ARTICLE 1: DEFINITIONS

1.1 **General.** Unless otherwise defined herein, capitalized terms shall have the meaning provided in the NACHA Operating Rules.

1.2 **Defined Terms.** The following terms shall have the meanings provided for the purpose of this Agreement and the Exhibits attached hereto:

1.2.1 **Applicable Laws** shall collectively mean all Federal and state laws, rules, and regulations applicable to ACH transactions, including, but not limited to: (i) the NACHA Rules, (ii) formal rules interpretations which are issued by NACHA, (iii) the NACHA Operating Guidelines, (iv) the applicable rules of any Payment Association, (v) Federal Reserve Bank Operating Circular 4 on Automated Clearing House Items, (vi) the Electronic Funds Transfer Act (15 U.S.C. §§ 1601, *et seq.*) and Regulation E issued by the Board of Governors of the Federal Reserve System (12 C.F.R. §§ 205, *et seq.*), (vii) Internal Revenue Service regulations and procedures issued under the Electronic Federal Tax Payment System (EFTPS) or otherwise in the Internal Revenue Code and all implementing rules, regulations and procedures, (viii) regulations issued by the Department of the Treasury Fiscal Service on Federal Government Participation in the Automated Clearing House (31 C.F.R. § 210), (ix) Article 4A of the Uniform Commercial Code; (x) Federal Trade Commission ("FTC") Act (15 U.S.C. §§ 41, *et seq.*); (xi) Telemarketing Sales Rule (16 C.F.R. 310, *et seq.*) ("TSR"); (xii) Federal Reserve Board Regulation J, if applicable, and all other Federal Reserve Board Regulations; (xiii) the rules and sanctions laws of the Office of Foreign Asset and Control ("OFAC"); (xiv) Unlawful Internet Gambling Enforcement Act (31 U.S.C. §§ 5361, *et seq.*) and accompanying regulations (12 C.F.R. § 233; 31 C.F.R. § 132); (xv) the Prevent all Cigarette Trafficking Act ("PACT Act") (15 U.S.C. §§ 376, *et seq.*), Jenkins Act (15 U.S.C. §§ 375, *et seq.*) and accompanying regulations; (xvi) FTC Mail or Telephone Order Merchandise Rule (16 C.F.R. §§ 435, *et seq.*); (xvii) Truth in Lending Act (15 U.S.C. §§ 1601-1666j), and its accompanying Regulation Z (12 C.F.R. § 226), if applicable; and (xviii) all applicable state laws and regulations. The Applicable Laws, each as amended from time to time, are incorporated into this Agreement by reference.

1.2.2 **Application** shall mean the ACH Application completed by Merchant and accepted by Company for the provision of the Services.

1.2.3 **Agreement** shall mean this agreement by and between Company and Merchant, and all addenda, schedules, exhibits and attachments hereto, including the Application.

1.2.4 **Authorized Individual** means those persons designated by Merchant from time to time in writing, or by other means acceptable to Company, as authorized to effect transaction requests or initiate Services, or give notices to Company with regard to this Agreement and any Service.

1.2.5 **Automated Clearing House Network** or "**ACH Network**" shall mean the network of participants involved in an ACH transaction, including parties originating Entries, ODFIs, RDFIs and parties receiving Entries.

1.2.6 **Customer** means Merchant's customer with respect to which Entries are initiated.

1.2.7 **Data** shall mean, as applicable, prenotifications, Returned Entries, adjustment Entries, notifications of change and/or other notices or data transmitted through one or more ACH Operators pursuant to the NACHA Rules and Applicable Laws.

1.2.8 **Guidelines** means the ACH operating guidelines that contain instructions and requirements for use of the specific Services provided to Merchant. The Guidelines as amended from time to time are hereby incorporated into this Agreement by reference.

1.2.9 **Fee Schedule** shall mean the schedule of fees and charges which are applicable to the Services, as initially set forth in the Application, which Fee Schedule is subject to revision as provided herein.

1.2.10 **Maximum Exposure Limit** shall mean the maximum amount of funds in aggregate that Merchant is permitted to have outstanding and unsettled at any given time.

1.2.11 **NACHA Rules** shall mean the Operating Rules of the National Automated Clearing House Association ("NACHA"), as amended from time to time.

1.2.12 **Returns** shall mean all Entries that are returned as Return Entries as set forth in the NACHA Rules.

1.2.13 **Security Procedures** means those security procedures specified in the Guidelines.

1.2.14 **Transaction Limit** shall mean the maximum amount of funds that Merchant may initiate or authorize for a single Entry or transaction.

1.2.15 Any Capitalized term that is not otherwise defined in this Agreement shall have the meaning contained in the Application or NACHA Rules.

ARTICLE 2: ACKNOWLEDGEMENT OF ODFI RELATIONSHIP

2.1 **General**. Merchant hereby retains and appoints Company and its Third-Party Sender, ("Third-Party Sender") as Merchant's exclusive data processing and collection agent for processing Entries originated by Merchant for Credit and Debit to accounts of Customers, in accordance with the terms and conditions contained herein. Merchant acknowledges that the services (the "Services") provided by Company through its Third-Party Sender pursuant to this Agreement are by virtue of Third-Party Sender's contractual relationship with an Originating Depository Financial Institution ("ODFI"), which is a federally insured financial institution regulated by Federal and state banking agencies ("Agencies" or "Agency"). Company, Third-Party Sender, ODFI, and the Agencies are relying upon the accuracy of all information provided by Merchant pursuant to this Agreement and Merchant's performance of its obligations hereunder.

2.2 **ODFI's Rights.** Merchant agrees to assume the obligations of an Originator under the NACHA Rules for all Entries initiated by Company or its Third-Party Sender on behalf of Merchant. Company and Third-Party Sender are obligated to provide the ODFI with any information that the ODFI considers to be reasonably necessary to identify each Originator for which the ODFI transmits Entries. Merchant authorizes Company and its Third-Party Sender to provide any information regarding Merchant to the ODFI or applicable Agencies as may be requested by them. Merchant acknowledges that Company, its Third-Party Sender, the ODFI, and Agencies have the right to periodically review the volume and character of the Entries initiated by Merchant and Merchant's business operations to evaluate the credit risk associated with processing Entries on behalf of Merchant. Merchant agrees to make payment to the ODFI for all Credit or Debit Entries originated by Merchant and for any Debit Entries returned by a Receiving Depository Financial Institution ("RDFI").

2.3 **ODFI Is A Third-Party Beneficiary.** Merchant and Company expressly acknowledge and agree that the ODFI is an express and intended third-party beneficiary of this Agreement, and that the ODFI has all the rights under this Agreement as if it were a party thereto, including, without limitation, the right to enforce any terms of the Agreement or assert claims against Merchant for breach of the Agreement.

2.4 **Third-Party Sender is A Third-Party Beneficiary.** Merchant and Company expressly acknowledge and agree that Third-Party Sender is an express and intended third-party beneficiary of this Agreement and has all the rights under this Agreement as if it were a party thereto, including, without limitation, the right to enforce any terms of the Agreement or assert claims against Merchant for breach of the Agreement.

ARTICLE 3: CUSTOMER AUTHORIZATIONS; RECORDS RETENTION; COMPLIANCE

3.1 **Authorization**. Before Merchant initiates any Entry on behalf of a Customer, Merchant shall obtain from the Customer such authorization as is required by the Rules and Applicable Laws. Merchant shall initiate no Entry after such authorization has been revoked.

3.2 **Records**. Merchant shall retain the original or a legible copy of each Customer authorization for the period of time specified by the NACHA Rules and Applicable laws, at least two (2) years unless any provision of the NACHA Rules, Guidelines, Applicable Laws or ODFI or Agency requirements, mandate a longer time period. Merchant further agrees to promptly furnish a copy of all Customer authorizations if requested by Company, Third-Party Sender, the ODFI or the Agencies. Merchant shall also retain all documents and information regarding its business activities relevant to this Agreement and establishing compliance with the Agreement, NACHA Rules, Guidelines, Applicable Laws and ODFI and Agency requirements for a period of no less than three (3) years, or as otherwise required by any Applicable Law. Merchant agrees to promptly provide any such documents, materials, records, financials, or other

information requested by Company, Third-Party Sender, the ODFI or applicable Agencies.

3.3 **Compliance with NACHA Rules, Guidelines, Applicable Laws, ODFI Requirements and Agency Requirements.** Merchant shall at all times comply with the NACHA Rules and Guidelines. Merchant shall also comply with all applicable U.S. Federal and state laws in its business and when initiating Entries, including, but not limited to, the requirements of the FTC Act, TSR and all of the laws and regulations identified in Section 1.2.1 of this Agreement. Merchant shall not, among other things, violate any prohibitions promulgated or enforced by the Office of Foreign Assets Control, or act on behalf of, or transmit funds to or from, any party subject to such prohibitions. Merchant shall also comply with all applicable requirements of the ODFI and applicable Agencies. Merchant agrees that it has all of the rights, responsibilities, obligations, and liabilities of an "Originator" under the NACHA Rules and Guidelines. Merchant further agrees to comply with the procedures set forth in any NACHA Rule, Guideline, Applicable Law, ODFI or Agency requirement, or any other document provided to Merchant or made available to Merchant regarding proper use of the Services. In the event of any conflict between the terms of this Agreement and any Guideline, the terms of this Agreement shall govern. In the event of any conflict between the terms of this Agreement or any Guideline and any NACHA Rule, Applicable Law or ODFI or Agency requirement, the terms of a specific, on point, NACHA Rule, Applicable Law or ODFI or Agency requirement shall govern. Merchant expressly acknowledges that full compliance by it with the NACHA Rules, Guidelines, Applicable Laws and all ODFI and Agency requirements is essential and material to Company, Third-Party Sender and ODFI's ability to provide Services to Merchant in accordance with this Agreement. Company or its Third-Party Sender reserves the right to change such procedures from time to time as it deems reasonable or necessary to provide said Services in an efficient and timely manner, or to conform with changes in the NACHA Rules, Applicable Laws, ODFI requirements, Agency requirements, or other events beyond its control that affect the manner in which such Services can be provided. Except as may be necessary to comply with any NACHA Rule, Guideline, Applicable Law, ODFI or Agency requirement, written notice of any changes shall be given to Merchant at least thirty (30) days before any such changes become effective. Merchant agrees to retain all documentary evidence that proves it is compliant with the NACHA Rules, Guidelines, all Applicable Laws and ODFI and Agency requirements to the satisfaction of the ODFI, NACHA, FTC, any state Attorneys General, or any applicable Agency or government authority for a period of no less than three (3) years, or as otherwise required by any NACHA Rule, Guideline, Applicable Law or ODFI or Agency requirements. Merchant shall provide copies of such documentary evidence to Company or its Third-Party Sender immediately upon request. Merchant bears the final responsibility to insure that the Merchant's policies, procedures and activities meet the requirements of all the NACHA Rules, Guidelines, all Applicable Laws and ODFI and Agency requirements. Merchant is encouraged to consult counsel regarding compliance with these whenever there is any doubt about compliance.

3.4 **Indemnity for Non-Compliance**. In addition to all other indemnification obligations in this Agreement, Merchant shall indemnify, defend and hold harmless Company, Third-Party Sender and the ODFI, including their directors, officers, employees and affiliates, from any and all claims, liabilities, losses, damages, fines, costs or expenses (including attorneys' fees and costs) suffered or incurred arising out of, relating to or involving in any way Merchant's actual or alleged violation (whether past or present) of any NACHA Rule, Guideline, Applicable Law or requirement of the ODFI or any Agency.

3.5 **Financial Statements**. Upon Company or Third-Party Sender's request, Merchant will provide Company quarterly financial statements within 45 days after the end of each fiscal quarter and annual financial statements (audited if requested) within 90 days after the end of each fiscal year. Such financial statements shall be prepared in accordance with generally accepted accounting principles. Merchant will also provide within five (5) Business Days such other financial statements and other information concerning Merchant's business and its compliance with the terms and provisions of this Agreement as Company, Third-Party Sender, the ODFI or any applicable Agency may reasonably request. Merchant and each guarantor of Merchant's obligations authorizes Company, Third-Party Sender and the ODFI, or any credit bureau or any credit reporting agency employed by one of them or their agents, to obtain from third parties financial and credit information relating to Merchant, its principals and such guarantor(s) in connection with a determination whether to accept this Agreement and the continuing evaluation of the financial and credit status of Merchant. Merchant also authorizes Company, Third-Party Sender and the ODFI to obtain additional credit reports regarding Merchant on an annual basis, unless in their sole and absolute discretion, one or more of them determines that it is necessary to periodically obtain Merchant's credit report on a more than annual basis, in which case Merchant authorizes them to obtain such additional credit reports. Merchant agrees that Company may share Merchant's financial and credit information, including, but not limited to, credit reports, with Third-Party Sender, ODFI, and applicable Agencies as necessary. Merchant will provide Company with written notice of any judgment, writ, warrant of attachment, execution or levy against any substantial part (25% or more in value) of Merchant's total assets not later than three (3) days after Merchant becomes aware of same.

ARTICLE 4: SUBMISSION AND PROCESSING OF ENTRIES

4.1 **General**. Merchant may only transmit Entries in the Standard Entry Class Codes indicated in the Application. Cross-Border Payment Entries (CBR or PRR Entries) may not be initiated by Merchant under this Agreement. Merchant shall transmit all Debit and Credit Entries to Company to the location(s) and in compliance with the formatting, content and other requirements set forth in the Rules and the Guidelines. Company or Third-Party Sender shall not be liable for any loss or damages resulting from Merchant's failure to deliver any Entry or Files of Entries in accordance with the foregoing.

4.2 **Services of Company and its Third-Party Sender**

4.2.1 Company, through its Third-Party Sender, shall (i) process Entries received from Merchant to conform with the file specifications set forth in the NACHA Rules, Guidelines, Applicable Laws, and ODFI and Agency requirements, (ii) transmit such Entries as a Third-Party Processor to an ACH Operator, (iii) process such Entries intended for Company as a Third-Party Processor/Receiving Institution from the ACH Operator, and (iv) process exception items as provided in the NACHA Rules, Guidelines, Applicable Laws, and ODFI and Agency requirements.

4.2.2 Company, through its Third-Party Sender, shall transmit Credit Entries to the ACH Operator by the deadline of the applicable ACH Operator two (2) Business Days prior to the Effective Entry Date shown in such Entries, provided (i) such Entries are received by Company or THIRD-PARTY SENDER's related cut-off time set forth in the Guidelines on a Business Day, (ii) the Effective Entry Date is at least two (2) Business Days after such Business Day, and (iii) the ACH Operator is open for business on such Business Day. For purposes of this Agreement, Entries shall be deemed receivable by Company and Third-Party Sender, in the case of transmittal by tape, when received by Company or Third-Party Sender at the location set forth in the Guidelines, and in the case of transmittal by electronic transmission, when the transmission (and compliance with any related security procedure provided for herein) is completed as provided in the Guidelines.

4.2.3 Company, through its Third-Party Sender , shall transmit Debit Entries to the ACH Operator by the deadline of the applicable ACH Operator one (1) Business Day prior to the Effective Entry Date shown in such Entries, provided (i) such Entries are received by Company or THIRD-PARTY SENDER's related cut-off time set forth in the Guidelines on a Business Day, (ii) the Effective Entry Date is at least one (1) Business Day after such Business Day, and (iii) the ACH Operator is open for business on such Business Day.

4.2.4 If any of the requirements of clause (i), (ii), or (iii) of Section 4.2.2 or 4.2.3 are not met, Company, through its Third-Party Sender , shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator which is a Business Day and a day on which the ACH Operator is open for business. Company or Third-Party Sender shall not be responsible for any incorrect information given by Merchant or its authorized third parties, which results in an erroneous or untimely settlement of funds.

4.3 **Communications**. Merchant shall direct all inquires, requests, complaints and other communications first to Company which will act as the first source of contact with Merchant. Company may, in its discretion, subsequently refer Merchant to Third-Party Sender, or work in

conjunction with Third-Party Sender, when necessary to address Merchant inquires, requests or the like that cannot be adequately addressed by Company alone. Third-Party Sender may also, from time to time, contact Merchant directly to request information or documents, or for other reasons related to the Services.

4.4 **Effective Entry Date For Entries**. The Effective Entry Date for an Entry is the date Merchant intends the Debit or Credit to post to the account of the Customer, as stated in the Entry or File of Entries. The Effective Entry Date for an Entry may be converted to a Settlement Date by the ACH Operator if the Effective Entry Date is the same day or prior to the transmission date, or if the Effective Entry Date falls on a Saturday, Sunday, or holiday on which the ACH Operator is closed.

4.5 **Suspension of Services.** If Merchant initiates or attempts to initiate Entries which exceed the Maximum Exposure Limit, Company or Third-Party Sender shall suspend its Services and no additional Entries shall be initiated on behalf of Merchant until Company or Third-Party Sender receives the consent of the ODFI or Agencies, if applicable. In addition, if Merchant attempts to initiate an Entry which exceeds the Transaction Limit, such Entry will not be initiated until Company or Third-Party Sender receives the consent of the ODFI or Agencies, if applicable.

4.6 **Security**.

4.6.1 Merchant and Company shall comply with the Security Procedures with respect to Entries transmitted by Merchant to Company or its Third-Party Sender. Merchant acknowledges that the purpose of such Security Procedures is for verification of authenticity and not to detect an error in the transmission or content of an Entry. No Security Procedures for the detection of any such error have been agreed upon between Company or its Third-Party Sender and Merchant.

4.6.2 Merchant is strictly responsible to establish and maintain the Security Procedures to safeguard against unauthorized transmissions. Merchant warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices and related instructions provided by Company or its Third-Party Sender in connection with the Security Procedures. If Merchant believes or suspects that any such information or instructions have become known or accessed by unauthorized persons, Merchant agrees to immediately notify Company and Third-Party Sender followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by Company, its Third-Party Sender, or an ODFI prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

4.6.3 If an Entry (or a request for cancellation or amendment of an Entry) received by Company, through its Third-Party Sender, purports to have been transmitted or authorized by Merchant, it will be deemed effective as Merchant's Entry (or request) and Merchant shall be obligated to pay Company or Third-Party Sender, as applicable, the amount of such Entry even though the Entry (or request) was not authorized by Merchant, provided Company or its Third-Party Sender accepted the Entry in good faith and acted in compliance with the Security Procedures with respect to such Entry. If signature comparison is to be used as a part of those Security Procedures, Company and its Third-Party Sender shall be deemed to have complied with that part of such procedures if it compares the signature accompanying a file of Entries (or request for cancellation or amendment of an Entry) received with the signature of an Authorized Individual and, on the basis of such comparison, believes the signature of Merchant sending such file to be that of such Authorized Individual.

4.6.4 If an Entry (or request for cancellation or amendment of an Entry) received by Company or its Third-Party Sender was transmitted or authorized by Merchant, Merchant shall pay Company or Third-Party Sender, as applicable, the amount of the Entry, whether or not Company or Third-Party Sender complied with the Security Procedures with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Company or Third-Party Sender had complied with such Security Procedures.

4.6.5 Any banking information, including, but not limited to, an Entry, Entry Data, a routing number, an account number, and a PIN or other identification symbol, that is transmitted or exchanged between Merchant and Company, its Third-Party Sender, or a Customer via an Unsecured Electronic Network (including the Internet), must, prior to the key-entry and through transmission of any banking information, (i) be encrypted using a commercially reasonable security technology that, at a minimum, is equivalent to 128-bit RC4 encryption technology, or (ii) be transmitted via a secure session utilizing a commercially reasonable security technology that provides a level of security that, at a minimum, is equivalent to 128-bit RC4 encryption technology.

4.7 **Inconsistency of Name And Account Number.** Merchant acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Company, through its Third-Party Sender, to the ODFI or from the ODFI to the RDFI may be made by the RDFI (or by the ODFI in the case of an On-Us Entry) on the basis of the account number supplied by Merchant, even if it identifies a person different from the named Receiver, and that Merchant's obligation to pay the amount of the Entry is not excused in such circumstances. Without limitation, Company, its Third-Party Sender, and the ODFI shall be entitled to rely on the routing and transit number provided to Company by Merchant, even though the routing and transit number does not correctly identify the financial institution named in the Entry.

4.8 **Erroneous Entry by Merchant.** If Merchant discovers that any Entry it has initiated was in error, it may notify Company of such error and Company will utilize commercially reasonable efforts, consistent with the Rules, to correct the Entry. In all such cases, it shall be the responsibility of Merchant to notify its affected Customers that an Entry has been made that is at variance with the Customer's authorization or is otherwise erroneous. Company, its Third-Party Sender, and the ODFI shall have no liability to Merchant or any Customer arising out of Merchant's initiation of erroneous Entries or Company's or Third-Party Sender's attempts to correct such Entries, and Merchant shall indemnify and hold Company, its Third-Party Sender, and the ODFI harmless from any such claim, liability and any pecuniary loss therefrom, including all expenses, court costs, and attorneys' fees, incurred in connection with any claim or claims asserting such liability.

4.9 **No Outbound Telemarketing**. Merchant acknowledges and agrees that it shall not originate any Entries to Company or Third-Party Sender for processing where the authorization for the Entry, draft or other payment was given during an Outbound Telephone Call, as that term is defined in the TSR, 16 C.F.R. 310.2(u), as currently promulgated or as it may be amended. Specifically, Merchant shall not originate any Entries to Company or Third-Party Sender for processing where the authorization was given during a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

4.10 **Rejected or Returned Entry**.

4.10.1 In the event any Entries are rejected or returned by the ACH Operator and rejection was due to mishandling of such Entries by Company and sufficient data is available to Company to permit it to remake such Entries, then Company shall remake such Entries. Merchant shall retain and make readily available to Company on request all information necessary to remake any Files of Entries for the preceding ten (10) Business Days.

4.10.2 Except as provided in Section 4.10.1, in the event any Entries are rejected or returned by the ACH Operator, Company, or its Third-Party Sender for any reason whatsoever, it shall be the responsibility of Merchant to remake and resubmit such Entries or otherwise resolve the rejection or return in accordance with the NACHA Rules. Company's responsibility, whether itself or through its Third-Party Sender, shall be limited to receiving rejected and Returned Entries from the ACH Operator, performing necessary

3

processing, control, and settlement functions, and forwarding such Entries to Merchant.

4.10.3   Company, its Third-Party Sender, and the ODFI have the right to reject, in their sole and absolute discretion, any Entry if (a) Merchant fails to comply with its Reserve Account requirements or Merchant fails to maintain the Reserve Balance; (b) Merchant fails to make any payment to Company when due; (c) Merchant fails to maintain sufficient funds in the Settlement Account; (d) the Entry would cause Company, Third-Party Sender, or the ODFI to violate any Federal Reserve or other regulatory risk control program, the NACHA Rules, Guidelines or any other Applicable Law; (e) the Entry or Entries would cause Merchant to exceed the Maximum Exposure Limit or Transaction Limit; or (f) Merchant breaches any of its obligations or representations and warranties under this Agreement. Company shall attempt to promptly notify Merchant by phone, fax, or e-mail of such rejection. Company, its Third-Party Sender, and the ODFI shall have no liability to Merchant by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

4.10.4   Third-Party Sender will apply returned Entries to Merchant's account when they are received. Company will create and make available to Merchant a report containing detailed information about Returned Entries. If the Merchant requests that the Returned Entries be provided electronically, Company or Third-Party Sender may do so according to the rules and regulations regarding those transactions.

4.10.5   Merchant will promptly provide immediately available funds to indemnify Company, or its Third-Party Sender, if any deposited item or debit Entry is returned after Company has settled Merchant, or if any adjustment memorandum that relates to such item or Entry is received by Company or Third-Party Sender.

4.10.6   Except as provided in Section 4.10.1, Merchant is solely responsible for all returned Entries.

4.11   **Return Thresholds**.   Merchant acknowledges and agrees that Company or Third-Party Sender shall have the right, in their sole and absolute discretion, to establish return and/or charge back thresholds with which Merchant must comply ("Return Thresholds"). Merchant further acknowledges and agrees that if Merchant exceeds any or all of the established Return Thresholds, Company or Third-Party Sender   shall have the right, in their sole and absolute discretion, to investigate the Merchant, immediately suspend or terminate processing, or take any other commercially reasonable actions, including, but not limited to, immediately terminating the Agreement.   Company will promptly notify Merchant if it exceeds any or all of the established Return Thresholds. The Return Thresholds shall be set forth in the Application and may be changed from time to time by Company or Third-Party Sender, in their sole and absolute discretion, based upon various factors, including, with limitation, file activity, ODFI or Agency request, Merchant's business or risk profile.

4.12   **Notification of Change.** Company shall provide Merchant all information, as required by the NACHA Rules, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by Company or its Third-Party Sender relating to Entries transmitted by Merchant. Company must provide such information to Merchant within two (2) Banking Days of the Settlement Date of each NOC or Corrected NOC Entry. Merchant shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) Banking Days of Merchant's receipt of the NOC information from Company or prior to initiating another Entry to the Receiver's account, whichever is later.

4.13   **Notice of Erroneous Unauthorized Transfers.** Merchant agrees to promptly and regularly review all Entries and other communications received from Company or its Third-Party Sender and to immediately notify Company if there are any discrepancies between Merchant's records and those provided by Company, Third-Party Sender, the ODFI or Merchant's bank, or with respect to any transfer not authorized by Merchant. If Merchant fails to notify Company within seven (7) days of the date Company provides a statement of account or other report of activity to Merchant, then Merchant will be responsible for all losses or other costs associated with any erroneous or unauthorized transfer.

4.14   **Notice of Changes**. Merchant shall provide Company with immediate notice of intent to: (i) transfer or sell any substantial part of its assets, or to liquidate; (ii) change the basic nature of its business, including selling any products or services not related to its current business; (iii) change ownership or transfer control of its business; or (iv) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business. Any such charges shall be sufficient grounds for Company or Third-Party Sender's immediate termination of this Agreement.

4.15   **Audit**. Merchant hereby grants to Company, its Third-Party Sender , the ODFI and applicable Agencies, including their respective auditors and agents, the right of access to Merchant's books and records and agrees to provide assistance at all times during the Term of this Agreement for the purposes of allowing Company, Third-Party Sender, the ODFI and/or auditors or Agencies to conduct an audit and/or verify Merchant's compliance with this Agreement, the NACHA Rules, Guidelines, Applicable Laws and the requirements of ODFI and Agencies.

ARTICLE 5: SETTLEMENT ACCOUNT

5.1   **Settlement Account**. Merchant acknowledges and agrees that Company is the party responsible for settling Merchant. Merchant further agrees and authorizes Third-Party Sender to fund Company's settlement account from which Company will subsequently settle Merchant pursuant to the terms of this Agreement. Merchant expressly acknowledges and agrees that, except as provided by Paragraph 5.3 of this Agreement, Company, not Third-Party Sender, will settle Merchant. Company will establish a demand deposit account ("Settlement Account") on behalf of Merchant with the ODFI or Company's bank. Merchant will maintain funds in the Settlement Account sufficient to offset (i) all Entries submitted and against which Returned Entries may be credited or debited as described on the Fee Schedule, and (ii) all fees and other charges imposed by Company or Third-Party Sender under this Agreement, including those set forth in Article 7 and in the Fee Schedule. Merchant hereby grants Company, its Third-Party Sender, and the ODFI the right to access the Settlement Account for the purpose of performing the Services contemplated by this Agreement and ensuring that Merchant performs its obligations hereunder.

5.2   **Funding Policy**. Merchant acknowledges and agrees that Company will set the funding schedule according to the underwriting guidelines of its Third-Party Sender as directed. Merchant further agrees that Third-Party Sender may at its sole and absolute discretion and without prior notice to Merchant change the funding schedule for settlement to Company. The amount disbursed to Merchant by the Company shall be the origination amount less Returned items and any reserve amount as required and all fees associated with the Agreement. Company may also deduct any fees Merchant has agreed to pay Company from the settlement to the Merchant.

5.3   **No Liability for Third-Party Sender**.   Merchant expressly releases and agrees that Third-Party Sender   shall have no liability whatsoever to Merchant, its Customers, or any of their agents or affiliates, arising out of or involving in any way Company's failure to fund Merchant as required by this Agreement or any errors or delays in funding.   Merchant acknowledges and agrees that Company shall bear any and all risk and liability to Merchant, its Customers, their agents or affiliates, or any other third parties, arising out of or involving in any way Company's failure to fund Merchant or any errors or delays in funding.   Merchant agrees that Third-Party Sender shall only have liability to Merchant for failures to fund, errors or delays involving transactions funded directly by Third-Party Sender to Merchant pursuant to Paragraph 5.4 of this Agreement. In addition to all other indemnification obligations in this Agreement, Merchant shall indemnify, defend and hold harmless Third-Party Sender , including its directors, officers, employees and affiliates, from any and all claims, liabilities, losses, damages, fines, costs or expenses (including attorneys' fees and costs) suffered or incurred arising out of, relating to or involving in any way Company's actual or alleged failure to fund Merchant as required by this Agreement or any errors or delays in funding.

5.4   **Third-Party Sender Funding**. Merchant acknowledges and agrees that if Third-Party Sender believes Company is not timely or properly funding Merchant, or in other limited circumstances defined in the agreement between Company and Third-Party Sender, Third-Party Sender may, without prior notice, directly fund Merchant to its Settlement Account. Merchant specifically authorizes Third-Party Sender to access the Settlement Account for the purpose of funding Merchant, performing other Services pursuant to this Agreement and ensuring that Merchant performs its obligations under the Agreement.

5.5   **Operation of Settlement Account** Company, or its Third-Party Sender pursuant to Paragraph 5.4, is entitled to debit the Settlement Account for (i) fees charged under Article 7 and the Fee Schedule, (ii) the settlement of Credit Entries, (iii) the offsetting of any Debit Entries that are rejected or returned by the ACH Operator, or (iv) any overpayments that Company or its Third-Party Sender may make to Merchant in error.

5.6   **Settlement by Merchant for Entries**. Company, or its Third-Party Sender pursuant to Paragraph 5.4, will either debit or credit the Settlement Account to offset any Credit or Debit Entry initiated by Merchant. Merchant shall reimburse Company, or its Third-Party Sender pursuant to Paragraph 5.3, with good and collected funds if, after settlement has been made, (i) any Debit Entry is rejected or returned, or (ii) Company or its Third-Party Sender receives any other adjustment that relates to any such Debit Entry. Merchant shall make such reimbursement on the date of such rejection or the date Company or its Third-Party Sender receives notification of the adjustment.

5.7   **Suspension of Funding**. If Company, its Third-Party Sender, ODFI, or any applicable Agency believes, in their sole and absolute discretion, that Merchant is, or has been, in violation or breach of this Agreement, any representations or warranties made herein, the NACHA Rules, Applicable Laws, or any requirements imposed by ODFI or any Agency, or if the ODFI or applicable Agency so requests for any reason, Merchant acknowledges and agrees that Third-Party Sender may, in its sole and absolute discretion, immediately suspend or terminate processing for Merchant or the Agreement, or funding of Company for the purpose of settling Merchant. Company will notify Merchant within a reasonable time of any suspension or termination in processing, funding of Company by Third-Party Sender, or settlement of Merchant by Company. Merchant hereby releases Company and Third-Party Sender from any and all liability, claims, damages, expenses (including attorneys' fees and costs) or otherwise arising out of or involving in any way suspension or termination of processing, funding or settlement pursuant to this Paragraph of the Agreement. Company will notify Merchant if it is found to no longer be in violation or breach of this Agreement, representations and warranties made herein, the NACHA Rules, Applicable Laws, or requirements imposed by ODFI or any Agency and when processing and funding will resume. Company will also notify Merchant if processing or funding will not be resumed or if the Agreement is terminated.

ARTICLE 6: RESERVE ACCOUNT, SECURITY AGREEMENT; TRANSACTION LIMITS AND MAXIMUM EXPOSURE LIMITS

6.1   **Reserve Account**.

    6.1.1   Merchant acknowledges and agrees that Company's Third-Party Sender or ODFI shall have the right, in either of their sole and absolute discretion, to determine whether a Merchant reserve account is required. Merchant shall maintain the required balance of funds ("Reserve Balance") in a reserve account ("Reserve Account") to be held in escrow by Third-Party Sender at a financial institution designated by Third-Party Sender for the term of this Agreement and a period of **24** months (length of time to be determined by Third-Party Sender in its sole and absolute discretion) after the last Debit Entry initiated by Merchant, whether Third-Party Sender ceases to process transactions for Merchant or this Agreement terminates for any reason.

    6.1.2   Merchant shall maintain a Reserve Balance in its Reserve Account. The amount of Reserve Balance required shall be established by Third-Party Sender and the ODFI, in their sole and absolute discretion, and may be modified by Third-Party Sender or the ODFI at any time upon providing Merchant with written notice. Merchant shall maintain readily available funds in its Reserve Account that shall not be less than the Reserve Balance. The Reserve Balance for the Reserve Account will be based on Merchant's return history, risk profile and file activity. The time period in which Merchant shall have to fund the Reserve Balance shall be determined by Third-Party Sender and the ODFI on a case-by-case basis.

    6.1.3   If the amount held in the Reserve Account falls below the Reserve Balance established for Merchant, Company shall notify Merchant via telephone, facsimile, or other form of electronic communication (including e-mail), and Merchant shall immediately (within one (1) Business Day) transfer funds to the Reserve Account so that the funds available in the Reserve Account is equal to or greater than the Reserve Balance. Merchant will promptly provide immediately available funds to indemnify Company or its Third-party Sender if any deposited item or Debit Entry is returned and there are insufficient funds in the Reserve Account to cover such Returns.

    6.1.4   Company, its Third-Party Sender, and the ODFI shall have access to such Reserve Account and shall have the right to debit such Reserve Account for any amount due and payable to Company, its Third-Party Sender, or the ODFI by Merchant, directly or indirectly, including, without limitation, Returned Entries, damages, fees, fines, costs, or any other expense or loss corresponding to an Entry initiated by or on behalf of Merchant. Company, its Third-Party Sender, and the ODFI shall have no obligation to provide notice or obtain the consent of Merchant prior to accessing the Reserve Account. Merchant shall provide all authorizations and consents necessary for Company, its Third-Party Sender, and the ODFI to access the Reserve Account.

    6.1.5   Without limiting the foregoing, Company, its Third-Party Sender, and the ODFI shall also have the right to access the Reserve Account for the following purposes: (a) to receive payment for any Returns; (b) to reimburse Company, its Third-Party Sender, or the ODFI for any Entries for which Company, its Third-Party Sender, or the ODFI expended any funds on behalf of Merchant; and (c) to indemnify Company, its Third-Party Sender, or the ODFI in case of any actual or alleged errors, mistakes or other unforeseen problems that may arise which are associated with any Entries.

    6.1.6   Merchant shall maintain the Reserve Balance in the Reserve Account throughout the period in which Merchant continues this contractual relationship with Company and for a period of at least **24** months after the last Debit Entry initiated by Merchant.

6.2   **Security Interest**. To secure all of Merchant's present and future obligations to Company, its Third-Party Sender, and the ODFI (Company, its Third-Party Sender, and the ODFI are referred to as "Secured Party" for purposes of this Section 6.2) under this Agreement, Merchant hereby grants to Secured Party liens and security interests in all of Merchant's rights to and interests in the following, presently existing or hereafter acquired, and in any interest earned thereon and proceeds thereof (collectively, "Collateral"): (i) the Reserve Account, (ii) the Settlement Account, (iii) any deposit account now or hereafter maintained by Merchant with the Secured Party, (iv) any of Merchant's funds now or hereafter in the possession of the Secured Party, and (v) all amounts now or hereafter owing to Merchant under this Agreement. Each Secured Party is hereby authorized (and any related notice and demand are hereby expressly waived), to set off, recoup and to appropriate and apply any and all such amounts owing, funds held, account balances and other Collateral against and on account of Merchant's obligations under this Agreement, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. In the case of any Collateral consisting of a deposit account with any other Secured Party or any other financial institution, Merchant hereby agrees that Secured Party shall have control thereof and the depository will (and is hereby authorized to) comply with instructions originated by Secured Party directing disposition of funds in the deposit account without further consent by Merchant. Merchant agrees to duly execute and deliver to Secured Party such additional instruments, documents and agreements as may be reasonably requested to perfect and confirm the liens, security interests in deposit accounts and other Collateral set forth in this Agreement. Merchant agrees that Secured Party may file such financing statements in Merchant's name describing any or

5

all of the Collateral and take such other action as they may require in order to perfect their liens and security interests therein.

6.3   **Transaction Limits and Maximum Exposure Limit**. Prior to or contemporaneous with the execution of this Agreement, Company, Third-Party Sender and the ODFI shall review the financial and business history of Merchant and establish Merchant's Transaction Limit and Maximum Exposure Limit. Company, Third-Party Sender and the ODFI shall have the right to modify the Transaction Limit and Maximum Exposure Limit established for Merchant at any time upon providing Merchant written notice.

ARTICLE 7: FEES

7.1   **Charges.** Company's charges for Services rendered to Merchant under this Agreement shall be computed in accordance with the Fee Schedule. Company may change the fees upon 30 days' prior written notice to Merchant. Payment of these fees will be made by a direct charge to the Settlement Account. If a debit for Company's fees is returned or uncollectible for a period of three (3) days after its transmittal, Company may cease providing Services for Merchant and will be excused from the performance of all its obligations hereunder until the fees and all service charges with respect thereto have been paid in good funds.

7.2   **Taxes**. The charges do not include any taxes, duties or other governmental charges (collectively "Taxes"), such as but not limited to sales, use, excise, and value added taxes. Merchant shall pay all Taxes levied or imposed by any governmental authority in connection with the Services, but excluding taxes which are imposed on Company's net income.

7.3   **Tax Name and ID**. Merchant shall provide to Company its correct and accurate tax filing name and tax identification number for the U.S. Internal Revenue Service. Merchant bears all liability and agrees to indemnify, defend and hold harmless Company, Third-Party Sender and ODFI, including all of their directors, officers, employees and affiliates, from any and all claims, liabilities, losses, damages, fines, costs or other expenses (including attorneys' fees and costs) suffered or incurred arising out of, relating to or involving in any way Merchant's failure to provide an accurate tax filing name or tax identification number.

7.4   **Section 6050W Reporting Obligations**. Merchant acknowledges that pursuant to Section 6050W of the Internal Revenue Code, Company, or Third-Party Sender with respect to any amounts it directly funds to Merchant pursuant to Paragraph 5.4 of this Agreement, is responsible for filing with the Internal Revenue Service ("IRS") annual information returns for all reportable payment transactions to Merchants for whom Company, or Third-Party Sender where applicable, process transactions under this Agreement. Merchant shall cooperate with Company, or Third-Party Sender as applicable, and take all reasonable steps to aid their reporting obligations and compliance with Section 6050W, including, but not limited to, provide an accurate and verifiable tax filing name and tax identification number ("TIN") for each Merchant account. Merchant further acknowledges and agrees that if it fails to provide an accurate tax filing name or TIN information, the IRS notifies Company or Third-Party Sender of a discrepancy between the information provided by Merchant and the IRS records, or if requested by the IRS for any reason, Company, or Third-Party Sender where applicable, shall be required to perform backup withholding from Merchant funding by deducting and withholding income tax in an amount based on the IRS withholding regulations at the time withholding is required from the gross amount of each reportable transaction pursuant to Section 6050W and its corresponding regulations. Merchant expressly authorizes Company, or Third-Party Sender as applicable, to withhold from Merchant's funding or debit Merchant's Settlement Account (or another account designated by Merchant if there are insufficient funds in the Settlement Account to cover the required withholding) for any and all backup withholding amounts required by Section 6050W and its corresponding regulations.

ARTICLE 8: REPRESENTATIONS, WARRANTIES AND INDEMNIFICATION

8.1   **Representations and Warranties of Merchant.** In addition to all other representations and warranties made in this Agreement, Merchant represents and warrants the following to Company, its Third-Party Sender, and the ODFI; now and as of the time it initiates each Entry:

    8.1.1   As to each Credit Entry submitted by Merchant: (a) Each person shown as the Receiver on an Entry received by Company or its Third-Party Sender from Merchant has authorized the initiation of such Entry and the crediting of its account in the amount and on the Effective Entry Date shown on such Entry; (b) Such authorization is operative at the time of transmittal or crediting by Company or its Third-Party Sender as provided herein; (c) Entries transmitted to Company or its Third-Party Sender by Merchant are limited to those types of credit Entries set forth on the Application and in the Guidelines; (d) The Entry is timely; (e) The Entry is in conformity with the NACHA Rules, Guidelines, Applicable Laws and all ODFI and Agency requirements; (f) That, at the time the Entry is transmitted to the ACH Network by Company or its Third-Party Sender, Merchant does not have actual knowledge of the revocation or termination of the authorization by the Receiver; (g) That the Receiver's authorization is neither inoperative nor ineffective by operation of law, nor has it been terminated by operation of law; (h) That Merchant has provided all written disclosures required by the NACHA Rules, Applicable Laws and all ODFI or Agency requirements to all consumers on whose behalf Company or its Third-Party Sender performs any Service; (i) Merchant will comply with all provisions of the NACHA Rules, Guidelines, Applicable Laws and all ODFI and Agency requirements applicable to the Services provided to Merchant; and (j) Merchant acknowledges and agrees that all Entries originated as part of a Service shall comply with all Applicable Laws and regulations, including but not limited to, any economic sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and shall not act on behalf of, or transmit funds to or from, any party subject to such sanctions.

    8.1.2   As to each Debit Entry submitted by Merchant: (a) The Entry is for a sum due and owing to Merchant/Originator from a Customer or for a sum specified by a Customer to be paid to Merchant; (b) The Entry is timely; (c) The Entry is forwarded in accordance with an authorization executed by the Receiver and held by the Merchant/Originator; (d) The Entry is in conformity with the NACHA Rules, Guidelines, Applicable Laws and all ODFI and Agency requirements; (e) That, at the time the Entry is transmitted to the ACH Network by Company or its Third-Party Sender, Merchant does not have actual knowledge of the revocation or termination of the authorization by the Receiver; (f) That the Receiver's authorization is neither inoperative nor ineffective by operation of law, nor has it been terminated by operation of law; (g) The Entry is of a type of debit Entry specified in the Application and the Guidelines; (h) The Merchant/Originator has complied with the NACHA Rules, Guidelines, Applicable Laws and all ODFI and Agency requirements pertaining to the Entry; (i) Merchant shall be bound by and comply with the NACHA Rules as in effect from time to time, including, without limitation, the provision making payment of an Entry by the RDFI of final settlement for such Entry; and Merchant specifically acknowledges that it has received notice of the NACHA Rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Merchant shall not be deemed to have paid the Receiver the amount of the Entry; (j) Merchant will comply with all provisions of the NACHA Rules, Guidelines, Applicable Laws and all ODFI and Agency requirements applicable to the Services provided to Merchant; and (k) Merchant acknowledges and agrees that all Entries originated as part of a Service shall comply with all Applicable Laws and regulations, including but not limited to, any economic sanctions administered by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) and shall not act on behalf of, or transmit funds to or from, any party subject to such sanctions.

    8.1.3   Merchant, including its subsidiaries, predecessors, principals, officers or managing members, has complied with and shall remain in compliance with all NACHA Rules, Guidelines, ODFI and Agency requirements and Applicable Laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of all Federal, state, local and foreign governments and all Agencies thereof, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of them alleging any failure to comply. Merchant further represents and warrants that it shall

not originate any Entries that constitute (i) improper outbound telemarketing in violation of the TSR or other Applicable Laws or NACHA Rules; (ii) sales or marketing of advance-fee credit cards in violation of the TSR or other Applicable Laws or NACHA Rules; (iii) restricted Internet gambling transactions; and/or (iv) unlawful Internet or other remote tobacco sales.

8.1.4   Merchant is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization.

8.1.5   Merchant has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder. This Agreement constitutes valid and legally binding obligations of Merchant and is enforceable in accordance with its terms and conditions.

8.1.6   Neither the execution or delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will violate any statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government Agency, or court to which Merchant is subject or any charter of Merchant, or conflict with or create any right to accelerate, terminate, modify, or cancel or require any notice under any other agreement, or other arrangement to which Merchant is a party or by which either is bound.

8.1.7   Merchant has provided to Company a copy of any and all government or Agency inquiries or complaints regarding Merchant or any of its subsidiaries, predecessors, principals, officers or managing members.

8.1.8   The information, authorizations, documents, reports, financial statements, and other documentation provided by Merchant pursuant to this Agreement are correct, accurate, and complete and do not contain any untrue or misleading statement or fact.

8.1.9   The representations and warranties made by Merchant in this Agreement shall survive termination of this Agreement and the termination of processing services provided by Third-Party Sender.

8.1.10   Company or Third-Party Sender, in their sole and absolute discretion, have the right to immediately suspend or terminate processing for Merchant and/or this Agreement if Company, Third-Party Sender, the ODFI or any applicable Agency believes that Merchant has breached these representations and warranties, any other representations and warranties made elsewhere in this Agreement, or has initiated any unauthorized Entries.

8.1.11   In addition to all other indemnification obligations in this Agreement, Merchant agrees to indemnify, hold harmless and defend Company, Third-Party Sender and the ODFI, including their directors, officers, employees and affiliates, for any claims, losses, liabilities, costs, fines or expenses suffered or incurred (including attorneys' fees and costs) relating to, arising out of or involving any actual or alleged breach of these representations and warranties, any other representations and warranties made elsewhere in this Agreement, or unauthorized Entries.

8.1.12   If Merchant breaches these representations and warranties, any other representations and warranties made elsewhere in this Agreement, or has initiated any unauthorized Entries, Merchant acknowledges that Company, Third-Party Sender and/or ODFI will suffer irreparable harm and the total amount of monetary damages for any injury to them will be impossible to calculate and therefore are an inadequate remedy. Accordingly, Company, Third-Party Sender or ODFI, as applicable, may (i) seek temporary and permanent injunctive relief against Merchant, or (ii) exercise any other rights and seek any other remedies to which Company, Third-Party Sender or ODFI, as applicable, may be entitled to at law, in equity and under this Agreement. This Paragraph 8.1.12 shall survive any expiration or termination of the Agreement.

8.2   **Indemnification.** In addition to all other indemnification obligations in this Agreement, which shall not be limited or modified in any way by this Paragraph, Merchant agrees to indemnify, defend and hold harmless Company, its Third-Party Sender , and the ODFI, including their respective directors, officers, employees, and affiliates, against any and all claims, liabilities, losses, demands, damages, fines, expenses or costs of any kind, including attorneys' fees and costs of litigation, arising out of, relating to or involving any third party or governmental actions resulting from (i) Merchant's actual or alleged negligence, fraudulent or willful misconduct or that of Merchant's directors, officers, affiliates, agents or employees, (ii) any and all fines and/or liabilities imposed against Company, its Third-Party Sender , or the ODFI for a NACHA Rules violation caused by an action or omission of Merchant or that of Merchant's directors, officers, affiliates, agents or employees, regardless of whether the violation was unintentional or inadvertent, (iii) Merchant's actual or alleged breach of any representation, warranty or obligation under this Agreement; (iv) Merchant's actual or alleged violation of any Applicable Law, NACHA Rule, Guideline or ODFI or Agency requirements, or (v) any other claims (whether actual or alleged) in any way relating to Merchant's business activities that are the subject of this Agreement.

ARTICLE 9: LIMITS ON LIABILITY

9.1   **Reliance on Merchant.** In the performance of the Services required by this Agreement, Company, its Third-Party Sender, and the ODFI shall be entitled to rely on the information, representations, and warranties that Merchant or its Authorized Individuals provide, and shall not be responsible for the accuracy, completeness, or authenticity thereof.

9.2   **Disclaimer.** THIS AGREEMENT IS A SERVICE AGREEMENT. THE SERVICES AND OTHER INDIVIDUAL COMPONENTS ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. COMPANY, ITS THIRD-PARTY SENDER , AND EACH ODFI DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES REGARDING NON-INFRINGEMENT, QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.

9.3   **Consequential Damages.** IN NO EVENT WILL COMPANY, ITS THIRD-PARTY SENDER , OR THE ODFI BE LIABLE FOR LOST PROFITS, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, HOWSOEVER CAUSED, AND ON ANY THEORY OF LIABILITY, WHETHER FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE. THESE LIMITATIONS WILL APPLY WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE PARTIES ACKNOWLEDGE THAT THE CONSIDERATION BARGAINED FOR IN THIS AGREEMENT WAS BASED UPON THE FOREGOING LIMITATION OF LIABILITY.

9.4   **Limitation of Liability.** SUBJECT TO THE FOREGOING, COMPANY'S, ITS THIRD-PARTY SENDER'S, AND/OR EACH ODFI'S JOINT AND SEVERAL LIABILITY FOR DAMAGES OF ANY KIND OR NATURE IN CONNECTION WITH THIS AGREEMENT SHALL IN NO EVENT EXCEED THE LESSER OF: (A) THE CHARGES FOR THE TRANSACTIONS WHICH COMPANY OR ITS THIRD-PARTY SENDER HAS FAILED TO PROCESS IN ACCORDANCE WITH THIS AGREEMENT OR (B) $5,000.

9.5   **Force Majeure.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL COMPANY, ITS THIRD-PARTY SENDER , OR ANY ODFI BE LIABLE OR RESPONSIBLE FOR ANY DELAYS OR ERRORS IN ITS PERFORMANCE OF THE SERVICES IF, AND TO THE EXTENT, SUCH DEFAULT OR DELAY IS CAUSED, DIRECTLY OR INDIRECTLY, BY (I) FIRE, FLOOD, ELEMENTS OF NATURE OR OTHER ACTS OF GOD; (II) ANY OUTBREAK OR ESCALATION OF HOSTILITIES, WAR, RIOTS OR CIVIL DISORDERS IN ANY COUNTRY; (III) ANY ACT OR OMISSION BY MERCHANT OR ANY AGENCY OR GOVERNMENT AUTHORITY; (IV) ANY LABOR DISPUTES (WHETHER OR NOT EMPLOYEES' DEMANDS ARE REASONABLE OR WITHIN THE PARTY'S POWER TO SATISFY); OR (V) THE NONPERFORMANCE BY A THIRD PARTY, INCLUDING WITHOUT LIMITATION, FAILURES OR FLUCTUATIONS IN TELECOMMUNICATIONS OR OTHER EQUIPMENT. IN ANY SUCH EVENT, COMPANY, THIRD-PARTY SENDER AND EACH ODFI SHALL BE EXCUSED FROM ANY FURTHER

PERFORMANCE AND OBSERVANCE OF THE OBLIGATIONS SO AFFECTED.

ARTICLE 10: TERM AND TERMINATION

10.1   **General**. The initial term of this Agreement shall be for a period of two (2) years beginning on the later of (a) the date of acceptance of this Agreement by Company; or (b) commencement of processing (the 'Term"), and shall renew for additional successive one (1) year terms unless any party hereto provides the other written notice of its intent not to renew prior to the expiration of the then current term. This Agreement may be terminated by Company upon thirty (30) days' written notice to Merchant, provided that applicable portions of this Agreement shall remain in effect for 24 months after the effective date of termination with respect to the Reserve Account and any Entries that Merchant initiates prior to the effective termination date, to clear all Returns against the Settlement Account. After termination of this Agreement for any reason whatsoever, Merchant shall continue to bear total responsibility for all Returns, fees and adjustments resulting from Entries processed pursuant to this Agreement and all other amounts then due or which thereafter may become due under this Agreement.   Nothing in this Section or this Agreement shall affect Third-Party Sender's right to immediately suspend or terminate processing for Merchant for any reason, in its sole and absolute discretion.   In the event Third-Party Sender suspends or terminates processing for Merchant, Company will promptly notify Merchant.

10.2   **Termination for Cause.** Company shall also have the right to terminate this Agreement immediately for cause, which shall include but not be limited to:

10.2.1   Merchant's failure to pay or settle Entries;

10.2.2   Merchant's failure to maintain the requisite balance in the Settlement Account or Reserve Account;

10.2.3   Merchant's failure to pay Company's fees or service charges within three (3) days after transmittal of a Debit to the Settlement Account therefore;

10.2.4   Merchant's breach of this Agreement or any representations and warranties made herein;

10.2.5   Merchant's noncompliance with Applicable Laws, the NACHA Rules or any ODFI or Agency requirement;

10.2.6   Excessive returned or rejected Entries (over the Return Thresholds) submitted by Merchant, in terms of number or amount;

10.2.7   Company's receipt of unauthorized, false, or fraudulent Entries or Files of Entries, or inaccurate or fraudulent authentication data;

10.2.8   Merchant's failure to conform to the requirements or specifications of Company, Third-Party Sender, ODFI or any applicable Agency; or

10.2.9   The Company is required by the ODFI, any Agency or other state or federal regulatory bodies to terminate its contractual relationship with Merchant.

10.3   **Termination Fee.**   Termination of this Agreement by Merchant prior to the expiration of the Term shall result in the assessment of fees determined by: (i) computing the number of months remaining from the date of termination to the end of the then current initial or renewal Term, and multiplying that number by the Merchant's minimum monthly fees, if any; and (ii) adding an account closure fee as follows: (1) $250 for Merchants with less than twelve months remaining from the date of termination to the end of the then current Term; (2) $500 for Merchants with twelve to twenty four months remaining; or (3) $1000 for Merchants with more than twenty four months remaining.

ARTICLE 11: DISPUTES

11.1   **Disputes.** Any Dispute (defined below) between the parties, including third-party beneficiaries, arising out of, relating to or involving the validity, construction, interpretation or performance of this Agreement, the Services or Merchant's business activities, which cannot be amicably resolved will be submitted to binding arbitration in accordance with the terms of this Article 11. A "Dispute" shall mean any action, dispute, claim or controversy of any kind, whether in contract or tort, statutory or common law, legal or equitable, now existing or hereafter arising under or in connection with, or in any way pertaining to this Agreement, the Services or Merchant's business activities. Any party may by summary proceedings, bring an action in court to compel arbitration of a Dispute. Any party who fails or refuses to submit to arbitration following a lawful demand by any other party shall bear all costs and expenses incurred by such other party in compelling arbitration of any Dispute.

11.2   **Governing Rules.** Arbitration proceedings shall be administered by the American Arbitration Association ("AAA") or such other administrator as the parties shall mutually agree upon. If there is any inconsistency between the terms hereof and any such rules, the terms and procedures set forth herein shall control. The arbitration shall be conducted at a location in Phoenix, Arizona selected by the AAA or other administrator. All statutes of limitation applicable to any Dispute shall apply to any arbitration proceeding. All discovery activities shall be expressly limited to matters directly relevant to the Dispute being arbitrated. Judgment upon any award rendered in arbitration may be entered in any court having jurisdiction; provided however, that nothing contained herein shall be deemed to be a waiver, by any party that is a bank, of the protections afforded to it under 12 U.S.C. §91 or any similar applicable state law.

11.3   **No Waiver; Provisional Remedies**. No provision hereof shall limit the right of any party to obtain provisional or ancillary remedies, including, without limitation, a temporary restraining order, preliminary injunctive relief, attachment, or the appointment of a receiver, from a court of competent jurisdiction before, after or during the pendency of any arbitration or other proceeding. The exercise of any such remedy shall not waive the right of any party to compel arbitration or reference hereunder.

11.4   **Arbitrator Qualifications and Powers; Awards**. Arbitrators are empowered to resolve Disputes by summary rulings in response to motions filed prior to the final arbitration hearing. Arbitrators (i) shall resolve all Disputes in accordance with the substantive law of the state of Arizona without regard for the principles of conflicts of law, (ii) except as provided in Paragraph 11.5 herein, may grant any legal or equitable remedy or relief that a court of the state of Arizona could order or grant within the scope hereof and such ancillary relief as is necessary to make effective any award, and (iii) shall have the power to award recovery of all costs and fees (including attorneys' fees), to impose sanctions and to take such other actions as they deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Arizona Rules of Civil Procedure or other applicable law. Any Dispute in which the amount in controversy is $1,000,000 or less shall be decided by a single arbitrator who shall not render an award of greater than $1,000,000 (including damages, costs, fees and expenses). By submission to a single arbitrator, each party expressly waives any right or claim to recover more than $1,000,000. Any Dispute in which the amount in controversy exceeds $1,000,000 shall be decided by majority vote of a panel of three arbitrators; provided however, that all three arbitrators must actively participate in all hearings and deliberations. In the event three arbitrators are needed, each party shall select an arbitrator and the third arbitrator shall be selected by the other two arbitrators.   All arbitrators shall be selected from a list prepared by AAA (subject to AAA's conflicts of interest rules), unless otherwise agreed by the parties. The decision or award of the arbitrator(s) shall be final and binding upon the parties.   Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction.   No party shall have the right to file an appeal or seek to vacate an arbitrator(s) decision or award.

11.5   **Damages**. The arbitrator(s) will have no authority to award punitive, consequential or other damages not measured by the prevailing party's actual damages, except as may be required by statute. Each party agrees that it shall pay (i) its own expenses of arbitration; (ii) one-half of the costs of commencing arbitration with the AAA; and (iii) one-half of the remainder of any costs of the AAA, including the costs of the arbitrator(s), subject to a subsequent award of such costs and expenses by the arbitrator(s). The prevailing party in any arbitration pursuant to this Article 11 shall be entitled to an award of all attorneys' fees, expenses, and costs incurred in connection with such arbitration.

11.6   **Miscellaneous.** To the maximum extent practicable, the AAA, the arbitrators and the parties shall take all action required to conclude any arbitration proceeding within 180 days of the filing of the Dispute with the AAA. No arbitrator or other party to an arbitration proceeding may

disclose the existence, content or results thereof, except for disclosures of information by a party required in the ordinary course of its business, by applicable law or regulation, or to the extent necessary to exercise any judicial review rights set forth herein. This arbitration provision shall survive termination, amendment or expiration of the Agreement or any relationship between the parties.

ARTICLE 12: ADDITIONAL TERMS AND CONDITIONS

12.1 **Third-Party Sender Right to Invoke Terms of This Agreement**. Merchant agrees that Third-Party Sender , as an intended third-party beneficiary of this Agreement, has the right, in its sole and absolute discretion, to at any time and without prior notice to Merchant, invoke and enforce any and all of the terms in this Agreement,   Third-Party Sender   shall have the right described in this Paragraph during the Term of this Agreement and after termination for all rights and terms of the Agreement that survive termination of this Agreement or processing for Merchant.

12.2 **Volume Analysis**. Company, through its Third-Party Sender, will routinely analyze Merchant origination and return activity.   In the event Merchant exceeds its established Returns Threshold, ceases to do business with Company, or Third-Party Sender ceases to process transactions for Merchant under this Agreement for any reason, Third-Party Sender shall have the right at any time to place all of the provisional or final credit that would otherwise be provided to Company for the purpose of funding Merchant for each Debit Entry originated by it into an account held by Third-Party Sender for a period of **24** months from the last Debit Entry. Third-Party Sender shall have the right to offset against amounts paid to Company for the purpose of funding Merchant for all Returned Entries, fees, damages, or other costs that may arise out of ACH processing for the Merchant. Neither Company nor Third-Party Sender shall have any liability whatsoever to Merchant for the retention of funds or maintenance of the account described in this Paragraph.

12.3 **Liquidated Damages**.   Notwithstanding any other provision of this Agreement, in the event that Merchant violates any NACHA Rule, Guideline, Applicable Law or ODFI or Agency requirement, or is in breach of the representations and warranties made in this Agreement regarding its compliance with all NACHA Rules, Guidelines, Applicable Laws and ODFI and Agency requirements, Merchant shall pay to Company and/or Third-Party Sender as applicable as liquidated damages an amount equal to 30% of the provisional or final credit for each Debit Entry or item that may otherwise be provided to Merchant at the expiration or termination of this Agreement.   The parties agree that Company and Third-Party Sender's damages for Merchant's violation of any NACHA Rule, Guideline, Applicable Law or ODFI or Agency requirement, or breach of Merchant's representations and warranties regarding its compliance with all applicable NACHA Rules, Guidelines, Applicable Laws and ODFI and Agency requirements, would be uncertain and difficult to ascertain and that the liquidated damages described in this Paragraph are reasonably related to Company and/or Third-Party Sender's actual damages and are a reasonable estimate of the damages which Company and/or Third-Party Sender would in fact suffer in the event of Merchant's failure to comply with all NACHA Rules, Guidelines, Applicable Laws and ODFI and Agency requirements, or Merchant's breach of its representations and warranties regarding its compliance with the NACHA Rules, Guidelines, Applicable Laws and ODFI and Agency requirements.

12.4 **Amendments.** This Agreement may be amended by Company at any time upon thirty (30) days written notice to Merchant. All intended third-party beneficiaries to this Agreement, including ODFI and Third-Party Sender, shall also be considered to be intended third-party beneficiaries of any amended Agreement.

12.5 **Implementation Materials**. Promptly on or following the Effective Date, Merchant will be allowed to access and utilize the Services and Merchant will be provided by Company with information and materials to utilize the Services. Such information and materials and all intellectual property rights associated therewith will remain the property of Company, Third-Party Sender and/or its suppliers. Merchant agrees to restrict use and access to Merchant's password and log-on ID to Merchant's employees and agents as may be reasonably necessary, and will ensure that each such employee or agent complies with all applicable provisions of this Agreement. Merchant will not give, transfer, assign, sell, resell or otherwise dispose of the information and materials provided to Merchant to utilize the Services. Merchant is solely responsible for maintaining adequate security and control of any and all IDs, passwords, or any other codes that are issued to Merchant by Company, Third-Party Sender or its suppliers.

12.6 **Non-Disclosure of Confidential Information, Proprietary Information, or Trade Secrets**.   Merchant agrees herein that the process utilized by Third-Party Sender, on behalf of Company, for providing ACH Services, and all written communications concerning ACH Services hereunder are the confidential and proprietary information of Third-Party Sender and are trade secrets of Third-Party Sender. Merchant agrees that neither it nor any of its employees, agents, representatives, independent contractors, or anyone under its control, will disclose any of Third-Party Sender or Company's confidential, proprietary information or trade secrets to any person or entity that is not a party or intended third-party beneficiary to this Agreement without the prior express written consent of Third-Party Sender or Company, as applicable.

12.7 **Confidentiality**.   Without limiting any of the foregoing, each party represents, warrants and mutually agrees that all information concerning the other party which comes into its possession during the Term of this Agreement shall be maintained as confidential and shall not be used or divulged to any other party except as necessary to permit the activities contemplated under this Agreement or as required by law.

12.8 **Customer Service**.   Merchant agrees to maintain, support and staff a customer service line with a U.S. domiciled telephone number during normal U.S. business hours to assist Customers. If Client fails to maintain a working customer service telephone line then Company or its Third-Party Sender will, at their sole and absolute discretion and without prior notice to Merchant, process customer services calls on behalf of the Merchant at a charge of $5.00 per inbound/outbound call and $5.00 per refund processed.

12.9 **Assignment.** This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of Merchant, Company and Third-Party Sender. Merchant will not have the right or the power to assign any of Merchant's rights or delegate the performance of any of Merchant's obligations under this Agreement without the prior written consent of Company, including in the case of a merger. Company and Third-Party Sender have the right to assign all of their rights, duties and obligations under this Agreement.

12.10 **Entire Agreement; Effective Date**. This Agreement, including the exhibits and schedules hereto, constitutes the entire agreement between the parties, supersedes all prior agreements, oral or written, and may be modified or amended only by a writing signed by all parties. This Agreement becomes effective when the first Entry is initiated by Company, through its Third-Party Sender, on behalf of Merchant.

12.11 **Headings**. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions hereof.

12.12 **Governing Law**. This Agreement, the rights and obligations of the parties hereto, and all claims arising out of, relating to or involving this Agreement, performance hereunder or Merchant's business activities, shall be governed by and construed and enforced in accordance with the internal laws of the United States and the State of Arizona, excluding its conflict of laws rules.

12.13 **Jurisdiction and Venue**. In the event that either party to this Agreement, Third-Party Sender, or Guarantor commences legal action seeking monetary, declaratory, or injunctive relief with respect to claims arising out of, relating to or involving this Agreement, performance hereunder or Merchant's business activities, they (i) agree that any such action may be commenced only in a court of competent subject-matter jurisdiction in Maricopa County, Arizona, (ii) consent to exclusive venue and personal jurisdiction in such a court, and (iii) waive any defense of lack of venue or personal jurisdiction in any such suit, action, or proceeding. The parties identified in this Paragraph further (A) agree that process in any such suit, action, or proceeding may be served by mailing a copy thereof by certified mail, return receipt requested, to the other party at the address set forth on the application for the Services, and (B) waive any defense of insufficiency of service of such process.

12.14 **Attorneys' Fees.** The prevailing party in any legal action or arbitration regarding the enforcement, interpretation, or violation of this Agreement, or any and all claims arising out of, relating to or involving this Agreement, performance hereunder, the Services or Merchant's business activities, shall be entitled to an award of all expenses, court costs, and attorneys' fees incurred in connection with such litigation or arbitration.

12.15 **Severability**. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective

during the term hereof, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part hereof; and the remaining provisions herein shall remain in full force and effect. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

12.16 **Waiver**. Waiver of the benefit of any provision of this Agreement must be in writing to be effective. The waiver by any party hereto of a breach of any provision hereof shall not operate or be construed as a waiver of any subsequent breach. No action taken pursuant to this Agreement shall be deemed to constitute a waiver by such party of compliance by the other party hereto with any of the covenants or other obligations contained herein. A failure by a party to insist upon strict compliance with any term of this Agreement, enforce any right, or seek any remedy upon any default of any other party shall not affect, or constitute a waiver of, such party's right to insist upon such strict compliance, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default.

12.17 **Notice**. Any notice or other communication required or permitted by this Agreement shall be in writing and may be given by personal delivery, overnight delivery service or certified mail (return receipt requested) (postage prepaid). Notice may also be given by facsimile or e-mail if followed up by a writing given by personal delivery, overnight delivery service, or certified mail (return receipt requested) (postage prepaid). Notice shall be deemed given upon personal or electronic delivery thereof, on the day after such notice is deposited with an overnight delivery service, or upon receipt of delivery of such notice by certified mail. Notices shall be sent to the addresses set forth on in this agreement or its' exhibits hereto. Failure or refusal of a party to accept receipt of a notice or other communication hereunder shall in no manner invalidate the notice.

12.18 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile or scanned signatures, which shall have the same force and effect as original signatures.

12.19 **No Partnership or Agency; Independent Contractors**. No agency, partnership, joint venture or employment relationship is created between Merchant and Company or its Third-Party Sender by way of this Agreement. In the performance of their respective obligations hereunder, the parties are, and will be, independent contractors. Nothing in this Agreement will be construed to constitute either party as the agent for the other for any purpose whatsoever. Neither party will bind, or attempt to bind, the other party to any contract or the performance of any obligation, and neither party will represent to any third party that it has any right to enter into any binding obligation on the other party's behalf.

12.20 **USA PATRIOT ACT Requirements**. TO HELP THE GOVERNMENT FIGHT THE FUNDING OF TERRORISM AND MONEY LAUNDERING ACTIVITIES, U.S. FEDERAL LAW REQUIRES FINANCIAL INSTITUTIONS TO OBTAIN, VERIFY, AND RECORD CERTAIN IDENTIFYING INFORMATION FROM ANY BUSINESS OR INDIVIDUAL SEEKING TO OPEN A NEW ACCOUNT. THE INFORMATION COMPANY, ITS THIRD-PARTY SENDER, AND THE ODFI ARE REQUIRED TO OBTAIN AND VERIFY INCLUDES NAME, ADDRESS, DATE OF BIRTH FOR INDIVIDUALS, AND OTHER INFORMATION THAT WILL ALLOW THE ODFI TO IDENTIFY MERCHANT.

12.21 **Continuing Guaranty**. As a primary inducement to Company to enter into this Agreement, and for Third-Party Sender to approve the Application of Merchant and begin processing payments, the Guarantor(s), individually and severally, who signed on the Guarantor signature line(s) on the Application, agree to be bound by all terms and provisions of this Agreement to the same extent and in the same manner as Merchant, and unconditionally and irrevocably, personally guarantee the continuing full and faithful performance and payment by Merchant of each and all of Merchant's duties and obligations to Company and Third-Party Sender under this Agreement or any other agreement currently in effect or in the future entered into between Merchant or its principals and Company or Third-Party Sender, as such agreements now exist or are amended from time to time, with or without notice to Guarantor(s). Guarantor(s) understands that Company or Third-Party Sender, without notice to Guarantor(s), may from time to time renew or extend the Agreement, modify rates, limits, charges and fees, or modify the amount or type of Services provided to Merchant, all of which may increase the Guarantor's obligations under this Guaranty. Guarantor(s) further understands that Company or Third-Party Sender may proceed directly against Guarantor(s) without first exhausting Company or Third-Party Sender's remedies against the Merchant, any other person or entity responsible to Company or Third-Party Sender or any security held by Company or Third-Party Sender. This Guaranty is a continuing guaranty and will not be discharged or affected by the release or discharge of Merchant or the death of the Guarantor(s). This Guaranty will bind all heirs, administrators, and representatives of the Guarantor(s) and may be enforced by or for the benefit of any successor of Company or Third-Party Sender. To the fullest extent permissible under applicable law, Guarantor(s) waives any and all rights of subrogation, reimbursement or indemnity derived from Merchant, all other rights and defenses available to Merchant, and all other rights and defenses available to Guarantor(s).