

# ARRAY+ MASTER SERVICES AGREEMENT

## (FOR FINANCIAL INSTITUTIONS ONLY)

This Master Services Agreement (the “MSA”) and any applicable order form (each an “Order”), as may be amended or supplemented by a mutually executed Change Order, Statement of Work, or other Amendment (collectively the “Agreement”), is a legally binding agreement by and between Array US, Inc. (“Company”, “us” or “we”), and the financial institution regulated under the laws of the United States of America (“Client”, “you” or “your”) executing an applicable Order, each a “Party” and collectively, the “Parties”. This Agreement and the Addendums linked herein and/or attached hereto, describe the terms and conditions under which you may access and use Company’s services and/or proprietary Array+ platform (collectively, the “Platform”). The “Effective Date” of this Agreement is the date on which the Client executes an applicable Order.

Company may modify this Agreement from time to time in accordance with Section 13 (Modifications) below. All addendums, exhibits, or other documents attached hereto are incorporated herein and made a part of this Agreement for all purposes as if fully set forth herein.

### 1. PLATFORM SERVICES

- A. Platform Services. The Platform includes various tools and features that provide access to, integrated display of and delivery of certain consumer data (“Data”) in conjunction with and through Company and third party products and services (“Products”), subject to the terms provided herein and any applicable attached hereto (collectively the “Platform Services”).
- i. Order. The Platform Services and related Products offered and made available to Client shall be set forth in an applicable Order. If you use the Platform Services and such Products, you may be subject to additional terms and conditions applicable to such Products, if any, as set forth herein, in an Order, applicable Addendum, or as provided to you prior to the time of such use. Your execution of an Order or use or continued use of such Products after review of such additional terms shall constitute acceptance of such terms.
  - ii. Client. For purposes of this Agreement, “Client” means any individual, corporation, partnership, limited liability company, association, trust, unincorporated entity or other legal entity executing an Order or otherwise accessing or using the Platform, and its employees, representatives, consultants, contractors, partners, agents or Affiliates who are authorized by such Client to access and use the Platform on Client’s behalf, each of whom shall be bound by this Agreement as if each is the Client.
  - iii. Client Website. For purposes of this Agreement, “Client Website” shall mean the website or websites listed on an applicable Order.
  - iv. Permitted Territory. For purposes of this Agreement, including any applicable Addendum, “Permitted Territory” shall mean the United States, Canada, and the United States territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.
  - v. Subscribers. For purposes of this Agreement, “Subscribers” means any end user customers, members, subscribers, or consumers who access the Products or Platform Services through the Client Website.
- B. License. Subject to Client's compliance with the terms and conditions of this Agreement, and as may be provided in an Order, the Company hereby grants Client, during the applicable term of an Order, the non-exclusive, limited, revocable,

non-transferable, and non-sublicensable right and license to access and use the Platform in accordance with the terms and conditions set forth herein and in the applicable Order, and specifically: (i) to utilize and exploit the Platform solely to market and sell the Data and Products as set forth in an applicable Order; and (ii) to allow Subscribers to access, view and use the applicable Data and Products on or through the Platform. Except as provided herein, Client may not disclose to or provide any third party access to, use of, or rights in or to the Platform, except as third parties may access or use the Platform in relation to the Client's ordinary course of business and then only for the sole benefit of Client in accordance with this Agreement and any applicable Order. Except for the license granted hereunder, as between the Parties, Company retains all right, title and interest in and to the Platform. Except as expressly set forth herein or otherwise agreed upon by the Parties hereto, Company acknowledges and agrees that Client's use of the Platform and Platform Services does not grant Company any right, title or interest in any information, content, or data obtained by Client from a source other than Company and used by Client in conjunction or association with the Platform Services and Company shall not make any claim of ownership or interest in any such information, content, or data.

C. Restrictions. Except as otherwise explicitly provided herein or in an applicable Order, or as may be expressly permitted by Applicable Laws, Client will not, and will not permit or authorize any third party to: (i) modify, make derivative works of, disassemble, reverse compile and/or reverse engineer any part of the Platform, or reverse engineer, decompile, disassemble, extract, or otherwise derive or attempt to derive the source code of the Platform or any other compiled software provided or made available by Company hereunder; (ii) use or permit the use of, reproduce or otherwise duplicate, disclose, distribute, modify, encumber, time-share, license, sublicense, sell, distribute, assign, rent, lease, or transfer the Platform, any portion thereof, or any of Client's rights thereto; (iii) frame and/or utilize framing techniques to enclose any trademark, logo, and/or other portion of the Platform (including images, text, page layout, and/or form); (iv) use any metatags and/or other "hidden text" using Company's name and/or trademarks; (v) use and/or access the Platform in order to create any service, software, platform, documentation, or data that is competitive with, substantially similar, or confusingly similar to any aspect of the Platform; (vi) copy, reproduce, distribute, republish, download, display, post and/or transmit any part of the Platform in any form and/or by any means; (vii) remove, obliterate, or cancel from view any copyright, trademark, or other proprietary or confidentiality notice or legend appearing on or in the Platform or any materials provided or made available by Company hereunder, or fail to reproduce any such notice or legend on any copy made of any such materials; (viii) take any action that materially interrupts or interferes with, or that would reasonably be expected to materially interrupt or interfere with, the Platform, Company's business operations or other customers' use or enjoyment of the Platform or Platform Services; (ix) run any form of auto-responder and/or "spam" on or through the Platform or use the Platform to otherwise send "spam" to any third-party; (x) use the Platform in any unlawful way or for any unlawful purpose and/or to violate any Applicable Laws; (xi) circumvent or disable any security or technological features or measures of the Platform, (xii) use the Platform to access, store, distribute or transmit any viruses, worms, trojan horses, or other similar things or devices that may prevent, impair or otherwise negatively affect the operation of any software, hardware, network, program or data; (xiii) use the Platform to transmit any material that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive, facilitates illegal activity or causes damage or injury to any person or property; (xiv) use any "open source" or "copyleft" software in a manner that would require Company to disclose the source code of the Platform to any third party or offer the Platform at no charge; (xv) use the Platform to conduct or forward illegal contests, pyramid schemes, chain letters, unsolicited or unauthorized advertising, or unsolicited email or multi-level marketing campaigns; and/or (xvi) access the Platform or Data for any purpose which is not authorized under this Agreement. Notwithstanding anything to the contrary herein, Company may, in its sole discretion, immediately revoke the grant of rights contemplated in Section 1.B if Client breaches the restrictions in this Section or creates other security or legal concerns.

D. Systems. Client shall ensure that its network and systems comply with the relevant specifications provided by Company and shall provide Company with information as may be reasonably required by Company in order to render access to the Platform. Client is responsible for obtaining, maintaining, and supporting all internet access, computer hardware, and other equipment and services needed for it to access and/or use the Platform, other than as necessary for Company to host and provide the Platform. The Client will determine the access controls for the Subscribers and will be responsible for its activity on or through the Platform, whether or not authorized, including compliance with this Agreement. Client agrees to prevent unauthorized access to, and/or use of the Platform and notify Company immediately of any unauthorized use of Client's account and/or any other known breach of security of or to the Platform in connection with Client's access to or use thereof. Company will, to the extent permitted by law, and to the

extent that Company reasonably deems it necessary, immediately notify Client after becoming aware of any breach of security relating to the Platform.

- E. Maintenance; Security. The Company will use its best efforts to provide standard maintenance for the Platform during the term of this Agreement, which will include enhancements, "bug fixes" and other modifications as may be identified by the Company. Company shall bear no obligation to run, provide or support legacy versions of the Platform. The Company may make additional modifications or releases to the Platform and the underlying source code as the Company may determine in its sole and absolute discretion. Notwithstanding the foregoing, to the extent any such modifications or releases are reasonably expected to reduce, inhibit, impair, or otherwise adversely affect the functionality or performance of the Platform, the Company will use commercially reasonable efforts to notify Client of such changes with as much notice as is reasonably practicable. The Company will, at all times, implement and maintain reasonable technical, administrative, physical, and organizational information security measures.
- F. Third Party Service Providers. The Platform and Platform Services may contain code, content, features, functionality, components and certain products and services (collectively the "Features") that are provided by third-parties ("Third Party Service Providers"). In addition to this Agreement, any such third-party Features may be governed by additional terms and conditions provided by suppliers of said third-party Features which shall be set forth herein this Agreement, an applicable Order, Addendum, or as provided to you prior to the time of such use. Your execution of an Order or use or continued use of such Features after review of such additional terms shall constitute acceptance of such terms. Any Features shall be provided "AS IS" without warranty of any kind by Company. Company assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Features as provided by Third Party Service Providers.
- G. Suspension. Client is responsible for maintaining the security of its account and shall use commercially reasonable efforts to govern and control activities that occur with respect to its use of the Platform and by any Subscribers. Notwithstanding anything herein to the contrary, Company reserves the right, without liability to the Client, to disable or suspend the Client's access to the Platform in the event (i) of any material breach of this Agreement; (ii) Client or its Subscribers use of the Platform (a) disrupts or poses a security risk to the Platform or any Company customer, (b) is reasonably believed it may harm Company's systems, or the systems of any provider of any third-party services, or (c) may subject Company or any third-party to liability; (iii) Client or its Subscribers are using the Platform for fraudulent or illegal activities; (iv) Client's use of the Platform materially violates any Applicable Laws, specifically including without limitation, the Telephone Consumer Protection Act and Fair Credit Reporting Act; or (v) Company's continued provision of any of the Platform Services is prohibited by Applicable Laws or regulation. Company shall provide Client with reasonable notice and opportunity to cure any of the foregoing events, unless in Company's reasonable discretion, Company determines that such notice and cure period would cause imminent harm to the Company, the Platform, or any third party.
- H. Array+ Additional Terms and Conditions; Payment Processing.
- i. Client's Subscribers will be offered the opportunity to upgrade from free Platform Services as identified in an applicable Order to a paid, premium package of the Platform Services. Client and Company agree that each Subscriber electing to purchase an upgraded package of the Platform Services shall be required to agree to certain terms and conditions directly with Array upon upgrading from the free version of the Platform Services. Access by Client's Subscribers to the upgraded package of the Platform Services is expressly conditioned upon each respective Subscriber's acceptance of the applicable terms, compliance therewith, and successful monthly payment.
  - ii. Client shall utilize Company as its merchant processing service provider in accordance with the Merchant Processing Terms attached hereto as Addendum B, including any exhibits or other attachments thereto.
- I. Trials and Betas. If Client receives access to the Platform (or certain features of the Platform) on a free or trial basis or as an alpha, beta, or early access offering ("Trials and Betas"), unless otherwise specified in an Order, use is permitted for Client's internal evaluation purposes only during the term specified in the Order (or if not specified, ninety (90) days). Trials and Betas are optional and either Party may terminate Trials and Betas at any time for any reason. Trials and Betas may be inoperable, incomplete or include features that Company may never release, and their features and performance information, including the existence of such Trials and Betas, are Company's Confidential Information

subject to all the applicable protections and restrictions provided herein. Notwithstanding anything to the contrary herein, Company provides no warranty, indemnity, uptime guarantee or support for Trials and Betas and its liability for Trials and Betas will not exceed US\$100.

- i. To the extent an Order specifies that Client may offer Trials and Betas to Subscribers, Client assumes all liability related to such Trials or Betas offering. For the avoidance of doubt, Client agrees to maintain compliance with Applicable Laws, including as specified in the applicable Addendum related to any such Trials and Betas offering to Subscribers. Further, in addition to Client's indemnification obligations provided herein (Section 8.A.), Client agrees to indemnify, defend, and hold harmless Company, its affiliates and agents, and each of their respective members, directors, officers, and employees from and against all third-party Claims (as defined herein) related to the Trials and Betas.

## **2. DATA AND INTEGRATED PRODUCTS.**

- A. Data Providers. Client understands and agrees that the Data offered through the Platform and/or used in conjunction with the Products is collected and compiled from various third party data and service provider sources (each a "Data Provider"). As such, Data may not be provided by the Company, but instead hosted and/or provided by and through such Data Providers. You may be required to agree to additional terms and conditions that apply to and govern the use of certain Data ("Applicable Data Terms" from a Data Provider) and/or Products ("Applicable Product Terms" as provided in Addendum A attached hereto), which shall be set forth within this Agreement, an applicable Order, or as provided to you prior to the time of such use. Your execution of an Order or use or continued use of such Data and/or Products shall constitute acceptance of such terms. Any Data or Products provided by third parties, including Data Providers shall be provided "AS IS" without warranty of any kind by Company. Company assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any third-party Data and Products. For the avoidance of doubt, any protections afforded Third Party Service Providers herein shall be applicable to Data Providers.
- B. Personal Information. Company may collect, use, share, and hold personal or non-public information about Client and Subscribers, including but not limited to: name, address, telephone number, email address, social security number and/or tax identification number and payment data, Transaction data, including account numbers, purchase history, descriptions of purchases, and various transaction data related to Subscribers ("Personal Information") for the purpose of considering eligibility for the Platform Services and for the purpose of providing Client and Subscribers with the Platform Services. Company shall have the right to (i) use the Personal Information as necessary to perform the Platform Services (including distributing the Personal Information to its Third Party Service Providers and other third parties, as requested by Client and/or Subscriber and as necessary to perform the Platform Services); (ii) maintain the Personal Information as long as necessary or as required by law and used internally for record keeping, internal reporting, and support purposes; (iii) compile and disclose Personal Information in the aggregate where the Personal Information is not identifiable, including without limitation and to the extent applicable, calculating merchant averages by region or industry; and (iv) provide the Personal Information as required by Applicable Laws or court order, or to defend Company's rights in a legal dispute. Company, its subsidiaries, Third Party Service Providers, suppliers and/or their agents and/or contractors may have access to, use, and transfer such Personal Information among themselves as necessary for the purpose of the provision and management of the Platform Services. Company may further transfer Personal Information (a) with non-affiliated entities that assist Company in providing products and services that Client or Subscriber have requested; (b) with companies that provide support services to Company; (c) with companies that provide marketing services on behalf of Company or (d) as otherwise provided by Applicable Laws.
- C. Privacy. Wherever Client collects personally identifiable information from its website users and/or Subscribers, which will be used in conjunction with the ordering of any Data through the Platform, Client agrees to clearly and conspicuously post a link to a Privacy Policy on each of its websites where it is collecting such information. Such privacy policy shall comply in all material respects with all Federal Trade Commission guidelines and any other laws, rules, and regulations with respect to personally identifiable information and online privacy and online privacy of minors, including all Applicable Laws, in each case, applicable to Client's collection and use of personally identifiable

information. Client acknowledges Company will collect, retain, use and share Personal Information and Data collected from Client and Subscribers, and Company will share such Personal Information and Data with its Third Party Service Providers, in accordance with Company's then current privacy policy (currently available here: <https://array.pactsafe.io/#privacy>). Client consents, to the collection, use, processing and transfer of Personal Information and Data, and the sharing of Personal Information and Data with Third Party Service Providers and other third-party vendors, agents, and suppliers, as described herein and pursuant to Company's Privacy Policy. Client agrees to monitor Company's Privacy Policy periodically to review any possible amendments. By using the Platform Services after modifications to Company's Privacy Policy, Client will have agreed to such amendments.

- D. Changes. Company shall have the right to modify or discontinue access to or delivery of any or all of the Data, if it believes in good faith that it cannot provide the Data without violating Applicable Laws or due to the requirements of any contract with a Data Provider. When and where possible, Company shall provide Client with reasonable notice prior to such modification or discontinuance and use reasonable efforts to provide substitute data.

### 3. REVENUE SHARING; PAYMENTS.

- A. Revenue Sharing. Company will pay Client a percentage of the Gross Revenue received by Company from Client's Subscribers in connection with the Array + Product as set forth in an applicable Order (each payment a "Revenue Share"). "Gross Revenue" shall mean the amounts collected by Company from Client's Subscribers for the Array+ Product, less any taxes, chargebacks, refunds, and/or other applicable adjustments. Company shall pay the applicable percentage of Gross Revenue to Client on an annual basis within thirty (30) days after the last day of the applicable Term for the Array+ Product. In no event shall Client have a right to receive any consideration for the Array+ Product other than as set forth herein or an applicable Order. Payments will be made in US Dollars and only to US bank accounts as instructed by Client.
- B. Payment; Disputed Amounts. Company shall pay Client the Revenue Share due hereunder via ACH. If Client disputes any Revenue Share payment, and such dispute cannot be resolved promptly through good-faith discussions between the Parties, the Parties shall diligently proceed to resolve such disputed amount through arbitration, as set forth in Section 14, within forty-five (45) days from the date of the invoice. An amount will be considered disputed in good faith if: (i) Client delivers a written statement to Company (at [billing-disputes@array.com](mailto:billing-disputes@array.com)) on or before thirty (30) days after receiving the applicable Revenue Share payment from Company, describing in detail the basis of the dispute and the amount of the dispute; and (ii) such written statement represents that the amount in dispute has been determined in good faith.
- C. Taxes. Company shall be solely responsible for collecting all sales, use, or excise taxes, or any other similar taxes or fees assessed by any state or local authority (collectively, "Sales Taxes") due in connection with sales of the Data and Products to Subscribers and remitting, when due, to the appropriate governmental authorities, all such Sales Taxes. Company shall indemnify, defend, and hold harmless the Client and its Third Party Service Providers for any and all such Sales Taxes and any damages incurred by the Client in connection with Company's failure to properly collect or deliver to the appropriate government authorities on a timely basis all required Sales Taxes.

### 4. TERM AND TERMINATION.

- A. Term. This Agreement shall commence on the Effective Date and shall continue as specified in the applicable Order (the "Initial Term"). Upon conclusion of the Initial Term, unless otherwise specified in an Order, the Order shall thereafter automatically renew for additional one (1) year terms (each a "Renewal Term"), unless either Party delivers written notice at least thirty (30) days prior to the end of the Initial Term or a Renewal Term of such party's intent to terminate this Agreement (the Initial Term and all such Renewal Terms, collectively the "Term").
- B. Termination. Either Party may terminate this Agreement immediately upon written notice to the other party: (i) if the other Party files a petition for bankruptcy, becomes insolvent, or makes a general assignment for the benefit of its creditors, or a receiver is appointed for the other Party or its business; (ii) if the other Party breaches or fails to perform

in any material respect any of its material obligations under this Agreement, which shall include Client's failure to deploy within a commercially reasonable time period once Company resources are assigned to Client deployment, and does not cure such breach or failure within seven (7) days after receipt of written notice of the breach or failure; or (iii) if a Party has a reasonable belief that continuance of the delivery, receipt or use of the Platform Services will result in an imminent violation of an Applicable Law. Notwithstanding the foregoing, in the event that a change in Applicable Laws, Data Provider requirements, results in Company no longer being able to offer the Platform or the Products in a commercially reasonable manner as determined by Company, Company shall have the right to terminate this Agreement without penalty upon thirty (30) days' notice.

- C. Obligations After Termination. Upon termination, (i) Client will stop all use of the Platform and the license granted in Section 1.B hereunder shall be terminated, and (ii) Company will pay all outstanding undisputed Revenue Share amounts owed through the date of termination. The rights and obligations of the Parties under Section 14.D. (SURVIVAL) shall survive termination as provided herein.

## 5. REPRESENTATIONS AND WARRANTIES.

- A. Applicable Law. Each Party represents and warrants that it will comply with all local, state, federal, and international laws, rules and regulations, as applicable in performance of this Agreement, including, without limitation, Title VII of the Civil Rights Act of 1974, the Gramm-Leach Bliley Act, 15 U.S.C. §§6801-6809, the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§6101-6108, the Telemarketing Sales Rule Act, 16 C.F.R. pt. 310, the Fair Credit Reporting Act (U.S.C. §1681m(a)), the Federal Trade Commission Act, the Children's Online Privacy Protection Act, the CAN-SPAM Act of 2003, the Telephone Consumer Protection Act (42 U.S.C. 227), provisions relating to the National Do Not Call Registry ((16. C.F.R. Part 310) and applicable state Do Not Call List requirements, the Fair Debt Collection Practices Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act including but not limited to Section 1031 and 1036, 12 U.S.C §§5531, 5536, Section 5 of the FTC Act, the Drivers Privacy Protection Act 18 U.S.C. §2721 (and related state laws), the Privacy Act of 1974, the Federal Communications Act, and any other applicable local, state, federal or international laws (collectively, "Applicable Laws").
- B. Mutual Representations and Warranties. Each Party represents and warrants to the other that (a) it is engaged in a lawful business that includes the sale of products and/or services, and are duly licensed to conduct such business under the laws of all jurisdictions in which each Party conducts business; (b) all statements made by each Party pursuant to this Agreement, or in any other document relating hereto are true, accurate and complete in all material respects; (c) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms; (d) the Party's obligations under this Agreement do not violate any law or breach any other agreement to which such Party is bound; (e) it has all necessary right, power and ability to execute this Agreement and to perform its obligations under this Agreement; (f) no authorization or approval from any third party is required in connection with such Party's execution, delivery or performance of this Agreement; and (g) it has reviewed and understands the Agreement.
- C. Company Representations and Warranties. Company represents, warrants, covenants and agrees that Company's provision of the Data and Products via the Platform as contemplated by the Parties in this Agreement does not violate either any third party contractual obligations or restrictions relating to the Company's access or use of any such Data or Products, or any third party intellectual property or proprietary rights. To the extent applicable to the Platform Services provided by Company, Company shall maintain compliance with PCI-DSS, but cannot guarantee or warrant that Personal Information or Data will be transported outside of Company without unauthorized interception or modification by a third-party. Company does not warrant the services of any third party, including without limitation Third Party Service Providers or the Card Association, as applicable.
- D. Client Representations and Warranties.
- i. Client represents and warrants that (a) it shall use the Data and related Products only for an intended and permissible purpose under this Agreement and/or an applicable Order; (b) it shall use and provide access



to the Data and related Products only in accordance with Applicable Laws, Applicable Product Terms, and Applicable Data Terms, and when and where required, upon the written instructions and consent of the Subscribers to whom such Products relate; (c) as applicable, it shall request and use the Data strictly in accordance with the FCRA, understanding and acknowledging that THE FCRA PROVIDES THAT ANY PERSON WHO KNOWINGLY AND WILLFULLY OBTAINS INFORMATION ON A CONSUMER FROM A CONSUMER REPORTING AGENCY UNDER FALSE PRETENSES SHALL BE FINED UNDER TITLE 18 OR IMPRISONED NOT MORE THAN TWO YEARS OR BOTH; and (d) it shall maintain commercially reasonable procedures designed to ensure that such Data and Products are not obtained by any unauthorized person and/or entity.

- ii. Client represents, warrants, covenants and agrees that: (a) Client will avoid deceptive, misleading or unethical practices that are or would be reasonably expected to be detrimental to the Company or its Data Providers, or their respective business or reputation; (b) Client will make no intentionally false or misleading representations with regard to the Company or its Data Providers; (c) Client will not intentionally publish or employ, or cooperate in the publication or employment of, any misleading or deceptive advertising material with regard to the Company or any Products; and/or (d) other than to the extent permitted in this Agreement or an applicable Order, Client will not modify any Data or Products in any manner (other than their "look and feel").
- iii. Client represents and warrants that: (a) it has implemented or contractually required industry- standard security measures to help protect the security and integrity of, and prevent, unauthorized access to the Data, Products, Platform, Platform Services or Company systems; (b) it will not disrupt, disable, erase, alter, harm, damage, interfere with or otherwise impair in any manner the Data, Products, Platform, Platform Services or Company systems; and (c) in the event of any security breach or unauthorized access to any Data, Products, Platform, Platform Services or Company systems, Client will immediately investigate such breach and immediately notify Company within three (3) hours, and, unless otherwise informed by Company, take all corrective action necessary to remedy such breach, and perform such remediation (with all consumer notifications and credit monitoring to be undertaken by Company), all at Client's cost.
- iv. Client represents and warrants that Client has, and will maintain, the lawful rights or licenses to use all trademarks, service marks, copyrights, and all other intellectual property rights necessary to conduct its business. Client also has the required licenses and/or usage rights to grant Company, and where applicable will grant to Company, the use of any intellectual property required to provide the services contracted for herein to Client. Client does not infringe any Intellectual Property rights of any third party.
- v. Client represents and warrants that to the extent any user name and password are issued for Client to access the Platform Services, it will restrict access to such user name and password to Client's employees and agents as may be reasonably necessary and consistent with the purposes of this Agreement and will ensure that each such employee and agent accessing and using the Platform Services is aware of and otherwise complies with all applicable provisions of this Agreement and any recommendations and notices regarding such use and access. Client is solely responsible for maintaining adequate security and control of any and all user names, passwords, or any other codes that are issued to Client by Company or selected by Client, for purposes of accessing the Platform Services. Company shall be entitled to rely on information it receives from Client and may assume that all such information was transmitted by or on behalf of Client.

## **6. CONFIDENTIALITY; NON-DISCLOSURE.**

- A. Confidential Information. "Confidential Information" means any non-public data, information and other materials regarding the products, software, services, customer list, or business of a Party (and/or, if either Party is bound to

protect the confidentiality of any third party's information, of a third party) provided by or on behalf of a Party to the other Party where such information is marked or otherwise communicated as being "proprietary" or "confidential" or the like, or where such information should, by its nature, be reasonably considered to be confidential and/or proprietary. Without limiting the foregoing, any software, performance data, benchmark results, and technical information relating thereto, pricing information and the terms and conditions of this Agreement (but not its existence) shall be deemed Confidential Information. The Party disclosing Confidential Information shall be referred to herein as the "Disclosing Party," and the Party receiving Confidential Information shall be referred to herein as the "Receiving Party."

B. Disclosure. Each Party shall at all times, (a) keep and maintain the confidentiality of all Confidential Information, (b) use reasonable best efforts to protect all Confidential Information provided by the Disclosing Party, and in any event, to take precautions at least as great as those taken to protect its own Confidential Information of a similar nature, and (c) shall not use or reproduce Confidential Information except for the purposes provided herein and shall not disclose any Confidential Information to any third party (other than to its legal, accounting or other professional representatives on an as-needed basis, provided such party has an obligation to keep the same confidential). Each Party shall inform its employees, marketers, agents and contractors of the nondisclosure requirements set forth in this Agreement and shall obtain their respective commitments to abide by such requirements. Each Party hereto shall be responsible for the actions of any of its employees, marketer, agents, Affiliates or contractors that would constitute a violation of such Party's rights under this section if such violation had been committed directly by such Party. Notwithstanding the above, the Receiving Party may disclose certain Confidential Information of the Disclosing Party, without violating the obligations of this Agreement, to the extent the disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that to the extent not prohibited by Applicable Laws, the Receiving Party provides the Disclosing Party with reasonable prior written notice of such disclosure and at Disclosing Party's expense, makes a reasonable effort to obtain, or to assist the Disclosing Party to obtain, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation requires, or for which the order was issued. Each Party shall notify the other upon the discovery of any loss or unauthorized disclosure of the Confidential Information of the other Party, promptly after such discovery, including a brief description of the Confidential Information disclosed.

C. Exclusions. Confidential Information shall not include information that: (i) is or becomes generally known or available to the public at large other than as a result of a breach by the Receiving Party of any obligation to the Disclosing Party; (ii) was known to the Receiving Party free of any obligation of confidence prior to disclosure by the Disclosing Party; (iii) is disclosed to the Receiving Party on a non-confidential basis by a third-party who did not owe an obligation of confidence to the Disclosing Party and does not reasonably appear to have obtained the information improperly or from an unauthorized source; or (iv) is developed by the Receiving Party independently of and without reference to any part of the Confidential Information. Confidential Information shall not be deemed to be in the public domain or generally known or available to the public merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public.

D. Injunctive Relief. Each Party acknowledges that breach of this provision by it may result in irreparable harm to the other Party, for which money damages could be an insufficient remedy, and therefore that the other Party may be entitled to seek injunctive relief to enforce the provisions of this Section 6.D. (CONFIDENTIALITY; NON-DISCLOSURE).

## **7. DISCLAIMERS AND OTHER LIMITATIONS.**

A. No Warranty. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT AND ANY APPLICABLE ORDER OR ADDENDUM, THE DATA, FEATURES, PRODUCTS, PLATFORM AND PLATFORM SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND THE COMPANY, INCLUDING ITS THIRD PARTY SERVICE PROVIDERS, MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, NON- INFRINGEMENT,



MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTIES WILL BE CREATED BY COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE, INCLUDING, WITHOUT LIMITATION, THAT THE PLATFORM WILL OPERATE ERROR FREE, WITHOUT INTERRUPTION, WILL ACHIEVE ANY INTENDED RESULT, OR THAT THE DATA WILL BE COMPLETE, ACCURATE AND VALID, AND THE COMPANY, INCLUDING ITS THIRD PARTY SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES. COMPANY, INCLUDING ITS THIRD PARTY SERVICE PROVIDERS, EXERCISES NO CONTROL OVER AND TO THE EXTENT PERMITTED BY APPLICABLE LAWS, EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED UPON CLIENT'S USE OF THE PRODUCTS OR ANY DATA.

B. Limited Liability. EXCEPT FOR CLAIMS RELATING TO INDEMNIFICATION PROVISIONS IN SECTION 8, OR CLAIMS FOR ATTORNEY'S FEES AND COSTS AWARDED TO A PARTY UNDER THE TERMS OF THIS AGREEMENT, IN NO EVENT WILL EITHER PARTY OR THEIR RESPECTIVE SERVICE AND DATA PROVIDERS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE AND/OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF USE, LOSS OF DATA, OR OTHER INTANGIBLE LOSSES ARISING OUT OF OR RESULTING FROM USE OR INTENDED USE OF THE PLATFORM OR PLATFORM SERVICES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR CLAIMS RELATING TO PLATFORM RESTRICTIONS IN SECTION 1.C, THE FEES IN SECTION 3.A, AND THE INDEMNIFICATION PROVISIONS IN SECTION 8, UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ITS SERVICE OR DATA PROVIDERS' TOTAL AND CUMULATIVE LIABILITY FOR DAMAGES ARISING OUT OF AND/OR IN CONNECTION WITH THIS AGREEMENT REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE AMOUNT THAT COMPANY HAS RECEIVED FROM OR ON BEHALF OF CLIENT OR ITS CUSTOMERS DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ACTION OR CLAIM. THIS LIMITATION OF LIABILITY IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN COMPANY AND CLIENT.

## **8. INDEMNIFICATION.**

A. Client Indemnification. CLIENT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS COMPANY, ITS THIRD PARTY SERVICE PROVIDERS, AFFILIATES, AND AGENTS, AND THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS AND EMPLOYEES, FROM AND AGAINST ALL THIRD PARTY CLAIMS, LOSSES, DAMAGES, COSTS (INCLUDING REASONABLE ATTORNEY'S FEES, COURT COSTS, AND COSTS ASSOCIATED WITH COMPANY RESPONDING TO A SUBPOENA), SUITS, JUDGMENTS, REGULATORY INQUIRIES, GOVERNMENT ORDER, EXPENSES AND DEMANDS (COLLECTIVELY, "CLAIMS") TO THE EXTENT ARISING OUT OF, FROM, OR RELATED TO (I) THE BREACH OR ALLEGED BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT OR AGREEMENT HEREIN, (II) THE USE OF OR PROVISION OF THE PLATFORM, DATA OR PRODUCTS OTHER THAN IN ACCORDANCE WITH THIS AGREEMENT OR IN VIOLATION OF APPLICABLE LAW, (III) ANY NEGLIGENT ACT, OMISSION, FRAUD, OR WILLFUL MISCONDUCT IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION UNDER THIS AGREEMENT, (IV) THE RELIABILITY, ACCURACY, OR LEGITIMACY OF INFORMATION CLIENT PROVIDES COMPANY UNDER THE TERMS OF THIS AGREEMENT, (V) ANY USE OF THE PLATFORM OR PLATFORM SERVICES THAT INFRINGES UPON ANY PATENT, COPYRIGHT, OR TRADE SECRET OF A THIRD PARTY INTELLECTUAL PROPERTY, (VI) THE PROCESSING OF UNAUTHORIZED TRANSACTIONS USING THE PLATFORM SERVICES, (VII) YOUR DISCLOSURE OF PERSONAL INFORMATION, DATA, OR OTHER CONSUMER INFORMATION RELATING TO GOODS OR SERVICES SOLD BY YOU, (VIII) ALLEGED OR ACTUAL VIOLATION OR NON-COMPLIANCE BY YOU OF ANY APPLICABLE LAWS, REGULATIONS OR RULES OF (A) THE CARD ASSOCIATIONS, INCLUDING

NONCOMPLIANCE WITH PCI-DSS, (B) THE NATIONAL AUTOMATED CLEARING HOUSE ASSOCIATION (“NACHA”), (C) THE GRAMM-LEACH-BLILEY ACT, OR (D) ANY REGULATORY BODY OR AGENCY HAVING JURISDICTION OVER THE SUBJECT MATTER HEREOF, (IX) ANY DATA BRACH OR ANY UNAUTHORIZED ACCESS, USE, OR DISCLOSURE OF CONFIDENTIAL INFORMATION, PERSONAL INFORMATION, DATA, CARD INFORMATION, OR YOUR CREDENTIALS FROM SYSTEMS OR NETWORKS CONTROLLED BY YOU OR YOUR SERVICE PROVIDERS, OR (X) ANY ACTS BY YOU OUTSIDE THE SCOPE OF THIS AGREEMENT. THESE INDEMNIFICATION OBLIGATIONS SHALL SURVIVE THE TERMINATION OF THE APPLICABLE ORDER.

B. Company Indemnification. COMPANY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CLIENT, ITS AFFILIATES AND AGENTS, AND THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, AND EMPLOYEES, FROM AND AGAINST ALL CLAIMS TO THE EXTENT ARISING OUT OF, FROM, OR RELATED TO ANY USE OF THE PLATFORM OR PLATFORM SERVICES THAT INFRINGES UPON ANY PATENT, COPYRIGHT, OR TRADE SECRET OF A THIRD PARTY’S INTELLECTUAL PROPERTY (COLLECTIVELY, “IP CLAIMS”). HOWEVER, COMPANY SHALL HAVE NO LIABILITY OR OBLIGATION HEREUNDER WITH RESPECT TO ANY IP CLAIMS ARISING DIRECTLY OR INDIRECTLY FROM (I) THE USE OF THE PLATFORM OR PLATFORM SERVICES IN COMBINATION WITH PRODUCTS, SERVICES, SOFTWARE, DATA, OR SYSTEMS NOT PROVIDED BY COMPANY, (II) ANY MODIFICATION OR UNAUTHORIZED USE OF THE PLATFORM OR PLATFORM SERVICES OR ANY BREACH OF THIS AGREEMENT BY CLIENT, (III) INSTRUCTIONS OR DIRECTIONS PROVIDED BY OR ON BEHALF OF CLIENT, OR (IV) THE FAILURE TO USE UPDATES OR CORRECTIONS PROVIDED BY COMPANY. IN RESPONSE TO AN ACTUAL OR POTENTIAL IP CLAIM UNDER THIS SECTION, IF REQUIRED BY SETTLEMENT OR INJUNCTION OR AS COMPANY DETERMINES NECESSARY TO AVOID MATERIAL LIABILITY, COMPANY MAY AT ITS OPTION (I) PROCURE THE RIGHTS FOR CLIENT’S CONTINUED USE OF THE PLATFORM OR PLATFORM SERVICES, AS APPLICABLE, (II) REPLACE OR MODIFY THE ALLEGEDLY INFRINGING PORTION OF COMPANY’S PLATFORM OR PLATFORM SERVICES TO AVOID INFRINGEMENT WITHOUT REDUCING THE OVERALL FUNCTIONALITY OF THE PLATFORM OR PLATFORM SERVICES, OR (III) TERMINATE THE IMPACTED ORDER, OR PORTION THEREOF, AND REFUND TO CLIENT ANY PRE-PAID, UNUSED FEES FOR THE TERMINATED PORTION OF THE ORDER. THIS INDEMNITY WILL BE CLIENT’S ONLY REMEDY UNDER THIS AGREEMENT FOR ANY INFRINGEMENT, MISAPPROPRIATION, OR OTHER VIOLATION BY COMPANY OF A THIRD PARTY’S INTELLECTUAL PROPERTY OR OTHER RIGHTS.

C. Indemnification Procedures. THE INDEMNIFYING PARTY RESERVES THE RIGHT, AT ITS SOLE COST, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER OTHERWISE SUBJECT TO INDEMNIFICATION BY THE INDEMNIFIED PARTY, IN WHICH EVENT THE INDEMNIFIED PARTY WILL REASONABLY ASSIST AND COOPERATE WITH THE INDEMNIFYING PARTY IN ASSERTING ANY AVAILABLE DEFENSES. THE INDEMNIFIED PARTY AGREES NOT TO SETTLE ANY MATTER WITHOUT THE PRIOR WRITTEN CONSENT OF THE INDEMNIFYING PARTY. THE INDEMNIFIED PARTY MAY HAVE COUNSEL OF THEIR OWN CHOICE AT THEIR OWN COSTS.

## 9. INSURANCE.

A. Insurance Requirements. During the term of this Agreement, Company and Client shall each maintain at least the following insurance coverages with insurance carriers with an A.M. Best rating: (i) comprehensive / commercial general liability insurance (which shall provide for minimum limits of \$1,000,000 per occurrence); (ii) professional liability (also known as errors and omissions) insurance with combined single limits of not less than \$1,000,000; and (iii) cyber liability (also known as technology errors and omissions) insurance with minimum limits of \$1,000,000 per occurrence. Upon request, each Party shall provide the other with evidence of such insurance coverage(s).

## 10. PROPRIETARY RIGHTS.

- A. Intellectual Property. As used herein, "Intellectual Property" means all patents, designs, inventions, trademarks, service marks, trade names and trade dress, copyrights and copyrightable works (including software programs and related documentation), trade secrets, know-how, design rights, database rights, and all other intellectual property and proprietary information, and all modifications, compilations, and derivative works thereof.
- B. Ownership. The Company is the sole and exclusive owner of all right, title and, interest, including Intellectual Property rights, in and to the Products, Platform, Platform Services, and all related documentation, source code, algorithms, tools, scripts, processes, techniques, methodologies, inventions, know-how, concepts, formatting, arrangements, visual attributes, and all derivatives, enhancements, modifications and improvements thereof. Client acknowledges that the Products, Platform and Platform Services and any related source code/algorithms constitute: (i) an original compilation protected by US copyright laws; and/or (ii) trade secrets of Company. Client acknowledges and agrees that the Products, Platform and Platform Services are licensed to Client, and not sold. Company reserves all right, title, and interest, including all Intellectual Property rights, in and to the Products, Platform and Platform Services, subject only to the license rights expressly granted to Client pursuant to the terms of this Agreement. As between Company and Client, Client shall have the sole and exclusive right, title and interest in and to any Intellectual Property in the Client Website and Client owned marketing materials.
- C. Feedback. If Company receives any feedback (which may consist of questions, comments, suggestions or the like) regarding the Products, Platform or Platform Services (collectively, "Feedback"), all rights, including intellectual property rights in such Feedback shall belong exclusively to Company. Client hereby irrevocably and unconditionally transfers and assigns to Company all intellectual property rights it has in such Feedback and waives any and all moral rights that Client may have in respect thereto. It is further understood that use of Feedback, if any, may be made by Company at its sole discretion, and that Company in no way shall be obliged to make use of the Feedback.
- D. Exclusions. Each of the Company and Client acknowledge that the other owns and/or licenses or may hereinafter develop certain Intellectual Property used in the performance of this Agreement or applicable Addendum. Subject to the foregoing Feedback clause, each of the Company and Client specifically disclaim any ownership or other right with respect to the Intellectual Property owned and/or licensed and/or developed by the other party, except as otherwise provided herein. Except as expressly provided herein, neither Party grants or transfers to the other, nor does the other Party obtain, any right, title, claim, license or other interest in or to any of the Intellectual Property (including information, consumer information database, systems, forms manuals or other proprietary information) utilized or provided by the other party.
- E. Use of Name and Logo; Trademark. Neither Party shall use the other Party's names, trademarks or logos without the prior written permission of the other Party. Neither Party shall use, register or attempt to register any trademarks or marks or domain names that are confusingly similar to any of the other Party's trademarks, marks or domain names. Except as authorized in this Agreement, neither Party shall take any actions inconsistent with the other Party's ownership of its trademarks and any associated registrations or attack the validity of them. Neither Party shall use the other Party's trademarks in any manner that would indicate it is using such trademarks other than as a licensee, nor assist any third party to do any of the same.

## 11. AUDIT RIGHTS.

- A. Records. Each Party shall maintain complete and accurate books and records of its activities performed pursuant to this Agreement relating to (i) transactions that trigger a payment to Company or Client, and (ii) compliance with Applicable Laws governing (a) the use and retention of Data, and (b) lead generation and sales and marketing activities, as applicable.
- B. Audit. Each Party shall retain and make available such records in Section 11.A for at least three (3) years following the end of the calendar year to which they pertain, to the other Party, at such Party's expense and upon a mutually agreeable date and time not to exceed thirty (30) days after such request, for inspection during normal business hours at a

mutually agreeable time, solely to verify any reports and payments made and/or compliance in other respects under this Agreement.

## 12. ELECTRONIC COMMUNICATIONS.

- A. Communication Requirements. By using the Platform, Client agrees to receive certain communications from Company electronically in connection with the Platform. Such communications include by way of email, text message, posting notices, delivering notifications through Company's mobile applications or through other electronic means. Client agrees that all agreements, notices, disclosures and other communications that Company provides to you electronically satisfy any legal requirement that such communications be in writing.

## 13. MODIFICATIONS.

- A. Agreement Modifications. From time to time, Company may modify the terms of this Agreement, including the Addendums incorporated herein. Company will notify Client of the modifications thirty (30) days prior to the effective date by providing a summary of the applicable changes and a URL link to the full terms, including the applicable effective date, via Client's account or email, as indicated by Client in the applicable Order. If a Client objects to the modifications in writing, unless otherwise agreed upon by the Parties in a dually executed Order or applicable amendment, its exclusive remedy is to cease any and all access and use of the Platform and terminate this Agreement with a written Termination Notice, subject to the Termination Section 4.C. provisions provided herein, which shall not be deemed a breach provided that Client shall be entitled to a reasonable wind-down period if allowable without undue or unreasonable harm to Company or the Platform. Client may be required to click to accept or otherwise agree to the modified terms in order to continue accessing or using the Platform.

## 14. MISCELLANEOUS.

- A. Authority. With respect to any individual consenting to this Agreement on behalf of its employer or another entity, that individual represents and warrants that: (i) it has full legal authority to bind its employer or such entity to this Agreement; (ii) it has read and understood this Agreement; and (iii) it agrees to this Agreement on behalf of the Party that it represents. In the event that an individual registers or signs up for the Platform using an email address from its employer or another entity, then that individual will be deemed to represent such Party and will bind its employer or that entity to this Agreement. If an individual does not have the legal authority to bind its employer or the applicable entity, that individual should not access or use the Platform, execute an Order and should not click or check "I agree" (or similar acceptance language).
- B. Entire Agreement. This Agreement together with all of Company's policies referenced in this Agreement sets forth the entire understanding and agreement of the Parties, and supersedes any and all prior or contemporaneous oral or written agreements or understandings between the Parties, as to the subject matter of this Agreement. You acknowledge that this Agreement reflects an informed, voluntary allocation between Company and Client of all risks (both known and unknown) associated with Platform Services.
- C. Assignment. Neither Party may assign its rights or obligations under this Agreement without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. However, Company shall be able to assign this Agreement to an Affiliate or in the event of a merger, acquisition or change of control, without having to obtain the consent of Client. Any attempted assignment that is prohibited under this section shall be null and void. This Agreement will bind and inure to the benefit of each Party's successors and permitted assigns.
- D. Survival. The rights and obligations of the Parties set forth in Section 1.H. ADDITIONAL TERMS AND CONDITIONS; PAYMENT PROCESSING, Section 5 REPRESENTATIONS AND WARRANTIES (as applicable), Section 6 CONFIDENTIALITY; NON-DISCLOSURE, Section 7 DISCLAIMERS AND OTHER LIMITATION, Section 8 INDEMNIFICATION, Section 10 PROPRIETARY RIGHTS, Section 11 AUDIT RIGHTS, and Section 14.J GOVERNING LAW AND ARBITRATION, and any right or obligation of the Parties which by its express terms or

nature and context is intended to survive termination or expiration of this Agreement or any Order, shall survive such termination or expiration.

- E. Equitable Remedies. Breaches of a party's obligations related to the protection of confidential information, protection of intellectual property rights (including violations of Section 1.C), or compliance with Applicable Laws may cause such other Party to incur irreparable harm and significant injury that would be difficult to ascertain and would not be compensable by damages alone. Accordingly, each Party acknowledges and agrees that, in addition to any and all remedies that the non-breaching Party may have at law or otherwise with respect to such a breach, the non-breaching Party will be entitled to seek injunction or other appropriate equitable relief without posting bond and without being obligated to prove actual damage or harm.
- F. Relationship. The Company and Client are independent contractors with respect to one another under this Agreement. This Agreement shall not be deemed to establish any agency, joint venture or partnership relationship. Each Party shall be responsible for the payment of all employee compensation, benefits and employment and other taxes pertaining to its employees and business. Neither Party shall have the authority, nor make any representation to suggest such authority, to legally bind the other to any contract, proposal or other commitment or to incur any debt or create any liability on behalf of the other.
- G. Waiver. The failure of any Party to insist on or enforce strict performance of any provision of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect. Waiver by either Party of a breach of any provision contained in this Agreement must be in writing, and no such waiver will be construed as a waiver of any other and/or succeeding breach of such provision or a waiver of the provision itself.
- H. Severability. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable under present or future laws, then such provision will be fully severable and this Agreement will be construed and enforced as if such invalid, illegal or unenforceable provision were not a part hereof. The Parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision.
- I. Headings. The headings of sections herein are for convenience only and will not be deemed to affect in any way the scope, intent or meaning of the provisions to which they refer.
- J. Governing Law and Arbitration. This Agreement shall be governed and construed in accordance with the laws of the State of New York, without resort to the conflict of law principles thereof. Except as it relates to Company's efforts to collect unpaid Fees from Client, any controversy, claim or dispute between the Parties arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation, conscionability or validity thereof, including any determination of the scope or applicability of this Agreement to arbitrate, such controversy, claim or dispute shall be resolved by mandatory, binding arbitration, rather than in court. The Parties agree that the arbitration shall be administered by the American Arbitration Association (AAA), or other nationally recognized arbitrator as agreed upon by the Parties and the Parties shall be bound by any and all rules of AAA or other mutually accepted rules and any award/decision rendered. Notwithstanding anything to the contrary in the AAA rules, the arbitrator will be empowered to order interim or permanent injunctive relief, which may be enforced in any court of competent jurisdiction. Any decision or award as a result of any such arbitration proceeding shall be in writing and shall provide an explanation for all decisions. Any such arbitration shall include a written record of the arbitration hearing and shall be conducted by an arbitrator as agreed upon by the Parties, or if no agreement can be made, then an arbitrator shall be selected by AAA experienced in complex business transactions. The award rendered by the arbitrator shall be final and shall not be subject to vacation or modification. Judgment on the award made by the arbitrator may be entered in any court having jurisdiction over the Parties. If either Party fails to comply with the arbitrator's award, the injured Party may petition the circuit court for enforcement. The Parties agree that either Party may bring claims against the other only in his/her or its

individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. Further, the Parties agree that the arbitrator may not consolidate proceedings of more than one person's claims and may not otherwise preside over any form of representative or class proceeding. The Parties shall share the cost (not any attorneys' fees) of arbitration equally. In the event a Party fails to proceed with arbitration as required herein, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other Party is entitled to costs of suit, including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award. Binding Arbitration means that both Parties give up the right to a trial by a jury or to use the court system except to enforce this section. It also means that both Parties give up the right to appeal from the arbitrator's ruling except for a narrow range of issues that can or may be appealed. It also means that discovery may be severely limited by the arbitrator. This section and the arbitration requirement shall survive any termination.

- K. Non-Exclusive Remedy. Except as expressly set forth in this Agreement, the exercise by either Party of any of its remedies under this Agreement will be without prejudice to its other remedies under this Agreement or otherwise.
- L. Force Majeure. Neither Party will be responsible for any failure or delay in its performance or service under this Agreement (except for any payment obligations for services already rendered) due to causes beyond its reasonable control, which may include, by way of illustration but not limitation, network failures, malicious cyberattacks, acts of civil or military authorities, pandemics, epidemics, fires, interruptions in third party telecommunications, Internet equipment, servers or other third party services (e.g., cloud hosting providers), labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, terrorism, riot, acts of God or governmental action (each a "Force Majeure Event"). Notwithstanding the foregoing, each Party affected by a Force Majeure Event shall use its commercially reasonable efforts to perform during the period of such event or circumstance, and in any event shall promptly perform upon the cessation of such event or circumstance. Promptly upon becoming aware of a Force Majeure Event causing a delay in performance or preventing performance of any obligations imposed by this Agreement (and the termination of such delay), the Party being delayed or prevented from performing shall give written notice to the other Party giving the details of the event, including particulars of the actual event, and if applicable, estimated continuing effects of such Force Majeure Event on the obligations of the Party. If such an event of force majeure continues for thirty (30) days, then either Party may terminate this Agreement with no penalties or damages, except for Client's obligation to pay any undisputed amounts owed.
- M. Conflict. To the extent there is any inconsistency or conflict between this Agreement (including any attached exhibits or addendums) and an Order (including any applicable exhibit or attachment), this Agreement shall control strictly as it relates to Client's use of the Platform Services.
- N. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. A facsimile or electronic delivery of the signature page hereto shall be deemed an original for all purposes hereof.
- O. Notices. Any notice, request, designation or other communication required or permitted to be given hereunder shall be in writing and may be given by personal delivery regular mail, overnight mail, facsimile or email, and shall be deemed sufficiently given if delivered or addressed to Parties at the respective addresses set forth below, or to such other addresses as may be designated by a Party in writing. All notices shall be deemed received when (i) delivered personally; (ii) three (3) business days following deposit in the mail, postage prepaid; (iii) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt, or (iv) in the case of email delivery, upon the sender receiving electronic email receipt notification from recipient.

If to Company:

Array US, Inc.

Attn: Legal



2200 N. Federal Hwy., Suite 217 Boca Raton, FL 33431

E-mail: [legal@array.com](mailto:legal@array.com)

If to Client:

The information provided in the applicable Order.

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## **Addendum A**

# **ARRAY+ PRODUCT TERMS OF USE**

The Product Terms Of Use in this Addendum A provide additional terms applicable to the use of, and access to, the applicable Products available within Company's Platform subject to the terms of an executed Order. The provision of Products by Company to Client pursuant to the Product Terms Of Use set forth below shall be subject to the terms and conditions of the Master Services Agreement between Company and Client that governs the provision of the Platform and Platform Services (the “MSA”) and any applicable Order. If these Product Terms Of Use and the terms of the MSA or Order conflict or are inconsistent, these Product Terms Of Use shall govern and control strictly as it relates to the provision of the applicable Product provided by Company.

### **1. GENERAL TERMS**

- A. A. These Product Terms apply to the Company Products and Services provided to Client (referred to herein collectively as the “Product Services”). These Product Terms form a contract (the “Product Terms”) that governs the relationship between Array US, Inc. and its Affiliates (referred to herein as “Company”, “us”, or “our”) with any financial institution (referred to herein as “you” or “Client”) that accesses, uses, requests, or receives the Product Services subject to an applicable Order. Our Third Party Service Providers, including The Bill Reduction Company, LLC, and Plaid Inc., are third-party beneficiaries to these Product Terms.
- B. B. Our privacy policy located at <https://array.com/legal/#privacy> (the “Privacy Policy”) describes how we collect and use personal and non-personal information when you request the Product Services, and should be read together with the MSA, applicable Order, and these Product Terms. By using the Product Services, you are agreeing that we may use information collected through the Product Services in accordance with the Privacy Policy.

C. The Product Services are made available to you only on the condition that you agree to be bound by the current Product Terms, including all restrictions provided herein. If you do not agree, do not access or use the Product Services. The following apply to access to, and use of, the Product Services:

- i. You may only use the Product Services in compliance with these Product Terms and all Applicable Laws, rules, and regulations;
- ii. If you reside in a jurisdiction that restricts the use of internet-based applications or the ability to enter into contracts such as these Product Terms according to age or for any other reason, and you are under such age limit or subject to such other restriction, you are not permitted to use the Product Services;
- iii. By using the Product Services, you are representing that you have the legal capacity and authority to enter into these Product Terms, and that you have reviewed, understand, and accept these Product Terms without limitation or qualification;
- iv. If you are accepting these Product Terms on behalf of a company, organization, or other legal entity, you represent and warrant that you are authorized to do so; and
- v. You further understand that by selecting the Product Services for purchase and entering personal information where prompted, you are submitting an electronic signature and entering into a legally binding contract with us for the purchase of such Product Services.

D. You represent and warrant that all of the information you provide to us is accurate, complete, and correct. You agree that we may rely upon and share your information with our Third Party Service Providers, agents, Data Providers, and otherwise as necessary in order to offer, provide, and track the Services. Subscriber Personal Information will only be used in the manner and for the purposes set forth in our Privacy Policy.

E. We may modify these Product Terms or MSA from time to time by notifying you of such modifications by any reasonable means as specified in the MSA. Your continued use of the Product Services after any such changes indicates your acceptance of the modifications. Company may provide unpaid versions of certain products identified below within Client's digital banking experience, with the opportunity for Subscribers to upgrade to a premium paid subscription product. The product offerings may change at Company's sole discretion and in compliance with Applicable Laws. Note that any such modifications will not apply retroactively to any dispute between you and us arising prior to the date on which we posted the revisions or otherwise notified you of the changes.

## 2. **Services Description.**

- A. MyCredit Manager (“MYCM”). Our MYCM Services include obtaining the latest available information in the Subscriber’s credit report for credit education purposes upon Subscriber’s consent. Client shall coordinate with Company regarding the information exchanges to present Data to the Subscribers via the Client’s Subscriber interface for Subscriber education purposes. The MYCM Services may also include the presentation of other related services designed to help Subscribers manage their credit health. We reserve the right to determine and modify the MYCM Services we offer in our sole discretion.
- B. Identity Protect (“IDP”). Our IDP Services include monitoring online activity for protection against identity theft and fraud prevention purposes upon Subscriber’s consent. Client shall coordinate with Company regarding the information exchanges to present the information to the Subscribers via the Client’s Subscriber interface for Subscriber education and protection purposes. The IDP Services may also include the presentation of other related services, including identity insurance and restoration services, designed to help Subscribers protect their identity. We reserve the right to determine and modify the IDP Services we offer in our sole discretion.
- C. Subscription Manager (“SM”). Our SM Services include presenting to Subscribers the active memberships or subscriptions with certain companies that provide the Subscriber with products paid for on a recurring basis, such as memberships, subscriptions, telecommunications, internet, cable, satellite, and security companies. The SM Services may also include the presentation of other related services designed to help you save money. We reserve the right to determine and modify the SM Services we offer in our sole discretion.
- D. Privacy Protect (“PIP”). Our PIP Services let users discover certain personal information that has been published by third-parties (“TP Data” as defined below), which is made available and provided through Company’s application program interface, software code, and applicable documentation. “TP Data” shall mean personal information that has been published by third-parties on certain data broker sites (each a “Data Broker Site”). Company does not guarantee that the PIP Services will find a user’s online personal information within the TP Data, or that it will scan all Data Broker Sites if a user’s online personal information is not present. Some of the Data Broker Sites may have multiple databases and may acquire and aggregate personal information about individuals on an ongoing basis. In addition, Company may not locate all entries or the correct entries of a user’s online personal information. Client understands and agrees that Company is not responsible for the actions or inactions

of any of these Data Broker Sites, and that Company makes no representations, warranties or guarantees related to such Data Broker Sites. Client expressly agrees that Company will not be liable to Client or Subscribers under any circumstances for any actions or inactions of these Data Broker Sites. Client understands and agrees that Company is not a credit repair organization as defined under federal or state law, including the Credit Repair Organizations Act. We reserve the right to determine and modify the PIP Services we offer in our sole discretion.

E. BuildCredit Account (“BCA”). Our BuildCredit Savings-Secured Loan, also known as BuildCredit Account from BuildCredit LLC, a wholly owned subsidiary of Array, can help establish a credit score and/or build credit history. BuildCredit LLC acts as a service provider of Cross River Bank in connection with Cross River Bank’s origination of the BuildCredit Savings-Secured Loan. BuildCredit LLC allows you to manage your loan application and payments related to the BuildCredit Savings-Secured Loan offered by Cross River Bank, member Federal Deposit Insurance Corporation. The terms of any applicable BuildCredit Savings-Secured Loan are governed by agreements you make with Cross River Bank. We reserve the right to determine and modify the BCA Services we offer in our sole discretion.

F. BuildCredit Rent (“BCR”). Our BCR Services from BuildCredit LLC, a wholly owned subsidiary of Array, can help establish a credit score and/or build credit history. BuildCredit LLC provides means for your rent payments to be reported to the major credit bureaus who accept such data from BuildCredit LLC. The Services may include lease and rent verification processes. Each credit bureau has its own requirements for rent payment data furnishing and reporting. As such, BuildCredit LLC cannot ensure that such data will be accepted, and BuildCredit LLC has no control over how such data is used and reported by the credit bureaus, nor how such data is used by the users of the credit bureau reporting services. We reserve the right to determine and modify the BCR Services we offer in our sole discretion and in compliance with Applicable Laws.

G. Debt Navigator (“DN”). Our DN Services analyze a consumer's tradeline data to provide repayment plans, paydown schedules, and balance transfer activation features. The Debt Navigator services are made available solely for general information purposes only, and is not intended to provide any legal, tax, or financial advice. You are solely responsible for evaluating the information provided by the Debt Navigator services and determining in your sole discretion whether acting on such advice or information is or is not in your best interest. You understand and agree that we are not a fiduciary, financial institution, financial advisor, or investment advisor, nor a provider of investment, tax, or legal

advice, and that we are not endorsing any company, property, product, service, security, or instrument. We reserve the right to determine and modify the DN Services we offer in our sole discretion.

H. Student Loan Aid ("SLA"). Our SLA Services can help lower monthly payments by identifying available federal student loan repayment programs. The content, features, and functionality of Student Loan Aid is made available solely for general information purposes only, and is not intended to provide any legal, tax, or financial advice. You are solely responsible for evaluating the information provided by Student Loan Aid and determining in your sole discretion whether acting on such advice or information is or is not in your best interest. You understand and agree that we are not a fiduciary, financial institution, financial advisor, or investment advisor, nor a provider of investment, tax, or legal advice, and that we are not endorsing any company, property, product, service, security, or instrument. We reserve the right to determine and modify the SLA Services we offer in our sole discretion.

### **3. OBLIGATIONS UNDER FCRA**

A. Where Client has access to and uses a consumer report (as defined in the FCRA), Client must abide by the certain rules set forth under the Fair Credit Reporting Act (FCRA). Further, Client shall promptly forward any Subscriber complaints subject to FCRA to Company and provide commercially reasonable assistance to Company as necessary to support the handling of Subscriber disputes or complaints related to the Product Services, as amended by Company from time to time at its sole discretion. The *Notice to Users of Consumer Reports: Obligations of Users Under the FCRA* is available at <https://array.com/company/notice>.

### **4. CLIENT BRANDING AND MARKETING**

A. Marketing Restrictions.

- i. Client agrees that it shall not use the terms and/or phrases listed below in any marketing and/or advertising of the Data and related Products, nor use such Data or related Products for any form of credit repair (as such term is interpreted under Applicable Laws as defined in Section 5):
- ii. Client must not use the following terms, "improve," "enhance," "boost," "raise," or "increase" in the same phrase as "score" or "rating,"
- iii. Client must not use the phrases "credit repair," "credit rebuilding," "credit fix," "repair your credit," "fix your credit," or combinations of those words.

iv. Client must not use the terms "advice," "tips," "suggestions" or "instructions" in or near the same phrase as "improving," "enhancing," "boosting," "raising" or "increasing" a credit score or credit rating.

v. When making a statement about the performance of analytic tools available in conjunction with the Products (e.g., a score simulator), marketing and advertising materials must not suggest that a simulated score (or its equivalent) is “always” predictive of one’s actual score.

B. Client is responsible for all marketing efforts pertaining to its use and access to the Data and related Products. Solely to the extent necessary for Company to comply with Applicable Laws or Data Provider requirements, Client acknowledges that the Company may request that Client submit for approval, which approval will not be unreasonably withheld, conditioned or delayed, on any and all brochures, press releases, internet postings, marketing, advertising promotional or any other materials to be used by Client in conjunction with the marketing of the Data and/or Products.

C. Client Branding. Client is responsible for providing its own branding, including trade names, trademarks, service marks and logos, as well as securing a URL for use with the Platform and the Products. Client is solely responsible for securing a URL via a registrar service, as well as clearing and registering any trade names, trademarks, service marks and logos, trademark or other intellectual property rights or concerns connected with a brand or URL.

D. Client Website. Company may (i) provide access to pre-coded web styling and features for Client to build a website with Platform integration and access to the Products, or (ii) deliver a Company hosted website to be developed and managed by Client. In either instance provided herein, Client shall be fully responsible for website compliance with all Applicable Laws, rules, and regulations including but not limited to those relating to terms of use, privacy policies, and ADA accessibility. Company may collect, use, share, sell and store data made available via the website solely in connection with the Platform and in accordance with the Agreement and all Applicable Laws.

## **5. REQUIRED CONSUMER AUTHORIZATION.**

A. Subscriber Agreement. Unless otherwise allowed under Applicable Laws, each Subscriber shall be required to enter into an agreement or provide other authorization containing certain terms and conditions related to the access and/or use of the Subscriber’s Data, and when and where required, shall, include disclosures similar to those set forth herein (the "Product Disclosures"). Such Subscriber Product Disclosures, in conjunction with applicable terms in the MSA, shall govern the Subscriber's



consent and access to, use, and distribution of the Data and related Products, as well as the Subscriber's affirmation of such consent. The Subscriber Product Disclosures (samples provided below) may be amended and/or updated by the Company, or as required by a Data Provider or Contractor from time to time, and to the extent applicable to the Client's use of the Platform or Platform Services, Client agrees to make similar modifications or changes to the Subscriber Product Disclosures and the verbiage therein as Company, or a Third Party Service Provider, may request.

B. Sample Subscriber Product Disclosures.

- i. Sample Web Page Disclaimer 1: *"You understand that by [checking this box and] clicking on the 'I Accept' button below, you agree to the terms and conditions, acknowledge receipt of our privacy policy and you are providing 'written instructions' under the FCRA to [Client] authorizing [Client] to obtain information from your personal credit profile from each credit reporting agency. You authorize [Client] to obtain such information solely to confirm your identity and display your credit data to you."*
- ii. Sample Web Page Disclaimer 2: *"By [checking this box and] clicking on the 'I Authorize' button below, you agree to the terms and conditions, acknowledge receipt of our privacy policy and agree to its terms, and confirm your authorization for [Client] to obtain your credit profile from any consumer reporting agency to display to you, to confirm your identity to avoid fraudulent transactions in your name, and to enable any consumer reporting agency to monitor your credit for changes."*
- iii. Terms and Conditions Disclaimer: *"“You understand that by clicking on the "I Accept" button and signing up for services, you are providing "written instructions" to [Client] and its employees, agents, subsidiaries, affiliates, contractors, third party data sources and suppliers, and all other credit reporting agencies under the Fair Credit Reporting Act (FCRA), as amended, to access your credit files from each national credit reporting agency and to exchange information about you with each such national credit reporting agency in order to verify your identity and to provide the products and/or services to you. You agree and hereby authorize Company, its agents and employees, to provide your personally identifiable information (or, if applicable, information about your child you have enrolled) to third parties as provided in our Privacy Policy, as may be amended from time to time, You waive any and all claims against Company and its agents and employees for the acts or omissions of these third parties with regard to the use or disclosure of such*

*information. Your further authorize Company and its agents and employees to obtain various information and reports about you (or about your child that you have enrolled, if applicable) in order to provide the products and/or services, including, but not limited to, bank account transaction history, address history reports, name and alias reports, criminal reports or sex offender reports, and to provide monitoring and alerts.”*

iv. Privacy Policy/Terms and Conditions Disclaimer: *“While enrolling for the products and/or services, we will ask you for the following types of information: contact information (such as name, address, phone number, and email address); sensitive information (such as date of birth, driver's license number and social security number); personal information to verify your identity and financial information (such as credit card number or bank account transaction history). This information is required in order to verify your identity, charge you the agreed upon fees for our products and services if applicable, and to fulfill our obligation to provide our products and services to you, including communicating with third parties as necessary to provide such products and services, such as identification verification companies, consumer reporting agencies, payment validation companies, law enforcement agencies, or others.”*

## **6. DISCLAIMERS.**

A. The Product Services are not intended to, and do not, constitute legal, professional, or financial advice, are not intended to be a substitute for such advice, and may not be used for such purposes. Always seek the advice of your attorney, tax advisor, financial planner, or other professional advisor with any questions you may have regarding such matters. Our agents, representatives, and employees providing the Product Services are not authorized to provide any such advice or make any claims of guaranteed savings, debt settlement benefits, or representations of expected results on our behalf. No written or verbal statement from our representatives shall supplement or amend the MSA, an Order, or these Product Terms. We do not guarantee that any savings, settlement, or particular outcome will be achieved through the Product Services.

## **7. SUBSCRIBER SUPPORT.**

A. Client Support Services are not included in the scope of services provided by Company. You shall be responsible for providing Client Support Services, which shall include, but not necessarily be limited to, agents focused on managing inquiries relative to (a) password ID/account lockouts; (b) questions

regarding your products and features; and (c) issue triage to determine if any issues involve questions that require escalation to Company Support Services.

B. Company Support Services shall be provided by Company or its agents to you and/or your Subscribers as necessary. Company Support Services will provide services throughout the issue resolution process, including one-on-one guidance to you or your Subscribers to address issues resulting from the use of or access to the Company's Products or subscriptions.

#### **8. MISCELLANEOUS.**

A. Our Third Party Service Providers are third party beneficiaries to these Product Terms. No provision of these Product Terms provides any other person or entity not a party to these Product Terms with any remedy, claim, liability, reimbursement, or cause of action or creates any other third party beneficiary rights.

B. The headings contained in these Product Terms are for reference purposes only and shall not affect in any way the meaning or interpretation of these Product Terms.

C. These Product Terms, including the MSA and any applicable Order, constitutes the entire agreement between you and us regarding the Product Services and supersedes any prior agreements between you and us and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter. These Product Terms can only be amended by us, as provided in these Product Terms or the MSA. No written or verbal statement, advertisement, or product description will contradict, interpret, or supplement these Product Terms.

D. These Product Terms may be published in a number of languages for information purposes and ease of access by customers. It is only the English version that is the legal basis of the relationship between you and us, and in case of any discrepancy between a non-English version and the English version of these Product Terms, the English version shall prevail.

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## **Addendum B**

# **MERCHANT PROCESSING TERMS**

The Merchant Processing Terms in this Addendum B provide additional terms applicable to the use of, and access to, the applicable Merchant Processing Services available within Company's Platform Services subject to the terms of an executed Order. The provision of Merchant Processing Services by Company to Client pursuant to the Merchant Processing Terms set forth below shall be subject to the terms and conditions of the Master Services Agreement between Company and Client that governs the provision of the Platform and Platform Services (the "MSA") and any applicable Order. If these Merchant Processing Terms and the terms of the MSA or Order conflict or are inconsistent, these Merchant Processing Terms shall govern and control strictly as it relates to the provision of the applicable Merchant Processing Services provided by Company. Our Third Party Service Providers, including The Bill Reduction Company, LLC, and Plaid Inc., are third-party beneficiaries to these Merchant Processing Terms.

## **1. GENERAL TERMS; DEFINITIONS**

- A. "Account" means an account portal established for Client by Company, and accessed by Client or Company through an application programming interface ("API"), integration, or online portal to utilize the Platform Services.
- B. "Acquiring Bank" means the financial institution supplying Client with the ability to accept credit and debit cards for payments. The financial institution will charge Client fees for providing these services.
- C. "ACH" means Automated Clearing House, which is an electronic network that allows the exchange and settlement of electronic payments between financial institutions.
- D. "Card Association" means any network or association associated with processing Payment Cards of a specific brand, including but not limited to American Express Company, Discover Financial Services, JCB Co., Ltd., Mastercard Incorporated, Visa Inc., or any debit network, and each of their subsidiaries and successors.
- E. "Payment Cards" means Visa, Mastercard, Discover, Amex, and any other Card Association debit or credit card that Client and Company mutually agree to participate in.
- F. "PCI DSS" means Payment Card Industry Data Security Standard.
- G. "Rules" means the rules, requirements, policies, procedures, and standards issued by the Card Associations or other industry bodies such as the PCI Security Standards Council LLC, including without limitation the PCI DSS and the PCI Software Security Framework, or any successor or replacement framework or standard implemented by the PCI Security Standards Council, as each may be amended from time to time by the Card Associations, National Automated Clearing House Association, or other applicable authorities.
- H. "Third Party Service Provider" shall incorporate the definition as provided in the MSA, but for the purpose of these Merchant Processing Terms, extend to include a third party entity that maintains aspects of the Merchant Processing Services or provides certain bank and/or merchant payment

services including but not limited to billing, reporting, customer service, authorization, and settlement services.

- I. "Transaction(s)" means any billable occurrence completed or submitted under Client Account including but not limited to sale, void, refund, credit, offline force, capture, authorization, validate, update or settlement regardless of whether approved or declined.
- J. There may be defined terms used in these Merchant Processing Terms that is defined within the MSA, therefore these Merchant Processing Terms should be read in conjunction with the MSA.

## **2. SERVICES DESCRIPTION.**

- A. Merchant Processing Services. Our Merchant Processing Services include processing of ACH Transactions by Company or its agents that it may designate from time to time, on behalf of Client and / or its Subscribers subject to the terms provided herein, including the Third Party Service Provider terms attached as Exhibits to these Merchant Processing Terms.

## **3. LICENSE GRANT.**

- A. Client grants Company a royalty-free, non-exclusive license (with right to sublicense) to use Confidential Information and Personal Information, materials, and other intellectual property as necessary or useful for Company to provide the Merchant Processing Services to Client and to otherwise perform Company's obligations under these Merchant Processing Terms. Company may collect and hold Confidential Information or Personal Information from and about Client and Subscribers for the purpose of providing the Merchant Processing Services. Client understands and agrees that such Confidential Information or Personal Information may be shared with and used by certain third parties (including without limitation Third Party Service Providers, government agencies, or courts). Additionally, Client understands that such Confidential Information or Personal Information may be shared with Company by such certain third parties and Client authorizes Company to receive Client's and Subscriber's Confidential Information or Personal Information from such third parties.

## **4. CLIENT REPRESENTATIONS AND WARRANTIES.**

- A. In addition to Client's compliance with these Merchant Processing Terms, Client will comply, at its own expense, with all Rules, Applicable Laws, regulations, rules, ordinances, orders of governmental authorities, and then-current legal obligations and security measures including without limitation those issued by the United States government, federal, state and municipal laws and ordinances, Card

Association, the Federal Trade Commission, Consumer Financial Protection Bureau, PCI DSS and any other governing body. You will comply with all Company security protocols, notices and safeguards in effect during the term of these Merchant Processing Terms.

- B. Client shall not request, introduce, or process Transactions using the Merchant Processing Services on behalf of any other person or entity, and shall not use the Merchant Processing Services in any other prohibited manner, including those set forth in Appendix A and set forth in the Rules or in furtherance of any activity that may cause Company to be subject to investigation, prosecution, or legal action.
- C. Client expressly acknowledges and agrees that Client is assuming the risk of compliance with all provisions of the Rules, regardless of whether Client has possession of such Rules. Client warrants that it has taken such precautions as are necessary to ensure that Client Confidential Information and Subscriber Personal Information is protected and that Client's electronic systems are secure from breach, intrusion or compromise by any unauthorized third parties. In the event that Client's system is breached and an unauthorized third party has access to or has accessed Subscriber Personal Information, Client shall notify the designated parties as required under any applicable laws or industry guidelines and shall immediately notify Company of such breach and take such prompt action and precautions as necessary to prevent any continuous or additional breach.
- D. Client is solely responsible for the security of Confidential Information and Personal Information residing on servers owned or operated by Client, or any third party designated by Client (e.g., a web hosting company, processor, or other service provider), including Payment Card numbers and any other Personal Information. Client shall comply with all Card Association rules, applicable laws and regulations governing the collection, retention and use by Client of Payment Card and other financial information, and Client agrees to provide notice to Subscribers on Client's web site that discloses how and why personal and financial information is collected and used, including uses governed by these Merchant Processing Terms.
- E. Client is solely responsible for verifying the accuracy and completeness of all Subscriber Personal Information submitted to Company associated with processing a Transaction on Client's behalf. Client is liable for any Transactions that are unauthorized, improperly processed or approved, wrongfully declined, or otherwise due to providing inaccurate or incomplete Subscriber Personal Information to Company, or for any unauthorized, illegal, or fraudulent access to any Transaction or Account data or Subscriber's Personal Information.



- F. Client is solely responsible for the security of its credentials associated with the API, and the security of information and data submitted through the API.
- G. Client will not use, disclose, sell or disseminate any card, cardholder, bank account, or ACH information obtained in connection with a Transaction except for purposes of completing or settlement of a Transaction or resolving chargebacks, retrievals or similar issues involving a Transaction unless required to do so by court order or governmental agency request, subpoena or order.
- H. Client is solely responsible for compiling and retaining permanent records of all Subscriber Personal Information desired by Client for its reference. Client shall use proper controls for and limit access to all Subscriber Personal Information. Prior to discard Client shall render all Subscriber Personal Information unreadable and abide by any laws or regulations imposed on Client for destruction and/or disposal of applicable Subscriber Personal Information.
- I. Client represents and warrants that it has provided notice to, and obtained consent from, Subscribers whose Personal Information is provided to Company with regard to: (i) the purposes for which Subscriber's Personal Information has been collected; (ii) the sharing and use of Subscriber's Personal Information with Company and its Third Party Service Providers and its and their agents, suppliers, and contractors; (iii) which parts of Subscriber's Personal Information are obligatory and which parts, if any, are voluntary; and (iv) how Subscribers can access and, if necessary, rectify the Personal Information Client holds about them. Neither Company nor its Third Party Service Providers are responsible for any consequences resulting from Client's failure to provide notice or obtain consent from Subscribers nor for Client providing outdated, incomplete or inaccurate information.
- J. Client represents and warrants that all Transactions submitted in connection with the Merchant Processing Services are for bona fide business operations compliant with applicable Rules, laws, and regulations and that Client is not engaged in any illegal or fraudulent business operation or any business operation prohibited by any applicable law, regulation, or Rule, or in any business identified on a prohibited activities list promulgated by any Third Party Service Provider or the Card Associations.

## **5. TERMINATION BY THIRD PARTY.**

- A. In the event Company is notified by a Third Party Service Provider, court of competent jurisdiction, governmental body or authority, Acquiring Bank or the Card Association that Client is no longer entitled to receive the Merchant Processing Services for any reason whatsoever, Company may

suspend and/or terminate the Merchant Processing Services and/or the MSA without notice and without liability.

## **6. LIMITATION OF LIABILITY.**

COMPANY AND ITS THIRD PARTY SERVICE PROVIDERS EXPRESSLY DISCLAIM ANY LIABILITY OR LOSS, HOWEVER OCCURRING INCLUDING NEGLIGENCE, ARISING FROM OR RELATED TO: (i) CLIENT FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE ITS ACCOUNT(S); (ii) DISRUPTION OF COMPANY SERVICES, SYSTEMS, SERVER OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (iii) ACTIONS OR INACTIONS BY ANY ACQUIRING BANK; OR (iv) CLIENT'S SALE OF PRODUCTS OR SERVICES (INCLUDING WITHOUT LIMITATION ANY RISK ASSOCIATED WITH PAYMENT CARD FRAUD, ACH FRAUD, CHECK FRAUD, CHARGEBACKS, TRANSACTION RATING, IMPROPERLY AUTHORIZED TRANSACTIONS, LEGITIMATE BUT UNAUTHORIZED TRANSACTIONS, DATA TRANSMISSION ERRORS, OR ANY ACTION OR OMISSION BY A THIRD PARTY).

CLIENT WILL REMAIN LIABLE FOR ANY LIABILITIES AND LOSSES AND OTHER AMOUNTS INCURRED BY COMPANY ARISING UNDER THIS AGREEMENT THAT ARE ATTRIBUTABLE IN WHOLE OR IN PART TO: (I) INTENTIONAL MISREPRESENTATION, FRAUD, WILLFUL OR INTENTIONAL ACTS OR OMISSIONS OR NEGLIGENCE BY CLIENT, INCLUDING ITS EMPLOYEES OR AGENTS, OR THE FAILURE OF ANY OF SUCH PERSONS TO COMPLY WITH THESE MERCHANT PROCESSING TERMS, RULES, APPLICABLE LAWS, RULES OR REGULATIONS, (II) CLIENT'S BREACH OF ANY PROVISION OF THESE MERCHANT PROCESSING TERMS OR OTHER APPLICABLE AGREEMENT ASSOCIATED WITH THE COMPANY SERVICES; (III) ANY PERSONAL INFORMATION, DATA, OR TRANSACTION THAT YOU KNOW OR SHOULD HAVE KNOWN CONTAINS INACCURACIES OR OMISSIONS; (IV) ANY SECURITY BREACH OR UNAUTHORIZED ACCESS TO PERSONAL INFORMATION, DATA OR CONFIDENTIAL INFORMATION CAUSED BY THE ACTIONS OF CLIENT OR ANY OF ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES; OR (V) ANY ASSESSMENTS, FINES, PENALTIES OR OTHER AMOUNTS (HOWEVER LABELED) IMPOSED BY THE CARD ASSOCIATIONS OR ANY GOVERNMENTAL OR REGULATORY BODY OR OTHER THIRD PARTY AS A RESULT OF ANY ACTION OR INACTION BY CLIENT OR ANY OF ITS OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES. ALL SUCH OBLIGATIONS AND AMOUNTS IMPOSED BY THIRD PARTIES WILL BE DEEMED DIRECT, NOT INDIRECT OR CONSEQUENTIAL, DAMAGES, AND WILL BE COLLECTIBLE NOTWITHSTANDING ANY PROVISION IN THESE MERCHANT PROCESSING TERMS OR THE MSA TO THE CONTRARY.

## **Appendix A – Prohibited Activities**

You agree that You will not at any time conduct Your business in any manner that directly or indirectly offers, sells, leases, licenses or displays, delivers, advertises, recommends, or promotes any product(s), service(s), data, information, image(s), text and/or any content which:

1. Is unlawful or violates any applicable local, state, federal, national or international law, statute, ordinance, or regulation including, without limitation, Card Association rules, consumer protection laws, unfair competition, antidiscrimination or false advertising;

2. Is associated with any illegal form of adult, sexually oriented, or obscene materials or services, including without limitation, any material clearly designed to sexually arouse the viewer/reader with images of children less than 18 years old and/or escort services;
3. Infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party, including, but not limited to, the unauthorized copying and posting of trademarks, pictures, logos, software, articles, musical works and videos;
4. Is threatening, abusive, harassing, defamatory, obscene, libelous, slanderous, deceptive, fraudulent, invasive of another's privacy, tortious, or otherwise violate Array's rules or policies;
5. Victimized harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
6. Impersonates any person or entity;
7. Contains harmful content, including, without limitation, software viruses, Trojan horses, worms, time bombs, cancel bots, spy-ware, or any other files, software programs, or technology that is designed or intended to disrupt, damage, surreptitiously intercept or expropriate the Array Services or any system, program, data or personal information or limit the functioning of any software, hardware, or equipment or to damage or obtain unauthorized access to any data or other information of any third party;
8. Violates any U.S. export or import laws, including, without limitation, the Export Administration Act and the Export Administration Regulations maintained by the Department of Commerce;
9. Offers or disseminates fraudulent goods, services, schemes, or promotions (i.e., make money fast schemes, chain letters, pyramid schemes) or engage in any unfair deceptive act or practice;
10. Is associated with any form of illegal gambling or illegal lottery type services;
11. Is associated with illegal telecommunications or illegal cable television equipment or illegal satellite equipment;
12. Is associated with unlicensed money transmission services, or any similar unlicensed payment type; or
13. Is associated with the sale of (a) any controlled drug that requires a prescription from a licensed practitioner unless You are authorized by the National Association of Boards of Pharmacy to offer such products as a Verified Internet Pharmacy Practice Site and only if such a prescription has been issued by the practitioner after a bona fide examination of the patient; or (b) any over-the-counter drug, unless the sale of such product, without a prescription, has been approved by the Food & Drug Administration; or (c) nonprescription drugs that make false or misleading treatment claims or treatment claims that require FDA approval; or (d) any drug or controlled substance that Array believes to be or may become harmful, unlawful, or prohibited. Array requires sellers of prescription drugs to abide by all laws applicable to both the buyer and seller and may require You to provide evidence of compliance with these requirements. In addition, due to the complexities of current laws regulating the importation of controlled drugs into the United States, You may not use the Array Services to sell prescription drugs that are imported into the United States from an international location. The foregoing list is a non-exhaustive list of prohibited goods and services.

