

ACH TERMS AND CONDITIONS

These ACH Terms and Conditions govern the relationship between the company ("Merchant") named on the Merchant Application ("Application") to which these ACH Terms and Conditions are incorporated or attached and Newtek Merchant Solutions, LLC ("Newtek"). The Application, these ACH Terms and Conditions, the Personal Guaranty (contained within the Application), and any addenda pertaining to ACH transactions thereto, all as amended from time to time, are collectively referred to herein as the "Agreement." Merchant agrees to be bound by the terms of the Agreement as stated herein. Each of the individuals signing the Agreement represents and warrants that he or she has the full power and authority to bind the Merchant. Capitalized terms used herein but not otherwise defined shall have the meaning assigned to such terms in the Rules (defined below).

1.0 SERVICE PROVIDERS. Newtek may satisfy its obligation to provide the applicable payment processing, settlement and other services provided by Newtek from time to time under this Agreement ("Newtek Services"), including gateway services, by causing one or more of its affiliates or non-affiliate third party service providers to provide such Newtek Services or by subcontracting any of such Newtek Services or any portion thereof to such affiliates or non-affiliate third party service providers ("Newtek Service Providers").

2.0 ACH TRANSACTIONS.

2.1 GENERAL. ACH transactions will be placed through a financial institution used by Newtek who will be acting as the Originating Depository Financial Institution ("ODFI"). Merchant shall act as the Originator. Newtek will debit funds ("Debit Entry") for the purpose of collecting ACH payments from the accounts of the Merchant's customers (each a "Receiver") and/or credit funds ("Credit Entry") for the purpose of paying the Merchant's accounts receivable in accordance with the terms of this Agreement, the Operating Rules ("Rules") of the National Automated Clearing House Association ("NACHA"), and applicable federal, state and local laws or regulations governing ACH transactions (collectively, "Regulations"). The terms and conditions of this Agreement do not limit Merchant's obligation to comply with the Rules and Regulations. "Entry" or "Entries" shall mean either a Credit Entry or a Debit Entry. Capitalized terms used but not defined herein have the meaning set forth in the Rules. Unless Merchant has received written approval from Newtek, which may be withheld in its sole discretion, Merchant may only initiate Entries for the following Standard Entry Class codes: PPD (Prearranged Payment and Deposit Entry), WEB (Single or recurring debit authorized over the Internet), CCD (Corporate of B2B credits or debits), POS (Point of Sale Entry) and TEL (Telephone-Initiated Entry).

2.2 ACCOUNT AND AUTHORIZATION. Merchant shall, at all times, maintain an account at a bank that is a member of the Federal Reserve ACH System (the "Account"). Merchant expressly authorizes Newtek to debit and/or credit the Account designated by Merchant according to the terms of this Agreement. Merchant further authorizes Newtek to process electronic funds transfers as a Third-Party Sender through the Account designated by Merchant. Merchant represents and warrants that it shall, at all times, maintain a sufficient balance in the Account to cover all obligations owed to Newtek, including, but not limited to, all Entries originated by Merchant, returned Entries, chargebacks, fees, fines and all other obligations owed to Newtek and Merchant authorizes Newtek to debit its Account for all amounts owed to Newtek. Merchant acknowledges and expressly agrees that this authorization applies with the same force and effect to any new bank account information for Merchant that Merchant identifies to Newtek at a future date, and Merchant expressly agrees that Newtek may debit any such account held by, or on behalf of, Merchant, in order to satisfy any of Merchant's obligations to Newtek. Merchant shall provide new Account information to Newtek, in writing, at least 10 days prior to closing or changing the Account designated in this Agreement. This authorization shall survive the termination of this Agreement and shall continue until all of Merchant's obligations to Newtek are paid in full.

Merchant agrees to maintain sufficient available funds in the Account to pay all returns, Credit Entries and adjustments to prior Entries. Merchant agrees to maintain sufficient funds in the Account to pay all fees and other amounts that Merchant is obligated to pay Newtek under this Agreement and the Rules.

2.3 CONSUMER CREDIT INQUIRIES. A credit report may be made in connection with this Agreement (including the Application). Merchant and each of the individuals signing this Agreement (including through signing the Application or otherwise accepting these ACH Terms and Conditions) on behalf of the Merchant (each, a "Signer"), including any Guarantors, authorize Newtek, or any credit bureau or any credit reporting agency employed by Newtek or any agents of Newtek to investigate the references provided or any other statements or data obtained from the Merchant, any Signer, any Guarantor or any of the Merchant's principals, for the purpose of this Agreement (including the Application). Merchant also authorizes Newtek to obtain additional credit reports regarding Merchant on an annual basis, unless Newtek, in its sole and absolute discretion, determines that it is necessary for Newtek to periodically obtain Merchant's credit report on a more than annual basis, in which case Merchant authorizes Newtek to obtain such additional credit reports. Notwithstanding anything in this paragraph, Merchant authorizes Newtek to obtain a credit report regarding Merchant if Merchant requests increased processing amounts or parameters, or if Merchant

originates sporadic transactional volume Merchant agrees to promptly provide Newtek any information pertaining to Merchant's financial condition requested by Newtek.

2.4 AGENT OF PAYEE. MERCHANT ACKNOWLEDGES AND AGREES THAT, FOR THE INITIAL TERM AND ANY RENEWAL TERM(S) OF THIS AGREEMENT, NEWTEK IS ACTING AS MERCHANT'S AUTHORIZED AGENT FOR THE LIMITED PURPOSE OF ACCEPTING PAYMENTS ON THE MERCHANT'S BEHALF FROM RECEIVERS FOR PRODUCTS AND/OR SERVICES SOLD BY MERCHANT, AND MERCHANT APPOINTS NEWTEK AS ITS AGENT, AND EXPRESSLY AUTHORIZES NEWTEK TO RECEIVE SUCH RECEIVER PAYMENTS ON MERCHANT'S BEHALF. DEBIT ENTRIES TO A MERCHANT'S RECEIVER (VIA THE AUTOMATIC CLEARINGHOUSE NETWORK) SHALL BE CONSIDERED PAYMENT TO MERCHANT, SATISFYING AND EXTINGUISHING THE PAYMENT OBLIGATION OF THE RELEVANT RECEIVER TO THE MERCHANT (IN THE AMOUNT PAID BY SUCH RECEIVER) AS IF THE RELEVANT RECEIVER HAD PAID THE MERCHANT DIRECTLY.

2.5 FINANCIAL CONDITION. Merchant shall provide Newtek with copies of its then-current financial statements and/or any other information pertaining to Merchant's financial condition upon Newtek's request therefor. In addition, Merchant shall promptly notify Newtek in writing if any change or development has occurred or, to the knowledge of Merchant, been threatened (or any development has occurred or been threatened involving a prospective change) that is reasonably likely to result in, individually or in the aggregate, a material or significant change to Merchant's financial condition.

2.6 RECORDS AND DATA RETENTION. Merchant shall, at its own expense, provide the original or copy of each Entry authorization and shall furnish such authorizations and documents to Newtek within three (3) days of Newtek's request therefor in a format easily accessible to Newtek, regardless of whether or not this Agreement has expired or been terminated. Merchant shall retain authorization data on file in a readily accessible format adequate to permit remaking of Entries for a period of twenty (20) days following the date of transmittal and shall provide such data upon request to Newtek. In addition, Merchant shall retain the ability to obtain all authorizations as required by the Rules for Entries for two (2) years after they are terminated or expire. Merchant acknowledges and agrees that the two-year retention period may be extended by Newtek, at its discretion, prior to the expiration of the two-year retention period or the Merchant's actual deletion of the data, whichever is later, in the event (a) Merchant, Newtek, or the ODFI is under investigation by NACHA or a governmental authority with respect to any or all of the Entries submitted by or for Merchant, or (b) Newtek has a reasonable basis to suspect fraud or illegal activity by Merchant with respect to any Entries submitted by or for Merchant.

3.0 MERCHANT RESPONSIBILITIES.

3.1 AUTHORIZATION. Merchant agrees to obtain authorization from Receivers pursuant to the requirements of the Rules and applicable Regulations prior to debiting and or crediting Receivers' accounts. Merchant will maintain copies of the authorizations for a period of 2 years from the termination or revocation of the authorization and provide copies of records of authorization to Newtek immediately upon written request.

3.2 AUTHENTICATION. Merchant agrees that Newtek may adjust processing fees and/or add authentication services without prior notice if Merchant experiences a return rate outside the standard return rates for its industry, as determined by Newtek in its reasonable discretion, or if Newtek deems the authentication process Merchant subscribes to is not adequate for standards determined by Newtek. Nothing herein limits the Merchant's obligation to comply with the Rules and all applicable Regulations.

3.3 REPRESENTATIONS REGARDING AUTHORIZATION. Merchant represents and warrants with respect to all Entries originated by Merchant and processed by Newtek for Merchant that (i) each Receiver has authorized the debiting and/or crediting of its account, (ii) each Entry is for an amount agreed to by the Receiver, (iii) each Entry is in all other respects properly authorized and each Receiver has been authenticated (iv) prior to transmitting Receiver information to Newtek, Merchant will provide all reasonably necessary disclosures and/or obtain all reasonably necessary consents from each Receiver regarding the intended disclosures and uses of the Receiver's personal data. In addition to all other indemnity obligations contained elsewhere in this Agreement, Merchant agrees to defend, indemnify and hold harmless Newtek and Newtek's ODFI for any claims, losses, liabilities, costs or expenses suffered or incurred (including reasonable attorneys' fees and costs) relating to, arising out of or involving any breach of these representations and warranties or any unauthorized Entries. These representations, warranties and indemnification obligations by/from/of Merchant shall survive termination of the Agreement.

3.4 MERCHANT ADMINISTRATORS. Merchant acknowledges and agrees that, from time to time, another person or entity may submit or modify transactions on behalf of the Merchant, including, without limitation, owners, principals, employees, officers, accountants or other designated third parties. Such a person or entity is referred to herein as a "Merchant Administrator." Merchant expressly agrees that Newtek is also considered a Merchant Administrator. Merchant agrees that all actions of a Merchant Administrator

will be deemed to be actions by Merchant under this Agreement, and Merchant accepts full responsibility and liability for any and all acts and/or omissions of a Merchant Administrator, including, but not limited to, acts of negligence (whether active, passive or gross negligence), intentional misconduct, or fraudulent acts. Provided, however, Merchant shall not be liable for the negligence, intentional misconduct or fraudulent act of Newtek.

3.5 IDENTIFYING NUMBERS. Merchant understands and agrees that Newtek may rely solely on identifying numbers provided by Merchant to determine the bank and account of a Receiver even if the numbers identify a bank or account holder different from the one identified by Merchant.

3.6 UNAUTHORIZED OR FRAUDULENT TRANSACTIONS. Merchant shall be liable for all Entries originated using any of its accounts (including the Account), including fraudulent transactions processed by third parties that use the Merchant's credentials or password, or who otherwise unlawfully access Merchant's account. Merchant is strictly responsible for establishing and maintaining the procedures to safeguard against unauthorized transmissions. Merchant represents and warrants that no individual will be allowed to initiate Entries in the absence of proper supervision and safeguards and agrees to take reasonable steps to maintain the confidentiality of any passwords, codes, security devices, and related instructions provided by Newtek or otherwise necessary to access the services hereunder ("Passwords"). If Merchant believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Merchant agrees to notify Newtek immediately followed by written confirmation. The occurrence of unauthorized access will not affect Merchant's liability for any Entries made in good faith by Newtek, or an ODFI, whether prior to receipt of such notification or during any period of time reasonably needed to prevent the occurrence of unauthorized transfers following notification.

3.7 SECURITY PROCEDURES. Merchant acknowledges and agrees that the security procedures established under this Agreement, including without limitation all Passwords, authentication requirements, and access controls, constitute commercially reasonable security procedures for the purpose of verifying the authenticity of payment orders under Article 4A of the Uniform Commercial Code. If an Entry is initiated using Merchant's credentials in compliance with such security procedures, Merchant shall be bound by such Entry and shall bear the risk of loss for any unauthorized Entry, regardless of whether Merchant actually authorized such Entry. Merchant agrees that the security procedures are not designed to detect errors in the transmission or content of Entries. Merchant is solely responsible for detecting and reporting any such errors in accordance with this Agreement.

In furtherance of the foregoing, Merchant further represents and warrants that it shall: (i) take reasonable steps to safeguard the security of Passwords; (ii) limit access to the Passwords to persons who have a need to know such information; (iii) closely and regularly monitor the activities of employees who initiate Entries; (iv) notify Newtek immediately if Merchant has any reason to believe the security required by this provision has been or may be breached; (v) immediately change the Passwords if it knows or suspects that the Passwords have been compromised in any way; (vi) permit initiation of Entries only from a secure location on Merchant's premises or from a location or server under its control; (vii) use up-to-date security software and commercially reasonable and up-to-date firewalls; and (viii) immediately report any account discrepancies.

3.8 REGULATORY COMPLIANCE. Merchant bears the final responsibility to ensure that Merchant's products, services, policies and procedures meet the requirements of all applicable laws, the Rules and all applicable Regulations. Merchant is encouraged to consult counsel regarding compliance with the Rules and Regulations whenever there is any doubt about compliance. Merchant represents and warrants that all Entries originated by Merchant and processed by Newtek for Merchant comply with all applicable Rules and Regulations, and with applicable law, including without limitation the following laws and regulations: 1) FTC Act (15 U.S.C. §§ 41, et seq.); 2) Telemarketing Sales Rule ("TSR"), if applicable (16 C.F.R. 310, et seq.); 3) Electronic Fund Transfer Act (15 U.S.C. §§ 1601, et seq.) and Regulation E (12 C.F.R. 205, et seq.), if applicable; 4) Uniform Commercial Code Article 4-A, if applicable; 5) Federal Reserve Board Regulation J, if applicable; 6) the regulations of the Office of Foreign Assets Control ("OFAC"); 7) Unlawful Internet Gambling Enforcement Act (31 U.S.C. §§ 5361, et seq.) and accompanying regulations (12 C.F.R. 233; 31 C.F.R. 132); 8) PACT Act (15 U.S.C. §§ 376, et seq.) and Jenkins Act (15 U.S.C. §§ 375, et seq. and accompanying regulations); and 9) all applicable federal and state laws and regulations to Merchant's business. Merchant further represents and warrants that it shall not originate any Entries that constitute (i) improper telemarketing in violation of the TSR or other applicable Regulations or Rules; (ii) sales or marketing of advance-fee credit cards in violation of the TSR or other applicable Regulations or Rules; (iii) unlawful Internet gambling transactions; and/or (iv) unlawful Internet tobacco sales. Merchant represents and warrants that it will not transmit any Entries that violate the laws of the United States or any state or locality in which Newtek or Merchant does business. Without limiting the foregoing, Merchant warrants and represents that it shall not itself and shall not knowingly cause or knowingly permit a third party to sell any product or service that violates the Prohibited Activity List set forth in Appendix A. These representations and warranties by Merchant shall survive termination of this Agreement. In addition to its termination rights described elsewhere in this

Agreement, Newtek may immediately terminate this Agreement if Newtek, its ODFI, or any regulatory agency, believes that Merchant is violating or has previously violated any applicable Regulation or Rule or is in breach of these representations and warranties. Save to the extent that Merchant is precluded by applicable laws or regulations, Merchant shall notify Newtek upon becoming aware that any Receiver engages or has engaged in any illegal activity.

3.9 TAX REPORTING. Merchant acknowledges that, pursuant to Section 6050W of the Internal Revenue Code ("IRC") and its corresponding regulations, as well as any equivalent law or regulation to Section 6050W that may be applicable at a state-level, Newtek may be required to file annual information returns with the IRS and/or equivalent state-level government agencies (each a "Tax Authority") and furnish such returns to "participating payees," which may include Merchant (each a "Tax Reporting Obligation"), if Newtek is a "payment settlement entity" or an "electronic payment facilitator" for a "reportable payment transaction" that may arise as Newtek renders its services under this Agreement (as "participating payee", "payment settlement entity", "electronic payment facilitator" and "reportable payment transaction" are defined in Section 6050W). Merchant shall cooperate with Newtek and diligently take all reasonable steps to aid Newtek's compliance with any Tax Reporting Obligation it may have. Such steps to be taken by Merchant include, but are not limited to, providing a current, accurate and verifiable legal name, address and tax identification number ("TIN") that is recognized by each relevant Tax Authority for each Merchant. Merchant further acknowledges and agrees that, if it fails to provide any such information, Newtek may be required to perform backup withholding from Merchant funding by deducting and withholding income tax, at the time such withholding is required, from the gross amount of "reportable payment transaction(s)" pursuant to any Tax Reporting Obligation or specific instruction received from a Tax Authority. Merchant expressly authorizes Newtek to withhold from Merchant's funding, and/or to debit Merchant's Account (or another account designated by Merchant if there are insufficient funds in the Account to cover the required withholding): (a) for backup withholding amounts required to be withheld pursuant to Section 3406 of the IRC and its corresponding regulations, any equivalent law or regulation that may be applicable at a state-level, and/or specific instructions received from a Tax Authority, and/or (b) if Newtek is assessed a fine or penalty by a Tax Authority under Sections 6721 and/or 6722 of the IRC and its corresponding regulations, any equivalent law or regulation that may be applicable at a state-level, due to Merchant providing a legal name, address and/or TIN that is not recognized by a Tax Authority, or failing to notify Newtek of a change to such information. For certainty, the above-described Tax Reporting Obligation(s), rights and duties of Newtek may be held, exercised and/or performed by Newtek Service Providers and, for the purposes of this Section, any reference to Newtek includes any Newtek Service Provider so engaged. Notwithstanding any other provision of this Agreement, each such Newtek Service Provider shall be a third-party beneficiary hereof.

3.10 NOTICE OF ERRONEOUS OR UNAUTHORIZED TRANSFERS. Merchant agrees to promptly and regularly review all records of Entries and other communication received from Newtek and to immediately notify Newtek if there are any discrepancies between Merchant's records and those provided by Newtek, the ODFI, or Merchant's bank, or with respect to any transfer not authorized by Merchant. If Merchant fails to notify Newtek within thirty (30) days of the date Newtek e-mails, mails or otherwise provides a statement of account or other report of activity to Merchant (including without limitation by making such available to Merchant through a portal, software or gateway), then Merchant will be solely responsible for all losses or other costs associated with any erroneous or unauthorized Entry.

3.11 INDEMNITY. In addition to all other indemnity obligations contained elsewhere in this Agreement, Merchant agrees to defend, indemnify and hold harmless Newtek, any Newtek Service Providers, the ODFI, all of the foregoing's respective affiliates and all of the foregoing's and their respective affiliates' directors, officers, employees, contractors, agents, representatives and affiliates, from and against any and all claims, losses, liabilities, costs or expenses suffered or incurred (including reasonable attorneys' fees and costs) relating to, arising out of or involving: (i) any breach of the representations and warranties made by Merchant in this Agreement, (ii) the failure of Merchant or a Merchant Administrator to comply with the terms of the Agreement, (iii) the failure of Merchant or a Merchant Administrator to comply with the Rules or any and all applicable laws or Regulations, (iv) Merchant providing an incorrect account or other identification, or (v) Merchant's failure to provide an accurate tax filing name or tax identification number. This paragraph and all of Merchant's other indemnification obligations under this Agreement shall survive termination of the Agreement. If Merchant becomes obligated to pay Newtek's attorneys' fees pursuant to any provision in of this Agreement, such fees shall include in-house counsel fees at the rate of \$400 per hour, as well as the actual hourly rate for outside counsel. Merchant will be responsible for any and all attorneys' fees and other costs and expenses Newtek may incur in collecting any fees or other amounts Merchant owes to Newtek.

3.12 CHANGES AFFECTING NEWTEK SERVICES. Merchant shall provide Newtek sixty (60) days' prior written notice of any new release or material change to Merchant's code, website, products or services which would reasonably be expected to impact the ability of Newtek to deliver services hereunder. Notwithstanding anything in this Agreement to the contrary, under no circumstances shall Newtek be responsible for any impact any such changes may have on Newtek's and/or Merchant's ability to deliver its respective services

or goods, including without limitation Newtek's ability to deliver the Newtek Services or any disruption to the delivery thereof to Merchant. Newtek may, however, endeavor to accommodate any such changes in its sole discretion, and if Newtek agrees to do so, Merchant shall pay Newtek \$200 USD per hour for Newtek to make any configuration or technical adjustments to remedy any delivery or performance issues, as applicable.

3.13 CUSTOMER-INITIATED PAYOUTS. With respect to payouts to Receivers, Merchant shall only use the Newtek Services to initiate payouts to Receivers: (i) if such Receivers have utilized the Newtek Services for a pay-in transaction, in which case Merchant acknowledges and agrees that Newtek solely passes on the Merchant's instructions to the depository financial institution and that such instructions are a component of the Newtek Service that Newtek provides as agent of the Merchant and are a continuation of the Newtek Services related to that prior pay-in transaction, and not standalone services; or (ii) if, prior to processing the payout to a Receiver, the Receiver has been verified using Newtek's standalone bank account verification services to validate the identity of the Receiver and owner of the account to which the payout will be made.

3.14 TEST ACCOUNT. Merchant agrees to provide Newtek with test accounts on Merchant's production system prior to the service going live in order for Newtek to perform transaction tests. Such test accounts will be used by Newtek solely for testing purposes and shall remain active until this Agreement is terminated.

3.15 CUSTOMER SERVICE. Merchant agrees to maintain, support and staff a customer service line with a U.S. domiciled telephone number during normal U.S. business hours.

3.16 COVENANTS, REPRESENTATIONS AND WARRANTIES. Merchant covenants, represents and warrants to Newtek as follows, which shall be true as of the date of this Agreement and continue to be true through the duration of the term of this Agreement:

- (i) Each person shown as the Receiver on an Entry received from Merchant has authorized the initiation of such Entry and the crediting of its account in the amount on the effective date shown on such Entry. The authorization for each such Entry submitted is operative at the time of transmittal or crediting by Newtek as provided herein.
- (ii) Merchant is aware of, and will comply with, the provisions of the Rules that make payment of Entries provisional until receipt of final settlement for such Entry and specifically acknowledges the refund obligations in the event settlement is not received.
- (iii) Merchant agrees to promptly notify Newtek if any of the covenants, representations and warranties set forth in this Agreement are no longer true and accurate.

4.0 NEWTEK RESPONSIBILITIES.

4.1 ACCEPTING TRANSACTIONS. Newtek will only be responsible for processing Entries that it receives in proper format and on a timely basis. Newtek will advise Merchant of any applicable cut-off time. Merchant does not have the right to cancel or amend any submitted Entry.

4.2 ORIGINATING TRANSACTIONS. Newtek will use the information provided by Merchant to originate Entries. Merchant acknowledges and agrees that Newtek may reject Entries for any reason permitted or required by the Rules or applicable Regulations. Merchant also acknowledges and agrees that Entries that exceed the threshold parameters set for Merchant may be rejected. Merchant also acknowledges and agrees that an Entry may be rejected if the Entry would cause Newtek to violate any Federal Reserve or other regulatory risk control program, any applicable Rule or Regulation, or Newtek's agreement with its ODFI. At Merchant's request, Newtek will make reasonable efforts to reverse, modify, or delete an Entry, but will have no responsibility for the failure to comply with that request. All such requests must be made in writing to Newtek.

4.3 RETURNED ENTRIES. Newtek reserves the right to issue refunds or credits to any Receiver that has been debited by Merchant at any time and in Newtek's sole and absolute discretion. In the event Newtek issues any credits or refunds on behalf of Merchant, the amount of the refund or credit and associated fees will be deducted from Merchant's Account or may be Net Settled (as defined below). Newtek will apply returned Entries to Merchant's Account when they are received. Newtek will create and make available to Merchant a report containing detailed information about returned Entries. If Merchant requests that the returned Entries be provided electronically, Newtek may agree to do so in its discretion in accordance with the Rules and Regulations regarding returned Entries. Merchant is solely responsible for all costs, expenses, fines, fees or other amounts incurred in connection by any person or entity (including without limitation, Merchant, Newtek, any of the Newtek Service Providers and ODFI) with any returned Entries.

4.4 NOTICE OF CHANGE (NOC) PROCEDURES. Newtek or the ODFI will forward to Merchant any Notice of Change (NOC) received from the ACH network relating to Merchant's Entries. Merchant shall make the necessary corrections to the affected Entry information within six (6) banking days of receipt of such NOC

or prior to initiating another Entry to the affected Receiver's account, whichever is sooner. Merchant acknowledges that failure to timely correct NOC information may result in returned Entries, fines, or suspension of Merchant's ACH privileges in accordance with NACHA Rules.

4.5 SETTLEMENTS AND FINALITY. Newtek will electronically disburse the Merchant Settlement Amount (defined below) to Merchant's Account. Newtek will settle Entries to Merchant in accordance with the funding schedule set for Merchant as part of the underwriting process. If any Entry is returned beyond the settlement date, Newtek will, at Newtek's sole and absolute discretion, either apply the debit to the current day's settlement ("Net Settled"), or debit the Account for the amount of the returned Entry plus associated fees. If sufficient funds to cover returned Entries are not available in Merchant's Account or the current day's settlement, Merchant shall immediately remit payment to Newtek to fully cover the amount of all returned Entries plus associated costs. Newtek may carry any Merchant Settlement Amount of less than one thousand dollars (\$1,000) to the next settlement date. "Merchant Settlement Amount" means the amount of money payable by Newtek to Merchant in accordance with this Agreement after deduction of any amounts for (1) fees, (2) transactions reversed by Receiver, including chargebacks; (3) ineligible, fraudulent or illegal transactions or transactions otherwise prohibited by this Agreement; (4) transactions alleged by a Receiver to have been performed without their consent; (5) transactions disputed by a Receiver because the Merchant service was not received or was returned, rejected or defective; (6) Receiver refunds initiated either by Merchant, Newtek or payment service provider; (7) any amounts Newtek is permitted to offset against amounts payable by it to Merchant under this Agreement (whether such offset right is authorized under this Agreement or otherwise); or (8) the failure of Merchant to perform any obligation in connection with the Merchant services.

4.6 NO WARRANTY. Merchant acknowledges and agrees that neither Newtek, the ODFI, nor any Newtek Service Providers have control over the conditions under which Merchant uses the payment processing system and thus do not and cannot warrant the results obtained by such use. **NEWTEK, ODFI AND THE NEWTEK SERVICE PROVIDERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE PROCESSING AND/OR NEWTEK'S SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES AGAINST INFRINGEMENT OF THIRD-PARTY RIGHTS OR THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEWTEK DOES NOT WARRANT THAT OPERATION OF THE PAYMENT PROCESSING SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. MERCHANT ACKNOWLEDGES THAT THE PAYMENT PROCESSING SYSTEM IS PROVIDED FOR USE BY MERCHANT "AS IS." MERCHANT FURTHER ACKNOWLEDGES THAT NEWTEK BEARS NO RESPONSIBILITY FOR THE MERCHANT WEB SITE(S). MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION FOR PAYMENT IS NEITHER A WARRANTY THAT THE PERSON PRESENTING THE AUTHORIZATION IS THE RIGHTFUL ACCOUNT HOLDER NOR A PROMISE OR GUARANTEE BY NEWTEK THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO MERCHANT FOR THE AUTHORIZED TRANSACTION. MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT PREVENT A SUBSEQUENT REVERSAL OF A PREVIOUSLY AUTHORIZED TRANSACTION PURSUANT TO THIS AGREEMENT.**

4.7 LIMITS OF LIABILITY. The ODFI shall have no liability whatsoever to Merchant for any claim arising out of contract or tort law, or whether such claim lies in equity or at law and regardless of whether either party knew or should have known of the likelihood of damages arising out of such a claim. Newtek will be responsible for the performance of its responsibilities in accordance with the terms of this Agreement and the Rules and applicable Regulations. Neither Newtek nor any Newtek Service Providers will accept responsibility for errors, acts, or failure to act by others, including but not limited to, banks, communication providers, common carriers, or clearing houses through which Entries may be passed and or originated. Neither Newtek nor any Newtek Service Provider is responsible for any loss, liability or delay caused by fires, earthquakes, war, civil disturbances, pandemics, power surges or failures, acts of governments, labor disputes, failures in communication networks, intervening negligent, criminal or tortious acts of third parties who are not within Newtek's control or employ, legal constraints or other events beyond the control of Newtek. Newtek shall not be liable to Merchant for any delays in receipt or transmittal of funds or errors in Entries caused by third parties, including, without limitation, the NACHA, the ODFI, any depository financial institution, or any agent of Merchant. Newtek's liability with respect to any Entry may not exceed the amount of such Entry, less any applicable fees and charges. Merchant acknowledges and agrees that its sole remedy, if any, for Newtek or any Newtek Service Providers' failure to provide the Newtek Services as provided for in this Agreement shall be against Newtek pursuant to the terms of this Agreement, and that Merchant hereby expressly waives any and all claims against any Newtek Service Provider performing any part of the Newtek Services. This waiver shall apply whether such claim arises out of contract or tort law, or whether such claim lies in equity or at law and regardless of whether either party knew or should have known of the likelihood of damages arising out of such a claim. If there are errors, omissions, interruptions or delays resulting from Newtek's or any Newtek Service Providers' performance or any failure to perform, Newtek's liability shall be limited to correcting such

errors, if commercially reasonable. Newtek shall not be liable for any punitive, incidental, indirect, special or consequential damages (including without limitation any fines), whether or not: (i) any claim for such damages is based on tort or contract law, or (ii) either party knew or should have known the likelihood of these damages in any situation. Merchant waives all claims against Newtek for any loss, claim, demand, penalty, action, delay, cost or expense (including reasonable attorneys' fees) of any kind unless Merchant provides written notice to Newtek of the occurrence that gave rise to the alleged liability within 30 days after Merchant knew or should have known of the occurrence. In addition to what is provided herein, Newtek's cumulative liability for itself, ODFI and any Newtek Service Providers towards Merchant for any reason whatsoever shall not exceed the amount of fees received by Newtek pursuant to this Agreement for services performed in the immediately preceding three (3) months.

4.8 RECEIVER ACCOUNT SUSPENSIONS AND LIMITS. Newtek reserves the right to suspend transactions to a Receiver account at any time without notice in the event that such account is operated in breach of this Agreement or Newtek reasonably suspects that the security credentials have been misappropriated or the account is being used fraudulently. Where it is lawful to do so, Newtek may notify Merchant of the reason for such suspension or deactivation and reactivate the account when the issue has been resolved. Newtek shall have the right, in its sole discretion, to limit the amount or frequency of transfers to Receivers to manage risk and may set or adjust Receiver limits dynamically based on Newtek's assessment of individual or aggregate Receiver risk using either manual or automated processes. Newtek reserves the right, in its sole discretion, to suspend services to Merchant in the event of a high volume of suspected fraudulent activity by Receivers.

5.0 ADDITIONAL TERMS AND CONDITIONS.

5.1 FEES AND PAYMENT.

- (i) In consideration of the provision of the services by Newtek, Merchant shall pay the fees set out in the Application and Schedule A thereto. Newtek will notify Merchant in writing of fees due for services rendered. Fees listed do not include any applicable sales, use, excise or value-added tax ("VAT") taxes. Notice of any changes to the existing fee structure (including new or increased fees) will be made in writing to Merchant within 30 days of such changes or any new fees becoming effective. Merchant has the right to terminate the Agreement by providing written notice to Newtek prior to the effective date of such a change in fees. Continued use of Newtek's Services after the effective date of any fee change shall constitute Merchant's agreement to any new or changed fees.
- (ii) Merchant agrees that Newtek may collect any and all amounts due from Merchant, including, without limitation, all fees set forth in the Application and this Agreement, returned Entries, chargebacks, refunds or credits issued to Receivers, fines, damages or costs and expenses incurred by Newtek to perform services for Merchant (including attorneys' fees and costs to enforce any of Merchant's obligations under this Agreement), by billing Merchant, debiting Merchant's Account, debiting the Reserve Account, if any, and/or such amounts due to Newtek may be Net Settled, without any obligation to give prior notice to Merchant. Merchant shall provide Newtek the information necessary to collect all amounts owed by Merchant under this Agreement or the Rules or applicable Regulations. Undisputed amounts not paid when due shall bear interest at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Merchant shall also reimburse Newtek for all reasonable costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. Notwithstanding anything in this Agreement or any other agreement between Newtek or any of its affiliates, on the one hand, and Merchants or any of its affiliates, on the other, (i) Newtek and its affiliates may offset any amounts owed by Merchant to Newtek under this Agreement against any amounts owed by Newtek or any of its affiliates to Merchant or any of its affiliates under this Agreement or any other agreement between Newtek or any of its affiliates, on the one hand, and Merchant or any of its affiliates, on the other; and (ii) Newtek may offset any amounts owed by Merchant to Newtek or any of its affiliates under this Agreement or any other agreement between Newtek or any of its affiliates, on the one hand, and Merchant or any of its affiliates, on the other, against any amounts payable to Merchant by Newtek under this Agreement (collectively, each a "Permitted Offset").

5.2 SALES TAXES. All sales, use, VAT or other similar taxes on a payment received from a Receiver as a result of transactions processed using the Newtek Service pursuant to this Agreement is the responsibility of the Merchant. Newtek will allow Merchant to collect taxes as set, administered and determined solely by Merchant, with Merchant acknowledging that any errors or omissions on the part of Newtek are solely the responsibility of Merchant to correct. Newtek will settle transaction amounts inclusive of taxes to Merchant.

5.3 VOLUME ANALYSIS RISK MONITORING. Newtek will routinely analyze Merchant origination and return activity. In the event Merchant exceeds a return rate outside the standard return rates for its industry, as determined by Newtek in its sole and absolute discretion, Newtek determines, in its sole and

absolute discretion that Merchant's business is operating in a manner that Newtek believes could cause a financial or legal risk to Newtek, or if Merchant is terminated for cause, Newtek shall have the right, at any time, to place all of any portion of a provisional or final credit or settlement otherwise due to Merchant into a Reserve Account, which shall be maintained pursuant to the terms of Section 4.14 below.

5.4 CONFIDENTIALITY. Merchant understands that it may receive non-public information about Newtek during the term of the Agreement, including, but not limited to, Newtek's strategic and development plans, business plans, data, business records, customer lists and information (including, but not limited to, names, addresses, telephone numbers, account numbers and all other non-public personal information regarding any member or customer or their relationship with the disclosing party), employee lists, business manuals, policies and procedures, software, and information relating to processes, technologies or theory, special operating procedures, secret processes, financial status and condition, computer codes, programs and formulae and other related information, trade secrets and specially acquired knowledge, intellectual property, and any other information as may be identified as confidential from Newtek or that a reasonable person would treat as confidential (collectively, "Confidential Information"). Confidential Information shall not include information which: (a) is publicly available through no action of Merchant, including without limitation any breach of this Section 5.4 by Merchant; (b) has been in Merchant's possession without restrictions on disclosure prior to disclosure by Newtek; (c) has been developed by Merchant wholly independently of the Confidential Information and without any use thereof; or (d) is obtained rightfully from one or more third parties not bound by an obligation maintain the confidentiality of the information. Merchant warrants that it, its officers, employees and agents will: (a) hold in strictest confidence all Confidential Information; (b) not use Confidential Information for any purposes other than procuring the products and/or services described in the Agreement; (c) not provide Confidential Information to any affiliate, officer, employee or agent, or vendor ("Representative") unless such Representative has reason to know such information in order to effect the purposes of the Agreement; and (d) not provide Confidential Information to any third party without the disclosing party's prior written consent. Merchant will cause its Representatives to observe the terms of this Agreement, and will be responsible for any breach of this Agreement by any of such Representatives. Merchant will use commercially reasonable means to implement appropriate administrative, technical, and physical safeguards to (i) ensure the confidentiality of the Confidential Information, (ii) protect against threats or hazards to the security or integrity of the Confidential Information, (iii) protect against unauthorized access to or use of the Confidential Information, and (iv) ensure the proper disposal of Confidential Information. Upon Newtek's request at any time during the term of the Agreement, Merchant will provide Newtek with a written summary description of the then-current safeguards used by Merchant to meet the above requirements. In the event of any breach of the above-described safeguards, Merchant shall immediately notify Newtek of such breach, the effect of the breach on the Confidential Information, the Confidential Information that may have been compromised as a result of the breach, and any corrective and responsive actions taken in response to such breach. If Merchant is compelled by applicable laws, regulations or court orders to disclose any Confidential Information to any third party, Merchant will, except as prohibited by applicable laws, regulations or court orders, provide Newtek with written notice of any such disclosure prior to any such disclosure. Except as otherwise prohibited by the Agreement, upon termination of the Agreement for any reason and at any time during the term of the Agreement upon Newtek's request, Merchant shall, (a) destroy any and all Confidential Information and any tangible or intangible copies thereof in accordance with commercially reasonable procedures for destruction of such Confidential Information and provide Newtek with prompt written confirmation of such destruction or (b) return any and all Confidential Information and any tangible or intangible copies thereof to Newtek. This paragraph shall survive termination of this Agreement for any reason. The parties acknowledge that a breach or threatened breach of any of the terms of this section by any party would result in material and irreparable damage and injury to Newtek, and that it would be difficult or impossible to establish the full monetary value of such damage. Therefore, Newtek will be entitled to seek injunctive relief by a court of appropriate jurisdiction in the event of Merchant's breach or threatened breach of any terms of this section. The right to seek an injunction will not prohibit Newtek from pursuing any other remedies against Merchant for breach of this section, including the recovery of damages.

5.5 INTELLECTUAL PROPERTY. Merchant acknowledges and agrees that except for the rights and licenses expressly granted to it by Newtek in this Agreement, as between Merchant and Newtek, Newtek shall retain all right, title and interest in and to its Intellectual Property and any derivatives of the foregoing; and nothing contained in this Agreement shall be construed as conferring upon Merchant by implication, operation of law, estoppel, or otherwise, any other license or right. Merchant shall not: (1) use, reproduce, distribute, or permit others to use, reproduce, or distribute any Newtek's Intellectual Property for any purpose other than as specified in this Agreement; (2) make Newtek's Intellectual Property available to unauthorized third parties; (3) rent, electronically distribute, timeshare, or market Newtek's Intellectual Property by interactive cable, remote processing services, service bureau or otherwise; or, (4) directly or indirectly modify, reverse engineer, decompile, disassemble, or derive source code from any of Newtek's Intellectual Property. "Intellectual Property" means all (i) copyrights (including, without limitation, the right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative works), copyright registrations and

applications, trademark rights (including, without limitation, registrations and applications), patent rights, trade names, mask-work rights, trade secrets, moral rights, author's rights, privacy rights, publicity rights, algorithms, rights in packaging, goodwill and other proprietary rights, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States of America or any other state, country or jurisdiction; (ii) intangible legal rights or interests evidenced by or embodied in any idea, design, concept, technique, invention, discovery, enhancement or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; and (iii) all derivatives of any of the foregoing.

5.6 DATA COLLECTION, PRIVACY AND SECURITY. Merchant represents, warrants and covenants that, prior to transmitting Receiver data to Newtek, it will provide all reasonably necessary disclosures and/or obtain all reasonably necessary consents from each Receiver regarding the intended disclosures and uses of such data. Merchant further represents, warrants and covenants that, at all times while this Agreement is in effect, Merchant shall maintain and adhere to all reasonable security measures to protect Merchant systems and the data contained therein (including consumer information and other non-public personal information) from network infections, unauthorized control or Entries, tampering, or any other unauthorized access ("Security Measures"). Merchant covenants that such Security Measures will include, but not be limited to, security technology (e.g., secure internet servers) that provides commercially reasonable encryption technology for Entries and transmission of Entries over the Internet, and network security to safeguard account information and access from unauthorized parties.

In the event of a security breach, unauthorized acquisition, loss or misuse of data or information, including consumer information, Merchant agrees to assist Newtek in determining the manner and source of the breach. Such assistance may include, at Newtek's sole discretion, but shall not be limited to, providing Newtek or Newtek's agent reasonable access to Merchant's storage media and devices, systems and any other equipment or device used in connection with the services hereunder. In the event of a such a breach, Merchant further agrees to provide to Newtek its analysis of such equipment, device, or software or its report of such analysis performed by Merchant, Merchant's agents, law enforcement agencies, or any other third party.

Each party is solely responsible for the security of Receiver data residing on servers owned or operated by such party, or a third party it designates (e.g., a Web hosting company, processor or other service provider). Each party shall comply with all applicable laws, policies and regulations governing the security, privacy, collection, retention and use of Receiver data by such party.

5.7 WEB ENTRY SECURITY PROGRAM. If Merchant originates WEB Entries, Merchant shall establish, implement, and maintain a written security program for the protection of Receiver data and the security of Merchant's website and systems used to collect and transmit WEB Entry authorizations. Such security program shall include (i) commercially reasonable administrative, technical, and physical safeguards appropriate to the size and complexity of Merchant's operations, (ii) annual risk assessments and security audits, (iii) periodic penetration testing and vulnerability scans, and (iv) prompt remediation of identified vulnerabilities. Merchant shall provide Newtek or the ODFI, upon reasonable request, with certifications of compliance with this Section, results of security audits, and access to Merchant's systems and records for examination purposes. Merchant shall notify Newtek immediately of any security breach affecting WEB Entry data.

5.8 TEL ENTRY REQUIREMENTS. If Merchant originates TEL Entries, Merchant shall ensure that each TEL Entry is authorized by the Receiver in accordance with NACHA Rules, including obtaining single-entry authorization or recurring authorization as applicable. Merchant shall maintain audio recordings or other evidence of authorization as required by NACHA Rules and shall retain such records for a minimum of two (2) years following termination or revocation of the authorization. Merchant shall ensure that its TEL authorization process includes disclosure of all required information to Receivers, including the date, amount, and Receiver's right to revoke authorization. Merchant shall provide Newtek or the ODFI, upon reasonable request, with access to TEL authorization records and audio recordings for audit and compliance purposes.

5.9 MARKETING. Subject to obtaining Merchant's prior written approval (which shall not be unreasonably withheld, conditioned or delayed), Newtek shall be entitled to issue a press release disclosing the existence of the relationship formed hereunder between Newtek and Merchant.

5.10 LICENSE TO MERCHANT MARKS. Merchant grants to Newtek a non-exclusive, sublicensable, transferable, royalty-free, worldwide license to use, display, store and reproduce Merchant's and/or its affiliates' trade names, service marks or trademarks to promote and provide Receivers with the ability to use Newtek's Services to pay for Merchant's goods and services.

5.11 GOVERNING LAW AND VENUE. This Agreement, all questions related to the Agreement's validity, interpretation, performance, execution and inducement, and all claims related to, arising under, or involving in any way this Agreement, the services provided by Newtek, or Merchant's business relationship with Newtek are governed by, and shall be construed under, the laws of the State of New York without regard for the principles and conflicts of law. All such claims shall exclusively be adjudicated in a State or Federal

Court located in Nassau County, New York, which the parties agree has personal jurisdiction over them and is the proper venue. The parties waive any objections to personal jurisdiction or venue in Nassau County, New York. The prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs (including expert witness fees and costs) incurred in the matter.

5.12 JURY TRIAL WAIVER. NEWTEK AND MERCHANT BOTH IRREVOCABLY WAIVE A TRIAL BY JURY UNDER BOTH STATE AND FEDERAL LAW IN ANY ACTION, LAWSUIT, OR DISPUTE ARISING OUT OF, OR RELATING TO, THIS AGREEMENT, NEWTEK'S SERVICES, OR THE TRANSACTIONS RELATING TO SUBJECT MATTER OF THIS AGREEMENT.

5.13 CLASS ACTION WAIVER. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, MERCHANT AGREES THAT ANY AND ALL DISPUTES, CLAIMS AND CAUSES OF ACTION ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT, THE NEWTEK SERVICES, OR ANY OTHER MATTER RELATING TO MERCHANT'S RELATIONSHIP WITH NEWTEK SHALL BE RESOLVED INDIVIDUALLY, WITHOUT RESORT TO ANY FORM OF CLASS ACTION. MERCHANT AGREES THAT IT WILL NOT SEEK TO BRING, JOIN, OR PARTICIPATE IN ANY CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION, PRIVATE ATTORNEY GENERAL ACTION, OR OTHER PROCEEDING IN WHICH ANOTHER PARTY ACTS OR PROPOSES TO ACT IN A REPRESENTATIVE CAPACITY ON BEHALF OF MERCHANT. NO CLAIM OF MERCHANT MAY BE CONSOLIDATED OR JOINED WITH CLAIMS OF ANY OTHER PERSON OR ENTITY WITHOUT THE PRIOR WRITTEN CONSENT OF NEWTEK. THIS CLASS ACTION WAIVER SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

5.14 AGREEMENT MODIFICATION. Newtek may modify the terms and conditions of this Agreement upon 30 days' written notice. Merchant has the right to terminate this Agreement following its receipt of notice of any such modification by providing written notice to Newtek prior to the effective date of such modification. Use of services after the effective date of any such modification will evidence acceptance of the modification(s).

5.15 NOTICES. Each notice required by this Agreement shall be in writing. Notice shall be effective upon receipt if provided by any form of physical mail delivery, or immediately when sent by electronic mail or facsimile. If the addressee of a notice rejects or otherwise refuses to accept a notice hereunder, or if the notice cannot be delivered because of a change of address for which notice was not given, then notice will be deemed received upon rejection, refusal or inability to deliver.

Notice may be provided by:

To Merchant:

- (i) by First Class Mail, return receipt requested, at any address Newtek has on file for Merchant (including without Merchant's business address listed in this Agreement (including the Application)) or any publicly-listed address for Merchant (each, an "Acceptable Merchant Address");
- (ii) by personal delivery;
- (iii) by overnight courier to any Acceptable Merchant Address;
- (iv) by facsimile to any fax number Newtek has on file for Merchant;
- (v) by electronic mail to any email address Newtek has on file for Merchant;
- (vi) by posting notice through any technological platform offered by Newtek through which Merchant may access information regarding its account (including any gateway made available to Merchant by or through Newtek), which shall be effective on the date on which the notice was first made available through the platform;
- (vii) by including the notice on Merchant's monthly or other periodic billing statement.

To Newtek: by reputable overnight courier to Newtek Merchant Solutions, LLC, Attention: President or Chief Operating Officer, 30 Jericho Executive Plaza, Suite 400E, Jericho, NY 11753, with copies to NewtekOne, Inc., Attention: Chief Legal Officer, 4800 T-Rex Avenue, Suite 120, Boca Raton, FL 33431 and to mschwartz@newtekone.com and legalnotices@newtekone.com.

5.16 TERM AND TERMINATION.

- (i) This Agreement is effective from the date hereof and shall continue for a term of one (1) year. Thereafter, this Agreement shall automatically renew for consecutive one (1) year periods unless either party gives the other written notice of non-renewal at least 60 days prior to the expiration date of the current term.
- (ii) This Agreement may be terminated by Newtek at any time with 30 days' written notice or as otherwise provided by the terms of this Agreement.
- (iii) Notwithstanding Newtek's rights to terminate this Agreement as stated elsewhere in this Agreement, Newtek may also immediately terminate this Agreement for cause, without an opportunity to cure, and/or immediately suspend all processing for Merchant without providing advance written notice to Merchant:
 - (a) upon the request of Newtek's ODFI, or any regulatory agency (regardless of the reason for the

request); (b) if Newtek, its ODFI, or any regulatory agency believes that Merchant has breached any its representations, warranties or covenants made in this Agreement, is violating or has previously violated any applicable Regulations or Rules, and/or has recklessly or willfully initiated any unauthorized Entries; (c) if Newtek receives notice that NACHA or a governmental authority is investigating Merchant or has requested information from Newtek or its ODFI regarding Merchant; or (d) if Newtek is unable to process transactions for Merchant for any reason that is out of Newtek's control or Newtek no longer has the ability to process transactions for Merchant. Newtek's ODFI may independently exercise any of Newtek's rights hereunder and shall be a third party beneficiary of this Agreement to the extent necessary to exercise such rights.

- (iv) Either party may terminate this Agreement, and/or Newtek may suspend all processing for Merchant, if the other party to this Agreement commits a material breach of this Agreement and either the breach cannot be cured or, if the breach can be cured, it has not been cured within thirty (30) days of the breaching party's receipt of written notice thereof.
- (v) This Agreement may be terminated by either party effective immediately and without any requirement of notice, in the event that (a) the other party files a petition in bankruptcy, seeking any reorganization, arrangement, composition, or similar relief under any law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors; (b) a receiver, trustee, or similar officer is appointed for the business or property of such party; (c) any involuntary petition or proceeding, under bankruptcy or insolvency laws, is instituted against such party and not stayed, enjoined, or discharged within sixty (60) days; or (d) the other party adopts a resolution for discontinuance of its business or for dissolution.
- (vi) Immediately upon termination of the Agreement, whether by expiration or otherwise, and whether or not the Agreement was terminated for cause, Newtek's obligation to provide services under the Agreement shall cease, and any unpaid amounts due and owing by Merchant shall become immediately due and payable. Payment for any services rendered or any other obligation or liability owing at the time of termination shall not be affected by termination of this Agreement.

5.17 RESERVE ACCOUNT. Although Newtek may have determined that Merchant does not need to establish a reserve ("Reserve Account") to begin processing transactions, Newtek retains the right to impose a Reserve Account requirement upon Merchant, in its discretion. If a Reserve Account is required, Merchant acknowledges and agrees that Newtek may either require Merchant to fund the Reserve Account or, in Newtek's discretion, Newtek may withhold amounts from settlement to be held in a Reserve Account by Newtek or its designee. Merchant further acknowledges and agrees that its Reserve Account may be commingled with reserve funds held for other merchants. Amounts held in the Reserve Account will remain in the Reserve Account for the later of (i) 180 days after the last Debit Entry or (ii) until the risk of loss or other circumstances reasonably supporting Newtek's imposition of the reserve have passed. Merchant acknowledges and agrees that this Reserve Account may be used to fund any and all returned Entries. In addition, Newtek shall also have the right to offset and pay itself from the Reserve Account for amounts owed by Merchant to Newtek, including without limitation all fees, damages, or other costs and expenses (including reasonable attorneys' fees and costs), that may arise out of processing transactions for Merchant (whether under this Agreement or any other agreement between Merchant and Newtek) or to otherwise satisfy any Permitted Offset.

- (i) In the event a reserve is held, Merchant acknowledges and agrees that, until such time as all of the amounts owed by Merchant and its obligations, including its obligation to pay all returns, are paid to Newtek in full or Merchant has otherwise provided security for such obligations, all funds in the Reserve Account shall be considered to be held by Newtek for Newtek's sole interest, benefit, and protection, shall be considered to be the property of Newtek, and shall not be considered to be held for the benefit of Merchant or be considered to be an asset for or property of Merchant.
- (ii) Notwithstanding any of the foregoing, as an additional and cumulative right under this Agreement, if Newtek reasonably believes that Merchant will in the future owe any such amounts under this Agreement, including for returns, anticipated returns, fines, fees, or any other item described in this Agreement, Newtek may also identify, sequester, segregate or transfer to itself (including its own bank account(s)) any portion of the Reserve Account that Newtek reasonably believes is needed to pay such obligation and may hold and use such amount for its own benefit and protection (as opposed to any such amount being held for Merchant's benefit or the benefit of any third party). Merchant shall not have any possessory or equitable interest in any funds identified, sequestered, segregated or transferred pursuant to this section.
- (iii) The aforementioned rights and remedies are not intended to be exclusive and are intended to be cumulative together with all of Newtek's other rights and remedies under this Agreement and applicable law.
- (iv) In the event Merchant does not notify Newtek in writing for an accounting and request, in writing, that Newtek release any Reserve Account within 30 days prior to the expiration of the 180-day period following the last Debit Entry, the Reserve Account shall be forfeit and may be transferred or applied to a Newtek-

wide reserve account that may be used, applied or offset, in Newtek's sole and absolute discretion, to pay or reduce other unfunded liabilities of any and all Newtek merchants, whether or not affiliated with Merchant and Merchant's processing activity.

5.18 FUNDING POLICY. Merchant acknowledges and agrees that funding for each origination will be disbursed as provided for in Schedule A attached to the Application. Unless expressly agreed to in writing, the amount settled and disbursed will be the origination amount less returned items, processing fees and any reserve amount, if any. Newtek reserves the right to change the funding schedule or reserve requirements at its discretion regardless of Standard Entry Class type.

Merchant agrees that Newtek or its ODFI may suspend all transactions, if Newtek determines that there are inconsistent instructions regarding settlement, or claims on the account (including, without limitation, any claim by a judgment creditor of Merchant, levy, or other legal process). Newtek may interplead any and all funds, freeze or hold funds, prevent withdrawals or transfers, or otherwise act to prevent or reduce loss or risk to Newtek and (in addition to any other remedy Newtek may have) Merchant agrees to reimburse Newtek for any out-of-pocket costs associated with such interpleading.

5.19 AUDIT AND INFORMATION REQUIREMENTS.

(i) Newtek and its ODFI shall have the right to audit Merchant concerning its compliance with the Rules and applicable Regulations.

Merchant shall, upon Newtek's reasonable request, provide Newtek with information requested to verify Merchant's compliance with this Agreement, including sample copies of ACH authorizations, customer contracts and related materials used or to be used by Merchant. Merchant agrees to cooperate with, and provide complete, accurate, and timely information as requested by Newtek. Newtek may hold settlement amounts pending the provision of such information, which may include copies of Merchant's business license, articles of incorporation, tax information requirements and authentication of business owner(s) or director(s) identity, and/or other documentation, including without limitation documentation required to meet KYC banking mandates and the requirements of anti-money laundering legislation.

(ii) Merchant will cooperate and provide reasonable assistance and information as necessary for Newtek or its ODFI to conduct audits, including reasonable access to operating systems, policies, procedures, records, and other materials. In addition, Newtek or its ODFI shall have the right to inspect Merchant's books, financials and records, and to conduct onsite visits to any Merchant locations with regard to all information reasonably deemed by Newtek or the ODFI to be necessary or pertinent to Merchant's use of the services provided under this Agreement. Information subject to the foregoing right of inspection shall also include all information maintained by Merchant with respect to Merchant's customers, clients, and vendors, if, in the reasonable opinion of Newtek or the ODFI, Merchant's relationship with such parties is materially related to Merchant's transaction activity conducted hereunder.

5.20 NON-SOLICITATION. Merchant agrees that, without Newtek's prior written consent, it will not, for a period of 1 year from the date this Agreement is terminated, directly or indirectly solicit for employment any person who is or was at any time during the term of this Agreement employed by Newtek.

5.21 ENTIRE AGREEMENT. This Agreement makes up the entire Agreement between the parties concerning ACH processing services and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions whether oral or written of the parties, and there are no warranties, representations and/or agreements among the parties in conjunction with the subject matter hereof except as set forth in this Agreement.

5.22 SEVERABILITY. In the event any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, only that provision shall be severed from this Agreement and the remaining provisions shall continue in force, provided that each party preserves the substantial benefits of the bargain contemplated in this Agreement.

5.23 INTERPRETATION; WAIVER. Any waiver by a party of a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach. The parties agree that, should any provision or term of this Agreement require interpretation or construction, this Agreement will be interpreted or construed without any presumption that the provisions of this Agreement are to be construed against the party that prepared this Agreement. There are no third-party beneficiaries of this Agreement.

5.24 ASSIGNMENT. Newtek shall have the right to assign this Agreement, I or any of its rights or duties hereunder, including its performance obligations hereunder to any person or entity. Upon assignee's or transferee's assumption of any of Newtek's obligations under this Agreement, Newtek shall have no further liability to Merchant with respect to such obligations, and Merchant shall look solely to the assignee or transferee for performance of any such obligations. Merchant shall not assign this Agreement without Newtek's

prior written consent. Any purported assignment in violation of this clause is ineffective, void, and unenforceable.

5.25 ELECTRONIC COMMUNICATIONS. Notwithstanding anything in this Agreement to the contrary, Merchant agrees that Newtek may deliver any communications to be delivered by Newtek to Merchant under or in connection with this Agreement (collectively, "Newtek Communications"), including without limitation all notices (for the avoidance of doubt, including without limitation any written notices), disclosures, monthly or other periodic statements, tax reports or forms (including without limitation Form 1099K's) and any other documents and information, to Merchant by electronic means chosen by Newtek (including without limitation delivery via e-mail or by making the Communication available through internet or intranet websites or portals as communicated to Merchant by Provider from time to time). Merchant is responsible for ensuring that (a) it has at all times a current and operable email address on file with Provider for delivery of Newtek Communications, and Merchant agrees to regularly check such email address; (b) it has, or will have, the technical means and resources to access any internet or intranet websites or portals communicated to Merchant by Newtek from time to time for Newtek Communications, and Merchant agrees to regularly check such websites; and (c) it complies with any technical requirements as may be required to access any Newtek Communication made available to Merchant through such websites as may be communicated to Merchant by Newtek from time to time. Merchant understands that it will not receive a paper copy of any Newtek Communication that Newtek elects to make available to Merchant electronically, including without limitation monthly or other periodic statements and Form 1099K's, unless Newtek provides Merchant an option to obtain a paper copy of the Newtek Communication (for which Merchant understands and agrees that Newtek may also charge Merchant a fee). In the event Merchant is unable to access any Newtek Communication that has been made available by Newtek electronically, it is the Merchant's obligation to notify Newtek in writing immediately.

5.26 COUNTERPARTS; ELECTRONIC EXECUTION. Unless Newtek requires otherwise, to the extent this Agreement, any component thereof (including without limitation, the Application), or any other document, agreement or instrument to be executed in connection with this Agreement (whether contemporaneously therewith or in the future) or the transactions contemplated thereby (collectively, including this Agreement, the "Transaction Documents"), is to be signed by a party, such signature thereto delivered by a party via telecopy transmission or other electronic means shall be deemed to be an original signature. The words "execution," "execute," "signed," "signature," and words of like import in or related to any Transaction Document shall be deemed to include electronic signatures and the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act or any other similar state laws based on the Uniform Electronic Transactions Act. Notwithstanding the foregoing, if Newtek requires any Transaction Document be signed manually, then such Transaction Document must be signed by Merchant manually. Unless otherwise required by Newtek, any Transaction Document may be executed in one or more counterparts, each of which, when taken together, shall be deemed an original and each of which may be introduced as evidence or used for any other purpose without the production of its duplicate counterparts.

5.27 RELATIONSHIP OF PARTIES. All parties are and shall be independent contractors with respect to the terms, provisions and operation of this Agreement. Nothing contained herein and no act done pursuant to this Agreement is intended to or shall be construed to create a partnership, joint venture, employment or similar relationship between the parties. In no event shall either party have the right or power (whether express or implied) to make any representation or warranty (express or implied) on behalf of the other party or otherwise to bind the other party in any way whatsoever, subject to section 1.5.

5.28 CURRENCY. Unless otherwise specified, all references to currency, monetary values and dollars set forth herein shall mean U.S. dollars.

APPENDIX A
Prohibited Activity List

Merchant agrees that Merchant will not knowingly, which includes where an employee acts in the course of his/her duties at any time conduct Merchant's business in any manner that directly or indirectly offers, sells, leases, licenses or displays, delivers, advertises, recommends, performs or promotes any product(s), service(s), data, information, image(s), text and/or any content which:

- (i) is associated with any form of adult, sexually oriented, or obscene materials or services, including without limitation, any material clearly designed to sexually arouse the viewer/reader (e.g., books, text, photos, videos, X-rated movies, pornographic materials, etc.), any materials which require individuals to be eighteen (18) or older to view or purchase those materials, escort services, and adult websites;
- (ii) infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party, including, but not limited to, the unauthorized copying and posting of trademarks, pictures, logos, software, articles, musical works and videos;
- (iii) is threatening, abusive, harassing, defamatory, obscene, libelous, slanderous, deceptive, fraudulent, invasive of another's privacy, tortuous.
- (iv) victimizes harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- (v) impersonates any person or entity;
- (vi) contains harmful content, including, without limitation, software viruses, Trojan horses, worms, time bombs, cancel bots, spy-ware, or any other files, software programs, or technology that is designed or intended to disrupt, damage, surreptitiously intercept or expropriate services provided by Newtek or any system, program, data or personal information or limit the functioning of any software, hardware, or equipment or to damage or obtain unauthorized access to any data or other information of any third party;
- (vii) causes an unusual number of API calls to be made to Newtek's payment processing platform (in website, application and other available formats) resulting in disruption to the Newtek Services;
- (viii) violates any U.S. export or import laws, including, without limitation, the Export Administration Act and the Export Administration Regulations maintained by the Department of Commerce;
- (ix) offers or disseminates fraudulent products, services, schemes, or promotions (i.e., make money fast schemes, chain letters, pyramid schemes) or engage in any unfair deceptive act or practice;
- (x) is associated with illegal telecommunications or cable television equipment;
- (xi) is associated with the sale of any controlled drug or illicit substance; or
- (xii) involves gambling.