



BCMS INDEPENDENT SALES EXCLUSIVE AGENT AGREEMENT

INTERNAL USE ONLY

AGENT No. _____

CONTRACT No. _____

This Agreement ("Agreement") is between Banc Certified Merchant Services, LLC, an Ohio corporation dba: BCMS and _____(legal name), a _____ (State), [corporation / partnership / sole proprietorship / limited liability company], dba BCMS Independent agent) _____ ("Agent").

BCMS is an Independent Sales Organization and Member Service Provider as defined by the Association Rules and Regulations. BCMS is engaged in the business of providing Services.

BCMS has its principal place of business at 3962 Brown Park Dr. Hilliard, Ohio 43026.

Agent is a person or entity in the business of soliciting purchasers of Services.

Agent has its principal place of business at _____.

BCMS and Agent wish to enter into a relationship in which Agent will represent BCMS with respect to soliciting purchasers of Services provided by BCMS on the terms and conditions contained in this Agreement.

In consideration of the foregoing and the covenants and conditions contained herein, Agent and BCMS agree as follows:

1. Agent Obligations

1.1. Required Training. Prior to representing BCMS or soliciting any Prospective Merchant, Agent shall attend and complete an agent training program.

1.2. General Obligations.

a. Compliance with Law. Agent shall operate its business in a professional manner, in compliance with all applicable local, state and federal laws and regulations.

b. Compliance with Association Rules and Regulations and BCMS Rules and Regulations. Agent agrees that it shall be bound by all Association Rules and Regulations and all BCMS Rules and Regulations as they now exist and as each may be amended or supplemented from time to time.

c. Security. Agent shall, in accordance with Association Rules and Regulations, maintain the security of all its records, including all records it may have relating to BCMS Merchants and their customers (including all transaction records).

d. Records. The Agent, at BCMS' request, shall provide BCMS with all files and materials related to Merchants acquired by Agent. BCMS shall reimburse Agent for its actual, reasonable, direct costs of providing such files and materials, excluding any internal overhead or allocated costs.

e. Prohibited Solicitations. Agent shall not, without first obtaining BCMS' written consent, solicit "high risk Merchants" as the term is defined by BCMS, from time to time.

f. Promotional Information. Agent shall not use the MasterCard or Visa logos on any business card or stationery. MasterCard and Visa logos shall only be used on BCMS' approved promotional materials, and must contain the name, city and state of all of BCMS' member bank(s) along with the MasterCard and/or Visa logo. BCMS shall make available, from time to time, various pre-approved promotional materials.

g. Advertising. Prior to any public distribution of any Web site, advertising, recruitment and promotional material related to the BCMS Services, Agent shall submit all such material to BCMS for approval. BCMS shall promptly review all such material for the purpose of determining compliance with BCMS' policies. Publication of advertising without the prior written approval by BCMS shall be grounds for termination of this Agreement by BCMS on 5 days written notice.

h. Business Telephones. Agent's business telephone shall be listed and answered by reference to Agent's approved fictitious business name, which shall include the name "Banc Certified" or "BCMS."

i. Business Cards and Stationery. Agents and their sales representatives shall carry Banc Certified or BCMS business cards and BCMS stationery shall be used for all written correspondence. These products are available directly from BCMS.

j. Merchant Information. Agent shall cause each Merchant and Prospective Merchant to furnish BCMS with such financial information as BCMS may from time to time request including, but not limited to, financial statements and Bank Card statements. Agent shall use its best efforts to inform BCMS of any information that could reasonably be considered relevant to a determination of any prospective or existing Merchant's creditworthiness.

1.3. Agent Warranties.

a. Agent shall not, and represents and warrants and covenants that its Representatives will not, misrepresent the manner in which BCMS provides its services or the procedures BCMS follows, including services and procedures related to chargeback's, loss prevention, ATM/Debit and equipment leasing.

b. Agent and its Representatives shall provide a full and fair disclosure to all Merchants, including disclosures related to all charges, minimum fees, limitations, initial and renewal terms of agreements and warranty services.

c. Agent will not make, or offer to make, any payments to, or confer, or offer to confer, any benefit upon any employee, agent or fiduciary of any third party (including any government, or agency or instrumentality thereof) with the intent to influence the conduct of such employee, agent or fiduciary in relation to the business or affairs of such third party.

d. Agent covenants not to directly or indirectly induce or influence Merchants to cancel any existing BCMS Merchant account.

e. Unless otherwise authorized by BCMS, Agent shall not charge Merchant for any service offered by directly by BCMS that is related to the Services.

1.4. Assessments. Agent shall pay, immediately upon demand, all fines or other assessments charged or assessed for the Agent's violation of the Association rules or the BCMS Rules and Regulations. BCMS shall have the right, but not the obligation, to withhold payment of commissions and Residuals, if any, to the extent necessary to collect the fines and assessments charged or assessed by BCMS. Agent shall have the right to appeal the imposition of any fine or assessment if, within 7 calendar days of having received written notice of the imposition of the

fine or assessment, Agent delivers a written appeal to the BCMS at the address listed above. The appeal shall contain a statement of all reasons why a fine or assessment should not have been imposed. If BCMS fails to act on the appeal within 20 Business Days of receipt of the appeal, the appeal will be deemed sustained and no fine or assessment shall be levied for such violation.

1.5. Sales Obligations. In soliciting for the purchase of Services from BCMS, Agent shall take such actions as BCMS may from time to time reasonably require, including: (i) ensuring that each Prospective Merchant has fully completed the BCMS Merchant application; (ii) taking all necessary action to verify that each Prospective Merchant conducts or intends to conduct a bona fide, lawful business operation, including inspecting the Prospective Merchant's premises to determine whether a Prospective Merchant has the proper facilities, equipment, inventory and license to conduct the business, or reviewing the Merchant's Internet site, as applicable; (iii) obtain and submit to BCMS, as appropriate, any information required by BCMS including financial statements, Bank Card statements and corporate resolutions for each Prospective Merchant; and (iv) ensuring that each Prospective Merchant receives a copy of the most current BCMS merchant agreement.

1.6. Merchant Agreements.

a. Agent shall only use the Merchant agreement and Merchant application that has been designated by BCMS and that is current at the time it is presented to a Prospective Merchant.

b. All Merchant applications (whether partially or fully completed), Merchant agreements and Merchant accounts and records are owned by BCMS and/or the Acquirer and may not be transferred, assigned, sold or exchanged, in whole or in part, by Agent.

c. The discount rate and fees charged to the Merchant pursuant to the Merchant agreement may be recommended by Agent, but in all cases shall be subject to final review and approval by BCMS and/or the Acquirer in their sole discretion, respectively.

d. All Merchant applications are subject to review and rejection or acceptance by BCMS in its sole discretion.

1.7. Exclusivity. Agent shall represent only BCMS with respect to soliciting the purchase of Services within the Territory unless BCMS declines to approve a merchant account for any particular prospective merchant.

2. BCMS' Obligations

2.1. Grant of Authority. BCMS hereby grants to Agent the right, on a non-exclusive basis, to solicit Prospective Merchants for the purchase of Services from BCMS within the Territory as long as the Merchant does not already have, and has not had in the last 90 days, an open BCMS Merchant account. BCMS shall have the right, in its sole discretion, to solicit directly and to retain other agents to solicit Prospective Merchants for Services within the Territory.

2.2. Processing Services. BCMS shall be responsible for all processing and accounting functions relating to the clearing and settlement of Bank Card transactions, including: (a) Merchant processing and settlement; (b) Merchant credit research; (c) Merchant activation and approval; (d) Merchant security and recovery; (e) Merchant customer services; (f) Merchant chargeback and retrieval services; and (g) all other back office services. BCMS may contract with other persons to perform these functions on behalf of BCMS

3. Term

- 3.1. Effective Date.** This Agreement is effective as of _____, 2008 (the "Effective Date").
- 3.2. Term of Agreement.** Subject to **Sections 3.3, 3.4, 3.5 and 9.5(c)**, this Agreement shall remain in effect for 1-year ("the "Initial Term") and shall automatically renew for additional 1-year terms (each a "Renewal Term" and collectively, the "Term").
- 3.3. Termination for Convenience.** Either party may terminate this Agreement at the end of the Initial Term or any Renewal Term by providing the other party with written notice of non-renewal at least 60 days prior to the end of the then current term.
- 3.4. Termination by BCMS.**
- a. With Cause without any Right to Cure. In addition to any other rights and remedies that it may have and notwithstanding **Paragraph 3.4(b)**, BCMS may immediately terminate this Agreement in its sole discretion, by providing 5 calendar days prior written notice to Agent, if any evidence is discovered indicating: i) a failure by Agent or Representative to perform any monetary obligation to BCMS; ii) the violation of any BCMS confidentiality or intellectual property rights protected by this Agreement; iii) the violation of any applicable law or regulation; iv) the commission of any act of fraud, forgery, dishonesty or other willful or malicious act; v) the complete cessation of Agent's operation and activity as a sales agent for BCMS coupled with the inability, after making a good faith effort, to locate Agent or make payment of Residuals to Agent; or vi) if Agent generates less than 25 new Open Accounts during any calendar year.
- b. With Cause with a Right to Cure. BCMS may terminate this Agreement if Agent is in breach of any of the terms and conditions of this Agreement or is in violation of Association Rules and Regulations or BCMS Rules and Regulations, but only upon giving Agent written notice of such breach and Agent's failure to cure such breach within 10 Business Days after receipt of such notice, unless a cure cannot reasonably be accomplished within such period. In that case, the cure period will be tolled so long as the Agent commences a cure within such 10-day period and thereafter diligently pursues such cure as promptly as practical, but in no event may a cure period exceed 90 calendar days.
- 3.5. Agent Insolvency.** If Agent makes any assignment of assets or business for the benefit of creditors, or if a trustee or receiver is appointed to administer or conduct its business or affairs, or if it is adjudged in any legal proceeding to be either a voluntary or involuntary bankruptcy, then the rights granted herein to Agent shall forthwith cease and terminate without prior notice or legal action by BCMS.

4. Relationship of the Parties

- 4.1. Independent Contractor.** Neither Agent, nor any of its Representatives, is an employee of BCMS for any purpose whatsoever, but each is an independent contractor. BCMS is interested only in the results obtained by Agent. BCMS shall not have the right to require Agent to: (1) conform to any fixed or minimum number of hours devoted to selling effort, (2) follow prescribed itineraries, (3) bind BCMS or (4) do anything else which would jeopardize the relationship of independent contractor between BCMS and Agent.

All expenses and disbursements, including those for travel and maintenance, entertainment, training, office, clerical and general selling expenses that may be incurred by Agent in connection with this Agreement shall be borne wholly and completely by Agent, and BCMS shall not be in any way responsible or liable therefore.

Neither Agent nor any Representative has, nor shall Agent or any Representative hold itself out as having, any right, power or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon BCMS, or to pledge BCMS' credit, or to extend credit in BCMS' name.

BCMS shall have no right or authority either hereunder or otherwise to commit Agent or any Representative in any matter, cause or thing whatever, without the prior written consent of Agent, or to use Agent's name in any way not specifically authorized by this Agreement.

5. Sales Representatives

- 5.1. Sales Representatives.** Agent shall have the right to appoint or otherwise designate suitable and desirable Representatives. Agent shall be solely responsible for Representatives and their acts. Representatives shall be hired at Agent's own risk, expense and supervision, and Representatives shall not have any claim against BCMS for salaries, residuals, commissions, items of cost, or any other form of compensation or reimbursement. Agent represents and warrants, and covenants, that Representatives shall be subordinate to Agent and subject to each and all of the terms, provisions and conditions applying to Agent hereunder.
- 5.2. Initial Sales Representative.** Upon execution of this Agreement, Agent shall promptly notify BCMS as to the name, address and telephone number of each of its Representatives who are currently marketing the Services on behalf of Agent and shall further provide BCMS with such other information concerning Agent's Representatives as BCMS may require from time to time.
- 5.3. Subsequent Representatives.** Agent shall provide BCMS with a copy of the BCMS Representative Registration Form, and all other applicable documentation, for each new Representative added prior to the Representative being permitted to solicit, make or submit any sales of Services. In addition, Agent agrees to notify BCMS, in writing, of the termination of any Representative within 3 Business Days of their termination.
- 5.4. Fraudulent Activities.** If Agent becomes aware of any actual or alleged fraudulent activities or misrepresentations by its Representatives, whether or not related to Services, Agent shall promptly advise BCMS and Agent shall take all necessary corrective action the Agent determines in its discretion, to be necessary or appropriate.
- 5.5. Employment Statement.** Agent acknowledges that Representatives shall not be and are not BCMS employees. Agent shall furnish BCMS with all copies of contracts that relate to Services that contain the signature of Agent or any Representative.
- 5.6. Representatives' Right to Use Trademarks.** Upon Agent's request BCMS may, in BCMS' sole discretion, grant to a Representative the right to use the Trademarks in the Territory under conditions substantially similar to those contained in this Agreement, including contained in **Section 7** hereof.

6. Merchant Relationship

- 6.1. Merchant Survivability.** If this Agreement terminates for any reason, BCMS shall not be required to terminate any Merchant agreement with any Merchant.
- 6.2. Right to Complete Business in Process.** If Agent is terminated or if Agent abandons a Prospective Merchant, BCMS has the right, but not the obligation, to complete the processing of such Prospective Merchant's submitted application and to assist such Merchant with the installation of any equipment.

- 6.3. **Right of BCMS or Acquirer to Change Merchant Pricing.** BCMS or Acquirer shall have the right to change Merchant Pricing at its sole discretion, from time to time, without prior notice to Agent.

7. Licensing

- 7.1. **BCMS Trademarks.** Agent acknowledges that Banc Certified Merchant Services, LLC is the owner or licensee of the Trademarks, as defined in Section 14.32 hereof, which is in full force and effect for the use of the term BCMS, Banc Certified, Banc Certified Merchant services” or word and design variations thereof.
- 7.2. **License.** BCMS grants to the Agent, during the Term of this Agreement, the limited, non-exclusive, non-assignable right to use and the Agent hereby undertakes to use, the Trademarks and its distinctive labels and packages, in the Territory, but only in connection with approved marketing materials in any format and in any media relating to the BCMS Services and only in compliance with the terms and conditions of this Agreement.
- 7.3. **Marketing Restrictions.** The permitted use by Agent of the Trademarks shall be subject to the instructions and restrictions of BCMS, as defined from time to time in the sole discretion of BCMS. The Agent shall use the Trademarks only with respect to marketing BCMS’ Services in accordance with the specifications and directions furnished to the Agent by BCMS from time to time. Agent shall refrain from any act or acts that may prejudice the enforceability or validity of the of the Trademarks.
- 7.4. **Use of Trademarks.** Whenever Agent uses the Trademarks pursuant to its rights under this Agreement, Agent shall clearly indicate that the Trademarks are owned by Banc Certified Merchant Services, LLC. or BCMS, as applicable. Agent shall provide BCMS, prior to use, samples of all literature, logos and Trademarks packages, labels and labeling prepared by Agent utilizing the Trademarks. BCMS has the right to reject, in its sole discretion, the use of any such sample. When using the Trademarks, Agent shall comply with all laws pertaining to Trademarks, including laws relating to marking requirements, in force at any time in the Territory. In connection with any marks, including the Trademarks, Agent shall include any designation of ownership or rights specified by BCMS, for example, for marks that are registered, Agent shall use the designation “®” in conjunction with its use thereof and shall include the following phrase: “The “BCMS mark and logo” are registered mark of Banc Certified Merchant Services, LLC. and are used with permission” or as applicable “The “BCMS mark and logo” are registered marks of Banc Certified Merchant Services, LLC and are used with permission”.

In addition to and not as a limitation upon the provisions set forth in Section 1.2(g) hereof, it is expressly agreed that BCMS has the full right to inspect Agent’s use of the Trademarks, and Agent shall make or cause to be made any and all revisions to the content of any advertising or other product materials bearing the Trademarks, as such may be requested by BCMS from time to time.

- 7.5. **Ownership of Trademarks.** Agent acknowledges that Banc Certified Merchant Services, LLC. and BCMS hold the exclusive right, title and interest in and to their respective Trademarks and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest. In connection with the use of the Trademarks, the Agent shall not in any manner represent that it has any ownership in the Trademarks or registration thereof, and the Agent acknowledges that use of the Trademarks shall not create in the Agent's favor any right, title or interest in or to the Trademarks or the goodwill attached to and associated with the Trademarks, but all uses of the Trademarks by the Agent shall inure to the benefit of BCMS or Banc Certified Merchant Services, LLC respectively.

Upon termination of this Agreement, the limited rights granted to Agent to use the Trademarks provided in this **Section 7** shall immediately terminate and Agent shall immediately cease and desist from all use of the Trademarks in any way and, at BCMS' request, will deliver up to BCMS, or its duly authorized representatives, all material and papers upon which the Trademarks appears or to which the Trademarks relate, including correspondence and information on Merchants solicited or procured while the Agent solicited on behalf of BCMS.

Upon termination of this Agreement, Agent shall immediately take all necessary actions to correct information that states or suggests that Agent is connected in any manner with BCMS or its Trademarks. Such corrective action shall include referral sources such as telephone and other directories, telephone information providers, postal offices, electronic mail providers, letterhead, business cards, office signage, Web page(s) on the Internet, domain name registries (if applicable), any post domain URL path (if applicable) and other communication delivery services. Agent shall direct that all inquiries be forwarded to BCMS' corporate headquarters or such other place, as BCMS shall designate. If Agent fails to take any required action within thirty (30) days of the termination of this Agreement, then Agent appoints, without power of revocation, BCMS as its attorney in fact to act in Agent's place and with Agent's authority to take such corrective actions with the same legal force and effect as if such acts were performed by Agent.

Agent will at no time during or after the term of this Agreement register, adopt or use, any word or mark which is likely to be similar to or confusing with the Trademarks. Agent shall market only BCMS products or services under the Trademarks.

8. Equipment Purchases

- 8.1. Merchant Equipment Purchase.** Agent may, as an independent reseller, sell Merchants card processing equipment or Internet gateway services and software so long as such card processing equipment, Internet gateway services or software has been approved by BCMS. BCMS shall approve card processing equipment, gateway services and software that it determines, in its sole discretion, to be compatible with its operational systems. BCMS shall, for Agents electing to purchase such items from BCMS, publish price lists from time to time. Agent must identify to BCMS each item of Bank Card processing equipment that every Prospective Merchant whose application is submitted to BCMS intends to use in conjunction with BCMS' Services.
- 8.2. Ancillary Products and Services.** The sale, lease and/or rental of point-of-sale terminals and other ancillary products or services not provided by BCMS shall be solely pursuant to separate written agreements between Agent (or its designee) and Merchants. The BCMS name shall not appear on such agreements.

9. Payments

- 9.1. Right to Payment.** BCMS shall pay Residuals to Agent for Open Accounts in accordance with this **Section 9** and **Section 10**.
- 9.2. Duration of Payments.** Unless modified by BCMS pursuant to **Section 9.5** and subject to the conditions of **Section 9.3** and **Section 9.4**, Residuals shall continue so long as a Merchant continues to maintain an Open Account with BCMS.
- 9.3. Conditions for Payment.**
- a. BCMS has the right, at its sole discretion to discontinue Residual payments to Agent if, during the Term of this Agreement: i) Agent or any former or current owner of a controlling interest in Agent, or any former or current partner, member, officer or director of Agent engages in a Competing Activity or carries out any act that would injure BCMS in its relationship with its

employees, or customers; ii) Agent induces any BCMS merchant, whether or not solicited by Agent, to discontinue their business relationship with BCMS; iii) Agent fails to remain current on all obligations to BCMS and BCMS' acquiring bank(s); iv) Agent fails to remain in compliance with all terms and conditions of this Agreement; v) this Agreement is terminated by BCMS pursuant to Section 3.4.a(v) of this Agreement; or vi) this Agreement is terminated by BCMS pursuant to Section 3.4.a(vi) of this Agreement.

b. BCMS' obligation to pay Residuals shall cease if, after the termination of this Agreement: i) Agent or any former or current owner of a controlling interest in Agent, or any former or current partner, member, officer or director of Agent engages in a Competing Activity or carries out any act that would injure BCMS in its relationship with its employees, or customers; ii) Agent induces any BCMS merchant, whether or not solicited by Agent, to discontinue their business relationship with BCMS; iii) Agent fails to remain current on all obligations to BCMS and BCMS' acquiring bank(s); iv) Agent fails to remain in compliance with all terms and conditions of this Agreement which survive termination of this Agreement; v) BCMS is unable, after good faith efforts for a period of 90 days, to locate Agent and make payment of Residuals to Agent; or vi) Agent's monthly Residual payment falls below \$100.

c. Notwithstanding anything to the contrary in this Agreement, if BCMS terminates this Agreement pursuant to Section 3.4.a.(vi), Agent will have the right to invoke the retirement option in Section 10.2. of this Agreement for a period of 60 days following notice of termination from BCMS. For purposes of clarification, this is the only scenario in which the retirement option in Section 10.2. of this Agreement is intended to survive the termination of this Agreement. If Agent fails to submit the retirement acceptance form attached as Exhibit B to BCMS within 60 days from receiving notice of termination, Agent's right to invoke the retirement option in Section 10.2. will terminate and Agent will have no right to future Residuals under this Agreement.

9.4. Time of Payments. Payments of Residuals shall be made to Agent on or about the 25th day of the month following the month in which payment is earned in accordance with the BCMS commission and residual policy, as published from time to time by BCMS.

9.5. Bank Card Processing Residuals for Merchant Accounts.

a. Notwithstanding anything to the contrary in this Agreement, Agent's initial Bankcard Processing Residuals for activity is outlined in Exhibit A.

9.6. Merchant Losses. BCMS shall bear the risk for Merchant Losses (other than those caused by Agent's or its Representatives' willful misconduct). BCMS shall not deduct Merchant Losses (other than those caused by Agent's or its Representatives' willful misconduct) from Residuals.

9.7. Third Party Referral Sources. If BCMS distributes a lead to Agent from a third party referral source, which through Agent's efforts results in an Open Account, BCMS may, in its sole discretion, credit Agent for such Open Account. To "credit Agent" means that BCMS will pay Agent Residuals for such Merchant, provided, however, that Agent's Residuals for such Merchant will be reduced by 100% of any recurring referral fee paid by BCMS to the third party referral source during each month preceding payment of Agent's Residuals for the referral. Notwithstanding the foregoing, BCMS will subsidize Agent's Residuals for its portion of the referral fee in an amount equal to the lesser of i) 50% of any recurring referral fee paid by BCMS to such third party, or ii) 5% of the Gross Processing Revenue attributable to the Merchants resulting from such third party. The adjustments to Agent's Residuals referenced in this Section will apply to all recurring referral fees paid by BCMS after the execution of this Agreement including referral fees paid for Merchants, which were referred by third parties prior to the execution of this Agreement. Agent's residuals will also be reduced by 100% of any non-

recurring referral fees such as one-time commissions paid by BCMS to any third party referral source.

- 9.8. Secure Payment Gateway and Other Third Party Products & Services.** BCMS shall pay Agent a Residual for each Secure Payment Gateway account that Agent sells. The amount of the Residual Gateway accounts shall be the amount collected by BCMS that is above the “monthly usage fee” established by BCMS for the Secure Payment Gateway from time to time. In addition, BCMS shall, from time to time, at its sole discretion, provide for the payment of Residuals to Agent for the sale of other third party products and services.
- 9.9. Right to Offset.** Notwithstanding Agent’s right to any payments referenced in this Agreement, and in addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, BCMS is hereby authorized by Agent at any time and from time to time, without notice or demand to Agent or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and apply any and all funds of Agent held by BCMS or any of its affiliates, against and on account of Agent’s obligations to BCMS or any of its affiliates under this Agreement and any other agreement with BCMS or any of its affiliates, including fees for equipment or Services, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured. Agent is prohibited from setting-off, offsetting or otherwise reducing or applying against any amounts due and owing to BCMS under this Agreement or otherwise, any amounts owed or alleged to be owed to Agent by BCMS under this Agreement or otherwise.

BCMS may, but is not required to, exercise the rights describes in this **Section 9.9** by direct debit to Agent’s bank account. This offset right is in addition to all other remedies available to BCMS.

- 9.10. Right to Debit and Credit Agent’s Bank Account.** All financial transactions between Agent and BCMS, including payment for equipment and terminal purchases, may be automatically debited and credited by BCMS, in its sole discretion, directly through Agent’s bank account. Agent irrevocably consents to the debiting and crediting of its bank account(s) as provided herein. With respect to equipment transactions only, BCMS shall provide 10 days advance written notice to Agent prior to initiating a debit entry. In order to activate automatic debit and credit service, Agent shall provide BCMS with the required depository information and execute ACH Authorization Agreement Direct payments (Debits) Form and ACH Authorization Agreement Direct Payments (Credits) Form that will be provided to Agent, and any other form that BCMS may request from time to time.

10. Purchase and Sale of Agent Residual Rights

- 10.1. Continuing Offer to Purchase.** BCMS at its sole discretion may hereby offer to purchase Agent’s unencumbered right to receive Residuals for all Eligible Accounts on the terms and conditions set hereto and the following terms and conditions:
- a. For purposes of this **Section 10.1**, Residual rights shall be valued at the multiples for each Merchant Account Type established from time to time by BCMS, in its sole discretion. BCMS shall have the right, in its sole discretion, to modify said multiples .

Right of First Refusal. At any time during the Term of this Agreement, Agent may sell its right to receive future Residuals under this Agreement (“Future Residuals”) to a third party subject to the following terms and conditions:

(i) Agent hereby grants to BCMS a right of first refusal to purchase Agent's Future Residuals. If Agent receives a bona fide offer from a willing and able buyer to purchase Agent's Future Residuals (an "Offer"), Agent shall notify BCMS of the amount and terms of such Offer. BCMS shall have the first right to purchase Agent's Future Residuals for an amount and on terms equal to the Offer, and Agent shall not sell or in any way transfer any rights to Agent's Future Residuals without first presenting BCMS with the opportunity to match any such Offer. BCMS shall have fifteen (15) days to notify Agent of its decision whether or not to exercise its right to purchase Agent's Future Residuals; and

(ii) If BCMS does not exercise its right to first refusal and Agent accepts the buyer's offer, BCMS must consent in writing to the terms and conditions of the purchase and sale of the Future Residuals. Such consent shall not be unreasonably withheld or delayed.

11. Confidentiality

11.1. Restriction on Use or Disclosure of Trade Secrets. During the term of this Agreement, Agent will be given access to certain of BCMS' trade secrets, including information, inventions and processes, all of confidential nature that are BCMS' property and are or may be valuable to, or used in the course of, BCMS' business. Agent shall not disclose to anyone, directly or indirectly, either during the term of this Agreement or at any time thereafter, any such trade secrets, or use them other than in the course of its business relationship with BCMS. All documents that BCMS prepares, or confidential information that might be given in the normal course of business, shall remain in Agent's possession and control. Under no circumstances shall any such information or documents be copied without BCMS' prior written consent.

11.2. Confidentiality. The terms, conditions and existence of this Agreement are strictly confidential. Agent shall indemnify, defend and hold BCMS harmless from any and all loss, cost, injury, damage or claim that may result, directly or indirectly, from the failure of the Agent to maintain the confidentiality of the information provided pursuant to this Agreement. Any violation of this confidentiality clause shall be grounds for terminating this Agreement and any and all payments otherwise payable under this Agreement. Any termination of payments by BCMS shall not limit BCMS' right to recover damages arising from Agent's failure to perform under this Agreement, including under this **Section 11.2**, to seek equitable remedies and to pursue all of its other rights and remedies pursuant to this Agreement.

11.3. Association Exception. Notwithstanding anything herein to the contrary, Agent's confidential information may be made available by or on behalf of BCMS to MasterCard, Visa or any other Association or to any other supervisory or regulatory authority to which BCMS may be subject, upon their written request.

12. Indemnity and Limitation of Liability

12.1. Indemnification. Agent shall indemnify, defend and hold harmless BCMS and its officers, directors, shareholders, employees, agents and representatives against any and all liability, demands, claims, costs, losses, damages, recoveries, settlements and expenses, including without limitation claims based in tort or for personal injury (including interest, penalties, attorneys' fees, accounting fees, expert witness fees, costs and expenses) incurred by BCMS, directly or indirectly arising from or related to (i) any debts incurred by Agent including debts incurred with telephone, utility, and express mail companies, (ii) any claim of any officer, director, shareholder, employee or Representative of the Agent made against BCMS for any compensation, benefit or other payment to such person, (iii) any activity or representation by Agent or Agent's employees, Representatives or contractors in marketing, advertising, promoting or otherwise engaging in any activity arising from or related to this Agreement, (iv) any claim

arising from the unauthorized use of the Trademarks or other BCMS intellectual property; (v) any actions concerning alleged Agent or Representative improprieties in the solicitation, sale or leasing of Services or equipment; and (vi) any breach of any term or condition of this Agreement, any Association Rules or Regulations, or BCMS Rules and Regulations, or of any representation or warrant of Agent made in or in connection with this Agreement being false or misleading.

- 12.2. Statute of Limitations.** Except for the indemnification rights set forth in **Section 12.1** above, the parties agree that notwithstanding the fact that the statute of limitations for bringing any legal action on a written contract is 4 years, and that other limitation periods apply depending on the type of act, omission or violation being alleged, any action, legal or equitable, based on or arising out of the subject matter of this Agreement, and whether based on contract, tort, strict liability or some other legal or equitable theory of recovery, must be commenced within 1 year of the date of the first alleged act, omission or violation.
- 12.3. Limitation of Liability.** Notwithstanding anything contained in this Agreement or otherwise, BCMS' cumulative liability to Agent and anyone claiming by through or under Agent, for all losses, cost, claims, suits, controversies, breaches or damages for any cause whatsoever (including those arising out of or related to this Agreement), and regardless of the form of action or legal theory shall not exceed, in the aggregate, \$50,000. Agent understands the limitation on damages to be a reasonable allocation of risk and expressly consents to such risk allocation.
- 12.4. Exclusion of Damages.** Notwithstanding anything in this Agreement to the contrary or otherwise, in no event shall either party, its parents, affiliates or any of its or their directors, officers, employees, agents or sub-contractors be liable under any theory of tort, contract, strict liability or other legal or equitable theory for lost profits, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties regardless of whether such damages were foreseeable or whether either party or any entity has been advised of the possibility of such damages.

13. General Provisions

- 13.1. Effect of Headings.** The subject headings of the sections, subsections, paragraphs and subparagraphs of this Agreement are included for convenience only and shall not affect the construction or interpretation of any of its provisions.
- 13.2. Entire Agreement.** This Agreement, including the Exhibits hereto, constitutes the sole and exclusive terms and conditions and agreement between the parties relating to the subject matter hereof, and supersedes all prior or contemporaneous discussions, writings, negotiations, understandings and agreements with respect thereto.
- 13.3. Waiver or Modification Ineffective Unless in Writing.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless executed in writing and signed by a duly authorized representative of both parties to this Agreement. Nothing contained herein shall be construed as a waiver of any of the legal or equitable rights of BCMS, all of which are hereby expressly reserved. The waiver by a party of any term, covenant, condition or obligation contained in this Agreement or of any breach thereof, shall not be deemed a waiver of any other term, covenant, condition or obligation, or any future breach thereof or default there under, contained in this Agreement. No single or partial exercise of any right under or with respect to this Agreement shall preclude its further exercise. Any delay or omission by a party to exercise any right or power arising from any breach or default of the other party with respect to any of the terms, provisions or covenants contained in this Agreement shall not be construed to be a waiver, including any subsequent breach or default of the same or other terms, provisions or covenants contained in this Agreement.

- 13.4. Non-Transferable.** Neither this Agreement nor the rights granted pursuant to this Agreement shall be transferable without BCMS' prior written consent.
- 13.5. Assignment.** Except as otherwise expressly provided in this Agreement, Agent shall not assign, subcontract, license, franchise, or in any manner attempt to transfer or extend to any third party any right or obligation under this Agreement, by operation of law or otherwise, without the prior written consent of BCMS, which may be granted or withheld at the sole discretion of BCMS. For purposes of this Agreement, any transfer of ownership or voting control of Agent shall be considered an assignment or transfer hereof.
- 13.6. Written Notice.**
- a. Communications Regarding Agreement. All communications regarding or arising from this Agreement shall be sent to the Agent at the address set forth below the signature line of this Agreement as the Agent's place of business and to BCMS at the Hilliard, Ohio address set forth above. Any notice(s) required or permitted to be given under this Agreement shall be deemed sufficiently given by facsimile transmission with the original mailed by registered or certified mail, postage prepaid, and addressed to the party to be notified at its address shown at the beginning or below the signature line of this Agreement, or at such other address as may be furnished in writing to the notifying party.
- b. Effective Date of Communications. Any written notice shall be deemed delivered and received by the other party 5 days after deposit in the U.S. mail, postage prepaid, if sent to the addressee at the address stated in this Agreement or such other address as may hereafter be specified by notice in writing.
- 13.7. Severability.** If any portion of this Agreement is held invalid or unenforceable by any court of final jurisdiction, it is the intent of the parties that all other provisions of this Agreement be construed to remain fully valid, enforceable and binding on the parties. Furthermore, if any obligation of either party under this Agreement is deemed, in such party's reasonable discretion, to violate any applicable state or federal law, the provision giving rise to that obligation will no longer have any force or effect and all other provisions of this Agreement will be construed to remain fully valid, enforceable and binding on the parties.
- 13.8. Governing Law, Venue and Waiver of Jury Trial.** This Agreement shall be governed by the laws of the State of Ohio. Any action taken by either party shall have as its exclusive venue the County of Franklin, Ohio. The non-exclusive venue for any disputes under or related to this Agreement shall be a court of competent jurisdiction located in Franklin County, State of Ohio, and each party irrevocably submits and attorns to such jurisdiction and waives any right to assert a claim of forum nonconveniens as to any such action filed by a party in such jurisdiction. BCMS and Agent irrevocably waive any and all rights they may have to a trial by jury in any judicial proceeding involving any claim relating to this Agreement. Agent additionally waives personal service of process and consents that service of process upon it may be made by certified or registered mail, return receipt requested, at the address provided below the signature line of this Agreement.
- 13.9. Survival of Terms.** The parties expressly agree that **Sections 1.2(b), 1.2(c), 1.2(d), 1.2(j), 1.3, 1.4, 4, 6, 7.1, 7.5, 9, 11, 12 and 13 and 14** shall survive the termination of this Agreement and shall remain enforceable to the extent of any remaining unfulfilled performance obligation notwithstanding such termination.
- 13.10. No Breach.** Agent warrants that entering into this Agreement will not constitute a breach of any other agreement to which Agent is or may have been a party. In particular, Agent warrants that it

has not agreed to any covenant not to compete. Agent further warrants that it is not party to any confidentiality agreement, which would become at issue upon entry into force of this Agreement.

- 13.11. Word Usage.** Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive; (d) “or” is not exclusive; and (e) “includes” and “including” are not limiting.
- 13.12. Authority.** The person executing this document on behalf of Agent warrants that they have the full right, capacity and authority to cause such party to enter into this Agreement and that such party has all necessary authority to perform this Agreement.
- 13.13. No Presumption Against Drafter.** BCMS and Agent have jointly participated in the negotiation and drafting of this Agreement. The Agreement shall be construed as if drafted jointly by BCMS and Agent, and no presumptions arise favoring any party by virtue of the authorship of any provision of this Agreement.

14. Definitions

Whenever used in this Agreement, the following terms shall have the following meaning:

- 14.1. Accept or Acceptance** means the completion, execution and delivery to BCMS of the form titled “Acceptance of BCMS’ Offer to Purchase Agent’s Residual Rights” or “Acceptance of BCMS’ Offer to Purchase Agent’s Residual Rights (Retirement)”, as applicable, which are set forth herein as **Exhibit A** and **Exhibit B**, respectively.
- 14.2. Acquirer** means a member as defined by Association Rules and Regulations that acquires the data relating to a Bank Card, credit, debit and other transaction between a merchant and a card holder and directly or indirectly exchanges such transaction records with other members of an Association, including MasterCard and Visa.
- 14.3. Association** means an entity formed to administer and promote credit, debit and other cards, including MasterCard and Visa and any other entity whose cards are accepted by merchants for payment for goods or services.
- 14.4. Association Rules and Regulations** means the rules and regulations now existing, as they may be modified in the future, and any rules and regulations hereafter promulgated by an Association, including the rules and regulations contained in the Visa U.S.A. Inc. (“Visa”) Operating Regulations and MasterCard International Incorporated (“MasterCard”) Operations Manual and the rules and regulations of any other Association, as applicable.
- 14.5. Bank Card** means a credit card or debit card issued by a member of an Association, including MasterCard and Visa, and bearing its respective trade name, Trademarks, and/or trade symbol.
- 14.6. Bank Card Processing Residuals** is a subcategory of the term “Residual” and means those recurring payment obligations of BCMS to Agent which is calculated, as described in **Section 9.5**, as a percentage of Gross Processing Revenue for all Open Accounts solicited by Agent, except those for which Residual rights have already been purchased by BCMS.
- 14.7. Business Day** means any calendar day other than Saturdays, Sundays, or Ohio or federal holidays.
- 14.8. BCMS Rules and Regulations** means the guidelines, as they now exist and as they may be modified or supplemented in the future or distributed through Agent memoranda, which provide

the standards and conditions for the Agent's conduct in soliciting and servicing, as applicable, Merchants for BCMS Services.

- 14.9. Competing Activity** means, whether directly or indirectly, the ownership, management, operation, control, participation in, performance of services for, the solicitation of Merchants for, or otherwise carrying on, a business similar to or competitive with the electronic transaction processing business of BCMS, including the Services, (whether as a principal, agent, independent contractor, partner, employer, proprietor, stockholder, director or otherwise), anywhere in the Territory.
- 14.10. Current Level of Account Production** means the number of new Merchant accounts opened by Agent during a specified time period.
- 14.11. Eligible Accounts** means those Open Accounts that: i) are either in their first renewal term or have been open for more than 12 consecutive months; ii) are not in collections; iii) have not provided BCMS with notice of cancellation; and iv) are in compliance with all Association Rules and Regulations.
- 14.12. Gross Processing Revenue** means all Income on Open Accounts, including those in collections and including those for which BCMS has purchased the Residual rights, minus Association interchange fees and Association dues and assessments. Refunds (other than those caused by processing errors) or Merchant losses (other than those caused by Agent's or its Representatives' willful misconduct) from Gross Processing Revenue are not subtracted from Income for purposes of calculating Gross Processing Revenue.
- 14.13. Gross MasterCard and Visa Sales Volume** means all MasterCard and Visa Bank Card payments accepted by Merchants which are processed and settled through BCMS, are not fraudulent and do not result in a chargeback.
- 14.14. Income** consists of the following items on all Open Accounts: (1) all discount fees (qualified, mid-qualified, and non-qualified) on MasterCard, Visa, Diners, debit and JCB transactions; (2) transaction fees, (3) batch header fees, (4) address verification service fees, (5) monthly minimum fees, (6) customer support fees, (7) statement fees, (8) monthly BCMS Merchant Club fees, (9) American Express residuals, (10) Discover residuals, (11) JCB fees, (12) chargeback/retrieval fees, and (13) annual fees.
- 14.15. Internet Merchant** means a Merchant who primarily accepts orders over the Internet or submits transactions through an application interface.
- 14.16. Merchant** means an entity who has submitted an application to BCMS, which application indicates Merchant has been solicited by Agent, and based on that application, then contracts with BCMS and BCMS' Acquirer to originate and process electronic transactions.
- 14.17. Merchant Account Type** means one of four classifications currently assigned by BCMS to each Merchant account. Each classification is based on the primary source of transaction origination and the percentage of card present transactions. The four different classifications are: Internet Merchants, MOTO Merchants (also referred to herein as Mail Order / Telephone Order Merchants), Retail Keyed Merchants and Swiped Merchants. BCMS may, from time to time, in its sole discretion, add to, subtract from or otherwise modify these classifications.
- 14.18. Merchant Category Classification ("MCC") Codes** means the four digit codes created by Visa International, Inc. and listed in the Visa USA Merchant Data Manual to identify a particular merchant's principal trade, profession or line of business.

- 14.19. Merchant Losses** means all losses experienced by BCMS attributable to (i) chargebacks in excess of a Merchant's reserve account and (ii) uncollected Merchant fees or uncollected Merchant processing revenue.
- 14.20. Merchant Pricing** means all monies charged Merchant by BCMS.
- 14.21. MOTO Merchant or Mail Order / Telephone Order Merchant** means a Merchant who accepts mail orders and telephone orders and whose percentage of face-to-face transactions, as defined in the Association Rules and Regulations, is less than 70% of its total transactions during any rolling 3-month period.
- 14.22. Open Account** means any BCMS Merchant account solicited by Agent that has been accepted by BCMS, has been classified as "open" on a BCMS or its Acquireer's Services settlement platform and has not been cancelled or terminated.
- 14.23. Prospective Merchant** means any entity solicited by Agent for Services to be provided by BCMS.
- 14.24. Representative** means all salespersons, employees, agents or representatives appointed or designated by Agent to act on Agent's behalf in soliciting Prospective Merchants.
- 14.25. Residuals** mean monthly recurring payment obligations owed by BCMS to Agent pursuant to **Section 9.5 and 9.8** of this Agreement. The term Residuals shall not include any payment obligations owed by BCMS that do not recur on a monthly basis.
- 14.26. Retail Keyed Merchant** means a Merchant whose percentage of manual imprint terminal transactions, as defined by Visa Operating Regulations, equals or exceeds 70% of its total transactions during any rolling 3-month period.
- 14.27. Services** means electronic transaction processing and facilitation of the payment of charges representing purchases or leases of goods and services made with Bank Card related services and support systems.
- 14.28. Swiped Merchant** means a Merchant whose percentage of cardholder-activated terminal transactions, as defined by Visa Operating Regulations, and whose percentage of card read transactions, as defined by MasterCard Operations Manual, as the case may be, equals or exceeds 70% of its total transactions during any rolling 3-month period.
- 14.29. Territory** means the United States, as currently defined by Visa.
- 14.30. Trademarks** means the marks set forth on Exhibit D.

Agent

**Banc Certified Merchant Services, LLC
An Ohio Corporation**

Signature: _____

By: _____

Printed Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: _____

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