | $30 per month |
| 501- 2,500 active email accounts | $50 per month |
| 2,501- 5,000 active email accounts | $100 per month |
| 5,001- 10,000 active email accounts | $150 per month |
| 10,001- 25,000 active email accounts | $300 per month |
| 25,000 – 100,000 active email accounts | $1,050 per month |
| Between 100,001 – 250,000 active email accounts | $2,500 per month |
| **(OPTIONAL) Fulfillment Services** | |
| Setup Fee | $5,000 |
| Monthly Management Fee (including 1 skid and 15 bin locations) | $600 for first module, $250 for each additional module |
| Pick Pack - Business-to-Business (B2Store) | $6.50 + $0.25 per additional piece |
| Pick Pack – Business-to-Consumer (B2C) | $1.95 per card or quote based on requirements |
| Receiving Fee | $25 per SKU per instance |
| Storage Fee | $15 per location per month |
| Shipping using Givex/Partner account | Actual shipping + 10% |
| **Web POS Transaction Website** | |
| Use of Givex Generic Site | No charge |
| **Training** | |
| Self Directed Training | No charge |
| Telephone Training - Per location | $100 per location |
| Telephone Training ("Train the Trainer Session") – Adobe Connect/Webex Refresher (Up to twelve seats) | $500 per session |
| In-House Training | $750 per day, plus disbursements |
| **Delivery and Special Packaging** | |
| Delivery and Shipping – Overnight or expedited service | |
| **Payment Terms** | |
| Orders less than $3,000 | 100% with order |
| Between $3,000 and $9,999 | 50% deposit with order, 50% on delivery |
| Between $10,000 and $24,999 | 40% deposit with order, 40% on delivery, 20% Net 30 |
| Between $25,000 and $49,999 | 30% deposit with order, 40% on delivery, 30% Net 30 |
| Greater than $50,000 | 25% deposit with order, 40% on delivery, 35% net 30 days |

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PRICING IS EXPRESSED IN U.S. DOLLARS. ALL PRICING IS EXCLUSIVE OF APPLICABLE SALES, USE, OR EQUIVALENT TAXES IMPOSED BY ANY GOVERNMENTAL AUTHORITY HAVING JURISDICTION. GIVEX WILL ADD ALL APPLICABLE SALES, USE, OR EQUIVALENT TAXES IMPOSED BY ANY GOVERNMENTAL AUTHORITY HAVING JURISDICTION ON ALL FEES OR OTHER CHARGES. THE EXPENSES ASSOCIATED WITH CARD PRODUCTION SERVICES WILL BE ITEMIZED ON EACH INVOICE AS SEPARATE SALES TAXES MAY APPLY ALL SERVICES AND PRICING SUBJECT TO CHANGE WITHOUT NOTICE.

STATE OF NEW HAMPSHIRE

NAME: Joseph Bouchard
Title: Assistant Commissioner

GIVEX USA CORPORATION

NAME: BRITTAIN BROWN
Title: PRESIDENT

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## SCHEDULE C - DIRECT DEBIT AUTHORIZATION

### Direct Debit Request

Pursuant to the Merchant Agreement between Givex and Merchant, it will necessary for Merchant to provide Givex with its banking information to facilitate invoicing and billing for the Givex Services. This Direct Debit Authorization sets out the rights and responsibilities of the Parties with respect to the debiting of the following nominated bank account for the Givex Services.

Merchant Business/Legal Name: State of New Hampshire

Merchant hereby requests and authorizes Givex to arrange for the direct debiting of the Merchant bank account for all monthly service fees and charges payable to Givex for the Givex Services. Givex Services will be billed in advance of the 1st day of every month. Payment will be withdrawn between the 1st and 15th of every month. Merchant agrees that the financial institution will not be liable for any loss or damage incurred as a result of anything done or not done pursuant to this Direct Debit Authorization.

### Account Details

Financial Institution Nam: [redacted]

Financial Institution Address: [redacted]

Name of Account (to be debited): State of New Hampshire

(NB: Direct debiting is not available on all accounts. Refer to your financial institution to determine appropriate account).

[ABA / Routing Number]: [redacted] [Account Number]: [redacted]

### Merchant's Obligations

Merchant is responsible for ensuring that direct debiting is available from the nominated account and that there are sufficient clear funds available in the account to allow for the debit to be processed in accordance with this Direct Debit Authorization. If there are insufficient clear funds in the account, Merchant acknowledges that: (i) it will be charged a fee and/or interest by the financial institution maintaining the account; and (ii) it will incur an administration fee of US$20.00 per instance of non- sufficient funds, incorrect account information, or other errors that are not the result of an error by Givex.

Merchant shall inform Givex of any changes to its banking details and accounts. Notices of changes to banking details and drawing arrangements must be provided to support.givex.com before the 25th day of the subject month in order to be applied for debits and payments in the following month. Givex will not be liable for any funds incorrectly transferred as a result of changes or errors in the banking and account details provided by the Merchant.

### Merchant's Rights

If Merchant believes that there has been an error in debiting the nominated account, Merchant must promptly notify Givex in writing to support.givex.com. If Givex concludes following an investigation that an incorrect debit as occurred, Givex will arrange to correct the debit by providing an adjustment to the nominated account in a timely manner.

### Acknowledgement

By signing this Direct Debit Authorization, Merchant acknowledges that it has read and understood the terms and conditions governing the direct debit arrangement between Merchant and Givex as set out herein and in the Merchant Agreement.

### Signature(s) (if joint account all signatories must sign)

For and on behalf of

Merchant: Signature (Authorized Signatory): Rachel K Miller

Name (Authorized Signatory): Rachel K. Miller

Title: Chief Deputy State Treasurer

Date: 7/19/16

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**EXHIBIT B – COMPENSATION**
***STATE OF NEW HAMPSHIRE GIVEX AGREEMENT***

See Schedule B "Pricing" in Merchant Agreement

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**EXHIBIT C – SPECIAL PROVISIONS**
***STATE OF NEW HAMPSHIRE GIVEX AGREEMENT***

The following will replace the corresponding provisions in the P-37, General Terms and Conditions:

1. Replace Section 6.3 with the following:

"6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts solely pertaining to this Agreement for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement, excluding: (i) any information of or about other customers of Contractor; (ii) personal information of Contractor's employees; and (iii) books, records, accounts or other information unrelated to this Agreement or the products or services provided under this Agreement."

Contractor Initials BB

Date 4/20/16

# State of New Hampshire
## Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that GIVEX USA CORPORATION, a(n) Delaware corporation, is authorized to transact business in New Hampshire and qualified on April 12, 2016. I further certify that all fees required by the Secretary of State's office have been received.

In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 21st day of April, A.D. 2016

William M. Gardner
Secretary of State

**Givex USA Corporation**

## Certificate of Authority

I, Donald Gray, CEO of Givex USA Corporation, a corporation organized and existing under the laws of the State of Delaware ("Givex"), do hereby certify as follows:

The President of Givex is duly authorized to execute and deliver contracts and other instruments on behalf of Givex, as he deems necessary or desirable subject, at all times, to the applicable policies of Givex and other limitations on its officers' and senior executives' authority.

The following person is a duly qualified and acting President for Givex. He is now serving in such capacity, and his signature as set forth below is genuine.

| **Name** | **Signature** |
|---|---|
| Brittain Brown, President | |

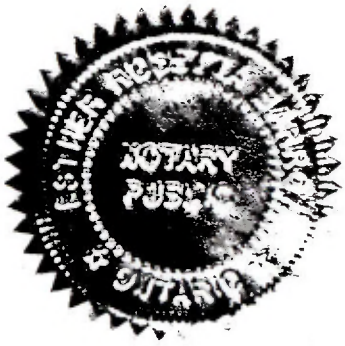
IN WITNESS WHEREOF, I have signed this Certificate of Authority on APRIL 29, 2016,
Province of Ontario, City of Toronto,

D. P. Gray

This instrument was acknowledged before me on APRIL 29, 2016, by Esther Barrow, Notary Public.

Esther Barrow, ~~Notary~~ Signature

ON DEATH
Expiration Date Stamp



**Ref. No. 320007415840**

# CERTIFICATE OF INSURANCE

Aon Reed Stenhouse Inc.
20 Bay Street
Toronto ON M5J 2N9
*tel* 416-868-5500 *fax* 416-868-5580

Re: Amending Certificate Reference No.: 320007409740

Contractual Agreement

**State of New Hampshire**
**Department of Administrative Services**
**25 Capitol Street**
Concord, NH 03301
USA

Insurance as described herein has been arranged on behalf of the Insured named herein under the following policy(ies) and as more fully described by the terms, conditions, exclusions and provisions contained in the said policy(ies) and any endorsements attached thereto.

## Insured

Givex USA Corporation
1341 Estes Street
Gurnee, IL 60031
USA

## Coverage

| | | | | |
|---|---|---|---|---|
| **Commercial General Liability** | **Insurer** | Chubb Insurance Company of Canada | | |
| | **Policy #** | 35874452 | | |
| | **Effective** | 01-Jun-2015 | **Expiry** | 01-Jun-2016 |
| | **Limits of Liability** | Bodily Injury & Property Damage, Each Occurrence $1,000,000<br>Policy may be subject to a general aggregate and other aggregates where applicable | | |
| Primary Property | **Insurer** | Chubb Insurance Company of Canada | | |
| | **Policy #** | 35874452 | | |
| | **Effective** | 01-Jun-2015 | **Expiry** | 01-Jun-2016 |
| | **Perils Insured** | All Risks of Direct Physical Loss or Damage (except as excluded) | | |

## Cancellation / Termination

The Insurer will endeavour to provide THIRTY ( 30 ) days written notice of cancellation/termination to the addressee except that statutory or policy conditions (whichever prevails) will apply for non-payment of premium.

THIS CERTIFICATE CONSTITUTES A STATEMENT OF THE FACTS AS OF THE DATE OF ISSUANCE AND ARE SO REPRESENTED AND WARRANTED ONLY TO THE INSURED. OTHER PERSONS RELYING ON THIS CERTIFICATE DO SO AT THEIR OWN RISK.

**Aon Reed Stenhouse Inc.**

Dated : 25-April-2016
Issued By : Daley,Elesha May
Tel : 416-868-2415

THE POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE
OR, IN THE CASE OF AUTOMOBILE INSURANCE,
THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE



AON

**Ref. No. 320007416594**

# CERTIFICATE OF INSURANCE

Aon Reed Stenhouse Inc
20 Bay Street
Toronto ON M5J 2N9
tel 416-868-5500 fax 416-868-5580

Re Contractual Agreement

**State of New Hampshire**
**Department of Administrative Services**
**25 Capitol Street**
**Concord, NH 03301**
**USA**

Insurance as described herein has been arranged on behalf of the Insured named herein under the following policy(ies) and as more fully described by the terms, conditions, exclusions and provisions contained in the said policy(ies) and any endorsements attached thereto.

## Insured

Givex USA Corporation
1341 Estes Street
Gurnee, IL 60031
USA

## Coverage

| | | | |
|---|---|---|---|
| **US Workers Comp/Employers Liability** | **Insurer** | Federal Insurance Company | |
| | **Policy #** | 71735811 | |
| | **Effective** | 01-Jun-2015 | **Expiry** 01-Jun-2016 |
| | **Limits of Liability** | Bodily Injury - by Accident USD1,000,000<br>Bodily Injury - by Disease, policy limit USD1,000,000<br>Bodily Injury - by Disease, each employee USD1,000,000<br>Workers Compensation As per applicable Law | |

## Cancellation / Termination

The Insurer will endeavour to provide THIRTY ( 30 ) days written notice of cancellation/termination to the addressee except that statutory or policy conditions (whichever prevails) will apply for non-payment of premium.

THIS CERTIFICATE CONSTITUTES A STATEMENT OF THE FACTS AS OF THE DATE OF ISSUANCE AND ARE SO REPRESENTED AND WARRANTED ONLY TO THE INSURED. OTHER PERSONS RELYING ON THIS CERTIFICATE DO SO AT THEIR OWN RISK.

Aon Reed Stenhouse Inc.

Dated : 26-April-2016
Issued By : Daley,Elesha May
Tel : 416-868-2415

THE POLICY CONTAINS A CLAUSE THAT MAY LIMIT THE AMOUNT PAYABLE
OR, IN THE CASE OF AUTOMOBILE INSURANCE,
THE POLICY CONTAINS A PARTIAL PAYMENT OF LOSS CLAUSE



AON