



## Company Authorization Agreement

THIS AGREEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, among \_\_\_\_\_ (COMPANY) whose physical address is \_\_\_\_\_ (LOCATION), \_\_\_\_\_ (PROCESSOR), and INTERCEPT CORPORATION (IC).

**Definitions:** The terms stated below shall have the following meaning:

IC	Intercept Corporation
PROCESSOR	Processor noted above
COMPANY	Company noted above
TRANSACTION	Company's Employee or Company's Customer
ACH	Automated Clearing House: the system through which electronic funds are transferred
NACHA	National Automated Clearing House Association: the governing body which defines the Rules and Regulations and file formats required to transfer money via the ACH system
BANK	A depository financial institution including, but not limited to a commercial bank, savings bank or credit union
CREDIT	Transfer of money to an account/deposit
DEBIT	Transfer of money from an account/withdrawal

### I. Services Provided

- 1.0 Company authorizes Processor to create and transmit ACH files to IC for the transfer of funds through the ACH system for a variety of purposes including, without limitation, (i) providing direct deposit of payroll for Company's employees (Transactees), (ii) transferring funds for flexible benefits plans, (iii) impounding taxes, and (iv) for any other approved reason that Company may desire to transfer funds electronically through the ACH system. At all times, IC's transfer of funds shall be conducted pursuant to the terms of this Agreement, the NACHA rules, the laws of the State of North Dakota, and all applicable federal rules and regulations.
- 1.1 COMPANY UNDERSTANDS THAT IC PROVIDES ITS SERVICES ONLY TO PROCESSOR AND COMPANY. ALL FUNDS TO BE TRANSFERRED, WHETHER PAYROLL, FLEX BENEFITS, OR ANY OTHER FUNDS, MUST BE COLLATERALLY FUNDED AND FULLY GUARANTEED BY PROCESSOR AND COMPANY. COMPANY UNDERSTANDS AND AGREES THAT IT WILL NOTIFY ITS TRANSCACTEES OF THIS RELATIONSHIP WHEN APPLICABLE. PROCESSOR AND COMPANY UNDERSTAND AND AGREE THAT IC HAS NO DIRECT FINANCIAL INTEREST IN THE DEBITS AND CREDITS PROVIDED PURSUANT TO THIS AGREEMENT, THAT IC IS ONLY PROVIDING A SERVICE FOR A FEE, AND THAT IC IS NOT A GUARANTOR OF FUNDS FOR SERVICES PERFORMED. ALL RISK OF LOSS AND LIABILITY TO ANY PERSON OR ORGANIZATION ARISING OUT OF THE SERVICES FURNISHED HEREUNDER SHALL BE THAT OF PROCESSOR AND COMPANY, AND NOT THAT OF IC.
- 1.2 Through a letter from IC outlining approval terms, Processor will be notified of the types of ACH activity that Company and Processor are approved to process. Company and Processor are specifically confined to processing only such approved types of ACH activity, or such other types of ACH activity that are specifically approved in writing by IC. Federal law prohibits the knowing acceptance of payments in connection with the participation of another person in unlawful Internet gambling. Company and Processor agree that they shall not, under any circumstances, submit for processing any transaction in connection with Internet gambling.

### II. Automated Transfers

- 2.0 Company represents and warrants to IC that Company will have sufficient funds on hand in the bank account disclosed herein to honor all transfer instructions received and processed by IC. In the event that transfer instructions are sent to IC and there are insufficient funds on hand to honor the transfer instructions, such transfer instructions shall be "in error". Company and Processor authorize IC to correct any transfer of funds if the transfer was not properly funded or honored by Company, Company's Transactees, or Company's bank without any liability to IC. Processor and Company shall be liable to IC for all damages/losses incurred, including costs, attorney's fees, and other expenses, and Processor and Company hereby authorize IC to transfer funds from any account, including any reserve account, if available, to reimburse IC for all said losses upon notice to Company and Processor, as applicable. Moreover, if further collection attempts are required, all IC's collections costs including, but not limited to, attorney's fees, where permitted by law, will be charged to Processor and Company.
- 2.1 IC may refuse to follow Processor's transfer instructions if IC reasonably and in good faith believes that Company's bank account balance is insufficient to fund the dollar amount of the payment instructions, IC reasonably believes that Company, Company's Transactee or their Banks will return, reverse or otherwise dishonor the debit to Company's or Company's Transactee's Bank, or for any other reason that IC deems reasonable, including any of the reasons listed in section 5.4 as bases for immediate termination.
- 2.2 If any amount transferred from or to the accounts of Company or Company's Transactee is dishonored or returned for any reason, is deemed unauthorized or contested, or is reversed by Company, Company's Transactee and/or their Banks, or is otherwise transferred in error, IC:
- May reverse any corresponding transfers issued to Processor, Company, Company's Transactee or any other party, without liability to Processor, Company, Company's Transactee, or any other party;
  - May require Processor or Company to wire transfer the amount of the return and any associated costs or fees to IC by no later than 2:00 PM Central Time the day that Processor or Company are notified of said return;
  - May re-submit the item and charge Processor and/or Company a late fee; and
  - Is authorized by Company and Processor to make withdrawals from any Company or Processor account, including, if available, any reserve account.
- 2.3 IC may reverse any transfer of funds without any liability to IC, and should IC suffer any loss or claim for damages, Processor and Company shall be liable to IC for all damages/losses incurred, including costs, attorney's fees, and other expenses. Further, Processor and Company hereby authorize IC to transfer funds from any account, including any reserve account, if available, to reimburse IC for all said losses.



- 2.4 Processor and Company understand, agree, and acknowledge that as part of the ACH process, once Processor and/or Company instructs IC to cause funds to be debited from the accounts of Company or Company's Transactee, (i) such funds shall be placed in one or more IC accounts at IC's bank and (ii) IC shall be the only entity authorized on such accounts. Processor and Company further acknowledge that such IC accounts shall be subject to setoff by IC's bank.
- 2.5 The processing time limitations that are applicable to this agreement, and are made a part hereof, are located on the following website: [www.intercepteft.com](http://www.intercepteft.com)

### III. Liability and Indemnification

- 3.0 PROCESSOR AND COMPANY SHALL INDEMNIFY AND HOLD IC HARMLESS FROM ANY AND ALL CLAIMS, LIABILITY, LOSS, DAMAGES, COSTS OR EXPENSES, INCLUDING COURT COSTS AND REASONABLE ATTORNEY FEES, ARISING OUT OF: (a) A BREACH OF ANY AGREEMENT BETWEEN OR AMONG COMPANY, PROCESSOR AND IC, INCLUDING, BUT NOT LIMITED TO, ANY BREACH OF REPRESENTATIONS AND WARRANTIES; (b) A FAILURE BY COMPANY OR PROCESSOR TO COMPLY WITH ANY GOVERNING RULE, INCLUDING THE RULES OF THE NACHA SYSTEM, THE FISCA CODE OF CONDUCT IN OFFERING ACCESS TO CREDIT, AND OTHER SIMILAR RULES, REGULATION, OR LAW; (c) A FRAUDULENT, WRONGFUL, ILLEGAL OR NEGLIGENT ACT OR OMISSION OF COMPANY, PROCESSOR OR ANY OF THEIR OWNERS, EMPLOYEES, AGENTS, AFFILIATED ENTITIES OR INDEPENDENT CONTRACTORS; (d) ANY UNAUTHORIZED TRANSMISSION BY COMPANY OR PROCESSOR OF DATA, (e) ANY UNAUTHORIZED ENTRY BY COMPANY OR PROCESSOR OF INFORMATION INTO THE ACH NETWORK, (f) ANY USE BY COMPANY OR PROCESSOR OF THE SERVICES PROVIDED BY IC, (g) ANY SERVICES PROVIDED BY IC TO COMPANY OR PROCESSOR INCLUDING BUT NOT LIMITED TO CLAIMS OF PROCESSOR'S OR COMPANY'S CUSTOMERS, EMPLOYEES, OR OTHER TRANSACTEES THAT A TRANSFER WAS UNAUTHORIZED OR THAT AN ACCOUNT CONTAINED INSUFFICIENT FUNDS, OR RELATING TO THE ISSUANCE OF A STOP PAYMENT ORDER, AS WELL AS ANY CLAIM ASSERTED BY ANY TAXING AUTHORITY WHOSE CREDITS MAY HAVE BEEN REVERSED OR BY ANY BANK THAT MAY HAVE SUFFERED DAMAGE OR LOSS BECAUSE OF INSUFFICIENT FUNDS OF COMPANY, EXCEPT WHERE THE CLAIM, LOSS, DAMAGES, COSTS OR EXPENSES AROSE OUT OF IC'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND (h) ANY INQUIRY BY ANY LAW ENFORCEMENT, REGULATORY, OR ADMINISTRATIVE AGENCY, WHETHER, LOCAL, STATE, FEDERAL, FOREIGN OR SELF-REGULATORY ORGANIZATION, INCLUDING, BUT NOT LIMITED TO, A CIVIL INVESTIGATIVE DEMAND, SUBPOENA, OR ANY OTHER FORMAL OR INFORMAL REQUEST FOR INFORMATION OR DOCUMENTS REFERRING OR RELATING TO PROCESSOR, COMPANY OR THEIR OWNERS, EMPLOYEES, AGENTS, AFFILIATED ENTITIES OR INDEPENDENT CONTRACTORS.
- 3.1 Processor and Company authorize IC to make withdrawals, at any time, from any Processor or Company account, including, if available, any reserve account, to cover any claims, liability, loss, damages, costs or expenses, including court costs and reasonable attorney fees as described above, incurred by IC. IC may indefinitely retain reserve or other funds in IC's possession following termination of the parties' contractual arrangement until IC determines, in its sole discretion, that IC has not presently incurred and does not anticipate incurring any claims, liability, damages, costs or expenses, including court costs and reasonable attorney's fees.
- 3.2 Processor and Company shall have no right to cancel or amend any entry after its receipt by IC. At Processor's or Company's request, IC shall use reasonable efforts to cancel or amend an entry prior to transmittal to the ACH system, but shall have no liability if such cancellation is not effected.
- 3.3 IC is not responsible for the actions of Processor, Company, or others with respect to the amount, accuracy, and timeliness of transmittals or authorization of entries received from Processor. The acts of any other person or organization including, without limitation, banks or other financial institutions, or transmissions facilities, shall not be deemed the acts of IC. Processor and Company shall hold IC harmless from any transfers that IC makes upon the direction of Processor or Company when such direction is without proper authority and/or in error.
- 3.4 IC's liability to Processor, Company, or any other person or entity, shall in no event exceed the charges made by IC for the effected transaction. In no event shall IC be liable for consequential, special or punitive damages or for loss of profits.
- 3.5 To the extent that IC's ability to provide the equipment, facilities or personnel is delayed, reduced, or interrupted by a force beyond IC's control, including, but not limited to, acts of God, public enemy, inclement weather, interruption of communications systems, physical damage to IC's premises, labor disputes, orders or directives of any governmental or quasi-governmental authority, IC shall not be required to perform its obligations under this Agreement or be liable to Processor, Company or Company's Transactees for any failure to perform.
- 3.6 **Confidentiality:** Each party acknowledges and agrees that it may obtain certain confidential information from the other in the course hereof. Such information includes, but is not limited to, pricing and technical information, operating procedures, and other information pertaining to the business and customers of each party ("Confidential Information"). Such Confidential Information does not include: (a) information that is publicly available; (b) information received from a third party not in violation of any confidentiality obligation; (c) information already known by the receiving party at the time of the disclosure; (d) independently developed information; and (e) information suggesting or indicating that a transfer of funds through IC has been returned, reversed, claimed to be unauthorized or otherwise contested. Each party agrees: (i) to maintain the confidentiality of the others' Confidential Information, using efforts no less protective than such party uses in the protection of its own information; (ii) not to disclose such information to any third party, except auditors and regulators, or as otherwise required by law; (iii) not to use such information for any purpose whatsoever other than for its performance hereunder; and (iv) to return all Confidential Information to the other parties upon request. Parties agree to comply with all applicable local, state, and federal laws, the NACHA rules, and, in addition, to comply with IC's settlement bank privacy policy.
- 3.7 **Relationship of Parties:** The parties hereunder intend that their relationship be that of independent contractors. In no event shall IC be deemed an agent, employee, partner or joint venturer of Company or Processor, or have the power or authority to bind them in any way; nor shall Company or Processor be deemed an agent, employee, partner or joint venturer of IC, or have the power or authority to bind it in any way. Nothing herein shall be construed to grant Processor, Company, Company's Transactees, or any other person or entity any right, title, interest or license in or to IC's name, trademarks, or other proprietary information; further, Processor, Company, and Company's Transactees shall not use IC's name, trademarks or information without IC's prior written consent.
- 3.8 **Third Parties:** This Agreement is solely for the benefit of the undersigned and may not be relied upon or enforced by any third party.



#### IV. Fees

- 4.0 IC will charge Processor for all services rendered hereunder, for any and all other costs, expenses or losses that IC incurs in processing items for Company, and for the fees as set forth in the Processor Agreement. IC may also charge Processor late fees from time to time, upon IC providing Processor five (5) days' prior notice regarding any late fee charge. In the event that IC is unable to collect any fees or late fees from the Processor, IC may charge Company.
- 4.1 Processor, pursuant to the terms of the Processor Agreement, has authorized IC to collect electronically all sums of money due IC. In the event that IC is unable to collect all sums of money due IC from the Processor, and/or IC has discontinued processing transactions for Processor, and Company agrees to continue services from IC for any pending or future transactions, IC may contact Company to make arrangements to collect all sums of money due IC pursuant to the terms and conditions of this Agreement.
- 4.2 Processor and Company agree that any interest that may accrue on any funds transferred to IC's settlement account is the property of IC.

#### V. Miscellaneous

- 5.0 **Entire Agreement:** This agreement, the IC Processor Agreement, and the Authorization for Debit and Credit Electronic Funds Transfers constitutes the entire Agreement between and among Processor, Company and IC, and correctly describes the parties' mutual understanding of this Agreement. Any and all oral or written agreements, representations or understandings between the parties entered into or made prior to or made contemporaneously with the effective date of this Agreement have been incorporated into this Agreement or were revoked, released or terminated before the effective date of this Agreement. No modifications, deletions, additions, or amendments to this Agreement shall be binding on IC unless the same are reduced to writing and the writing is signed by IC. All of the terms of this Agreement are subject to the approval of IC and, unless IC has executed this Agreement, such approval has neither been obtained nor granted.
- 5.1 **Document Execution:** The parties to this Agreement agree to execute whatever documents are reasonably necessary to carry out the terms and effect of this Agreement.
- 5.2 **Counterparts:** The parties hereto may execute this Agreement in any number of separate counterparts (including by portable document format (pdf) or facsimile), each of which, when executed and delivered by the parties hereto, shall have the force and effect of any original. All such counterparts shall be deemed to constitute one and the same instrument.
- 5.3 **Governing Law:** This Agreement shall be governed by the laws of the State of North Dakota; NACHA; and any applicable state and federal law including, but not limited to, the regulations of the Board of Governors of the Federal Reserve System and the operating circulars of the Federal Reserve System Banks; the Electronic Funds Transfer Act of 1978 and amendments thereto; North Dakota's adoption of the Uniform Commercial Code – Funds Transfer Act; North Dakota Century Code Section 41-04.1; and the Foreign Assets Control Regulations. The parties to this Agreement also stipulate and agree that disputes regarding this Agreement shall be venued and filed and are subject to the exclusive jurisdiction of the United States Federal District Court for the Southeast Division of the State of North Dakota, Fargo, North Dakota or the District Court for Cass County, Fargo, North Dakota.
- 5.4 **Default and Remedies:**
- Processor and Company:** Processor and Company shall be deemed to be in default, permitting IC to immediately terminate this Agreement in accordance with the notice procedure described below, if IC determines in its sole discretion that Processor or Company, or any of their owners, employees, agents, affiliated entities or independent contractors: (a) have failed to comply with any term or condition of this Agreement, where bound, (b) have not provided IC with honored funds, (c) have violated any governing rule, including, without limitation, the rules of the NACHA system, the FiSCA Code of Conduct in Offering Access to Credit, and other similar rules, regulations, or laws, (d) have engaged in a fraudulent, wrongful, illegal or negligent act or omission, (e) have been made the subject of any inquiry by any law enforcement, regulatory, or administrative agency, whether local, state, federal, international or self-regulatory organization, (f) have misrepresented any fact to IC, whether in connection with an application to IC for processing services, during a subsequent audit of Processor or Company by IC, or at any other time, (g) pose a credit risk to IC, or (h) refuse to provide information that would enable IC to make a determination as to (a) through (g). Additionally, Processor and Company have affirmative duties to inform IC immediately of any inquiry by any law enforcement, regulatory, or administrative agency once they have a credible basis for believing that such an inquiry has commenced. Consistent with this duty, Processor and Company must furnish to IC copies of any subpoenas, civil investigative demands, requests for information, as well as any reports of findings and cease and desist orders (or their equivalent), except where expressly prohibited by law. Failure to satisfy this duty to notify shall represent a separate basis for immediate termination. IC shall provide Processor and Company with notice of termination by e-mail, telephone or fax, followed up by letter correspondence to be issued within ten (10) days of the date thereof.
  - IC:** In the event that IC fails to comply with any term or condition of this Agreement, Company or Processor may terminate this Agreement upon five (5) days' written notice faxed to IC, with the five (5) days' notice of termination of Agreement commencing upon IC's actual receipt of the notice of termination.
- 5.5 **Non-Default Termination of Agreement:** Any time while this Agreement is in effect, during which time neither party is in breach of this Agreement, any party to this Agreement may terminate this Agreement upon fifteen (15) days' notice of termination, to be faxed to either party and to be followed up by letter correspondence.
- 5.6 **Effect of Termination:** Upon termination of this Agreement, Processor's and Company's representations, obligations and duties shall survive termination of this Agreement, and Processor and Company shall continue to indemnify and hold IC harmless and shall remain liable to IC for all sums of monies due and payable hereunder to IC. Reserve and other Company or Processor funds in IC's possession following termination of the Agreement may be retained indefinitely by IC until such time as IC determines, in its sole discretion, that it has no present or anticipated claim for indemnification from Company or Processor. Provided, however, that a determination by IC that there is no present or anticipated claim for indemnification will in no way affect Processor or Company's continuing obligation to indemnify and hold IC harmless.
- 5.7 **Term of this Agreement:** The term of the Agreement will be for one (1) year from the date of this Agreement, unless this Agreement is subsequently supplemented or replaced. This Agreement will automatically renew for subsequent successive periods of one (1) year thereafter, unless either party provides the other parties with written notice of termination fifteen (15) days prior to the end of any succeeding term of this Agreement.



- 5.8 **Apparent Authority:** Company and Processor stipulate that any action that IC takes hereunder is pursuant to the apparent authority of Processor and Company, their agents, assigns, officers, directors, and/or employees. In the event that Processor's and/or Company's agents, assigns, officers, directors, or employees do not have the authority to request a transfer of funds, or any other action, by IC, Processor and Company hereby hold IC harmless from such actions and/or inactions and agree to indemnify IC for any losses, damages or claims. Processor and Company stipulate and agree that Company and Processor, and not IC, are entirely liable under such circumstances.
- 5.9 **Limitation of Action:** Processor, Company and Company's Transactees will have 60 days from the transaction date to notify IC, in writing, of any discrepancies, errors or problems with a transaction processed. This 60-day limitation of rights includes, but is not limited to, errors in amounts, erroneous transactions, and alleged revocation of authority. IC must be notified telephonically and in writing of any said discrepancies, errors or problems with a particular processed transaction and be provided with the following information:
- Processor and/or Company's name, address and contact information;
  - Company transaction processed under with Fed Tax ID Number;
  - The name, account number and ABA number on the transaction in question;
  - The dollar amount of the transaction in question;
  - Description of the error and an explanation of the error.

IC will inform Company and/or Processor of the results of its investigation within 30 days and will correct any error it identifies promptly. If IC needs more time, IC may take up to 45 days to investigate any complaint. For transfers initiated outside the United States or transfers resulting from point of sale or debit/access cards, the time periods for resolving errors will be 45 days and 90 days, respectively.

- 5.10 **Account Authorization:** Company authorizes Processor and IC to initiate electronic debit and or credit entries to and from the bank account disclosed below, and to/from other bank accounts subsequently identified by Company in writing. Company understands that adjustment entries may be made to this account (and subsequently identified accounts) to ensure an accurate and balanced accounting of all transactions. This authorization will remain in effect until Company cancels the authorization in writing.

Bank Account:

Bank Name: \_\_\_\_\_

Bank Routing Number (nine digits): \_\_\_\_\_

Bank Account Number: \_\_\_\_\_

Account Type (checking or savings): \_\_\_\_\_

- 5.11 **Financial Reporting:** Company and Processor agree to provide IC, within 30 days of demand, with updated financial information regarding Company and Processor, including, but not limited to, their most recent and current balance sheets, income statements, bank statements, and, if requested, tax returns.
- 5.12 **Change in Ownership:** Company and Processor agree to provide IC with notice of any change in ownership, together with any information relating to change and the new owners as requested by IC, at least 10 days prior to change of ownership. If the change in ownership results in the creation of a new entity, Company and Processor shall provide IC with all applicable information regarding the new entity, including but not limited to its certificate of authority (or its equivalent) to transact business, taxpayer identification and related information.
- 5.13 **Notification:** All notices or other communications required or permitted hereunder shall be in writing and shall be effective upon the earliest of: (a) personal service, (b) upon receipt if mailed, (c) the next business day, if sent by overnight courier within the United States, or (d) upon confirmation (including electronic verification) of receipt of a facsimile message, addressed:

**If to IC, to:**

Intercept Corporation  
Attention: Risk Department  
1700 42nd Street S, Suite 2000  
Fargo, ND 58103  
Fax: (701) 499-5340

**If to Processor:**

To the location/fax number/e-mail as set forth on its ACH Application.

**If to Company:**

To the location/fax number/e-mail as set forth on its Client Information Form.

Notice may be given at such other addresses as may hereafter be furnished in writing by the respective parties, if given in the manner required above.

**VI. Representations and Warranties**

- 6.0 **Authorization by Company/Processor:** Company and Processor represent and warrant that the execution and delivery of this Agreement by Company and Processor, and the performance by them of the transactions contemplated herein, have been duly and validly authorized by all requisite corporate actions of Company and Processor, and this Agreement has been duly executed and delivered by Company and Processor, and constitutes the valid and binding obligation of Company and Processor, enforceable against Company and Processor in accordance with its terms. Company and Processor have full company power, capacity, and authority to execute and deliver this Agreement. In addition, Company and Processor possess all governmental approvals required to carry on their respective businesses as now conducted and all such governmental approvals are in full force and effect.
- 6.1 **Organization, Existence, and Good Standing of Company and Processor:** Company and Processor represent and warrant that they are duly organized, validly existing, and in good standing under the laws of their respective jurisdictions where they were created, with all requisite company power and authority to own, lease, and operate their properties, to carry on their businesses as now being conducted, and to execute, deliver, and perform their obligations under this Agreement and any other documents related thereto to which they are parties and to consummate the transactions contemplated hereby.



- 6.2 **No Conflicts:** Company and Processor represent and warrant that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not and will not contravene, conflict with, or result in any violation of or default under any provision of the certificates of where they were created, any resolution adopted by the Company or Processor, or any mortgage, indenture, lease, loan or credit agreement, or other contract, applicable law, or governmental approval applicable to Company or Processor or any of the properties of Company or Processor, or any order which affects or binds Company or Processor. No governmental approval, and no consent or approval of any other person, is required on the part of Company or Processor in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.
- 6.3 **Litigation:** Company and Processor represent and warrant that there is no actual pending litigation (i) that has been commenced by or against Company or Processor that relates to or may affect Company's or Processor's right to consummate the transactions contemplated by this Agreement, or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, this Agreement or the transactions contemplated hereby.
- 6.4 **Compliance with Laws:** Company and Processor represent and warrant that they have complied with, and will remain in compliance with, all laws, regulations, and rules, whether state, local, federal, self-regulatory or foreign, that are or were applicable to Company and Processor; they further represent and warrant that they have not received any notice or other communication (whether written or oral) from any governmental authority or any other person regarding any actual, alleged, or potential violation of, or failure to comply with, any law, regulation or rule.
- 6.5 **Compliance with ERISA:** Company and Processor represent and warrant, when applicable, that they are responsible for the administration of any flexible benefit plan/cafeteria plan/ERISA plans and for compliance with all rules, requirements, regulations and laws regarding those plans (whether relating to compliance, taxation or any other subject), and that IC is only providing electronic means to transfer funds and nothing more. Company and Processor hereby indemnify and hold IC harmless from any and all liabilities that may arise from their failure to properly manage, obtain authorization, fund, or otherwise operate and institute a flexible benefit plan.
- 6.6 **Electronic Funds Transfer Act (15 U.S.C. § 1693):** Company and Processor represent and warrant that they have been fully advised by their respective financial institutions, where applicable, and represent and warrant that all of the parties having funds debited and/or credited to or from financial accounts pursuant to this Agreement are fully advised of and aware of (i) their rights, remedies and responsibilities pursuant to the Electronic Funds Transfer Act found at 15 U.S.C. § 1693, including, but not limited to, the right to receive documentation, the right to stop payment, and the right to stop pre-authorized transfers, and (ii) any charges for electronic funds transfers. Company and Processor further represent and warrant that they are in full compliance with the Act.
- 6.7 **Authorization:** Company and Processor represent and warrant that all debit and credit entries have been and will be pre-authorized pursuant to a valid authorization, and that such authorization is of record. They further represent and warrant that they will provide IC with a copy of any such authorization upon IC's request. Company and Processor will indemnify and hold IC harmless for any failure by Company or Processor to have or provide authorizations of record.
- 6.8 **Provision of Contact Information:** Company and Processor represent and warrant that they have installed a system whereby Company or Company's Transactees may contact Processor and/or Company via a telephone number, e-mail address, and a physical address so Company and/or Company Transactee may speak with a person and seek resolution of any dispute. Moreover, in the event that Company and/or Company's Transactee are unable to resolve any dispute or are unable to contact Processor and/or Company to resolve a dispute, Processor acknowledges that Processor and Company have provided, or will promptly provide, Company and/or Company's Transactees with the name, address, and telephone number of IC.
- 6.9 **NACHA Rules:** Company and Processor represent, warrant and acknowledge that they are bound by the NACHA Operating Rules, that they are (and will remain) in compliance with such Rules, including, but not limited to, any maximum thresholds set by NACHA for Unauthorized Returns, Administrative Returns and Overall Returns, and that they assume the responsibilities of an Originator under such Rules.

#### **VII. ACH Security/Compliance Procedures**

- 7.0 **Authorized Representative:** Processor and Company agree to designate Authorized Representatives to act on their respective behalfs, who shall have the authority to authorize all actions necessary in the preparation and generation of the Processor's and Company's entries. The Processor and Company agree that IC shall not be under a duty to inquire as to the authority or propriety of any instructions given to IC by the Processor or Company, or by any of their Authorized Representatives, and that IC shall be entitled to rely upon all ACH instructions conveyed to IC.
- IC shall be entitled to act upon the instructions of any person who is the Authorized Representative of Processor or Company, whether or not the Processor or Company have authorized such instructions. IC shall not be liable for any loss, cost, expense, claim or other liability arising out of any such instructions.
- 7.1 **Compliance With OFAC:** Processor and Company agree to remain in compliance with the rules and requirements of the Office of Foreign Assets Control Department (OFAC), including verifying that Processor and Company shall not transact business with individuals appearing on the OFAC specifically designated individuals and corporate entities/nationals and blocked persons list (SDN). Processor and Company agree to identify their customers in accordance with a customer identification program pursuant to the requirements of OFAC. For more information, please see the following sites:
- <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>  
<http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>
- 7.2 **Authentication:** The Processor and Company agree that IC may send notices and other communications, including IDs, USER IDs, PASSWORD(S) AND OTHER METHODS OF AUTHENTICATION to the current address shown in IC's records, whether or not that address includes a designation for delivery to the attention of any particular individual. IC will not be responsible or liable to the Processor or Company, or any other party, in any way, if information is intercepted by an unauthorized person, either in TRANSIT or at the Processor's or Company's place of business unless the interception was caused by IC's breach of reasonable security measures under the circumstances. The Processor and Company must: (1) keep the Processor's and Company's PASSWORD(S) AND AUTHENTICATION METHOD(S) secure and strictly confidential, providing it only to Authorized Representatives on the Processor's and Company's account(s); (2) instruct each



person to whom the Processor and Company gives PASSWORD(S) AND AUTHENTICATION METHODS that he or she is not to disclose it to any unauthorized person; and (3) immediately notify IC to get a new PASSWORD AND/OR AUTHENTICATION METHOD assigned if the Processor or Company believe a PASSWORD AND/OR AUTHENTICATION METHOD may have become known to an unauthorized person.

IC WILL HAVE NO LIABILITY TO THE PROCESSOR OR COMPANY FOR ANY UNAUTHORIZED PAYMENT OR TRANSFER MADE USING THE PROCESSOR'S OR COMPANY'S PASSWORDS AND/OR AUTHENTICATION METHODS THAT OCCUR BEFORE THE PROCESSOR OR COMPANY HAVE NOTIFIED IC OF POSSIBLE UNAUTHORIZED USE AND IC HAS HAD A REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE WITHIN A REASONABLE TIME. IC may suspend or cancel the Processor's or Company's PASSWORD(S) OR AUTHENTICATION METHODS even without receiving such notice from the Processor and Company if IC suspects a PASSWORD OR AUTHENTICATION METHOD is being used in an unauthorized or fraudulent manner.

- 7.3 **Right To Audit:** Processor and Company agree that IC, its bank, and any regulatory authority with supervisory authority over IC's bank may at any time, at their individual discretion, audit Processor/Company's compliance with: (a) the terms of this Agreement; (b) the terms of the ACH agreement between IC and its bank (to the extent the terms of such agreement are applicable to Processor or Company); (c) the NACHA Operating Rules; and (d) applicable local, state, federal, and foreign regulations or law. Processor and Company agree that the cost of the audit will be paid by Processor and/or Company and that the audit report will be the property of IC, with a copy supplied to Processor and/or Company. Processor and Company agree that they will remedy all matters identified in the audit report within 21 days of the date of the audit report and provide to IC written verification of this remediation. IC may, at its sole discretion, permit an extension of this 21-day period.
- 7.4 **Acknowledgment of Security Procedures:** Unless Processor and Company agree with IC in writing to a different security procedure than is set forth herein, Processor and Company acknowledge and agree that the authenticity of payment orders will be verified using the procedures set forth herein. Further, Processor and Company agree that such security procedures are commercially reasonable.
- 7.5 **Internal Security Procedures:** Processor and Company agree to (i) adopt and implement commercially reasonable policies, procedures and systems to receive, store, transmit and destroy Consumer-Level ACH Data in a secure manner and to protect against data breaches; and (ii) implement commercially reasonable policies, procedures and systems to detect the occurrence of a data breach within its respective organization. The term "Consumer-Level ACH Data" means a bank account number together with a bank routing number, or a customer's name together with a customer's social security number. Processor and Company further agree to comply with any prevention, detection, investigation, and escalation (notification) requirements of any NACHA policies relating to ACH data breach notification requirements, and any applicable state or federal laws.

COMPANY	PROCESSOR	INTERCEPT CORPORATION
Signature of Authorized Agent	Signature of Authorized Agent	Signature of Authorized Agent
Name Printed	Name Printed	Name Printed
Title	Title	Title
Telephone Number		
Federal Tax ID Number		

Revised 12/15