



AUTOMATED CLEARING HOUSE SERVICES CREDIT AND DEBIT ORIGATION

THIS AGREEMENT is made on _____ between _____, ("Client") and Pacific Western Bank ("Bank").
By signing below, Client agrees to the terms and conditions of the Agreement.

WHEREAS, the Bank is a Participating Depository Financial Institution ("Participating Institution") of the Western Payments Alliance ("WesPay") and may initiate electronic fund transfer entries ("Entries") by means of the Automated Clearing House.

WHEREAS, Client desires to initiate Entries through Bank for: (I) payment of money from the accounts of Client's customers ("Customers") maintained at Bank and other Participating Institutions ("Accounts"), otherwise referred to herein as "Debit Entries", and/or (ii) deposit of funds to the accounts of Client's employees, customers and other parties ("Customers"), maintained at Bank and other Participating Institutions ("Accounts"), otherwise referred to herein as "Credit Entries."

NOW, THEREFORE, the Bank and Client agree as follows:

1. **Rules.** Client shall comply with the Operation Rules of WesPay and the Operations Rules of the National Automated Clearing House Association ("NACHA") in existence as of the date of the Agreement and as amended from time to time (herein collectively referred to as the "Rules"). The terms of this Agreement shall in no way limit Client's obligation of complying with the Rules. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. Their term "Entries" shall have the meaning provided in the Rules and shall also mean (i) the data received from Client hereunder from which the Bank prepares Entries, and (ii) for the purposes of Sections 2.10 request from Client for reversal of an Entry.

2. **Delivery of Entries to Bank.**

2.1 **Originated Entries.** The Client acknowledges that the NACHA system may not be used in violation of, and that Entries originated by the Client must comply with the law of the United States, including sanctions and laws administered by the Office of Foreign Asset Controls. Further, Client agrees that the NACHA system may not be used to transmit entries that are in violation of the Unlawful Internet Gambling Enforcement Act.

2.2 **Delivery Requirements.** All entries shall be delivered by Client to the Bank to the location(s) and in compliance with the formatting and other requirements set forth in Schedule A attached hereto ("Delivery Requirements").

2.3 **Security Procedures.** Client and Bank shall comply with the security procedures requirements described in Schedule A attached hereto ("Security Procedures") with respect to Entries transmitted by Client to Bank. The total dollar amount of Entries transmitted by Client to the Bank on any one day shall not exceed the amount set forth in Schedule A.

2.4 **Client Authorizations and Record Retention.** Before the initiation by Client of the first Entry to a Customer's Account, Client shall obtain from such customer an authorization to initiate one or more Entries to the Customer's Account, which authorization shall comply with the Rules. Each Entry thereafter shall be made pursuant to such authorization and no Entry shall be initiated by Client after such authorization has been revoked or the arrangement between Client and such Customer has terminated. Client shall retain Customer authorization for two years after they are terminated and other documents related to Entries for a

period of two years. Client shall immediately furnish such authorizations and documents to Bank upon Bank's request.

2.5 **Prenotification.** Client shall deliver a Prenotification, in a format and in the medium set forth in Schedule A and/or prescribed by the Rules to Bank to be transmitted to the Participating Institution at which the Customer's account is held ("RDFI") within the time limits set forth in the Rules. If Client has received notice that such Prenotification has been rejected within the prescribed period by the RDFI, Client shall not initiate any corresponding Entry until the cause for rejection has been corrected and another Prenotification has been submitted to and accepted by the RDFI in accordance with the Rules.

2.6 **Cancellation and Amendment of Entries; Reversals.** Client shall have no right to cancel or amend an Entry after it is delivered to Bank. Bank, however, shall use reasonable efforts to act on a request by Client for reversal of an Entry file pursuant to the Rules; provided, however, that Bank shall not be liable for interest or losses if such reversal is not effected. Any request by Client for reversal of Entry must comply with the Delivery Requirements and the Security Procedures (reversing files and entries must be available to the RDFI within 5 banking days following the settlement date of the erroneous file or entry and must be accompanied by a "correcting file"). Client shall reimburse Bank for any expenses, losses or damages Bank may incur in effecting or attempting to affect Client's request for the reversal of an Entry. The Client must notify the Receiver of the reversing entry and the reason for the reversing entry no later than settlement date of the reversing entry.

2.7 **Customer's Right to Refund Debit Entry.** Client acknowledges that a Customer, under the Rules, has the right to obtain a refund of funds debited from a Customer's Account by such Customer's sending of a notice to the RDFI that a Debit Entry was, in whole or in part, not authorized, and the right of the RDFI to obtain payment of the amount of such Entry from an ODFI by transmitting an adjustment entry in the amount of such refund. Client agrees to pay Financial Institution the amount of (i) any such adjustment entry upon its receipt by Financial Institution, and (ii) with respect to any On-Ups Entry, any refund paid by Financial Institution to a Customer in connection with such Customer's claim that an Entry was, in whole or in part, not authorized.

2.8 **Client's Notice to Customers.**

(i) If the amount of a Debit Entry to a Customer's Account varies in amount from the previous Debit Entry relating to the same authorization or preauthorized amount, Client shall at least ten (10) calendar days before the Effective Entry Date of such Debit Entry, send the Customer written notice of the amount of such Debit Entry and its Effective Entry Date, unless Customer has previously been notified of Customer's right to receive such notice and Customer has elected to receive such notice only when the Debit Entry does not fall within a specified range of amounts or varies from the most recent Debit Entry by an agreed amount.

(ii) If any change is made by Client in the scheduled Effective Entry Date of one or more Debit Entries, Client shall, at least seven (7) calendar days before the Effective Entry Date of the first such Debit Entry to be affected by such change, send the Customer a written notice of the notice of the new Effective Entry Date(s) of such Entry or Entries.

3. **Processing Transmittal and Settlement by Bank.**

3.1 **Processing Transmittal and Settlement.** Except as provided in Sections 4, 5 and 9, Bank shall (i) process Entries received from Client to conform with the requirements set forth in this Agreement, (ii) transmit such entries as an Origination Depository Financial Institution to an Automated Clearing House processor ("ACH") selected by Bank in its sole discretion and (iii) settle for such Entries as provided in the Rules.

3.2 **Timing.** Bank shall transmit such Entries to the ACH by the deadline of the ACH set forth in the Schedule A (Processing Schedule/Location) attached hereto at least one (1) business day prior to the Effective Entry Date shown in such Entries provided (i) such Entries are received by Bank's related cut-off time set forth in Schedule A on a business day, (ii) the Effective Entry Dated is at least one (1) day after such business

day, and (iii) the ACH is open for business on such business day. For purpose of this Agreement a "business day" is a day on which Bank is open to the public for carrying on substantially all of its business (other than a Saturday or Sunday), and Entries shall be deemed received by Bank in the case of transmittal by electronic transmission, when the transmission (and compliance with any related Security Procedure) is completed as provided in the Delivery Requirements. If any of the requirements of clause (i), (ii) or (iii) of the preceding paragraph is not met, Bank shall use reasonable efforts to transmit such Entries to the ACH by the next deposit deadline of the ACH following that specified in Schedule A which is a business day and a day on which the ACH is open for business.

3.3 Client's Credit for Debit Entries. Bank shall have the right to defer any credit to Client's Account until Bank receives final settlement for a debit Entry. Any credit provided prior to that time shall be provisional and Bank shall have the right to immediate payment of the amount of such credit upon its receipt of notice that final right payment by Client of any returned or rejected Entry for which Client has previously received credit at the time Bank receives such rejection or return.

4. On-Us Entries. Except as provided in Section 5, in the case of an On-Us Entry Bank shall credit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in clauses (i) and (ii) of Section 3.2 are met. If either of those requirements is not met, Bank shall use reasonable efforts to credit the Receiver's account in the amount of such Entry on the next business day following such Effective Entry Date.

5. Rejection of Entries. Bank may reject any Entry for any reason. Bank shall notify Client of such rejection or refusal (either electronically, in writing, by telephone, or as otherwise agreed to by Bank and Client) no later than the business day after the Effective Entry Date. Bank shall not be liable to Client for the rejection or refusal of any Entry, for Client's non-receipt of notice given to Client, or for the failure to give notice of rejection or refusal at an earlier time than provided for herein. Bank shall not be required to pay Client interest on a rejected/refused Entry for the period from rejection/refusal of the Entry to Client's receipt of the notice of rejection/refusal.

6. Returned Entries.

6.1 Notice to Client. Bank shall notify Client either electronically, in writing, by telephone, or as otherwise agreed to by Bank and Client of the receipt of an Entry returned by the ACH no later than one (1) business day after Bank's receipt of the returned Entry. Bank shall have no obligation to take other action with respect to a returned Entry.

6.2 Subsequent Authorization. Client will not re-initiate any returned entry with a reason of stop payment, not authorized, or authorization revoked until a subsequent authorization has been obtained from Client's customer.

6.3 Notifications of Change. Upon receipt of Notification of Change, requested changes should be made within six business days or prior to the initiation of the next entry, whichever is later.

6.4 Insufficient or Uncollected Funds. Client will not re-initiate entries returned for insufficient or uncollected funds in excess of the limits prescribed by the NACHA rules (no more than 2 times after the return of the initial entry).

7. Provisional Payment. Client represents to Bank and agrees that it shall be bound by the provisions of the Rules making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry, and specifically acknowledged that it has received notice of that Rule and

of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Client shall not be deemed to have paid the receiver the amount of the Entry.

8. Securities Procedures; Unauthorized and Authorized Entries; Inconsistent Entries.

8.1 Purpose of Security Procedures. Client agrees that the purpose of the Security Procedures is to certify the authenticity of Entries transmitted to Bank in the name of Client and not to detect an error in the transmission or content of any Entry, and that no security procedures for the detection of such errors has been agreed upon by Bank and Client.

8.2 Protection of Security Procedures. Client is strictly responsible to establish and maintain procedures to safeguard against unauthorized transmissions. Client warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and of any passwords, codes, security devices and related instructions provided by Bank in connection with the Security Procedures. If Client believes or suspects that any such information or instructions are known or have been accessed by unauthorized person, Client shall notify Bank immediately.

8.3 Unauthorized Entries. An Entry delivered to Bank that purports to have been transmitted or authorized by Client shall be effective as Client's Entry as provided herein even if the Entry was not in fact authorized by Client, provided Bank has accepted the Entry in compliance with the Security Procedures with respect to such Entry.

8.4 Authorized Entries. If an Entry received by Bank was transmitted or authorized by Client, it shall be effective as the Client's Entry as provided herein, whether or not Bank complied with the Security Procedures within respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with such procedure.

8.5 Inconsistent Entries. Client acknowledges and agrees that (i) if an Entry describes the receiver inconsistently by name or account number, payment of the Entry transmitted by Bank to an RDFI might be made by RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number even if it identifies a person different from the named receiver, and that Client's obligations to pay the amount of the Entry to Bank is not excused in such circumstances, and (ii) if an Entry describes the RDFI inconsistently by name and identifying number, payment of the entry might be made by RDFI on the basis of the account number even if it identifies an RDFI different from the named RDFI, and that Client's obligation to pay the amount of the entry to Bank is not excused in such circumstances.

9. Client Account. Client shall at all times maintain sufficient available funds in a deposit account. Client shall maintain at Bank (the "Client Account") to pay (i) the amount of all Credit Entries, fees and other amounts which Client is obligated to pay Bank under this Agreement and/or (ii) the amount of all returned or reversed Debit Entries, Adjustment Entries, fees and other amounts which the Client is obligated to pay Bank under this Agreement. Bank in its sole discretion may require Client to have sufficient available funds in the Client Account to cover the amount of a Credit Entry prior to Bank's transmittal of such Entry to an ACH or Bank's crediting of a Receiver's account in the amount of an On-Us Entry. In the absence of such a requirement, Client shall be obligated to have such available funds in the Client Account at such time on the Settlement Date with respect to such Entry, or in the case of an On-Us Entry, the date of crediting the receiver's account, as Bank, in its discretion, may determine. Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the Client Account and any credit the Client Account for any amount to which Client is entitled under this Agreement. If there are insufficient funds available in the Client Account to pay amounts Client owes Bank under this Agreement, Client shall pay any amounts due immediately upon demand, and Client agrees that Bank may debit any account maintained by Client with Bank or that Bank may set off against any amount it owes to Client, in order to obtain payment of Client's obligations.

10. **Client's Representations, Warranties and Indemnification.** Client represents and warrants that for each Entry Client delivers to Bank that: (i) the Entry is a Credit Entry or a Debit Entry and complies with the terms of this Agreement and the Rules; (ii) Client has complied with the Rules with respect to the Entry; (iii) there has been and shall not later be any breach of any warranty of Client as an Originator or of Bank as an ODFI under the Rules; (iv) Client has not breached any warranty contained in this Agreement; and (v) the Entry complies with all local, State and Federal regulations, including but not limited to the Electronic Fund Transfer Act and Regulation E.

10.1 **POP Entries.** Originators initiating Point-Of-Purchase entries warrant that the Receiver is provided with a receipt that contains information relating to the POP entry, as required by the rules. Further, the source document used for the ACH transaction is voided and returned to the Receiver.

10.2 **ARC and RCK Entries.** Originators initiating converted or returned check entries warrant that they have provided clear and conspicuous notice of the conversion/truncation policy to the Receiver.

Client shall indemnify Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations or warranties.

11. **Notices and Statements.** Bank is not required to and will not provide Client or Customers with notice of receipt or Bank's transmittal or crediting or debiting of Entries. Entries and other debit and credits to the Client Account will only be reflected on the periodic statement for the Client Account. Client shall notify Bank of any unauthorized or erroneous Entries or any other discrepancy or error on the periodic statement within fourteen (14) calendar days of receipt of the statement after which the statement will be conclusively presumed to be correct. Bank shall not be liable for any interest or losses resulting from Client's failure to give such notice.

12. **Liability of Bank; Limitations on Liability.**

12.1 **Performance of Bank.** Bank shall be responsible only for performing the services it expressly agrees to perform in this Agreement, and shall be liable only for direct damages caused by its negligence in performing those services. Bank shall not be responsible for any acts or omissions of Client, including without limitation the amount, accuracy, timeliness of delivery or Customer authorization of any Entry received from Client, or any act or omission of any other person, including without limitation WesPay, any Federal Reserve Financial Institution, any ACH or transmission or communications facility, any data processor of Client, or any Receiver or RDFI (including without limitation the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent.

12.2 **Limit on Damage.** In no event shall Bank be liable for any consequential, special, punitive, or indirect loss or damage which Client may incur or suffer in connection with this Agreement, including without limitation loss or damage from subsequent wrongful dishonor resulting from Bank's acts or omissions in performing its services under this Agreement.

12.3 **Force Majeure.** Bank shall not be responsible for any failure to act or delay in acting if such failure is caused by legal constraint, the interruption of transmission or communication facilities, computer malfunction or equipment failure, war, emergency conditions, or other circumstances beyond Bank's reasonable control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank having violated any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other governmental regulatory authority.

12.4 **Interest.** Subject to the foregoing provisions of this Section 12, any liability which Bank may have for loss of interest for an error or delay in performing its services hereunder shall be calculated by using a rate equal to the overall Federal Funds rate of the Federal Reserve Financial Institution of San Francisco for the period involved, less any applicable reserve requirements.

13. **Indemnification.** Client shall defend, indemnify and hold harmless Bank, and its officers, directors, agents and employees, from and against any and all actions, cost, claims, losses, damages or expenses, including attorneys' fees and expenses, resulting from or arising out of (i) any breach of any of the agreements, representations or warranties of Client contained in this Agreement, or (ii) any act or omission of Client or any other party acting on Client's behalf, including but not limited to the parties described in Section 12.1 above.

14. **Payment for Bank Services.** Client shall pay Bank fees for the services provided by Bank under this Agreement in accordance with rate schedules provided by Bank from time to time. Such charges do not include government taxes or other assessments, and Client shall be responsible for payment of taxes relating to the services provided for in Client's agreement between Bank and Client with respect to the Client Account (the "Account Agreement"). Rate schedules may be changed by Bank upon thirty (30) calendar days prior notice to Client.

15. **Termination.** Bank may terminate this Agreement immediately by notice to Client, or without if Client breaches any of its obligations under this Agreement or the Rules. Client may terminate this Agreement at any time upon (10) business days prior notice to Bank. Termination shall not affect any of Bank's rights or Client's obligations under Sections 2.3, 10, 12 and 13 above or related to Entries initiated by Client prior to such termination.

16. **Confidentiality.** Client acknowledges that it will have access to certain confidential information regarding Bank's execution of Entries, the Security Procedures and the services contemplated by this Agreement. Client shall not disclose any such confidential information of Bank and shall use such confidential information only in connection with the transactions contemplated by this Agreement.

17. **Tapes and Records.** All magnetic tapes, Entries, Security Procedures and records used by Bank for transactions contemplated by this Agreement shall be and remain Bank's property. Bank may, in its sole discretion, make available such information upon Client's request. Any expenses incurred by Bank in making any such information available to Client shall be paid by Client.

18. **General Provisions.**

18.1 **Entire Agreement.** This Agreement and the schedules attached hereto constitute the entire agreement between Bank and Client and supersede all prior agreements. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which Bank is subject, and which governs or affects the transaction contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and Bank shall incur no liability to Bank as a result of such violation or amendment. No course of dealing between Bank and Client or usage of trade shall constitute a modification of this Agreement, the Rules or the Security Procedures or constitute an agreement between Bank and Client regardless of whatever practices or procedures Bank or Client may use.

18.2 **Amendment.** Except as provided in Section 14, Bank may amend any part of this Agreement, including any schedule hereto, from time to time immediately upon notice to Client.

18.3 **Instructions and Notices.**

(i) Except as otherwise expressly provided herein, Bank shall not be required to act upon any notice or instruction received from Client or any other person, or to provide any notice or advice to Client or any other person with respect to any matter.

(ii) Bank shall be entitled to rely on any oral or written notice, response, or other communication believed by it to be genuine and to have been provided by any authorized representative of Client whose name is set forth on Schedule B ("Authorization Form"), and any such communication shall be deemed to have been provided by such person on behalf of Client. Client may add or delete any Authorized Representative by completion of a new Schedule B or by written notice to Bank signed by an Authorized Signatory on the Corporate Depository Account Agreement. Such notice shall be effective on the second business day following the day of Bank's receipt thereof.

(iii) Except as otherwise provided herein, any notice under this Agreement must be in writing and delivered or sent by United States mail and if to the Bank addressed to:

Pacific Western Bank
120 Wilshire Blvd
Santa Monica CA 90401
Attn: Sharon Skibiski

and if to Client, addressed to the most current address shown on the Bank's records unless another address is substituted by notice delivered or sent as provided herein.

Notices must comply with any applicable Security Procedures. Except as otherwise expressly provided herein, any such notice shall be deemed given when received.

18.4 Venue; Jurisdiction; Service of Process; Jury Trial Waiver. Any legal action or proceeding arising out of or relating to this Agreement by Bank may be (and by Client must be) instituted in the courts of the State of California or of the United States of America for the Central District of California, and Client hereby irrevocably submits to the jurisdiction of each such court in any such action or proceeding. Client hereby irrevocably consents to the service of any and all legal process, summons, notices and documents out of any of the aforesaid courts in any such action, suit or proceeding by mailing copies thereof by registered or certified mail, postage prepaid, to Client at its address provided for notice in accordance with Section 18.3 hereof. **Client and Bank each waive any and all rights to a trial by jury in any action, proceeding or counterclaim relating to any matter whatsoever arising out of or in any way connected with this agreement or any transaction hereunder.**

18.5 Severability; Related Automatic Amendments. If any one or more of the provisions of this Agreement shall be finally determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect in a particular jurisdiction, then the validity, legality or enforceability of the remaining provisions hereof in such jurisdiction and the validity, legality and enforceability of this entire Agreement in any other jurisdiction shall not in any way be affected or impaired thereby. If performance of the services to be provided in accordance with the terms of this Agreement would result in a violation of any present or future statute, rule, regulation, order or government policy to which Bank is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed to be amended to the extent necessary to comply with such statute, rule, regulation, order or policy, and Bank shall incur no liability to Client as a result of such violation or amendment.

18.6 Assignment. Client may not assign its interest or rights under this Agreement without the prior written consent of Bank and any purported assignment in violation of this section shall be void.

18.7 Successor and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against Bank or Client hereunder.

18.8 Headings. Headings used in the Agreement are for the convenience only and shall not be deemed a part of this Agreement.

18.9 **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of California.

18.10 **Counterparts.** This Agreement may be signed in counterparts, all of which shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above set forth.

Pacific Western Bank

Customer Name

By:

By:

Signature

Signature

Name and Title

Name and Title

Signature

Name and Title