

## **Bankcard Solutions, LLC Independent Contractor Sales Referral Agreement**

This Independent Contractor Sales Referral Agreement (“Agreement”) is made effective as of the date set forth below by and between Bankcard Solutions, LLC (“Bankcard Solutions”), with its place of business at PO Box 4604, Olathe, Kansas 66063, and the individual and/or entity (“Agent”) set forth on the signature page of this Agreement.

### **RECITALS**

WHEREAS, Agent is engaged in the business of marketing services to businesses and entities that accept electronic payments for goods and services; and

WHEREAS, Bankcard Solutions desires to contract with Agent to assist in marketing its confidential and proprietary credit card, debit card, gift card, loyalty card, leasing, ACH, point-of-sale (“POS”) equipment or technology and software, and related goods and services offered through Bankcard Solutions (the “Bankcard Solutions Payments Services”); and

WHEREAS, Agent desires to undertake certain duties and responsibilities as a Select marketer and reseller of the Bankcard Solutions Payment Services.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **AGREEMENT**

#### **SECTION ONE – MARKETING THE BANKCARD SOLUTIONS SERVICES**

1.1. Appointment. Subject to the terms and conditions of this Agreement, Bankcard Solutions hereby appoints Agent as a non-exclusive reseller of the Bankcard Solutions Payments Services. In connection with such appointment, Bankcard Solutions grants Agent a limited, non-transferable right to promote, market and solicit orders for the Bankcard Solutions Payments Services from qualified entities or businesses for the Bankcard Solutions Payments Services (“Merchants”). Agent shall identify prospective Merchants that meet Bankcard Solutions criteria as set forth in this Agreement and its general policies and procedures. Agent will obtain all information and documentation reasonably required by Bankcard Solutions. Agent shall promptly provide Bankcard Solutions with the current address of each of its offices and the offices of its agents.

1.2. Approval of Merchants Required. Agent acknowledges that all aspects of the Bankcard Solutions Payments Services are subject to the management and approval of Bankcard Solutions and its vendors. All Merchant applications submitted by Agent are to be approved by Bankcard Solutions in its sole discretion, which approval is contingent upon the review and approval of its vendors.

initials:\_\_\_\_/\_\_\_\_

Merchants shall be able to utilize the Bankcard Solutions Payments Services only after approval by Bankcard Solutions. Agent shall make no promise, or create any impression with a prospective Merchant to the effect that any application is or will be approved prior to review and approval by Bankcard Solutions

1.3. Services Agreement. Merchants will be provided with an online or written application and/or agreement that will govern the relationship between the Merchants, Bankcard Solutions and its vendors regarding the Bankcard Solutions Payments Services (“Merchant Agreement”). Agent shall use only the form or forms of Merchant Agreement approved for use and supplied by Bankcard Solutions. Agent shall not make any alterations, changes or modifications of any kind to any Merchant Agreement form without the prior written consent of Bankcard Solutions. Bankcard Solutions reserves the right to amend or change Merchant Agreements, forms or applications in any manner, including without limitation changes to fees or charges due from or to be paid by a prospective Merchant. No compensation shall be paid to Agent by Bankcard Solutions unless and until the Merchant Agreement has been received and accepted by Bankcard Solutions and all other requirements of Bankcard Solutions' policies and procedures as set forth in this Agreement have been met.

1.4. Acceptable Merchants. Agent shall market the Bankcard Solutions' Payments Services only to bona fide and lawful businesses and in accordance with this Agreement and Bankcard Solutions' and its vendors' published policies, procedures and standards. Agent shall promptly notify Bankcard Solutions in writing of any adverse information Agent receives, whether directly or indirectly, relating to or concerning a Merchant, including information regarding a Merchant's financial condition, business practices, operations, or any other information relating to a Merchant that would have a material effect on Merchant's ability to conform to the terms of its Merchant Agreement. This duty to report adverse information shall exist before and after approval of Merchant Agreement, and shall continue throughout the term of any Merchant Agreement submitted by Agent and approved by Bankcard Solutions.

1.5. Independent Contractor. The relationship of Bankcard Solutions and Agent is that of independent contractors. Neither Agent nor its employees, consultants, contractors or agents are agents, employees, partners or joint ventures of Bankcard Solutions, nor do they have any authority to bind Bankcard Solutions to any debt or contract, or otherwise bind Bankcard Solutions to any obligation, legal or equitable. Neither Agent nor any person or entity acting on its behalf shall represent to any third party to Agent's relationship to Bankcard Solutions is anything other than an independent contractor.

1.6. Compliance With Laws/Marketing Materials. Agent agrees to comply with the rules and regulations of Visa, MasterCard, Discover, American Express and all other such associations, as they may exist from time to time, and the rules and regulations of any debit network or federal or state department or agency having

jurisdiction over the activities of Bankcard Solutions or Agent (the “Rules”). In the event of any inconsistency between any provision of this Agreement and the Rules, the Rules shall govern. Agent hereby agrees to accept and abide by any amendments and revisions to the Rules. Agent shall comply with all applicable international, national, state, regional and local laws and regulations in performing its duties hereunder and in any of its dealings with respect to the Bankcard Solutions Payments Services.

Agent shall use only those marketing and promotional materials that comply with the Rules and all United States, state, local and any other applicable laws or regulations. Agent acknowledges and agrees that MasterCard and Visa each have the right, either in law or in equity, to enforce any provision of the Rules and to prohibit any conduct that creates a risk of injury to Visa or MasterCard or that may adversely affect the integrity of MasterCard or Visa systems, information, or both. Agent shall refrain from taking any action that would interfere with, have the effect of interfering with, or prevent the exercise of such right by MasterCard or Visa.

1.7. Agent Covenants. Agent covenants and agrees that it will, at all times during the performance of this Agreement:

(a) conduct business in a manner that reflects favorably at all times on the Bankcard Solutions Payments Services and the good name, good will and reputation of Bankcard Solutions and its vendors;

(b) avoid deceptive, misleading or unethical practices that are or might be detrimental to Bankcard Solutions, the Bankcard Solutions Payments Services or the public;

(c) make no false or misleading representations with regard to Bankcard Solutions or the Bankcard Solutions Payments Services;

(d) not publish or employ, or cooperate in the publication or employment of, any misleading or deceptive advertising material with regard to Bankcard Solutions or the Bankcard Solutions Payments Services;

(e) promote the proper use of Bankcard Solutions Payments Services, and

(f) make no representation, warranties or guarantees to potential Merchants with respect to the specifications, features or capabilities of the Bankcard Solutions Payments Services that are inconsistent with the literature distributed by Bankcard Solutions or the Merchant Agreement

## **SECTION TWO – THE SERVICES**

2.1. Non-Exclusive Services. During the term of this Agreement, Agent, its principals and its affiliates are permitted to enter into other agreements to solicit Merchants for the merchant- acquiring program of any bank or financial institution other than Bankcard Solutions’ vendors. Bankcard Solutions is permitted to contract with any number of other or additional Agents to market and resell Bankcard Solutions Payment Services, without regard to competition, territory or region.

2.2. Ownership of Merchant Agreements and the Merchant Program. Agent acknowledges and agrees that all Merchant Agreements, Merchant records, Bankcard Solutions Payment Services, and documentation and information contained therein is/are the sole and exclusive property of Bankcard Solutions and/or its vendors. Bankcard Solutions (or its vendors) is the owner of any and all rights, title and interest in and to the Bankcard Solutions Payment Services, Merchant Agreements, Merchant forms or applications, Merchant records, documents, contact information and good will (collectively the “customer information”) used, derived or obtained by Agent in performance of its duties and obligations under this Agreement. Agent shall have no legal or equitable interest, proprietary right, ownership, or other rights of any kind whatsoever in any Merchant Agreement or in the Bankcard Solutions Payments Services, except to the extent that Agent is entitled to payment of commissions/compensation for marketing and reselling of the Bankcard Solutions Payment Services under the express terms of this Agreement.

### **SECTION THREE – PAYMENT OF FEES**

3.1. Fees. During any period of time in which this Agreement remains in full force and effect, compensation to Agent will be paid as set forth in the attached Schedule A. The compensation plan set forth in Schedule A shall be held in strict confidence by Agent. Bankcard Solutions shall have the right to change the compensation plan as set forth in Schedule A at any time in its sole discretion by providing thirty (30) days’ notice to Agent. Agent shall retain the right to terminate this Agreement upon notice of a change in compensation, which it deems unacceptable. Failure to terminate this Agreement within the thirty (30) day notice period will be deemed acceptance of the modified compensation plan by Agent. Agent authorizes Bankcard Solutions to deposit funds directly into Agent ’s authorized Bankcard Solutions deposit account, and Bankcard Solutions will automatically deduct all amounts for Agent’s obligations under this Agreement. Bankcard Solutions shall only pay Agent the amounts due under this Agreement if and when Bankcard Solutions is paid by its vendors. i.e. “collected funds”. Bankcard Solutions has no duty or obligation to pay Agent for uncollected funds. Agent shall bear no liability to Bankcard Solutions for the value of any merchant chargebacks, except to the extent that any such merchant chargebacks are directly or indirectly related or attributable to the fraudulent or negligent conduct of Agent or any of its employees, agents, representatives, or nominees. Agent shall have thirty (30) days from the receipt of any compensation or residuals to notify Bankcard Solutions of any errors in payment of compensation or residuals. If Agent does not notify Bankcard Solutions within the thirty (30) day time period, Agent shall be deemed to have accepted without question such residual or compensation payment and may not in the future contest the amount it was paid or seek reimbursement for any discrepancies. Upon receipt of notice, Bankcard Solutions shall have thirty (30) days to correct any errors. Agent's fees shall be reduced by 20% following any six (6) month period that Agent does not submit a Merchant that is approved and uses

the Bankcard Solutions Payments Services. Once Agent submits a Merchant, any reduction related to failure to submit a Merchant will be eliminated.

3.2. Offset Rights, Security Interests: Bankcard Solutions shall have the right of offset against any funds credited to or owing from Bankcard Solutions to Agent for any obligation of Agent to Bankcard Solutions, including, without limitation, obligation of Agent under this Agreement and any other agreement with Bankcard Solutions, this right of offset may be exercised by Bankcard Solutions at any time and without notice to Contract whether or not the obligations of Agent to Bankcard Solutions are the due.

Agent acknowledges and agrees that Bankcard Solutions shall have full recourse against Agent for: (i) monies owed by Agent to Bankcard Solutions Payments for any reason whatsoever, including but not limited to equipment, sales, supplies, and/or marketing material (ii) any errors or inaccuracies in amounts previously paid to Agent under this Agreement, (iii) any amounts incurred or advanced by sponsor bank and/or Bankcard Solutions on Agent's behalf, and (iv) any lawsuits, claims, fines, or penalties caused by Agent. Agent further agrees such recourse shall not be limited to withholding Compensation or debiting the Agent Account but at Bankcard Solutions' sole discretion, Bankcard Solutions may initiate other actions to recover such monies.

#### **SECTION FOUR – TERM AND TERMINATION**

4.1. Term. The initial term of this Agreement shall be for a period of thirty (30) days, commencing on the date first set forth below. This Agreement shall thereafter be automatically renewed for additional terms of one month unless either party notifies the other no later than ten (30) days prior to the end of the current term that it does not wish to renew this Agreement.

4.2. Default. Either party shall have the right to terminate this Agreement at any time if:

(a) the other party breaches any of the provisions of this Agreement and fails to cure such breach within thirty (30) days of its receipt of written notice thereof from the non-breaching party; or

(b) the other party (i) fails to pay its debts or perform its obligations in the ordinary course of business as they mature; (ii) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or assignment or composition for the benefit of creditors.

4.3. Failure to Comply with Rules. Bankcard Solutions may immediately terminate this Agreement for any material default knowingly or intentionally caused by Agent with respect to its obligations to comply with Bankcard Solutions' policies or rules if Bankcard Solutions determines in good faith that the default is of such a serious nature that an opportunity to cure such default is not practical or warranted. Bankcard Solutions may, at its sole discretion, effect such termination upon

delivery of written notice to Agent without regard to any provisions for cure of default.

4.4. Regulatory Demand. If Visa, MasterCard, NACHA or any federal, state or other type of regulatory agency having jurisdiction over the subject matter of this Agreement makes a demand that either Bankcard Solutions or any of its vendors discontinue or substantially modify any of the Bankcard Solutions Payments Services, either party in its sole discretion may terminate this Agreement upon written notice to the other, in which case neither party shall be deemed to be in default by reason of such termination.

4.5. Termination by Bankcard Solutions. Bankcard Solutions may terminate this Agreement for no reason at all, by providing Agent with seven (7) days' notice.

4.6. Lifetime Residual. Under section 3.1, and unless this Agreement is terminated for the reasons as set forth in sections 4.2 or 4.3, or 4.4, after any termination Agent commits a material breach of the terms of this Agreement that survive the termination of this Agreement, Bankcard Solutions agrees to make payments to Agent as set forth in this Agreement for any Merchant obtained by Bankcard Solutions through Agent 's performance of this Agreement for any period of time during which such Merchant continues to generate revenue to Bankcard Solutions. Bankcard Solutions shall have no further obligation to make any payments to Agent under this Agreement once Agent 's monthly payment falls below one hundred dollars (\$100.00).

4.7. Termination of Compensation. If this Agreement is terminated by Bankcard Solutions under sections 4.2, 4.3 or 4.4 or Agent commits a material breach of the terms of this Agreement that survive the termination of this Agreement, Bankcard Solutions shall have no further obligations for payment of any compensation to Agent under this Agreement.

## **SECTION FIVE - OBLIGATIONS.**

5.1. Confidential Information. The parties acknowledge that in their performance of their duties hereunder either party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning the Bankcard Solutions Payments Services and the know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information") all of which are confidential and proprietary to, and trade secrets of, the disclosing party. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by the disclosing party; (ii) becomes public knowledge or known to the receiving party after disclosure by the disclosing party other than by breach of the receiving party's obligations under this section or by breach of a third party's confidentiality obligations; (iii) was known by the receiving party prior to disclosure by the disclosing party other than by breach of a third party's confidentiality obligations;

or (iv) is independently developed by the receiving party. As a condition to the receipt of the Confidential Information from the disclosing party, the receiving party shall: (i) not disclose in any manner, directly or indirectly, to any third party any portion of the disclosing party's Confidential Information; (ii) not use the disclosing party's Confidential Information in any fashion except to perform its duties hereunder or with the disclosing party's express prior written consent; (iii) disclose the disclosing party's Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the receiving party's internal business purposes; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure. The receiving party shall promptly notify the disclosing party of any unauthorized disclosure or use of the Confidential Information. The receiving party shall cooperate and assist the disclosing party in preventing or remedying any such unauthorized use or disclosure.

5.2. Indemnification. Each party agrees to indemnify, defend, and hold harmless the other party, its employees, members, directors, managers, officers or agents from and against any loss, liability, damage, penalty or expense (including attorneys' fees, expert witness fees and cost of defense) they may suffer or incur as a result of (i) any failure by the party or any employee, agent or affiliate of the party to comply with the terms of this Agreement; (ii) any warranty or representation made by the party being false or misleading; (iii) any representation or warranty made by the party or any employee or agent of the party to any third person other than as specifically authorized by this Agreement, (iv) the manner or method in which the party performs its services pursuant to this Agreement, (v) negligence of the party or its sub-contractors, agents or employees, or (vi) any alleged or actual violations by the party or its subcontractors, employees or agents of any card association rules, governmental laws, regulations or rules.

5.3. Disclaimer of All Warranties. THE Bankcard Solutions SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. Bankcard Solutions DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, TO INDEPENDENT Agent AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON- INFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY Bankcard Solutions OR ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF Bankcard Solutions' OBLIGATIONS.

5.4. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE Bankcard Solutions SERVICES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS; OR LABOR CLAIMS), EVEN IF

SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL Bankcard Solutions' TOTAL LIABILITY TO INDEPENDENT Agent OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED TEN THOUSAND DOLLARS (\$10,000.00) REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON WARRANTY, CONTRACT, TORT OR OTHERWISE.

5.5. Taxes. Agent shall pay, indemnify and hold Bankcard Solutions harmless from (i) any sales, use, excise, import or export, value-added, or similar tax or duty, and any other tax or duty not based on Bankcard Solutions' income, and (ii) all government permit fees, customs fees and similar fees which Bankcard Solutions may incur with respect to this Agreement. Such taxes, fees and duties paid by Agent shall not be considered a part of, a deduction from, or an offset against, payments due to Bankcard Solutions hereunder.

5.6. Agent represents and warrants to Bankcard Solutions as follows:

(a) Agent has the full power and authority to execute, deliver and perform this Agreement. This Agreement is valid, binding and enforceable against Agent in accordance with its terms and no provision requiring Agent 's performance is in conflict with Agent 's obligations under any charter or any other agreement (of whatever form or subject) to which Agent is a party or by which it is bound.

(b) If other than a sole proprietorship, Agent is duly organized, authorized and in good standing under the laws of the state of its organization and is duly authorized to do business in all other states in which Agent 's business make such authorization necessary or required.

(c) Except as otherwise disclosed in writing by Agent to Bankcard Solutions on or before the effectiveness of this Agreement, neither Agent nor any principal has been subject to any (i) criminal conviction (excluding traffic misdemeanors or other petty offenses); (ii) bankruptcy filings; (iii) Internal Revenue Service liens; (iv) federal or state regulatory administrative or enforcement



proceedings; or (v) restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices.

5.7. Data Security Compliance. Agent agrees to comply with privacy and security requirements under the Payment Card Industry Data Security Standard (“Association Requirements”) with regards to Agent’s use, access, and storage of certain credit card non- public personal information (“Cardholder Information”) on behalf of Bankcard Solutions. Visa, MasterCard, Discover, American Express, any ATM or Debit Networks, and the other financial service card organizations shall be collectively known herein as “Associations.” Agent shall comply with its obligations under any applicable state or federal law or regulations as may be in effect or as may be enacted, adopted or determined regarding the confidentiality, use, and disclosure of Cardholder Information. Agent agrees that it shall protect the privacy of Cardholder Information to at least the same extent that Bankcard Solutions must maintain that confidentiality under the Association Requirements or applicable law. Agent agrees to ensure that any agent, including a sub-Agent, to whom it provides Cardholder Information received from, or created or received by Agent on behalf of Bankcard Solutions, agrees to the same restrictions and conditions that apply through this Agreement to Agent with respect to such information. Upon five (5) business notice or immediately upon any unauthorized access to, use or disclosure of any Cardholder Information, Bankcard Solutions may at its discretion, conduct an on-site audit and review of Agent’s procedures and systems.

5.8. Non-Circumvention. Agent shall not knowingly cause or permit any of their employees, agents, representatives, principals, affiliates, subsidiaries or any other person or entity under its authority or control to circumvent the purposes of this Agreement for Agent’s benefit, including without limitation any of the following acts or business practices:

(a) encourage, solicit or otherwise cause any Merchant that has been accepted by Bankcard Solutions or its vendors to terminate its participation in any of the Bankcard Solutions Payments Services, cancel or terminate a Merchant Agreement, and/or otherwise cease doing business with Bankcard Solutions; or

(b) enter into any negotiation, contract or otherwise solicit any bank, Financial institutions through registered Payment Service vendors with whom Bankcard Solutions has an ongoing or pending business relationship for the purpose of entering into any direct business arrangement or contract between Agent and such bank, financial institution or vendor, where performance of the solicited/negotiated/proposed business arrangement or contract would permit Agent to provide services that are substantially similar to or in direct competition with the Bankcard Solutions Payment Services, whether or not such bank, financial institution or vendor continues or discontinues its business relationship with Bankcard Solutions, provided that this section shall not apply to any third party with whom Agent maintains a current business relationship at the time this Agreement becomes effective. This section shall apply during the term of this Agreement and

for a period of two (2) years after any termination, cancellation or expiration of this Agreement.

5.9. Non-Solicitation. (a) During the period that this Agreement is in effect and for the five (5) year period immediately following termination of this Agreement, Agent shall not directly or indirectly through another entity (i) induce or attempt to induce any employee of, or consultant of Bankcard Solutions or its subsidiaries to leave the employ of, or consultancy to, Bankcard Solutions or its subsidiaries, or in any way interfere with the relationship between Bankcard Solutions or its subsidiaries and any employee or consultant thereof, (ii) hire any person who was an employee of, or consultant to Bankcard Solutions or its subsidiaries at any time during the twelve-month period immediately following the last date of employment of such person by Bankcard Solutions without the written consent of Bankcard Solutions; (iii) call on, solicit or service any customer, referral partner, affiliate, agent, supplier, licensee, licensor, consultant, Agent or other business relation of Bankcard Solutions or its respective subsidiaries in order to induce or attempt to induce such person to cease doing business with Bankcard Solutions or its subsidiaries, or in any way interfere with the relationship between any such customer, referral partner, affiliate, agent, supplier, licensee, licensor, consultant, Agent or other business relation and Bankcard Solutions or its subsidiaries (including, without limitation, making any negative statements or communications about Bankcard Solutions or its subsidiaries); or (iv) call on, solicit, or take away or attempt to call on, solicit, or take away any of Bankcard Solutions' customers, referral partners, affiliates, agents and vendors on whom Agent called or with whom Agent became acquainted during its contractual relationship with Bankcard Solutions, either on its behalf or that of other person, firm, or corporation.

(b) If, at the time of enforcement of the covenants contained in this section above (the "Protective Covenants"), a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed to revise the Protective Covenants to cover the maximum duration, scope and area permitted by law. Agent agrees that the Protective Covenants are reasonable in terms of duration, scope and area restrictions and are necessary to protect the goodwill of Bankcard Solutions' businesses and agrees not to challenge the validity or enforceability of the Protective Covenants.

5.10. Intellectual Property. "Intellectual Property" means all of the following owned by a party: (i) trademarks and service marks (registered and unregistered) and trade names, and goodwill associated therewith; (ii) patents, patentable inventions, computer programs, and software; (iii) databases; (iv) trade secrets and the right to limit the use or disclosure thereof; (v) copyrights in all works, including software programs; and (vi) domain names. The rights owned by a party in its Intellectual Property shall be defined, collectively, as "Intellectual Property Rights." Other than the express licenses granted by this Agreement, Bankcard

Solutions grants no right or license to Agent by implication, estoppel or otherwise to the Bankcard Solutions Payments Services or any Intellectual Property Rights of Bankcard Solutions. Each party shall retain all ownership rights, title, and interest in and to its own products and services (including in the case of Bankcard Solutions, in the Bankcard Solutions Payments Services) and all intellectual property rights therein, subject only to the rights and licenses specifically granted herein. Bankcard Solutions (and not Agent) shall have the sole right, but not the obligation, to pursue copyright and patent protection, in its sole discretion, for the Bankcard Solutions Payments Services and any Intellectual Property Rights incorporated therein. Agent will cooperate with Bankcard Solutions in pursuing such protection, including without limitation executing and delivering to Bankcard Solutions such instruments as may be required to register or perfect Bankcard Solutions' interests in any Intellectual Property Rights and any assignments thereof. Agent shall not remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received from Bankcard Solutions in connection with this Agreement.

## **SECTION SIX - GENERAL PROVISIONS**

6.1. Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions not so declared shall nevertheless continue in full force and effect, but shall be construed in a manner so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions.

6.2. Drafting. No provision of this Agreement shall be construed against any party merely because that party or counsel drafted or revised the provision in question. All parties have been advised and have had an opportunity to consult with legal counsel of their choosing regarding the force and effect of the terms set forth herein. This Agreement shall be deemed to be jointly prepared by the parties and therefore any ambiguity or uncertainty shall be interpreted accordingly.

6.3 Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute consent to, waiver of, or excuse for any different or subsequent breach.

6.4. Assignment – Right of First Refusal. Neither party shall assign, delegate, subcontract, license, franchise, or in any manner attempt to extend to any third party any right or obligation under this Agreement except as otherwise permitted herein without the prior written consent of the other party; provided, however, Bankcard Solutions may assign this Agreement and its rights hereunder to a

purchaser of all or substantially all of its assets or equity. Notwithstanding any other provisions in this Agreement, Agent may assign or sell its rights to its compensation under this Agreement to a third party; provided however, Bankcard Solutions shall first have the right to purchase such compensation rights from Agent. In the event Agent seeks to sell its right to compensation to a third party, it shall provide Bankcard Solutions with written notice of the material terms of the third -party offer, and Bankcard Solutions shall have thirty (30) days within which to notify Agent if it will match said third party offer. If Bankcard Solutions elects to match the third-party offer, Agent shall sell its rights to compensation to Bankcard Solutions. In the event Bankcard Solutions does not elect to exercise this right of first refusal, Agent may sell Agent 's compensation to the third party offer or on the same terms and conditions as set forth in the written notice to Bankcard Solutions.

6.5. Amendments. Except as otherwise provided in this Agreement, no provision of this Agreement may be amended, modified or waived except by a written agreement signed by both parties.

6.6. Notices. All notices and other communications required or permitted under this Agreement shall be in writing and given by personal delivery, telecopy (confirmed by a mailed copy), or first-class mail, postage prepaid, sent to the addresses set forth herein.

6.7. Section Headings. The section headings contained in this Agreement are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement.

6.8. Counterparts/Facsimile Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The signatures to this Agreement may be evidenced by facsimile copies reflecting the party's signature hereto, and any such facsimile copy shall be sufficient to evidence the signature of such party as if it were an original signature.

6.9. Entire Agreement; Binding Effect. This Agreement, including all schedules, exhibits and attachments thereto, sets forth the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and their respective successors and assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

6.10. Dispute Resolution. All disputes arising under or in connection with the Agreement will initially be referred to the senior executives of each party. The senior executives will use their best efforts to resolve the dispute informally and amicably. If, after negotiating for thirty (30) days (or for some longer period if the parties agree), no resolution of the dispute is reached by the senior executives, the parties will submit the dispute to binding arbitration in Carlsbad, California and the procedures set forth in paragraph 6.11.

6.11. Binding Arbitration. All disputes that cannot be resolved pursuant to the internal issue resolution process identified above will be submitted to and settled by final and binding arbitration according to the rules and procedures of the Judicial Arbitrator Group, or Jams in Dispute, unless otherwise mutually agreed by the parties. Any arbitration shall occur in Solana Beach, California by a single arbitrator mutually selected by the parties, and the law of the State of California shall apply to all issues. The arbitrator shall have binding authority to determine all issues arising out of this Agreement and to enter any legal, equitable or restitutionary remedy, including injunction and/or restitution. The decision of the arbitrators will be final and binding, and judgment on the award may be entered in any court of competent jurisdiction. Fees and costs of arbitration shall be initially born by the parties equally. However, the arbitrator shall, in addition to damages or other remedy, award to the prevailing party reimbursement of all arbitration costs, expenses and reasonable attorney fees incurred, including any attorney fees reasonably necessary to obtain judgment on or otherwise enforce the award.

6.12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California (irrespective of its choice of law principles).

6.13. Attorney's Fees. Should suit or arbitration be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees and fees on any appeal, as well as any fees or costs awarded by an arbitrator as provided in Section 6.11 above.

6.14. Guaranty. Agent and the principal(s) of Agent (collectively, "Guarantors") hereby jointly and severally guarantee indefeasible payment and performance of all obligations (the "Obligations") of Agent and principals under this Agreement, as hereafter amended. Guarantors' obligations under this section are independent of Agent 's and principals' obligations and a separate action may be brought against Guarantors, whether or not Agent or principals be joined in such action. Guarantors authorize Bankcard Solutions, without notice, from time to time and without affecting Guarantors' liability, to modify the Obligations. Guarantors waive: any right to require Bankcard Solutions to proceed against a Guarantors or pursue any other remedy; any defense arising by reason of any disability or other defense of Agent or any principal, or cessation from any cause of Agent 's or any principal's liability; any claim that Guarantors' obligations exceed Agent 's or any principal's;

until the Obligations have been paid and performed in full, all rights of subrogation and contribution; and any right to enforce any remedy of Bankcard Solutions against Agent or any principal. Guarantors acknowledge that Guarantors shall have sole responsibility for obtaining from Agent and principals information concerning their financial condition. Guarantors agree to pay all attorneys' fees and other costs incurred in enforcing this section or the Obligations.

6.15. Survival. All representations, covenants and warranties shall survive the execution of this Agreement and sections 2.1, 2.2, 3.2, 4.6, 4.7, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8, 6.9, 6.10, 6.11, 6.12, 6.13 and 6.14 shall survive termination of this Agreement.

IN WITNESS THEREOF, this Agreement has been duly executed by the parties hereto, effective as of the date and year first below written.

[SIGNATURE PAGE TO FOLLOW]

Bankcard Solutions

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

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

Title: Manager

**Agent :**

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

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

\_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ ZIP: \_\_\_\_\_

SSN/EIN: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Secondary Email: \_\_\_\_\_

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