



ACH Processing Agreement

This Data Processing and Payment Collection Agreement (this "Agreement") is entered into as of the date set forth below, by and among the undersigned client ("CLIENT") and Cliq, an organization existing under the laws of the State of California with its principal place of business at 2900 Bristol Street, Building F, Costa Mesa, CA 92626.

RECITALS

WHEREAS: Cliq is an item processor and provides Automated Clearing House ("ACH") and EFT services ("Services") for the collection and payment of Payments and Deposits to the accounts of Consumers and Businesses (collectively, "Customers") and;

WHEREAS: CLIENT wishes to initiate ACH transactions and desires to engage Cliq to process those ACH transactions items initiated by CLIENT.

NOW, THEREFORE, the parties intending to be legally bound do hereby agree as follows:

1. **Headings and Captions:** Unless the context otherwise clearly requires, words used in the singular include the plural, and words used in the plural include the singular. The captions and headings contained in this Agreement are for the convenience of the parties only and shall not be construed to limit or otherwise define the scope of this Agreement. This Agreement shall not be deemed to have originated with either party hereto.
2. **Definition of Terms:** Except as otherwise specifically indicated, the following terms shall have the following meanings in the Agreement:
 - a. **Banking Day:** Any business day, during which Cliq is open for business, but does not include any Saturday or Sunday, or Holiday observed by the Federal Reserve.
 - b. **Account:** A deposit account established by Customers at a Federal Reserve member bank that has the ability to receive Automated Clearing House ("ACH") items from the Federal Reserve for debit and credit to the account.
 - c. **EFT Data:** Electronic Funds Transfer ("EFT") Data is that certain data collected by CLIENT indicating funds to be distributed by credit or debit to Customers' accounts of Customers authorizing such credit or debit.
 - d. **Collected Funds:** Funds collected from the Federal Reserve as a result of the processing of EFT Data entries.
 - e. **Settlement Date:** A date specified by CLIENT, on which date EFT Data Entries will be available to Customers' banks that receive EFT Data from the Federal Reserve.
 - f. **Customer:** Those consumers or businesses who have given authorization to CLIENT for CLIENT to initiate credit or debit entries to the accounts of those CUSTOMERS.
 - g. **Sponsor Bank ("ODFI"):** The bank designated by Cliq which is a Federal Reserve depository with Agreements between itself, Cliq and the Federal Reserve to electronically transfer funds between member banks of the Federal Reserve Banking System.
 - h. **Originator:** CLIENT for purposes of this agreement is the Originator of the ACH entries as defined by the NACHA rules.
 - i. **Hold Period:** Cliq may hold the monies for a period established by Cliq pursuant to its underwriting of CLIENT. Upon the expiration of the Hold Period, Cliq shall transfer the Collected Funds, less the Reserve Amount to the CLIENT Bank Account.
 - j. **Reserve Amount:** Cliq may reserve a portion of the Collected Funds pursuant to its underwriting of CLIENT from time to time.
3. **Engagement:** CLIENT hereby retains and appoints Cliq as CLIENT's exclusive data processing and collection agent for processing ACH transactions originated by CLIENT for credit and debit to accounts of Customers, who have agreed to such transactions, in accordance with the terms and conditions contained herein.
4. **Fees:** For the services performed herein by Cliq, CLIENT agrees to pay the fees as detailed in the Fee Schedule. CLIENT understands that some fees may be subject to tax and agrees to pay all applicable tax. Increases in fees charged by Sponsor Bank, will be passed through to CLIENT, without notice, and the Fees may be changed by Cliq at any time upon Thirty (30) days prior written notice to CLIENT. CLIENT may be assessed an Investigation Fee equal to \$25 for each item investigated and/or 10% of the amount investigated each month for all sums that Cliq is required to investigate as a result of CLIENT's conduct
5. **Term and Termination:** The initial term of this Agreement shall be for a period of three (3) years, commencing on the date first set forth below. This Agreement shall thereafter be automatically renewed for additional terms of two (2) year each



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unless either party notifies the other no later than fifteen (15) days prior to the end of the current term that it does not wish to renew this Agreement.

We may terminate this Agreement at any time upon written notice to you as a result of any of the following events: (i) your actions cause harm to Cliq, (ii) any noncompliance with this Agreement, the NACHA rules and regulations, (iii) any voluntary or involuntary bankruptcy or insolvency proceeding involving you, (iv) we deem you to be financially insecure, or (v) any processor notifies us that it is no longer willing to accept your transactions.

If your Merchant Account is terminated or suspended for any reason or no reason, you agree: (a) to continue to be bound by this Agreement, (b) to immediately stop using the Services, (c) that the license provided under this Agreement shall end, (d) that Cliq reserves the right (but have no obligation) to delete all of your information and account data stored on our servers, and (e) that Cliq shall not be liable to you or any third party for termination or suspension of access to the Services or for deletion of your information or account data.

Termination of this Agreement prior to expiry of the initial term or any renewal term shall result in the assessment of an account termination fee in an amount equal to the greater of (i) the average monthly fees charged to you for the previous 12 months (or such shorter time if you have processed for less than 12 months) multiplied by the number of months remaining under the Agreement, or (ii) \$495. The parties expressly agree that the damages, which Cliq might reasonably anticipate to be sustained by Cliq, are difficult to ascertain and measure because of their indefiniteness or uncertainty and that the amount set forth above is a reasonable estimate of the damages that would probably be caused and shall be due regardless of proof of actual damages.

6. **Upon Default:** Either party shall have the right to terminate this Agreement, effective immediately, if either party is in default of any obligation under this Agreement and default continues for 30 days following notice from the other party, or if either party is declared bankrupt, files a petition under any bankruptcy laws, has a receiver appointed for all or substantially all of its property, or makes an assignment of all or substantially all of its assets for its creditors.
7. **Upon Termination:** All rights and obligations hereunder shall cease except CLIENT's obligations (A) to pay the applicable fees for any services performed by Cliq prior to the effective date of termination, (B) to pay for any items returned unpaid ("Returned Items") subsequent to the effective date of termination for which Cliq shall hold from the final deposit to the Settlement Account for sixty (60) days a balance sufficient to cover Returned Items and any unpaid fees payable to Cliq, and (C) within ninety (90) days of termination of this Agreement CLIENT shall return to Cliq all materials that are the property of Cliq and provided by Cliq to CLIENT, as part of the services contemplated hereunder, including, but not limited to software, hardware, manuals and instructions.
8. **Rejection of Entries:** CLIENT agrees that Cliq has no obligation to accept Entries and therefore may reject any Entry issued by CLIENT. Cliq has no obligation to notify CLIENT of the rejection of an Entry but Cliq may do so at its option. Cliq shall have no liability to CLIENT for rejection of an Entry.
9. **Reversing Entries:** Upon proper and timely request by the CLIENT, Cliq will use reasonable efforts to effect a reversal of an Entry or File. To be "proper and timely," the request must (i) be made within five (5) Business Days of the Effective Entry Date for the Entry or File to be reversed; and (ii) be accompanied by a Reversal/Cancellation Request form that complies with all of the Rules. In addition, if the CLIENT requests reversal of a Debit Entry or Debit File, it shall concurrently deposit into the CLIENT Account an amount equal to that Entry or File. CLIENT agrees to notify the receiver that a reversing Entry has been transmitted to the Receiver's account no later than the Settlement Date of the reversing Entry. This notification may be made by the CLIENT's method of choice. Under no circumstances shall Cliq be liable for interest or related losses if the requested reversal of an Entry is not effected. The CLIENT shall reimburse Cliq for any expenses, losses or damages it incurs in effecting or attempting to effect the CLIENT's request for reversal of an Entry.
10. **Notification of Change:** Cliq shall provide CLIENT all information, as required by the Rules, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by Cliq relating to Entries transmitted by CLIENT. CLIENT shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) banking days of CLIENT's receipt of the NOC information from Cliq or prior to initiating another Entry to the Receiver's account, whichever is later.
11. **Audit:** Cliq and ODFI shall have the right to audit CLIENT for compliance with the agreement and Rules.
12. **Underwriting of CLIENT:** From time to time Cliq may request financial and other applicable documentation from CLIENT. CLIENT shall provide the data requested no later than thirty (30) calendar days. CLIENT understands and agrees that the Hold Amount, Hold Period, Reserve Amount, Reserve Period may be adjusted at the sole discretion of Cliq to insure



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availability and sufficiency of funds to cover the amount CLIENT is responsible to pay Cliq under the terms of this Agreement.

13. **Cooperation in Loss Recovery Efforts:** In the event of any damages for which Company or CLIENT may be liable to each other or to a third party pursuant to the services provided under this Agreement, Company and CLIENT will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.
14. **Responsibilities of the Parties:** In connection with the engagement of Cliq by CLIENT, the parties hereby agree that each shall have the responsibilities set forth hereunder:
15. **CLIENT** shall be responsible for the following as Originator:
 - a. **Settlement Account:** CLIENT shall, at all times, maintain an Account ("Settlement Account") at a bank that is a member of the Federal Reserve ACH System. All credits for collected funds and debits for fees, payments and Returned Items under the terms of this Agreement shall be made to the Settlement Account. For the services to be performed by Cliq hereunder as set forth in the Specifications as published from time to time by Cliq, CLIENT authorizes Cliq, at its sole and unfettered discretion, to credit and or debit the Settlement Account, and CLIENT warrants that it shall, at all times, maintain a sufficient balance in said account to cover overdraft of the Consolidation Account as might result from Returned Items and service fees, and other charges plus such additional fees charged by Cliq for the performance of services beyond the terms of this Agreement or resulting from increased expenses incurred by the failure of CLIENT to furnish data as specified in the Specifications as published from time to time by Cliq, upon demand of Cliq. CLIENT may not close or change the Settlement Account without written notice to Cliq. CLIENT will be solely liable for all fees and costs associated with the Settlement Account and for all returns/overdrafts. CLIENT hereby grants to Cliq a security interest in the Settlement Account as well as any other account owned by CLIENT to the extent of any and all fees, payments and Returned Items which may arise under this Agreement, and CLIENT shall execute any document and obtain any consents or waivers from the bank at which the Settlement Account is maintained as requested by Cliq to protect its security interest therein.
 - b. **Notice of Intent:** CLIENT shall provide Cliq with immediate notice of intent to: 1). Transfer or sell any substantial part of its total assets, or liquidate; 2). Change the basic nature of its business, including selling any products or services not related to its current business; 3). Change ownership or transfer control of its business; or 4). 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 CLIENT's business. Failure to provide notice as required above may be deemed as material breach and shall be sufficient grounds for immediate termination of the Agreement. In the event any of the changes listed above should occur, Cliq shall have the option to renegotiate the terms of this Agreement or provide thirty (30) days' notice of termination.
 - c. **Non-Disclosure of Customer Information:** CLIENT will not, under any circumstances, disclose any CUSTOMER's account number or any information relating to any CUSTOMER's account, or any sales information, to any person other than Cliq, except as expressly authorized in writing by CUSTOMER, or Cliq as required by law.
 - d. **Returned Items:** CLIENT is liable for repayment to Cliq for all Returned Items. Cliq will comply with ACH Associations' and the Federal Reserve prevailing regulations in processing any Returned Items which result from CUSTOMER disputes. However, all disputes which are not or cannot be resolved through established returned item procedures shall be settled between CLIENT and the CUSTOMER, and CLIENT will indemnify Cliq and will provide reimbursement for all expenses, including reasonable attorney's fees, which it may incur as the result of any CUSTOMER claim which is pursued outside the ACH Association or Federal Reserve rules and regulations. Excessive Late Returns are defined as Late Return Items totaling greater than the indicated % of total Returned Items.
 - e. **Inconsistency of Name and Account Number:** The CLIENT acknowledges and agrees that, if an Entry describes the Receiver inconsistently by the name and account number, payment of the Entry transmitted to the Receiving Depository Financial Institution might be made by the Receiving Depository Financial Institution on the basis of the account number. This provision shall apply even if an Entry or account number identified a person different from the named Receiver. CLIENT shall pay the Entry to Company and is not excused in such circumstances.
 - f. **Error Detection:** CLIENT agrees that Cliq has no obligation to discover and shall not be liable to CLIENT for any errors, omissions or wrongful acts made by or on behalf of CLIENT or any third party, including but not limited to errors made when identifying any Receiver, Intermediary or Receiving Depository Financial Institution ("RDFI"); or for errors in the amount or frequency of a particular Entry; or for errors in Settlement Dates; or for any failure or



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alleged failure to detect identity theft or fraudulent transactions. Cliq shall likewise have no duty to discover and shall not be liable for duplicate Entries. This provision shall survive termination of this Agreement.

- g. **Transmittal of Entries:** CLIENT agrees to transmit all credit and debit entries to Cliq in compliance with the formatting, content and other requirements as included herein. CLIENT agrees that its ability to originate entries under this Agreement is subject to exposure/ACH processing limits and standard entry class restrictions in accordance with the Rules, this Agreement and the ACH Application. CLIENT understands that requests for Entries exceeding these amounts are honored solely at the discretion of Cliq.
- h. **Delivery of EFT Data:** CLIENT shall deliver EFT data necessary for ACH processing in such form and at such times and in accordance with the ACH Gateway Manual. CLIENT will cause the EFT data to be current and accurate at all times. CLIENT warrants to Cliq that all data and entries contained in EFT Data and delivered to Cliq by CLIENT will contain true and accurate information; will be authorized by Customer.
- i. **Record Retention:** CLIENT assumes the responsibility for obtaining, storing and producing of all consents and authorizations.

CLIENT shall retain and be able to produce all consents and authorizations required under the Rules for a period of no less than two (2) years from the termination or revocation of the authorization. Failure to provide Cliq with requested CUSTOMER authorization documentation within five (5) business days after receipt of such request may be deemed as material breach and shall be sufficient grounds for immediate termination of the Agreement. CLIENT will maintain records of all entries including applicable documentation for a period of SIX (6) years past the date of the last transaction to any Account. Cliq shall have no liability to CLIENT, Customer, or third parties in the event data is inaccurate or incomplete. Further, the CLIENT shall retain data on file adequate to permit the remaking of Entries for five (5) Business Days following the date of their transmittal by Cliq.
- j. **Timely Delivery:** CLIENT shall cause the EFT data to be delivered to Cliq in a timely fashion to permit the electronic processing on the date designated by CLIENT which is estimated to require the delivery of the EFT Data not less than (2) banking days prior to the scheduled processing date. All data must be delivered before the end of the banking day. Cut-off time: 12:00 P.M. PST.
- k. **Reports/Statements:** CLIENT acknowledges that it is their responsibility to review the following electronic materials: reports, fees, statements, return notifications, correction notices that are provided by Cliq and respond accordingly and in a timely manner.
- l. **Data Protection:** CLIENT is responsible for providing access for its employees to the ACH Gateway and agrees to maintain adequate data security policies and procedures including policies on authenticating their customers. Cliq shall be entitled to rely on any electronically or written communication believed by it in good faith to be genuine and have been provided by the authorized representative of the CLIENT. CLIENT warrants that it will secure and protect all non-public personally identifiable information of the Customers and Cliq, and that if CLIENT believes or suspects that Customer data has been accessed by unauthorized persons or entities, or that one or more unauthorized transactions have been processed or attempted to be processed, CLIENT agrees to notify Company as soon as possible. CLIENT further acknowledges and agrees that said unauthorized access or transactions alone shall not affect Cliq's ability to recover payments that it is otherwise owed, or to obtain reimbursement for monies advanced pursuant to Paragraph 15(a) of this Agreement. This provision shall survive termination of this Agreement.
- m. **Delivery of Payroll Funds:** CLIENT shall cause payroll funds to be delivered by wire transfer at least Three (3) Banking Days ("Lead Time") prior to the Settlement Date designated by CLIENT in an amount sufficient to cover payroll deposits, fees and other charges to Cliq ("Payroll amount requirement") in accordance with the Specifications as published from time to time by Cliq. CLIENT understands and agrees that in the event payroll funds are not delivered in accordance with the above Lead Time, or that the Payroll amount requirement is insufficient, the Settlement Date will be delayed to allow for sufficient Lead Time and sufficient Payroll amount requirement.
- n. **Exclusive:** CLIENT agrees that Cliq shall be its sole provider of ACH services during the term of this Agreement.
- o. **Acceptance by Cliq:** This Agreement shall be effective only upon acceptance by Cliq. In the event CLIENT is not accepted for the services as contemplated herein, any fees paid to Cliq shall be non-refundable.
- p. **Compliance:** CLIENT shall be responsible to ensure they comply and not violate state, federal, local laws, and regulations, such as Regulation E, Article 4A of the Uniform Commercial Code, and sanctions laws administered by Office of Foreign Asset Control (OFAC). It shall further be the responsibility of the CLIENT to obtain information regarding such OFAC enforced sanctions. The CLIENT understands and agrees that the CLIENT shall be the



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originator of the ACH entries as defined by the National Automated Clearing House Association ("NACHA") Rules and shall Originate said Entries in accordance and be bound by these Rules. The CLIENT has access to a copy of the rules, acknowledges receipt of a copy, or may purchase a copy if they so desire. CLIENT agrees to acquire current copies of the Rules annually. In the event CLIENT violates any of the applicable Rules and NACHA imposes a fine on Cliq because of the CLIENT's violation, Cliq shall charge the fine to the CLIENT.

16. Cliq shall be responsible for the following:

- a. **ACH Gateway:** Cliq shall provide CLIENT with an initial secure log in and password into the ACH Processing Gateway Interface. CLIENT will be required to change the account password at first log on. See Appendix D regarding additional security requirements.
- b. **Format of EFT Data:** Cliq shall provide CLIENT with consultation on the format and specification of EFT data if transactions are to be transmitted to Cliq other than through the virtual terminal incorporated within the Cliq ACH Processing Gateway Interface.
- c. **Consolidation Account:** Cliq shall establish and maintain an account ("Consolidation Account") for deposit of Collected Funds and payment of returned Items and service fees, and other charges ("Other Fees") incurred by Cliq, Sponsor Bank and the Federal Reserve hereunder. CLIENT understands and agrees that: (i) Cliq shall deposit all Collected Funds to the Consolidation Account. (ii) Cliq shall hold One Hundred Percent (100%) of Collected Funds ("Hold Amount") in the Consolidation Account for a period of FIVE (5) Banking Days, or such other time period that may be established by Cliq pursuant to its underwriting of CLIENT ("Hold Period"), 3). Cliq shall, at the expiration of the Hold Period, transfer the Collected Funds, less a reserve amount of 10% of the Collected Funds ("Reserve Amount") or such other amount established for CLIENT pursuant to Cliq's underwriting of CLIENT, by EFT to the Settlement Account. Such transfer shall be in such form and at such times and in accordance with the Specifications as published from time to time by Cliq. CLIENT further understands and agrees that Cliq shall hold any Reserve Amount for a period of One Hundred Eighty (180) days from the date of collection ("Reserve Period"). Cliq shall release the Reserve amount to the credit of the Consolidation Account at the expiration of the Reserve Period unless CLIENT has unpaid amounts due Company.

CLIENT understands and agrees that the Hold Amount, Hold Period, Reserve Amount and Reserve Period may be adjusted by Cliq, at the sole discretion of Cliq, to insure availability and sufficiency of funds to cover fees and returns.

- d. **Electronic Bulletin Board:** Cliq shall provide an electronic means (electronic bulletin board service, or other like service) for the purpose of receiving EFT Data from CLIENT, posting return Items, correction notices and account statements for CLIENT. CLIENT understands and agrees that it is CLIENT's responsibility to pick up, by electronic means, the statements and return notifications from the electronic bulletin board service.

- 17. Force Majeure:** Except when prevented from doing so by causes beyond its control, including, but not limited to Acts of God, strikes, mechanical or electrical breakdown, fire, flood, war, governmental action, accident, Cliq shall process EFT data furnished by CLIENT and observe the processing schedules set forth in the Specifications as published from time to time by Cliq, and deposit of funds in the Consolidation and Settlement Accounts.
- 18. Materials:** CLIENT acknowledges that all materials provided to CLIENT by Cliq, in contemplation of and in fulfillment of this Agreement, are the property of Cliq. CLIENT shall guard against unauthorized duplication that would be a violation of United States copyright law.
- 19. Use of Independent Sales Organization:** CLIENT acknowledges that Cliq may use an independent sales organization/member service provider ("ISO/MSP") operating under applicable ACH Associations' rules, and the Rules and Regulations of the Federal Reserve System. ISO/MSP is an independent contractor and not an agent of Cliq. ISO/MSP has no authority to execute the Agreement on Cliq's behalf or to alter the terms hereof without Cliq's prior written approval.
- 20. Sole Obligation:** Cliq's sole obligation to CLIENT hereunder is to perform the services agreed upon, exercising the same degree of care used in processing items and data for its own use. Cliq shall not be liable for the insolvency, neglect, misconduct, mistake or default of any other bank, corporation or person. In no event shall Cliq be liable for any loss, destruction, mutilation, damage or thefts resulting from any cause whatsoever, of any data, entries, or items, except those directly attributable to willful misconduct or gross negligence on the part of Cliq.
- 21. Record Maintenance:** This Agreement and the performance by Cliq of its services hereunder shall not relieve CLIENT of any obligation imposed by law or contract, regarding the maintaining of records or other matters nor from employing adequate audit, account and review practices customarily followed by similar businesses.
- 22. Indemnification:** CLIENT agrees to indemnify and to hold Cliq, Sponsor Bank and the Federal Reserve free and harmless from any and all liability, claims, and damages (including attorney's fees and costs) which Cliq, Sponsor Bank and the Federal Reserve may suffer or incur by reason of providing the services contemplated herein, including but not limited to



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any liability incurred by Cliq with respect to the warranties and indemnities required to be made by Cliq to Sponsor Bank or the Federal Reserve, its representatives, and other banks under the ("Operating Rules") of the National Automated Clearing House, except any liability, claims, or damages caused by Cliq's gross negligence in performing its services hereunder. This article shall survive termination of this Agreement.

- 23. Warranty of Application:** In accordance with this Agreement, CLIENT has executed and delivered to Cliq a document entitled "Data Processing and Payment Collection Application" containing, among other things, certain information regarding the nature of CLIENT's business. Its form of business organization, and the individual principal owners of CLIENT. CLIENT represents and warrants to Cliq that all information and all statements contained in such Data Processing and Payment Collection Application are true, correct and complete as set forth in this Agreement. CLIENT FURTHER AGREES TO NOTIFY Cliq IN WRITING OF ANY AND ALL CHANGES WHICH MAY OCCUR FROM TIME TO TIME REGARDING ANY INFORMATION CONTAINED IN SUCH DATA PROCESSING AND PAYMENT COLLECTION APPLICATION, INCLUDING BUT NOT LIMITED TO: THE IDENTITY OF PRINCIPALS AND/OR OWNERS, THE FORM OF BUSINESS ORGANIZATION (i.e. SOLE PROPRIETORSHIP, PARTNERSHIP, ETC.), TYPE OF GOODS AND SERVICES PROVIDED, AND HOW SALES ARE COMPLETED (i.e. BY TELEPHONE, MAIL, OR IN PERSON AT THE CLIENT's PLACE OF BUSINESS).
- Such notice must be received by Cliq within ten (10) business days of such occurrence. CLIENT acknowledges that Cliq may from time-to-time request updated credit information on CLIENT's business and CLIENT further agrees to provide updated financial statements and other information within a reasonable period of time as Cliq may request. CLIENT shall be and remain fully liable to Cliq for any and all losses, costs, claims, and expenses suffered or incurred by Cliq, arising out of or resulting from CLIENT's failure to report all such changes to Cliq in accordance herewith.
- 24. Notices:** Any notice required or allowed to be given under this Agreement shall be addressed to the other party as follows: FOR CLIQ: at its principal place of business as listed above; FOR CLIENT: at the address listed on the attached "ACH Application". Any notice so addressed shall be deemed delivered on the date received.
- 25. Invalidity:** If any provision in this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 26. Facsimile:** This Agreement may be executed in one or more separate counterparts and conveyed by facsimile, each of which, when so executed shall be deemed an original and shall together constitute one and the same instrument which may be sufficiently evidenced by anyone counterpart, each of which shall be fully effective against the parties executing the same (even if by facsimile) and all parties claiming under or through them.
- 27. Assignment:** Cliq shall have the right to assign this Agreement to any corporation or other entity which Cliq may hereafter merge or consolidate, or to which Cliq may transfer all or substantially all of its assets, provided such corporation or other entity agrees to assume responsibility for all of Cliq's material obligations under this Agreement.
- 28. Limitation of Liability:** Any legal action undertaken by CLIENT pursuant to any of the terms or conditions or the interpretation thereof shall be commenced within six (6) months of said termination. CLIENT agrees hereby that after a term of six (6) months has expired, no legal action against Cliq may be brought in any court regarding any term or condition of this Contract.
- 29. Entire Agreement:** This Agreement, including the Merchant Application and these Terms and Conditions express the entire understanding of the Parties with respect to its subject matter, and except as provided herein, may be modified only in writing executed by all Parties and constitutes a fully integrated document.
- 30. Amendment:** Except as otherwise provided herein, no provision of this Agreement may be amended or modified except in writing signed by Cliq. Any amendment to this Agreement shall be effective the later of either the effective date contained in the notice of acceptance or fifteen (15) days after the notice is mailed, or when expressly agreed.
- 31. Guarantors:** The undersigned owners/officers ("Guarantors"), by their execution of this Data Processing and Payment Collection Agreement hereby unconditionally and irrevocably personally guarantee the full and faithful performance or payment by CLIENT of each and all of its duties and obligations herein set forth and contained, whether prior or subsequent to termination or expiration hereof. This provision does not apply if CLIENT is registered as an "exempt" organization under Section 501(c)(3) of the Internal Revenue Code, 26 USC 501(c)(3).
- 32. Attorney's Fees:** Should either party pursue an action in court or arbitration against the other regarding any provision of this Agreement, the prevailing party shall be entitled to all costs incurred in connection with such action, including a reasonable attorney's fees.
- 33. Binding Effect: Governing Law; Jurisdiction and Venue:** Any action or proceeding on the Agreement by or against Cliq shall be initiated and maintained under the jurisdiction of the State of California with venue in the courts of Orange County, in which case this Agreement shall be construed and governed by the laws of the State of California.



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34. Severability: In the event that any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

35. ACH Transaction Entry Types: The following provisions only apply to those ACH Transaction Entry Types selected by the CLIENT in the Application portion of the Agreement. No other entry types other than those listed below may be originated by CLIENT.

a. CCD – Corporate Credit or Debit Entries

- i. Transmittal of Entries by CLIENT: The CLIENT shall transmit CTX, CCD+ and/or CCD Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules.
- ii. Uniform Commercial Code Article 4A (UCC 4A) Disclosure: In regard to the origination of “wholesale credit” entries (defined as incoming corporate ACH credit transfers containing Standard Entry Class Codes (SEC Codes) “CCD” and “CTX”), the Originating Depository Financial Institution (ODFI) may provide disclosure as required by UCC 4A to the CLIENT.
- iii. Reporting Requirements: the ODFI may provide reporting to NACHA for CLIENT regarding “CTX”, “CCD+” and/or “CCD” debit Entries whose return rate for unauthorized Entries exceeds .50% as required by the NACHA Rules. This section does not apply if CLIENT is initiating “CTX”, “CCD+” and “CCD” credit Entries only.
- iv. Authorization: The CLIENT shall obtain authorization but no specific format is required per the NACHA Rules. The CLIENT shall retain a record of the authorization for a period of two (2) years from the termination or revocation of the authorization.
- v. Customer Agreement: CLIENT must have an agreement that binds the Customer to the Rules.

b. PPD – Direct Payment Entries

- i. Transmittal of Entries by CLIENT: The CLIENT shall transmit PPD Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules.
- ii. Authorization: The CLIENT shall obtain authorization for PPD Entries in accordance with the NACHA Rules and U.S. Law. The CLIENT shall retain a record of the authorization for a period of two (2) years from the termination or revocation of the authorization. The authorization must be in writing, provide Customer may revoke it, and be signed or similarly authenticated.
- iii. Pre-notifications: If the CLIENT initiates Pre-notifications, then the CLIENT shall send Pre-notifications six (6) banking days prior to initiating the first Entry to a particular account.
After the CLIENT has received notice that any such Entry has been rejected by the Receiving Depository Financial Institution (RDFI), the CLIENT shall not initiate any Entry to such customer.
- iv. Notice of Change in Amount: The CLIENT shall provide written notification to the Receiver ten (10) calendar days in advance if the amount of the Entry varies from the previous one, unless the authorization indicates variable amounts.
- v. Notice of Change in Scheduled Debiting Date: The CLIENT shall provide written notification to the Receiver seven (7) days in advance of the new debit date if the date of the debit date changes.
- vi. Reporting Requirement: ODFI shall provide reporting information to NACHA for CLIENT regarding PPD Entries whose return rate for unauthorized Entries exceeds .50% as required by the NACHA Rules.

c. PPD – Direct Deposit Entries

- i. Transmittal of Entries by CLIENT: The CLIENT shall transmit PPD Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules.
- ii. Authorization: The CLIENT shall obtain authorization for PPD Entries in accordance with the NACHA Rules and U.S. Law. The CLIENT shall retain a record of the authorization for a period of two (2) years from the termination or revocation of the authorization. The authorization must be in writing, provide Customer may revoke it, and be signed or similarly authenticated.
- iii. Pre-notifications: If the CLIENT initiates Pre-notifications, then the CLIENT shall send Pre-notifications six (6) banking days prior to initiating the first Entry to a particular account.
After the CLIENT has received notice that any such Entry has been rejected by the Receiving Depository Financial Institution (RDFI), the CLIENT shall not initiate any Entry to such customer.

d. TEL – Telephone Initiated Entries



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- i. Transmittal of Entries by CLIENT: The CLIENT shall transmit TEL debit Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules. A Tel entry may only be transmitted if there is an existing relationship between the CLIENT and the Customer or if there is not one, the Customer initiated the telephone call to the CLIENT.
 - ii. Authorization: The CLIENT shall obtain authorization for TEL Entries in accordance with the NACHA Rules and U.S. law. The CLIENT shall retain a record of the authorization for a period of two (2) years from the Settlement Date of the TEL Entry. For recurring TEL entries CLIENT shall record and provide Customer with a written copy of the authorization.
 - iii. Routing Number Verification: The CLIENT shall employ a commercially reasonable procedure to verify routing numbers.
 - iv. Receiver Identification: The CLIENT shall employ a commercially reasonable procedure to verify the identity of the Receiver.
 - v. Reporting Requirement: The ODFI shall provide reporting information to NACHA for CLIENT regarding TEL Entries whose return rate for unauthorized Entries exceeds .50% as required by NACHA Rules.
- e. WEB – Internet Initiated Entries**
- i. Transmittal of Entries by CLIENT: The CLIENT shall transmit single and recurring WEB debit Entries to Cliq in compliance with the formatting and any other requirements set forth in the NACHA Rules.
 - ii. Authorization: The CLIENT shall obtain authorization for WEB Entries in accordance with the NACHA Rules and U.S. law. The CLIENT shall retain a record of the authorization for a period of two (2) years from (i) the Settlement Date of a single WEB Entry, and (ii) the termination or revocation of the authorization of a recurring WEB Entry. The CLIENT must ensure the authorization is in writing that is signed or similarly authenticated.
 - iii. Routing Number Verification: The CLIENT shall employ a commercially reasonable procedure to verify routing numbers.
 - iv. Receiver Identification: The CLIENT shall employ a commercially reasonable procedure to verify the identity of the Receiver.
 - v. Fraudulent Transaction Detection System: The CLIENT shall employ a commercially reasonable fraudulent transaction detection system.
 - vi. Secure Internet Session: The CLIENT shall establish a secure Internet session with each Receiver utilizing a commercially reasonable level of encryption such as SHA-2 (SHA256) or the equivalent prior to the Receiver's key entry of any banking information, including but not limited to, the Receivers Cliq routing number, account number and PIN number or other identification symbol.
 - vii. Security Audit: The CLIENT shall conduct an annual audit to ensure that the financial information it obtains from Receivers is protected by security practices and procedures that include, at a minimum, adequate levels of (i) physical security to protect against theft, tampering or damage, (ii) personnel and access controls to protect against unauthorized access and use; and (iii) network security to ensure secure capture, storage and distribution of data.
 - viii. Reporting Requirement: The ODFI shall provide reporting information to NACHA for CLIENT regarding WEB Entries whose return rate for unauthorized Entries exceeds .50% as required by NACHA Rules.

Company Name/DBA: _____

X _____ Date ____/____/____
Owner/Officer/Guarantor Signature #1

(Print Name and Title #1)

X _____ Date ____/____/____
Owner/Officer/Guarantor Signature #2

(Print Name and Title #2)

Cliq
By: _____



ACH Processing Agreement

Appendix A

Sample ACH Debit Authorization Agreement

I (we) hereby authorize _____ (Company Name), hereinafter called Company, to initiate debit entries to my (our) Account indicated below and the financial institution named below, hereinafter called Financial Institution, to debit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Financial Institution Name: _____ Branch Address: _____ City: _____
State: _____ Zip: _____ Routing/Transit # (ABA) _____
Checking Account Savings Account
Routing/Transit # (ABA) _____ Account Number: _____

☐☐

I (we) understand that this authority will remain in full force and effect until I (we) notify Company in writing that I (we) wish to revoke this authorization. I (we) understand that Company requires at least 10 days prior notice in order to cancel this authorization.

Name(s): _____
(Please Print)

Signature(s): _____

Date: _____

Attach Copy of Voided Check to This Form

Sample ACH Credit Authorization Agreement

I (we) hereby authorize _____ (Company Name), hereinafter called Company, to initiate credit entries to my (our) Account indicated below and the financial institution named below, hereinafter called Financial Institution, to credit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Financial Institution Name: _____ Branch Address: _____ City: _____
State: _____ Zip: _____ Routing/Transit # (ABA) _____
Checking Account Savings Account
Routing/Transit # (ABA) _____ Account Number: _____

☐☐

I (we) understand that this authority will remain in full force and effect until I (we) notify Company in writing that I (we) wish to revoke this authorization. I (we) understand that Company requires at least 10 days prior notice in order to cancel this authorization.

Name(s): _____
(Please Print)

Signature(s): _____

Date: _____

Attach Copy of Voided Check to This Form



ACH Processing Agreement

Appendix B

UCC Article 4A Disclosure

DISCLOSURES REGARDING ELECTRONIC "WHOLESALE CREDIT" TRANSACTIONS SUBJECT TO UNIFORM COMMERCIAL CODE ARTICLE 4A

Provisional Payment:

Credit given by us to you with respect to an automated clearing house credit entry is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e. the originator of the entry) shall not be deemed to have paid you in the amount of such entry.

Notice of Receipt of Entry:

Under the operating rules of the "NACHA" National Automated Clearing House Association, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, all processing information and statement information is available online through the Cliq ACH Processing Gateway user interface.

Choice of Law:

We may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses ("ACH") and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of California, unless it has otherwise specified in a separate agreement that the law of some other state shall govern.



ACH Processing Agreement

Appendix C Written Statement of Unauthorized ACH Debit

Transaction Information

Name on Account _____

Account Number _____

Transaction Amount _____

Transaction Date _____

Company Debiting the Account _____

Statement

I hereby attest that (1) I have reviewed the circumstances of the above electronic ACH debit to my account, (2) the debit was not authorized, and (3) the following, to the best of my ability to identify, is the reason for that conclusion:

___ I did not authorize the company listed above to debit my account.

___ I revoked the authorization I had given to the company to debit my account before the debit was initiated.

___ My account was debited before the date I authorized.

___ My account was debited for an amount different than I authorized.

___ My share draft or check was improperly processed electronically.

___ Other (Please describe your reason in detail below):

Signature

I am an authorized signer, or otherwise have authority to act, on the account identified in this statement. I attest that the debit transaction above was not originated with fraudulent intent by me or any person acting in concert with me.

I have read this statement in its entirety, and attest that the information provided on this statement is true and correct.

Signature _____ Date _____



ACH Processing Agreement

Appendix D

Security Procedures

CLIENT agrees to comply with the security procedures identified below in transmitting all Origination Files pursuant to this Agreement. CLIENT understands that the Security Procedures are designed to verify the authenticity, and not to detect errors in transmission or content, of Origination Files. If an Origination File is authorized or issued by CLIENT, or on CLIENT's behalf, or CLIENT otherwise benefits from such Origination File, CLIENT agrees to be bound by the Origination File, whether or not Company complies with the Security Procedures. The Security Procedures for Origination Files shall consist of the procedures the Company and CLIENT use to verify that an Origination File has been validly issued by CLIENT and shall include:

- a. CLIENT warrants and agrees that no individual will be allowed to initiate and/or approve ACH transfers in the absence of proper supervision and adequate safeguards.
- b. CLIENT agrees to maintain the confidentiality of any Security Procedures and prevent the disclosure of such procedures except on a "need to know" basis. CLIENT shall notify Company immediately if CLIENT becomes aware of or suspects that any of the procedures relating to the transfer of funds may have been compromised or disclosed.
- c. CLIENT's unique user IDs, passwords, and/or other access devices or authentication techniques as Company may require from time to time ("Access Codes") to access the Services will be provided to the Authorized Representative(s). CLIENT agrees that Access Codes are strictly confidential and must be safeguarded. CLIENT shall have sole responsibility for controlling the distribution and maintaining the confidentiality of the Access Codes assigned to CLIENT. CLIENT acknowledges that anyone with knowledge of CLIENT's or Authorized Representatives' Access Codes will be able to issue Origination Files on CLIENT's account. CLIENT authorizes Company to execute Origination Files pursuant to the instructions of anyone who has provided Company with proper Access Codes and acknowledges that Company shall conclusively presume that any person possessing CLIENT's Access Codes is an Authorized Representative and will regard their Origination File as being authorized by CLIENT. If CLIENT becomes aware of the unauthorized use of Access Codes, or suspects that an unauthorized use may occur, or if CLIENT has terminated authorization for an Authorized Representative, CLIENT shall immediately notify Company to deactivate such Access Codes and issue new Access Codes as appropriate. IN NO EVENT SHALL COMPANY BE RESPONSIBLE FOR ANY DAMAGES RESULTING, EITHER DIRECTLY OR INDIRECTLY, FROM THE UNAUTHORIZED USE OF THE ACCESS CODES PRIOR TO SUCH NOTICE AND A REASONABLE TIME THEREAFTER REQUIRED TO CANCEL SUCH PASSWORD(S).
- d. Company may from time to time, and at its sole discretion, change the Security Procedures or establish additional Security Procedures.
- e. CLIENT agrees that Company may delay the execution of an Origination File until Company has completed any security measures Company, in its sole discretion, deems warranted.
- f. CLIENT is responsible for ensuring that there are adequate software and hardware security measures in place on CLIENT's computers to prevent initiation of fraudulent payments. Such security measures include but are not limited to anti-virus, spyware, malware, key logger detection software, firewalls, and any other "crime ware" protection programs.
- g. CLIENT has carefully analyzed the Security Procedures which will be used in connection with Payment Orders, under the terms of this Agreement, and acknowledges the Security Procedures identified herein are a satisfactory method of verifying authenticity of Payment Orders based on CLIENT's needs and that the Security Procedures are commercially reasonable.

Cancellation or Amendment

CLIENT shall have no right to cancel an Entry after its receipt by Bank. Bank will not manipulate or modify an Entry that needs to be amended, so CLIENT will need to submit a written request to Cliq to cancel the Entry and submit a new one. All Client requests must be submitted by an Authorized Representative of the Client. If the Entry has not yet been transmitted to the ACH Operator, Cliq will request Bank to use reasonable efforts to act on the request to cancel the Entry.

If Cliq is successful and the Bank was able to cancel the Entry, Cliq will call CLIENT to confirm the cancellation.