

## Intercept Corporation Processor Agreement

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, between \_\_\_\_\_  
\_\_\_\_\_(Processor) and INTERCEPT CORPORATION (IC)

### Definitions:

The terms stated below shall have the following meanings:

IC	Intercept Corporation
PROCESSOR	The Party to This Agreement/Undersigned
COMPANY	Processor's Client
TRANSACTION	Company's Employee or Company's Customer
ACH	Automated Clearing House: the system through which electronic transactions flow
NACHA	National Automated Clearing House Association: the governing body which defines the Rules and Regulations and file formats required to transfer money via the ACH system
BANK	A depository financial institution including, but not limited to a commercial bank, savings bank or credit union
CREDIT	Transfer/deposit of money to an account
DEBIT	Transfer of money from an account/withdrawal
TPA	Third Party Administrator of Flexible Benefits/Cafeteria Plan under ERISA Rules and Regulations. If Agreement is signed by TPA, TPA and Processor are one in the same.

### I. Services Provided

- 1.0 Processor desires to utilize the services of IC to transfer funds electronically via the Automated Clearing House (ACH) pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association (NACHA), and applicable local, state and federal law.
- 1.1 Processor is in the business of providing various services including, but not limited to providing such services such as payroll processing, flexible benefits/cafeteria/ERISA services, or other services. Processor requests the services of IC to electronically transfer funds. Processor hereby contracts with IC requesting IC to facilitate ACH Transfers of Processor's Company and/or Transactee's funds and related services including, but not limited to direct deposits, direct payments, and direct payments to TPAs, and payments from TPAs to Transactees and/or their designees or other designees. IC, pursuant to the terms of this Agreement, will debit an account of Company(s) and credit IC's settlement account, then, on the appropriate day, IC will debit its settlement account and credit Company's Transactees/employees accounts, TPA accounts, or other specified account(s) as requested. In the event Processor desires IC to provide other services such as direct payment of Company or Transactee's monthly bills, flex benefit payments, dues, tax impounding, and other payroll related services, IC will debit specific accounts (Company's or Company's Transactees) and credit IC's settlement account or other accounts IC and Processor agrees upon, and then on the appropriate day, debit IC's settlement account and credit Processor, Company, or other specified accounts.
- 1.2 It is understood that the Processor or its Company will create all files directing where and when (within the time schedules set by IC, see section 2.6 of this Agreement), all funds will be transferred. Upon the request of Processor or Company, IC may modify files received and on occasion, IC has the right to create files initiating credit/debit entries to make adjustments which have been requested by Processor or Company or whenever IC deems it necessary to do so.
- 1.3 IC PROVIDES ITS SERVICES ONLY TO PROCESSOR AND/OR TPA. ALL FUNDS TO BE TRANSFERRED HEREUNDER MUST BE COLLATERALLY FUNDED AND ARE FULLY GUARANTEED BY PROCESSOR, COMPANY, TPA, AND TRANSACTION.

## II. Automated Transfers

- 2.0 Processor and/or TPA shall initiate credit/debit entries by transmitting specific instructions to IC in a form acceptable to IC and cannot exceed the amount agreed upon between Processor and/or TPA and IC.
- 2.1 Processor and IC shall comply with the security requirements of IC as presently existing and as supplemented from time to time.
- 2.2 Processor warrants to IC that the amount of any credits and debits for which payment instructions are given to IC and processed by IC will be honored by Company's bank and/or Processor's bank upon presentment.
- 2.3 IC may refuse to follow Processor's, Company's, and/or TPA's payment instructions if:
- IC has not received a wire transfer to fund the dollar amount of a future transfer;
  - IC reasonably believes that the Company's, Transactee's, or TPA's Bank will return, reverse, or otherwise dishonor a transfer to or from a Company's, Transactee's or TPA's Bank account;
  - IC reasonably believes that Processor's, Company's or TPA's funds on deposit are insufficient to cover the amount of funds to be transferred; or
  - For any other reason IC deems reasonable.
- 2.4 If any transfer from Processor, Company, TPA or Company's Transactee account is dishonored, contested, deemed unauthorized or is requested to be redeposited or retraced for any reason, such as but not limited to non-sufficient funds, unauthorized transactions, revoked, account closed, or unable to locate account, or is reversed by Processor, Company, TPA, Company's Transactee and/or Transactee's Bank, IC may;
- Reverse any corresponding credit and debit issued to Processor, Company, TPA, Company's Transactee or any other party without liability to Processor, TPA, Company or Company's Transactee or any other party;
  - Require Processor, TPA or Company to wire funds to IC by no later than 2:00 pm Central Time the day Processor, TPA, and/or Company were notified of said return;
  - Re-submit the item and Processor, TPA and/or Company will be charged a late fee as provided herewithin and/or later supplemented; and/or
  - If further collection attempts are required, all IC's collections costs including, but not limited to attorney's fees, where permitted by law, will be charged to Processor, TPA and to Company.
- 2.5 IC may reverse any transfer if payment of the corresponding Company transfer is not honored or is reversed by Processor, TPA, Company or Company's Transactee for any reason. If IC fails to obtain full payment for any reversal of any transfer from Company, TPA, or Company's Transactee, or any transfer of payments that has not occurred and Processor, Company or Company's Transactee owes IC any sum of money, Processor, TPA, and Company hereby guaranty payment to IC and agree that they are liable to IC for any costs, expenses, attorney's fees, and any losses incurred by any reversing transfers. IC is not responsible for any inaccurate information submitted to IC which has resulted in an erroneous transfer of funds including, but not limited to Processor, TPA, Company or Company's Transactee providing inaccurate information regarding account numbers, amounts, or other related transfer information. Processor, TPA and Company agree to indemnify and hold IC harmless from any and all claims, causes of actions, and request for retransfer of funds erroneously transferred by IC due to incorrect information provided IC.
- 2.6 The processing time limitations that are applicable to this Agreement, and are made a part hereof, are located on the following website: [www.intercepteft.com](http://www.intercepteft.com).

- 3.2 Processor, TPA and/or Company shall have no right to cancel or amend any entry after its receipt by IC. At Processor, TPA, or Company's request, IC shall use reasonable efforts to cancel or amend an entry prior to transmittal to the ACH but shall have no liability if such cancellation is not effected.

### **III. Liability and Indemnification**

- 3.0 To the extent that IC's ability to provide the equipment, facilities or personnel is delayed, reduced, or interrupted by an event beyond IC's control including, but not limited to, acts of God, public enemy, inclement weather, interruption of communications systems for any reason, physical damage to IC's premises, labor disputes, orders or directives of any governmental or quasi-governmental authority, IC shall not be required to perform its obligations under this Agreement or be liable to Processor, Company or Company's Transactee's for any failure to perform.
- 3.1 PROCESSOR, TPA, AND COMPANY AGREE TO INDEMNIFY AND HOLD IC HARMLESS FROM ANY AND ALL CLAIMS OF ANY CORPORATION, ENTITY, PERSONS, OR INDIVIDUAL WHATSOEVER ARISING OUT OF IC'S PROCESSING ACTIVITIES FOR COMPANY OR COMPANY'S EMPLOYEE'S/CUSTOMER UNDER THE TERMS OF THIS AGREEMENT OR OTHERWISE. SUCH CLAIMS MAY INCLUDE, BUT ARE NOT LIMITED TO, CLAIMS REGARDING AUTHORIZATION OF A TRANSFER, TAXING AUTHORITIES WHOSE CREDITS MAY HAVE BEEN REVERSED OR BANKS WHO MAY HAVE SUFFERED DAMAGE OR LOSS BECAUSE OF INSUFFICIENT FUNDS OF COMPANY, TRANSACTEE, OR TPA. PROCESSOR, TPA, AND COMPANY UNDERSTAND AND AGREE THAT IC HAS NO DIRECT FINANCIAL INTEREST IN THE DEBITS AND CREDITS PROVIDED PURSUANT TO THIS AGREEMENT AND IC IS ONLY PROVIDING A SERVICE TO PROCESSOR, TPA, COMPANY AND COMPANY'S TRANSACTEE'S FOR A FEE AND IS NOT A GUARANTOR OF FUNDS FOR SERVICES PERFORMED. ALL RISK OF LOSS AND LIABILITY TO ANY PERSON OR ORGANIZATION ARISING OUT OF THE SERVICES FURNISHED HEREUNDER SHALL BE THAT OF PROCESSOR, TPA AND COMPANY. PROCESSOR, COMPANY AND/OR TPA AGREE TO REFUND ANY ERRONEOUS TRANSFERS AUTHORIZED BY PROCESSOR OR COMPANY, TO IC, BUT WILL IN ANY EVENT HOLD IC HARMLESS AND PAY TO IC AND HEREBY AUTHORIZE IC TO TRANSFER FROM PROCESSOR, TPA AND/OR COMPANY'S ACCOUNTS ALL LOSSES THAT IC HAS INCURRED BECAUSE OF SAID ERRONEOUS TRANSFERS.
- 3.2 Processor, TPA and Company shall have no right to cancel or amend any entry after its receipt by IC. At Processor's request, IC shall use reasonable efforts to cancel or amend an entry prior to transmittal to the ACH but shall have no liability if such cancellation is not affected.
- 3.3 IC is not responsible for the actions of Processor, TPA and Company, or others with respect to the amount, accuracy, timeliness of transmittals or authorization of entries received from Processor. The acts of any other person or organization including, without limitation, banks or other financial institutions, or transmissions facilities, shall not be deemed the acts of IC. Processor, TPA and Company shall hold IC harmless from any transfers IC makes upon the direction of Processor when such direction is without proper authority and/or in error.
- 3.4 IC's liability to Processor, TPA and Company or any other person shall in no event exceed the charges made by IC for the effected transaction. In no event shall IC be liable for consequential, special or punitive damages or loss of profits.
- 3.5 **Confidentiality:** Each party hereto acknowledges and agrees that it may obtain certain confidential information from the other in the course hereof. Such information includes, but is not limited to, pricing and technical information, operating procedures, and other information pertaining to the business and customers of each party ("Confidential Information"). Such Confidential Information does not include: (a) information that is publicly available; (b) information received from a third party not in violation of any confidentiality obligation; (c) information already known by the receiving party at the time of the disclosure; and (d) independently developed information. Each party agrees: (i) to maintain the confidentiality of the other's Confidential Information, using efforts no less protective than such party uses in the protection of its own information; (ii) not to disclose such information to any third party, except

- 4 auditors and regulators, or as otherwise required by law; (iii) not to use such information for any purpose whatsoever other than its performance hereunder; and (iv) to return all Confidential Information to the other party upon request. The parties stipulate and agree that it is not confidential information regarding whether Processor, TPA, Company, or Company's Transactee, transfer of funds through IC has been returned, reversed, alleged unauthorized, or otherwise contested.
- 3.6 **Relationship of Parties:** The parties hereunder intend that their relationship to be that of independent contractors. In no event shall either party be deemed an agent, employee, partner or joint venturer of the other or have the power or authority to bind the other in any way. Nothing herein shall be construed to grant Processor, TPA, Company, Company's Transactee's, or any other person any right title, interest or license in or to IC's name, trademarks, or other proprietary information, and Processor, TPA, Company, Company's Transactee shall not use such name, trademarks or information without IC's prior written consent.
- 3.7 **Third Parties:** This Agreement is solely for the benefit of the undersigned and may not be relied upon or enforced by any third party.

#### **IV. Fees**

- 4.0 IC may charge Processor for all services rendered, the fees as set forth in attached Schedule "A". Processor agrees that late fees, which may be modified by IC at any time, may be charged from time to time upon IC providing Processor with five (5) days prior notice regarding any late fee charge.
- 4.1 Processor and/or TPA authorizes IC to electronically collect all fees due it by appropriate entries five (5) business days after billing to Processor and/or TPA. Processor and/or TPA authorizes IC to debit/credit Processor's and/or TPA's bank account as stated in section 5.11 below.
- 4.2 In case of a return item, or other costs, expenses, or losses, that IC may incur in processing items for Processor, Company and/or TPA, the Processor, Company and/or TPA agree that IC may submit the item for payment and Processor, Company, and/or TPA will be charged including a late fee as provided herewithin and/or later supplemented. If further collection attempts are required, all IC's costs, expenses, losses, and collections costs, including attorney's fees where permitted by law will be charged to Processor, TPA, and/or Company and all amounts will be transferred from Processor, TPA and/or Company's account to reimburse IC for all losses.
- 4.3 IC is not responsible for Processor's, TPA's, Company's, Company's Transactee's or others' actions or inactions with respect to the amount, accuracy, timeliness of transmittals or authorization of transmittals received from Processor. The acts of any other person or organization including, without limitation, banks or other financial institutions, or transmissions facilities, shall not be deemed the acts of IC.
- 4.4 IC's liability to Processor, TPA, Company or Company's Transactee or any other person shall in no event exceed the charges made by IC for the effected transaction. In no event shall IC be liable for consequential, special or punitive damages or loss of profits of Processor, TPA, Company or Company's Transactee's or any other person.
- 4.5 Processor, TPA and Company understand that any interest that may accrue on all funds transferred to IC's settlement account is the property of IC.

#### **V. Miscellaneous**

- 5.0 TPA warrants and represents that it has fully complied with all rules, regulations and laws regarding cafeteria plans/flexible benefit plans/ERISA plans and that it is fully compliant with said laws. TPA further stipulates and agrees that it has provided Processor, Company, and Company's Transactee with a toll-free telephone number, name, address, and contact person should any dispute or claim arise. TPA has



further advised Company's Transactees that if their dispute remains unsatisfied, they may contact IC and TPA has provided said Company Transactees with IC's name, address, and toll free telephone number. TPA stipulates and agrees that it is responsible and liable for any failure to have any preauthorization of the transfers as contemplated hereunder. TPA further stipulates and agrees that TPA is responsible for the administration of any flexible benefit plan/cafeteria plan/ERISA plans compliance and taxation laws, rules and regulations regarding the same and that IC is only providing electronic means to transfer funds and nothing more.

- 5.1 **Entire Agreement:** This Agreement and the Company Authorization Agreement, Authorization For Debit and Credit Electronic Funds Transfers, and if applicable, Independent Sales Organization Agreement constitutes the entire Agreement between the parties and correctly describes the parties mutual understanding of this Agreement. Any and all oral or written agreements, representations or understandings between the parties entered into or made prior to or made contemporaneously with the effective date of this Agreement have been incorporated into this Agreement or were revoked, released or terminated before the effective date of this Agreement. No modifications, deletions, additions, nor amendments to this Agreement shall be binding on IC unless the same are reduced to writing and the writing is signed by IC. All of the terms of this Agreement are subject to the approval of IC and unless IC has executed this Agreement, such approval has neither been obtained nor granted.
- 5.2 **Document Execution:** The parties to this Agreement agree to execute whatever documents that are reasonably necessary to carry out the terms and effect of this Agreement.
- 5.3 **Governing Law:** This Agreement shall be governed by the laws of the State of North Dakota; NACHA; and applicable Federal law including, but not limited to, regulations of the Board of Governors of the Federal Reserve System and operating circulars of the Federal Reserve System Banks; Electronic Funds Transfer Act of 1978 and amendments; North Dakota's adoption of Uniform Commercial Code – Funds Transfer Act; North Dakota Century Code Section 41-04.1; Foreign Assets Control Regulations, and any and all other applicable laws, rules and regulations. Parties to this agreement also stipulate and agree disputes regarding this Agreement shall be venued and filed and are subject to the exclusive jurisdiction of the United States Federal District Court, for the Southeast Division of the State of North Dakota, Fargo, North Dakota or the District Court for Cass County, Fargo, North Dakota.
- 5.4 **Default and Remedies:**
- a. Processor and TPA: Any failure by the Processor, TPA, and/or Company to observe any term or condition of this Agreement, to provide IC with honored funds, or otherwise, shall allow IC to immediately terminate this Agreement and fax notice of such termination of Agreement to Processor and/or TPA. IC shall provide Processor and/or TPA with notice of termination either by telephone or fax followed up by written correspondence to be issued within ten (10) days of the date thereof.
  - b. IC: In the event that IC fails to comply with any term or condition of this Agreement, Processor may terminate this Agreement upon five (5) days written notice faxed to IC with the five (5) days notice of termination of Agreement commencing upon IC's actual receipt of the notice of termination.
- 5.5 **Non-Default Termination of Agreement:** Any time while this Agreement is in effect during which time neither party is in breach of this Agreement, any party to this Agreement may terminate this Agreement upon fifteen (15) days notice of termination to be faxed to either party and followed up by written correspondence. Upon termination of this Agreement, Processor's, and/or TPA's representations, obligations and duties shall survive termination of this Agreement and Processor shall still indemnify and hold IC harmless and shall be liable to IC for all sums of monies due and payable hereunder to IC.
- 5.6 **Term of this Agreement:** The term of the Agreement will be for five (5) years from the date of this Agreement or unless this Agreement is subsequently supplemented or replaced. This Agreement will automatically renew for subsequent successive periods of one (1) year each thereafter, unless either party provides the other party written notice of termination fifteen (15) days prior to the end of any succeeding term of this Agreement, or this Agreement is later supplemented.

5.7 **Electronic Funds Transfer (15 U.S.C. § 1693):** Processor acknowledges that it has been fully advised by its financial institutions and represents and warrants that all of the parties having funds, pursuant to this Agreement, debited and/or credited to or from the financial accounts, are fully advised of and aware of their rights and remedies pursuant to the Electronic Funds Transfer Act found at 15 U.S.C. § 1693, et al., including, but not limited to the right to receive documentation, right to stop payment, or pre-authorized transfers, charges for electronic funds transfers for the right to make such transfers and that Processor is in full compliance with such act. Moreover, Processor and Company have installed a system whereby Company or Company's Transactees may contact Processor and/or Company via toll

free telephone number, e-mail address, and a physical address whereby Company and/or Company transactee may contact a person and seek resolution of any dispute. Moreover, in the event that Company and/or Company's Transactee are unable to resolve any dispute or unable to contact Processor and/or Company to resolve a dispute, Processor and Company acknowledge that they provided Company and/or Company's Transactee with the name, address, and telephone number of IC.

5.8 **Authorization:** Processor, TPA, and Company represent that all debit and credit entries have been pre-authorized and that an authorization agreement is of record. In the event that no authorization agreement is of record, Processor, TPA and Company shall bear the risk of loss for failure to have any authorization agreement of record and hereby indemnify and hold IC harmless for such failure.

5.9 **Apparent Authority:** Processor and TPA stipulate that any action that IC takes hereunder is pursuant to apparent authority of Processor, TPA, its agents, assigns, officers, directors, employees. In the event that Processor's and/or TPA's agent, assigns, officers, directors, employees do not have the authority to request the transfer of funds by IC, Processor, TPA and Company hereby hold IC harmless from such actions and/or inactions and agree to indemnify IC.

5.10 **Limitation of Action:** Processor, TPA, Company or Company's Transactee will have 60 days from the transaction date to notify IC, in writing, of any discrepancies or errors with a transaction processed through IC. This 60 day limitation of rights includes, but is not limited to errors in amounts, erroneous transactions, alleged revocation of authority, and all other transactions processed by IC. The Processor and/or TPA must notify IC telephonically and in writing of the alleged error and include the following information:

- a. Processor's and/or TPA's name, address and contact;
- b. Company transaction processed under permission with Company's Fed Tax ID Number;
- c. The name, account number and ABA number of the transaction in question;
- d. The dollar amount of the transaction in question; and
- e. Description of error and explanation of error.

IC will inform Processor, TPA and/or Company of the results of its investigation within 30 days and will correct any error promptly. If IC needs more time to conduct an investigation, IC may take up to 45 days to investigate the complaint. For transfers initiated outside the United States or transfers resulting from point of sale or debit/access cards, the time periods for resolving errors will be 45 days and 90 days respectively.

5.11 **Account Authorization:** Processor and/or TPA authorize IC to initiate electronic debit and/or credit entries to and from the bank account disclosed below. Processor and/or TPA understand that adjustment entries may be made to this account to insure an accurate and balanced accounting of all transactions. This authorization will remain in effect until Processor and/or TPA cancels authorization in writing.

Bank Account

Bank Name \_\_\_\_\_

Bank Routing Number (nine digits) \_\_\_\_\_

Bank Account Number \_\_\_\_\_

Account Type (checking or savings) \_\_\_\_\_

Bank's Telephone Number \_\_\_\_\_

- 5.12 **Processor Financial Reporting.** Processor agrees to provide IC within 30 days of demand, updated financial information regarding Processor including but not limited to Processor's most recent and current balance sheet, income statement, and, if requested, tax return.
- 5.13 **Change in Ownership:** Processor agrees to provide IC with notice of any change in ownership at least 10 days prior to change of ownership. Processor shall provide IC with all information regarding change of ownership. If Processor is not a publicly held corporation, Processor will provide IC with names, addresses, dates of birth, social security numbers and financial information of all owners of Processor. If Processor is a publicly held corporation, Processor shall provide IC with name, address and information regarding corporate entity acquiring stock or assets of Processor. If change in ownership results in the creation of a new entity, Processor shall provide IC with all information regarding new entity and Processor's certificate of authority to transact business, taxpayer identification and related information.

## **VI. ACH Security Procedures**

- 6.0 **Authorized Representative:** The Processor/Company agrees to designate Authorized Representatives to act on the Processor's/Company's behalf, which shall have the authority to authorize all actions necessary in the preparation and generation of the Processor's/Company's entries. The Processor/Company agrees that IC shall not be under a duty to inquire as to the authority or propriety of any instructions given to IC by the Processor/Company or any of the Processor's/Company's Authorized Representatives and IC shall be entitled to rely upon all ACH instructions conveyed to IC.

IC shall be entitled to act upon the instructions of any person whom is the Processor's/Company's Authorized Representative, whether or not the Processor/Company has authorized such instructions. IC shall not be liable for any loss, cost, expense or other liability arising out of any such instructions.

- 6.1 **Compliance With OFAC:** The Processor/Company further agrees to be in compliance with the Office of Foreign Assets Control Department (OFAC) including verification that Processor/Company shall not transact business with individuals appearing on the OFAC specifically designated individuals and corporate entities/nationals and blocked persons list (SDN), Cuban and North Korean citizens, individuals currently residing in Cuba or North Korea, companies located in North Korea or Cuba, and governmental entities or officials of Libya, Iraq, North Korea, Cuba, Sudan, Serbia, and the Federal Republic of Yugoslavia.
- 6.2 **Passwords:** The Processor/Company agrees that IC may send notices and other communications, including IDs, USER IDs, AND PASSWORD(S) to the current address shown in IC's records, whether or not that address includes a designation for delivery to the attention of any particular individual. The Processor/Company further agrees that IC will not be responsible or liable to the Processor/Company in any way if information is intercepted by an unauthorized person, either in TRANSIT or at the Processor's/Company's place of business unless the interception was caused by IC's breach of reasonable security measures under the circumstances. The Processor/Company agrees to: (1) keep



the Processor's/Company's PASSWORD(S) secure and strictly confidential, providing it only to Authorized Representatives on the Processor's/Company's account(s); (2) instruct each person to whom the Processor/Company gives PASSWORD(S) that he or she is not to disclose it to any unauthorized person; and (3) immediately notify IC to get a new PASSWORD assigned if the Processor/Company believes a PASSWORD may have become known to an unauthorized person.

IC WILL HAVE NO LIABILITY TO THE PROCESSOR/COMPANY FOR ANY UNAUTHORIZED PAYMENT OR TRANSFER MADE USING THE PROCESSOR'S/COMPANY'S PASSWORDS THAT OCCUR BEFORE THE COMPANY HAS NOTIFIED IC OF POSSIBLE UNAUTHORIZED USE AND IC HAS HAD A REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE WITHIN A REASONABLE TIME. IC may suspend or cancel the Processor's/Company's PASSWORD(S) even without receiving such notice from the Processor/Company if IC suspects a PASSWORD is being used in an unauthorized or fraudulent manner.

PROCESSOR

INTERCEPT CORPORATION

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal Tax ID Number

TPA (If Applicable)

\_\_\_\_\_  
Signature of Authorized Agent

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Federal Tax ID Number

Rev. 05/2008

