

## COMPANY AGREEMENT FOR ACH ORIGINATION

**THIS COMPANY AGREEMENT FOR ACH ORIGINATION** (the "Agreement") is made and entered into

this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_,

by and between, \_\_\_\_\_,

("Company") and Advantage Payment Systems, LLC, dba Advantage ACH, ("Processor").

**WHEREAS**, Processor is a third-party processor affiliated with one or more Originating Depository Financial Institutions (individually, each is an "ODFI");

**WHEREAS**, Processor and the ODFI are associated with the National Automated Clearing House Association ("NACHA");

**WHEREAS**, Company desires that Processor permit Company to initiate through the ACH Operator, as permitted by the ODFI, for the deposit ("Credit") and/or collection ("Debit") of money to and/or from the accounts of Company's employees, customers, vendors or clients ("Customers") maintained at Participating Depository Financial Institutions, by means of the Automated Clearing House Network; and

**WHEREAS**, Processor, subject to the approval of the ODFI, is willing to allow the Company to initiate such Entries in accordance with the terms of this Agreement and the Rules of the National Automated Clearing House Association.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants set forth herein, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

### **ARTICLE I** **DEFINITIONS**

1.1 **General**. Unless otherwise defined herein, capitalized terms shall have the meaning provided in the Rules, which are incorporated into this Agreement by reference.

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

"ACH" or "Automated Clearing House" shall mean the funds transfer system governed by the Rules, which provides for the inter-bank clearing of electronic entries for participating financial institutions.

"ACH Operator" shall mean the Automated Clearing House Operator who is the central clearing facility, operated by the Federal Reserve Bank (FRB) on behalf of depository financial institutions to or from which certain participating financial institutions transmit or receive Entries. ACH Operator shall also have the meaning set forth in Section 13.1. 1. of the Rules.

"Agreement" shall mean this agreement by and among Processor and the Company, and all addenda, schedules, exhibits and attachments hereto.

"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.

"Data" shall mean, as applicable, pre-notifications, returned entries, adjustment entries, notifications of change and/or other notices or data transmitted through one or more ACH Operators pursuant to the Rules.

"Effective Entry Date" shall have the meaning set forth in Appendix Two of the Rules.

"Entry" or "Entries" shall have the meaning set forth in 13.1.20 of the Rules.

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

"Originating Depository Financial Institution" or "ODFI" shall have the meaning set forth in Section 13.1.29 of the Rules.

"Receiver" shall have the meaning set forth in Section 13.1.39 of the Rules.

"Restricted State" shall mean any state or province as defined in Exhibit F and thereafter amended where a Receiver shall have his/her primary place of residence and therefore be precluded from receiving Company originated ACH credits and debits.

"Returns" shall mean all Entries that are returned as "Return Entries" as set forth in Appendix Five of the Rules.

"Rules" shall mean the Operating Rules of the National Automated Clearing House Association, as amended from time to time.

"Special Returns" shall mean the type of returned Entries for which the risk is not typically mitigated within (3) days from the date on which the Entry was initiated.

"Third Party Processor" or "TPP" shall mean a data processing service bureau having a contractual relationship with an ODFI and originating Entries to such ODFI on behalf of Processor at Processor's request.

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

### **ARTICLE II** **ACKNOWLEDGEMENT OF ODFI RELATIONSHIP**

2.0 **General**. The Company acknowledges that the services provided by the Processor pursuant to this Agreement are by virtue of the Processor's contractual relationship with the ODFI, which is a federally insured financial institution regulated by federal and state banking agencies ("Agencies"), or if not by virtue of Processor's direct ODFI contractual relationship, then pursuant to a TPP having such contractual relationship with the ODFI. Processor, TPP, if any, ODFI, and Agencies are each relying upon accuracy of all information provided by Company pursuant to this Agreement and Company's performance of its

obligations hereunder.

2.1 ODFI's Rights. Company acknowledges that Processor, TPP, if any, and ODFI each have the right to periodically review the volume and character of the Entries initiated by the Company and the Company's business operations to evaluate the credit risk associated with processing Entries on behalf of the Company.

2.2 ODFI and TPP, if any, Is Third-Party Beneficiary. Company and Processor each acknowledge that the ODFI and TPP, if any, is each a third-party beneficiary of this Agreement, and the ODFI and TPP have all the rights of Processor under this Agreement as if they were each a party hereto.

### **ARTICLE III** **CUSTOMER AUTHORIZATIONS ; RECORDS RETENTION;** **COMPLIANCE**

3.1 Authorization. Before Company initiates any Entry on behalf of a Customer, Company shall obtain from the Customer such authorization as is required by the Rules as well as authenticate the identity of the Customer by way of commercially reasonable authentication methods. Company shall initiate no Entry after such authorization has been revoked or the arrangement between Company and Customer has terminated.

3.2 Records. Company shall retain the original or copy of each authorization for the period specified by the Rules, but not less than two (2) years, and will furnish a copy thereof if requested by Processor, TPP (if any), or the ODFI.

3.3 Compliance with Rules. Company shall at all times comply with the Rules<sup>1</sup> and has all of the rights, responsibilities, obligations, and liabilities of an "Originator" under the Rules. Company agrees to comply with the Rules in effect as of the date of this Agreement and as amended from time to time, as well as the additional obligations set forth in this Agreement.

3.4 Compliance with Laws. Company shall comply with all applicable U.S. state and federal laws and jurisdictional licensing when initiating Entries. The Company shall not, among other things, violate any prohibitions promulgated or enforced by the Office of Foreign Assets Control ("OFAC"), or act on behalf of, or transmit funds to or from, any party subject to such prohibitions.

3.5 Financial Statements. Company shall provide Processor with copies of its annual financial statements within 45 days of Company's fiscal year end; provided, however, that if Company has been in business less than two years, Company shall provide Processor with copies of its quarterly financial statements within 15 days of each fiscal quarter.

### **ARTICLE IV** **SUBMISSION AND PROCESSING OF ENTRIES**

4.1 General. Company shall deliver each Entry or file of Entries to Processor in accordance with the Rules and specifications issued by Processor, which are subject to change

<sup>1</sup>At Company's request, Processor shall provide Company with a copy of the *ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network* published by NACHA.

at any time upon reasonable notice to the Company. Processor shall not be liable for any loss or damages resulting from Company's failure to deliver any Entry or files of Entries in accordance with the foregoing.

4.2 Authentication. Company shall, contemporaneously with the submission of each Entry or file of Entries, send the Processor authenticating data by fax or e-mail. This authenticating data shall consist of the file name, the total number and aggregate dollar amount of Debits, the total number and aggregate dollar amount of Credits, the file modifier, and the name of the individual submitting the authenticating data. Processor may contact the Company to ascertain the validity of the file prior to processing. Processor assumes no responsibility for file rejection due to its inability to confirm file validity.

4.3 Time Specifications. Company shall present ACH files to Processor in accordance with the File Delivery Time Specifications in Exhibit B attached hereto.

4.4 Effective Date For Entries. The effective Entry date is the date the ACH Debit or Credit is intended to post to the account of the employee, vendor, customer, or other recipient, as stated in the Entry or file of Entries. The effective date for an Entry may be converted to a settlement date by the ACH Operator if the effective date is the same day or prior to the transmission date, or if the effective date falls on a Saturday, Sunday, or holiday on which the ODFI or ACH Operator is closed

4.5 Suspension of Services. If Company initiates or attempts to initiate Entries, which exceed the Maximum Exposure Limit, Processor shall suspend its services and Processor shall initiate no additional Entries on behalf of Company until Processor receives the consent of ODFI. In addition, if Company attempts to initiate an Entry, which exceeds the Transaction Limit, Processor shall not initiate such Entry until Processor receives the consent of ODFI.

### **ARTICLE V** **SETTLEMENT ACCOUNT**

5.1 Settlement Account. Company shall provide checking account information for the depository account to be utilized for settlement of funds ("Settlement Account"). Company shall maintain funds in the Settlement Account sufficient to offset (i) all Entries submitted and against which Returns Entries may be credited or debited as described on Exhibit A, and (ii) all fees and other charges imposed by Processor under this Agreement including those set forth in Article VII and in Exhibit B. Company hereby grants Processor, TPP (if any), and ODFI the right to access the Settlement Account for the purpose of performing the services contemplated by this Agreement and ensuring that the Company performs its obligations hereunder.

5.2 Operations of Settlement Account. Processor shall be entitled to debit the Settlement Account for (i) fees charged under Article VII and Exhibit A to this Agreement, (ii) the settlement of Credit Entries, (iii) the offsetting, of any Debit Entries that are rejected or returned by the ACH Operator, or (iv) funding that Processor may make to Company in error.

5.3 Settlement by Company for Entries. Processor will either debit or credit the Settlement Account to offset any Credit or Debit Entry initiated by Company on the date prescribed on Exhibit A, less any Processor origination fees. Company shall reimburse Processor with good and collected funds if, after

settlement has been made, (i) any Debit Entry is rejected or returned, or (ii) Processor receives any other adjustment that relates to any such Debit Entry. Company shall make such reimbursement on the date of such rejection or the date Processor receives notification of the adjustment.

#### 5.4 Erroneous Entry by Company.

6 If Company discovers that any Entry it has initiated was in error, it may notify Processor of such error and Processor will utilize its best efforts, consistent with the Rules, to correct the Entry. In all such cases, it shall be Company's responsibility to notify its affected Customers that an Entry has been made that is inconsistent with the authorization or is otherwise erroneous.

7 Processor and the ODFI shall have no liability to the Company or any Customer arising out of Company's initiation of erroneous Entries or Processor's attempts to correct such Entries, and Company shall indemnify and hold Processor, TPP (if any), and the ODFI harmless from any such liability and any pecuniary loss therefrom, including all reasonable expenses, court costs, and attorney's fees, incurred in connection with any claim or claims asserting such liability.

#### 5.5 Rejected or Returned Entry.

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

(b) Except as provided in Subsection (a) of this Section, in the event any Entries are rejected or returned by the ACH Operator or Processor for any reason whatsoever, it shall be the responsibility of Company to remake and resubmit such Entries or otherwise resolve the rejection or return in accordance with the Rules. Processor's responsibility shall be limited to receiving rejected and returned Entries from the ACH Operator, performing necessary processing, control, and settlement functions, and forwarding such Entries to Company.

(c) Processor, TPP, if any, and ODFI each have the right to reject any Entry if (i) Company has failed to comply with its Reserve Account (as defined in Section 6.1(a) hereof) requirements or the Company fails to maintain the Reserve Balance (as defined in Section 6.1(b)); (ii) failed to make any payment to Processor when due; (iii) failed to maintain sufficient funds in its Settlement Account; or (iii) breached any of its obligations under this Agreement. Processor shall attempt to notify Company by phone, fax, or e-mail of such rejection no later than the business day that Processor would otherwise have transmitted such Entry to the ACH Operator. Processor, TPP, if any, and ODFI shall each have no liability to Company by reason of the rejection of any such Entry or if such notice is not given at an earlier time than that provided for herein.

### **ARTICLE VI RESERVE ACCOUNT, TRANSACTION LIMITS AND MAXIMUM EXPOSURE LIMITS**

#### 6.1 Reserve Account.

(a) Company shall maintain the Reserve Balance in a reserve account ("Reserve Account") to be held by Processor at a financial institution designated by Processor in Exhibit A for the term of this Agreement and a period of at least one hundred eighty (180) days after termination of this Agreement.

(b) Company shall maintain a Reserve Balance (the "Reserve Balance") in its Reserve Account as set forth in Exhibit B. Such Reserve Balance shall consist of the aggregate of any credit pre-fund amounts plus amounts reserved for debit returns occurring subsequent to Settlement funding. The Reserve Balance shall be established by Processor and ODFI and may be modified by Processor and ODFI at any time upon providing Company with written notice. Company 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 shall be based on Company's return history and file activity. The time period in which Company shall have to fund the Reserve Balance shall be determined by the ODFI on a case-by-case basis.

(c) If the Reserve Balance for the Reserve Account falls more than the lesser of five percent (5%) or \$1000.00 below the amount established for the Company, the Processor shall notify the Company via telephone, facsimile, or other form of electronic communication, and the Company shall immediately transfer funds to the Reserve Account so that the funds available in the Account are equal to or greater than the Reserve Balance.

(d) Processor and ODFI shall have access to such Reserve Account and shall have the right to debit such Reserve Account for (i) any amount due and payable to Processor by Company, directly or indirectly, (ii) to settle any Return or any other loss corresponding to an Entry initiated by or on behalf of the Company, or (iii) to reimburse Processor for any losses or other liabilities Processor may incur as a result of performing services on behalf of Company under the terms of this Agreement. Processor and ODFI shall have no obligation to provide notice or obtain the consent of Company prior to accessing such Reserve Account. Company shall provide all authorizations and consents necessary for the Processor and ODFI to effect the foregoing.

(e) Without limiting the foregoing, Processor and ODFI shall have the right to access the Reserve Account for the following purposes: (i) to receive payment for any Returns; (ii) to reimburse Processor or ODFI for any Entries for which Processor or ODFI expended any funds on behalf of the Company; and (iii) to indemnify Processor or ODFI in case of any errors, mistakes or other unforeseen problems that may arise which are associated with any Entries, including but not limited to Entries originated in violation of state, sovereign nation, or Federal law.

(f) Company shall maintain the Reserve Balance in the Reserve Account throughout the period in which Company continues this contractual relationship with Processor and for a period of at least one hundred eighty (180) days provided, however, that if Processor provides notice to Company of the reasonable likelihood of a claim against Processor for which Company is or may be obligated to indemnify Processor under Section 6.1(e)(iii), Processor may hold the Reserve Balance for any period of time (i) during which either a state or Federal investigation into either Company, Processor, TPP, if any, or ODFI is either pending or is reasonably likely to occur, or (ii) during which a civil action, arbitration, or other similar proceeding has been filed or is threatened in any jurisdiction

against either Company, Processor, TPP, if any, or ODFI, or (iii) at the sole discretion of the ODFI where each instance of (i) (ii) and (iii) above shall be as a result of Entries processed by Processor, TPP, if any, and ODFI on behalf of Company. Processor shall also be entitled to hold the Reserve Balance if ordered to do so by a court or other state or federal governmental authority until such time as such order is vacated.

6.2 Transaction Limits and Maximum Exposure Limit. Prior to or contemporaneous with the execution of this Agreement Processor and ODFI shall review the financial and business history of Company and establish Company's Transaction Limit and Maximum Exposure Limit. At any time with advance written notice Processor and ODFI shall have the right to modify the Transaction Limit and Maximum Exposure Limit established for Company.

## **ARTICLE VII FEES**

7.1 Processor's charges for services rendered to the Company under this Agreement shall be computed in accordance with Exhibit B hereto. Company agrees origination fees may be deducted from Company settlement funding and all other fees invoiced and debited monthly. Processor may change fees upon 30 days' prior written notice to Company. Payment of these fees will be made by a direct charge to the Settlement Account. If a Debit for Processor's fees is returned or uncollectible for a period of three days after its transmittal, the Processor may cease providing services for Company 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.

## **ARTICLE VIII REPRESENTATION, WARRANTIES, AND INDEMNIFICATION**

8.1 Representations of Company. Company represents and warrants the following; now and as of the time it initiates each Entry:

(a) With respect to each and every Entry initiated by Company and to the best of Company's knowledge: (i) each person shown as the Receiver on an Entry transmitted by Processor 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; and (ii) such authorization is operative at the time of transmittal by Company. Company is aware of and bound by the Rules including, without limitation, the provision making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Company specifically acknowledges that it has received notice of the 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 Company shall not be deemed to have paid the Receiver the amount of the Entry.

(b) Company is in compliance with the rules and directives of the United States Treasury Department and the Office of Foreign Assets Control ("OFAC").

(c) Company has complied with all applicable laws (including rules, required licensing, 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.

(d) Company is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization.

(e) Neither the execution 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, government agency, or court to which Company is subject or any charter of Company, 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 Company is a party or by which either is bound.

(f) The information, documents, reports, financial statements, and other documentation provided by Company pursuant to this Agreement is correct, accurate, and complete and do not contain any untrue or misleading statement or fact.

(g) Company has full power and to execute and deliver this Agreement and to perform their obligations hereunder. This Agreement constitutes valid and legally binding obligations of Company and is enforceable in accordance with its terms and conditions.

(h) The representations and warranties contained in this Section 8.1 do not contain any untrue statement of fact or omit to state any fact necessary in order to make these statements and information contained in this Section 8.1 not misleading.

8.2 Indemnification. In the event of any breach of any of the warranties stated above or otherwise contained in this Agreement, Company shall indemnify and defend Processor and the ODFI and hold each harmless against and from any pecuniary loss arising out of or in respect of any such breach, including all reasonable expenses, court costs, and attorney's fees incurred in connection therewith.

## **ARTICLE IX PROCESSOR'S RESPONSIBILITIES**

9.1 Reliance on Company. In the performance of the services required by this Agreement, Processor shall be entitled to rely on the information, representations, and warranties that Company provides, and shall not be responsible for the accuracy, completeness, or authenticity thereof.

9.2 Misconduct, Force Majeure. Processor shall be answerable for its own fraudulent act or willful misconduct, but shall not otherwise be responsible for any action taken, allowed, or omitted by or under this agreement, or for any liability, loss, claim, or damage arising from an act of God, from delay occasioned in transit of data or processed work, or from other cause of event beyond the Processor's control.

9.3 Disclaimer. PROCESSOR MAKES NO WARRANTY WITH RESPECT TO THE SERVICES TO BE RENDERED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ACCURACY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL THE PROCESSOR BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES OR

FAULTY SERVICE EVEN IF THE PROCESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, EITHER ORAL OR WRITTEN, EXPRESS OR IMPLIED. PROCESSOR IS NOT RESPONSIBLE FOR ANY COSTS INCLUDING, BUT NOT LIMITED TO, THOSE INCURRED AS A RESULT OF LOST PROFITS OR REVENUE, LOSS OF TIME OR USE OF THE SERVICES, LOSS OF DATA, COSTS OF CONSULTANTS, COSTS OF SUBSTITUTE PRODUCTS, CLAIMS BY THIRD PARTIES, OR OTHER SIMILAR COSTS. IN NO CASE WILL PROCESSOR'S LIABILITY EXCEED THE AMOUNT OF THE FEES OF A SINGLE MONTH OF SERVICE.

## **ARTICLE X TERMINATION**

10.1 General. This Agreement may be terminated upon thirty (30) days' written notice by either party, provided that applicable portions of this Agreement shall remain in effect for ninety (90) days after the effective date of termination with respect to any Entries that Company initiates prior to the effective termination date, to clear all returns against the Settlement Account.

10.2 Termination for Cause. Processor shall also have the right to terminate this contract immediately for cause, which shall include but not be limited to (i) Company's failure to pay or settle Entries, (ii) Company's failure to maintain the requisite balance in the Settlement Account or Reserve Account, (iii) Company's failure to pay the Processor's fees or service charges within three days after transmittal of a Debit to the Settlement Account therefore, (iv) Company's noncompliance with applicable state or Federal laws or the Rules, (v) excessive returned or rejected Entries submitted by Company, in terms of number or amount, as solely determined by Processor, (vi) Company's failure to stay within established NACHA and ODFI thresholds for returns, (vii) Processor's receipt of unauthorized, false, illegal, or fraudulent Entries or files of Entries, or inaccurate or fraudulent authentication data, (viii) Company's failure to conform to Processor's specifications, (ix) ODFI is required by Agencies or other state or federal regulatory bodies to (a) terminate its contractual relationship with Processor or (b) cease origination of Entries on behalf of Company.

10.3 Notice Requirement. If the Company terminates this Agreement without required notice, the Company authorizes the Processor to debit the Settlement Account (or, if applicable, the Company's Reserve Account) for an amount equal to the Company's average monthly billing.

## **ARTICLE XI MISCELLANEOUS**

11.1 Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that the Agreement or any section thereof was drafted by the party.

11.2 Records. All data that the Processor uses in rendering services hereunder shall be and remain its property. Upon termination of this Agreement, the Processor shall, at the Company's request and expense, make available Company information contained in Processor's back-up storage media or records then on hand.

11.3 Assignment. This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of the

Company and the Processor, except that the Company shall not have the right to assign this Agreement or any of the rights and duties hereunder to any person or entity without Processor's written consent upon 60 days advance written notice.

11.4 Entire Agreement. This Agreement, including the exhibits and schedules hereto, constitutes the entire agreement between the parties, supersedes all prior agreements, oral or written, and only modified or amended in writing if signed by both parties.

11.5 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.

11.6 Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the internal laws of the United States and the State of Nevada.

11.7 Jurisdiction and Venue. In the event that either party commences legal action seeking monetary, declaratory, or injunctive relief with respect to enforcement, interpretation, or violation of this Agreement or any other agreement between Processor and Company, the parties agree that any dispute relating to the interpretation or performance of this Agreement shall be resolved through binding arbitration. Arbitration shall be conducted in Reno, Nevada in accordance with the rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Both parties intend that this Agreement to arbitrate is irrevocable. The parties further agree that process in any such suit, action, or proceeding must be served by personal service, to the other party at the address set forth on Section 11.11 hereto.

11.8 Attorney's Fees. The prevailing party in any legal action regarding the enforcement, interpretation, or violation of this Agreement shall be entitled to an award of all reasonable expenses, court costs, and attorney's fees incurred in connection with such litigation.

11.9 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.

11.10 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.

11.11 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 shall be deemed given upon personal 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. Failure or refusal of a party to accept receipt of a notice or other communication hereunder shall in no manner invalidate the notice.

Notices to Processor shall be sent to the following:

Advantage Payment Systems, LLC  
Attn: Legal Department  
3993 Howard Hughes Pkwy # 390  
Las Vegas, NV 89169

Notices to Company shall be sent to Company legal address provided by Company on the ACH & VeriTrac Service Registration application form or to the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11.12 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 signatures, shall have the same force and effect as original signatures.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be duly executed effective on the day and year first written above but actually signed on the dates indicated below by their respective signatures.

**Company:**

Signature:  \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Processor:** Advantage Payment Systems, LLC,  
dba Advantage ACH

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_