



**Palm Beach Capital Partners**  
**Independent Sales Organization Agreement**

This Independent Sales Organization Agreement ("Agreement") is made effective as of the date on the signature page hereto, by and between Palm Beach Capital Partners, a New York limited liability company, (PBCP) and the entity and/ or individual whose name and address are set forth below on the signature page for this Agreement (the "Independent Sales Organization").

**Recitals**

WHEREAS, PBCP through its subsidiaries and/or affiliates is in the business of purchasing from merchants ("Merchants) percentages of future credit card, debit card, bank card and/or other charge card receivables and ordinary course of business receivables (collectively "Receipts") due and to be payable to the Merchants (the "PBCP Program"); and

WHEREAS, the PBCP Program permits Merchants to sell to PBCP or its subsidiaries an agreed upon portion of the Merchants' future Receipts at a discount; and

WHEREAS, Independent Sales Organization wishes to promote the PBCP Program, assist with its implementation and refer potential Merchants to PBCP that may wish to participate in the PBCP Program, all subject to the terms hereof; and

WHEREAS, PBCP wishes to engage Independent Sales Organization to assist in marketing and referring to PBCP or its subsidiaries Merchants that may wish to participate in the PBCP program.

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

**Agreement**

**SECTION ONE**

**1.1. Appointment-**

Subject to the terms and conditions of this Agreement, PBCP hereby appoints Independent Sales Organization as a non-exclusive marketer of the PBCP Program. In connection with such appointment, PBCP grants Independent Sales Organization a non-exclusive and non-transferable right to market, solicit and assist interested Merchants in completing and submitting applications to PBCP. Independent Sales Organization shall identify prospective Merchants that meet PBCP's criteria as set forth in this Agreement and PBCP's general policies and procedures. Independent Sales Organization will obtain all information and documentation required by PBCP. Independent Sales Organization shall promptly provide PBCP with the current address of each of its offices and the offices of its agents.



### 1.2. IC Agents-

Independent Sales Organization may engage independent agents ("IC Agents") to perform Independent Sales Organization services under this Agreement. All such IC Agents must meet the same criteria and requirements of the Independent Sales Organization under this Agreement. Any IC Agent shall be bound to all the same limitations and be subject to the same obligations as the Independent Sales Organization under this Agreement. The IC Agents shall have no independent relationship with PBCP. All compensation payments, taxes, fees or other obligations arising from the IC Agents shall be the sole responsibility of Independent Sales Organization. Independent Sales Organization shall remain responsible for all conduct of the IC Agents including any violation of this Agreement by an IC Agent. Independent Sales Organization may not assign any of its rights under this Agreement, including any right to payment to an IC Agent.

### 1.3. Approval of Merchants-

Independent Sales Organization acknowledges that all Merchants' participation in the PBCP Program are subject to PBCP's approval which may be withheld in PBCP's sole

and absolute discretion. Merchants will be able to participate in the PBCP Program effective only upon such approval. Therefore, Independent Sales Organization will not make any promise to or create any impression with a prospective Merchant that it will be approved prior to review and written approval by PBCP. Further, Independent Sales Organization acknowledges that all aspects of the PBCP Program are subject to the management and approval of PBCP and Independent Sales Organization shall make no representations to the contrary.

### 1.4. PBCP Program Agreement-

PBCP or Independent Sales Organization will provide Merchant an Online or written application and/or agreement that will govern the relationship between the Merchants and PBCP in regard to the PBCP Program ("Merchant Agreement"). Independent Sales Organization shall use only the form of Merchant Agreement that has been approved and provided by PBCP. Independent Sales Organization shall not make any changes or modifications to any Merchant Agreement without the prior written consent of PBCP reserves the right to amend or change in any manner without the approval of or notice to the Independent Sales Organization the terms of the Program or the Merchant Agreement, including changes to fees due from Merchants.

### 1.5. Acceptable Merchants.

Independent Sales Organization shall market the PBCP Program only to bona fide and lawful businesses and in accordance with PBCP's policies, procedures and standards and this Agreement. Independent Sales Organization shall promptly notify PBCP in writing of any adverse information that Independent Sales Organization receives, or becomes aware of, relating to a Merchant, including information regarding a Merchant's financial condition or any other information relating to Merchant that would have a material effect on Merchant's ability to conform to the terms of its agreements or meet PBCP's underwriting requirements or comply with the Merchant Agreement.

### 1.6. Independent Contractor-

The relationship of PBCP and Independent Sales Organization is that of independent contractor engaged in the operation of their own respective businesses. Neither Independent Sales Organization nor Independent Sales Organization's IC Agents, employees, consultants, contractors or agents are agents, employees, partners or joint venturers of PBCP, nor do they have any authority to bind PBCP by contract or otherwise to any obligation. They will at no time make any representation to the contrary; either expressly, implicitly, by appearance or otherwise.



#### 1.7. Independent Sales Organization Covenants-

(a) Independent Sales Organization will and will cause its IC Agents to: (i) conduct its business in a manner that reflects favorably at all times on the PBCP Program and the good name, good will and reputation of PBCP;(ii) avoid deceptive, misleading or unethical practices that are or might be detrimental to PBCP, the PBCP Program, Merchants or the public;(iii) make no false or misleading representations with regard to PBCP or the PBCP Program; (iv) not publish or employ, or cooperate in the publication or employment of, any misleading or deceptive advertising material with regard to PBCP or the PBCP Program; and (v) make no representation, warranties or guarantees to Merchants with respect to the specifications, features or capabilities of the PBCP Program that are inconsistent with the terms and conditions of the PBCP Program.

(b) Under no circumstances shall Independent Sales Organization hold out that it has any right to accept or decline a Merchant application for a Merchant Agreement nor shall it hold out or represent to any person that it has the right to: (i) modify in any way or accept any Merchant Agreement; (ii) include a Merchant in the Program; or (iii) bind PBCP legally or otherwise. No agreement made by or through Independent Sales Organization, any IC Agent or their affiliates shall be legally or otherwise binding on PBCP until accepted in writing by a duly authorized officer of PBCP. Independent Sales Organization shall be solely responsible for any and all expenses incurred by Independent Sales Organization in performance of services hereunder including, but not limited to, expenses related to any Independent Sales Organization, employees, agents and consultants.

(c) Independent Sales Organization and its IC Agents, employees, consultants, contractors or agents shall inform all Merchants of its status as an Independent Sales Organization and inability to bind PBCP in any manner.

## SECTION TWO

2.1 Ownership of Merchant Agreements and the Merchant Program- Independent Sales Organization acknowledges and agrees that it will have no equity interest, ownership, or other rights in any Merchant Agreement or in the PBCP Program. Independent Sales Organization acknowledges and agrees that all Merchant Agreements, Merchant records, documentation, and the information contained therein are the property of and are owned by PBCP.

## SECTION THREE

### **3.1 Fees.**

3.1.1 During any period of time in which this Agreement remains in full force and effect, compensation to Independent Sales Organization will be paid as per the schedule A.

3.1.2 Compensation shall be paid in respect of each Merchant referred to PBCP by Independent Sales Organization only, and with which Merchant has entered into a Merchant Agreement in a form prescribed by PBCP as a direct result of the referral by Independent Sales Organization. Payments shall be disbursed seven (7) business days following receipt by PBCP of payment from or on behalf of Merchant.



3.1.3 If a Merchant is referred to PBCP by Independent Sales Organization the Independent Sales Organization shall have an exclusive right to the Merchant for 7 calendar days., If the Merchant does not execute a Merchant Agreement with PBCP within 14 calendar days of such referral, then the Independent Sales Organization forfeits its rights to be compensated in connection with that Merchant if another Independent Sales Organization submits an application for the Merchant.

3.1.4 If the Independent Sales Organization does not cause the Merchant to execute the Merchant Agreement with PBCP within 7 days of a referral, the Independent Sales Organization forfeits its right to be compensated in connection with that Merchant. The Independent Sales Organization may resubmit the referral if the Merchant has not executed a Merchant Agreement with PBCP may at its sole discretion reject any resubmission of a referral.

3.1.5 If a Merchant referred by Independent Sales Organization defaults under its Merchant Agreement within the first 30 calendar days after funding, the Independent Sales Organization shall immediately return to PBCP the One-Time Lump Sum Compensation (as defined in Schedule A) paid to Independent Sales Organization with respect to such Merchant (and, if Independent Sales Organization fails to do so, then without limiting Independent Sales Organizations obligation to represent such amounts or any other rights of PBCP may set off the amount of such One-Time Lump Sum Compensation against other amounts due to Independent Sales Organization hereunder or any other agreement). In the event that a Merchant terminates or is in default of its obligations under a Merchant Agreement, no Ongoing Compensation shall be paid in respect of such Merchant.

3.1.6 Independent Sales Organization shall have thirty (30) days from the receipt of any compensation to notify PBCP in writing of any errors in payment of compensation. If Independent Sales Organization does not notify PBCP within the thirty (30) day time period, Independent Sales Organization shall be deemed to have accepted without question such compensation payment and may not in the future contest the amount it was paid or seek reimbursement for any discrepancies. Upon receipt of written notice, PBCP shall have thirty (30) days to correct any errors.

3.1.7 Independent Sales Organization is entitled to charge additional fees to a Merchant provided that any and all such additional fees (a) are disclosed to such Merchant and (b) do not exceed five percent (5%) of the purchase price on the individual Merchant Agreement. In the event that the Independent Sales Organization charges more than 5% of the purchase price PBCP shall have the right to withhold the full compensation payment for that deal.

3.2 Refinance Payments. Independent Sales Organization shall be entitled to Compensation in accordance with Section 3.1 if (a) Merchant referred by Independent Sales Organization enters into a new Merchant Agreement within thirty (30) days of the completion of its previous Merchant Agreement

(b) Merchant referred by Independent Sales Organization enters into a new Merchant Agreement prior to the completion of the current Merchant Agreement.

3.3 Offset Rights, Security Interests. PBCP shall have the right of offset against any funds credited to or owing from PBCP to Independent Sales Organization for any obligation of Independent Sales Organization to PBCP, including, without limitation, obligations of Independent Sales Organization under this Agreement. This right of offset may be exercised by PBCP at any time and without notice to Independent Sales Organization whether or not the obligations of Independent Sales Organization to PBCP are then



due. In the event Independent Sales Organization has been paid fees in connection with which, for any reason, a payment made to PBCP is refunded, returned, offset, or deemed refunded, returned or offset and in connection with Merchant has received compensation, then such compensation must be promptly returned to PBCP.

#### SECTION FOUR

##### 4.1 Term

The initial term of this Agreement shall be for a period of one (1) year, commencing on the date first set forth below on the Signature Page unless terminated earlier pursuant to the terms set forth below. This Agreement shall thereafter be automatically renewed for additional terms of one (1) year each unless either party notifies the other no later than thirty (30) days prior to the end of the current term that it does not wish to renew this Agreement.

##### 4.2 Termination.

(a) PBCP shall have the right to terminate this Agreement at any time for Cause, which termination shall be effective immediately.

For purposes of this Agreement, "Cause" means (i) an intentional act of fraud, embezzlement, theft or any other material violation of law, including, without limitation, the indictment, arrest or conviction in a court of law for, or the entering of a plea of guilty or no contest to, a felony or any crime involving moral turpitude, fraud, dishonesty or theft or engaging in any act which is a violation of any law or regulation protecting the rights of persons against discrimination or harassment, in each case, that occurs during or in the course of the Independent Sales Organization's term of service with PBCP or its subsidiaries

(b) PBCP shall have the right to terminate this Agreement at any time without Cause upon 10 days' notice. Any commissions resulting from Merchant Applications submitted by Independent Sales Organization to PBCP prior to such termination shall be payable to Independent Sales Organization in accordance with Section 3.1.

##### 4.3 Termination for Default-

PBCP shall have the right to terminate this Agreement at any time if Independent Sales Organization breaches any of the provisions of this Agreement, or if as determined by PBCP, Independent Sales Organization causes a detrimental effect to the Program, PBCP or any of its affiliates, other programs, officers, or employees or a Merchant.

##### 4.4 Termination for Failure to Comply-

PBCP may immediately terminate this Agreement for any material default knowingly or intentionally caused by Independent Sales Organization with respect to its obligations to comply with PBCP policies or rules in

effect from time to time in PBCP's sole discretion and determination. PBCP may, at its sole discretion, effect such termination upon delivery of written notice to Independent Sales Organization without regard to any provisions for cure of default.

##### 4.5 Termination for Regulatory Reasons.

If Visa, Master Card, any other credit or debit card payment processing services, or any federal, state or other type of regulatory agency or officer having jurisdiction over the subject matter of this Agreement makes a demand that PBCP discontinue or substantially modify any of the PBCP Program, either party in its sole discretion may terminate this Agreement upon written notice to the other, in which case neither party shall be deemed to be in default by reason of



such termination. If Independent Sales Organization or any IC Agent, employee or agent of the Independent Sales Organization breaches any federal, state or municipal law or regulation relating to the subject matter of this Agreement, PBCP may terminate this Agreement with immediate effect upon written notice to Independent Sales Organization.

4.6 Compensation to Independent Sales Organization Following Termination. Unless this Agreement is terminated pursuant to Sections 4.2(a), 4.3, 4.4, or 4.5, PBCP agrees to make payments to Independent Sales Organization as set forth in this Agreement for any Merchant obtained by PBCP through Independent Sales Organization's performance of this Agreement on any funding to such Merchant that occurred on or prior to the termination date of this Agreement, on the same terms that Independent Sales Organization would have received compensation had this Agreement not been terminated or expired, including, without limitation, any clawback provision.

4.7 Termination of Compensation. If this Agreement is terminated by PBCP pursuant to Sections 4.2(a), 4.3, 4.4, or 4.5 or Independent Sales Organization breaches any of the representations or warranties herein, PBCP shall have no further obligations for payment of any compensation to Independent Sales Organization under this Agreement after the date of termination.

## SECTION FIVE

5.1 Confidential Information- Independent Sales Organization acknowledges that in its performance of its duties hereunder PBCP may communicate to Independent Sales Organization (or its designers) certain confidential and proprietary information, including without limitation information concerning PBCP or the PBCP Program and the know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information") all of which are confidential and proprietary to, and trade secrets of, the disclosing party. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by PBCP; (ii) becomes public knowledge or known to the Independent Sales Organization after disclosure by PBCP other than by breach of the Independent Sales Organization's obligations under this section or by breach of a third party's confidentiality obligations; (iii) was known by the Independent Sales Organization prior to disclosure by the PBCP other than by breach of a third party's confidentiality obligations; or (iv) is independently developed by the Independent Sales Organization without the use of any Confidential Information. As a condition to the receipt of the Confidential Information from PBCP, the Independent Sales Organization shall: (i) not disclose in any manner, directly or indirectly, to any third party any portion of the PBCP's Confidential Information; (ii) not use the disclosing party's Confidential Information in any fashion except to perform its duties hereunder or with PBCP's express prior written consent; (iii) disclose the Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the Independent Sales Organization's internal business purposes; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure. The Independent Sales Organization shall promptly notify PBCP of any unauthorized disclosure or use of



the Confidential Information. The Independent Sales Organization shall cooperate and assist PBCP in preventing or remedying any such unauthorized use or disclosure. Confidential information shall specifically include the form and substance of this Agreement and any agreement with a Merchant

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

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

5.4 Limitation of Liability- PBCP SHALL NOT BE LIABLE TO THE INDEPENDENT SALES ORGANIZATION, NOR TO ANY OTHER THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PBCP PROGRAM, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS; OR LABOR CLAIMS) UNLESS SUCH CLAIM ARISES FROM GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT ON BY PBCP.

5.5 Representations and Warranties. Independent Sales Organization represents and warrants to PBCP as follows:

(a) Independent Sales Organization has the full capacity, power and authority to execute, deliver and perform this Agreement. This Agreement is valid, binding and enforceable against Independent Sales Organization in accordance with its terms and no provision requiring Independent Sales Organization's performance is in conflict with Independent Sales Organization's obligations under any charter or any





other agreement (of whatever form or subject) to which Independent Sales Organization is a party or by which it is bound.

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

(c) Except as otherwise disclosed in writing by Independent Sales Organization to PBCP on or before the effectiveness of this Agreement, neither Independent Sales Organization nor any principal of Independent Sales Organization has in the ten years preceding the date of this Agreement been subject

to any (i) criminal conviction (including a plea of nolo contendere, but excluding traffic misdemeanors or other petty offenses); (ii) bankruptcy filings; (iii) Internal Revenue Service liens; (iv) federal or state regulatory administrative or enforcement proceedings; or (v) restraining order, decree, injunction or judgment in any proceeding or lawsuit alleging fraud or deceptive practices.

5.7 Non-Solicitation of Merchants. Without PBCP's prior written consent (which consent may be withheld in LE's sole and absolute discretion), Independent Sales Organization shall not knowingly cause or permit any of their IC Agents, employees, agents, principals, affiliates, subsidiaries or any other person or entity (i) to solicit or provide services that compete with the PBCP Program to any Merchant that has been accepted by PBCP; (ii) to solicit or otherwise cause any Merchant that has been accepted by PBCP to terminate its participation in any of the PBCP Program; or (iii) to solicit or market services to any Merchant that is already directly or indirectly provided any of the PBCP Program by PBCP, whether or not such are provided under the terms of this Agreement. This section shall apply during the term of this Agreement and for two (2) years after any termination, cancellation or expiration of this Agreement. Independent Sales Organization will remain responsible for resulting damages from such prohibited solicitation.

#### 5.8 Non-Solicitation.

(a) During the period that this Agreement is in effect and for the two (2) year period immediately following termination of this Agreement, Independent Sales Organization shall not directly or indirectly through another entity (i) induce or attempt to induce any employee of, or consultant to, PBCP or its subsidiaries to leave the employ of, or consultancy to, PBCP or its subsidiaries, or in any way interfere with the relationship between PBCP or its subsidiaries and any employee or consultant thereof, (ii) hire any person who was an employee of, or consultant to, PBCP or its subsidiaries at any time during the twelve- month period immediately prior to the date on which such hiring would take place without the written consent of a PBCP officer (it being conclusively presumed by the parties so as to avoid any disputes under this section that any such hiring within such twelve-month period is in violation of clause (i) above); (iii) call on, solicit or service any customer, referral partner, affiliate, agent, supplier, licensee, licensor, consultant, contractor or other business relation of PBCP or its respective subsidiaries in order to induce or attempt to induce such person to cease doing business with ACF or its subsidiaries, or in any way interfere with the relationship between any such customer, referral partner, affiliate, agent, supplier, licensee, licensor, consultant, contractor or other business relation and or its





subsidiaries (including, without limitation, making any negative statements or communications about PBCP or its subsidiaries); or (iv) call on, solicit, or take away or attempt to call on, solicit, or take away any of PBCP's customers referral partners, affiliates, agents and vendors on whom Independent Sales Organization called or with whom Independent Sales Organization became acquainted during its contractual relationship with PBCP, either on its behalf or that of other person, firm, or corporation or any Merchant.

(b) If, at the time of enforcement of the covenants contained in this section above (the "Protective Covenants"), a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties hereto agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area and that the court shall be allowed to revise the Protective Covenants to cover the maximum duration, scope and area permitted by law. Independent Sales Organization agrees that the Protective Covenants are reasonable in terms of duration, scope and area restrictions and are necessary to protect the goodwill of

businesses and agrees not to challenge the validity or enforceability of the Protective Covenants.

5.9 Intellectual Property. "Intellectual Property" means all of the following owned by a party: (i) trademarks and service marks (registered and unregistered) and trade names, and goodwill associated therewith; (ii) patents, patentable inventions, computer programs, and software; (iii) databases; (iv) trade secrets and the right to limit the use or disclosure thereof; (v) copyrights in all works, including software programs; and (vi) domain names. The rights owned by a party in its Intellectual Property shall be defined, collectively, as "Intellectual Property Rights." Other than the express licenses granted by this Agreement, PBCP grants no right or license to Independent Sales Organization by implication, estoppel or otherwise to the Program or any Intellectual Property Rights of PBCP. Each party shall retain all ownership rights, title, and interest in and to its own products and services (including in the case of PBCP, in the PBCP Program) and all intellectual property rights therein, subject only to the rights and licenses specifically granted herein. PBCP (and not Independent Sales Organization) shall have the sole right, but not the obligation, to pursue copyright and patent protection, in its sole discretion, for the PBCP Program and any Intellectual Property Rights incorporated therein. Independent Sales Organization will cooperate with PBCP in pursuing such protection, including without limitation executing and delivering to PBCP such instruments as may be required to register or perfect PBCP 's interests in any Intellectual Property Rights and any assignments thereof. Independent Sales Organization shall not remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received from

in connection with this Agreement.

## SECTION SIX

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



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

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

6.4 **Assignment-** Independent Sales Organization shall not assign, delegate, subcontract, license, franchise, or in any manner attempt to extend to any third party any right or obligation under this Agreement except as otherwise permitted herein without the prior written consent of PBCP including an assignment by virtue of the sale of all or substantially all of its assets or equity. PBCP may assign its rights and obligations hereunder without notice to Independent Sales Organization.

6.5 **Amendments-** No provision of this Agreement may be amended, modified or waived except by a written agreement signed by both parties.

6.6 **Notices-** All notices and other communications required or permitted under this Agreement shall be in writing and given by personal delivery, internationally recognized overnight carrier, registered or certified mail (postage prepaid with return receipt requested) sent to the addresses set forth herein. Such notice or other communications shall be deemed received (i) on the date delivered, if delivered personally, (ii) on the business day after being sent by an internationally recognized overnight air carrier, or (iii) five (5) days after being sent if sent by first class registered mail, return receipt requested. If to Independent Sales Organization or Guarantor:

Email to the Email address as set forth below on the signature page of this Agreement.

If to [submissions@palmbeachcp.com](mailto:submissions@palmbeachcp.com)



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

6.8 Counterparts/Facsimile Signatures.-

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

6.9 Entire Agreement Binding Effect-

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

6.10 Remedies-

Without limiting the foregoing, in the event of a breach of this Agreement by Independent Sales Organization, shall be entitled to apply to a court of competent jurisdiction for an injunction to restrain such breach, without the need for bond. Any remedies hereunder shall be in addition to any other remedies available to PBCP in law or in equity.

6.11 Jurisdiction; Venue; Governing Law-

All questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the State of New York, without regard to the principles of conflicts of law thereof. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in New York County, New York for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery). Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law. Each party irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby. If either party shall commence an action or proceeding to enforce any provisions of the documents contemplated herein, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred with the investigation, preparation and prosecution of such action or proceeding.



#### 6.12 Attorney' s Fees-

Should suit or arbitration be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, including expert witness fees and fees on any appeal.

#### 6.13 Guaranty-

Independent Sales Organization and the principal(s) of Independent Sales Organization or such other third party acceptable to PBCP (collectively, "Guarantors") hereby jointly and severally guarantee indefeasible payment and performance of all obligations (the "Obligations") of Independent Sales Organization and principals under this Agreement, as hereafter amended. Guarantors' obligations under this section are independent of Independent Sales Organization's and principals' obligations and a separate action may be brought against Guarantors, whether or not Independent Sales Organization or principals be joined in such action. Guarantors authorize PBCP, without notice, from time to time and without affecting Guarantors' liability, to modify the Obligations. Guarantors waive: any right to require to proceed against a Guarantors or pursue any other remedy; any defense arising by reason of any disability or other defense of Independent Sales Organization or any principal, or cessation from any cause of Independent Sales Organization's or any principal' s liability; any claim that Guarantors' obligations exceed Independent Sales Organization's or any principal's; until paid and performed in full, all rights of subrogation and contribution; and any right to enforce any remedy of PBCP against Independent Sales Organization or any principal. Guarantors acknowledge that Guarantors shall have sole responsibility for obtaining from Independent Sales Organization and principals information concerning their financial condition. Guarantors agree to pay all attorneys' fees and other costs incurred in enforcing this section or the Obligations.

[REST OF THIS PAGE LEFT INTENTIONALLY BLANK]



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

Signature: \_\_\_\_\_

Officer

Email: Submissions@palmbeachcp.com

**INDEPENDENT SALES ORGANIZATION**

ISO                      Legal                      Name:

Signature: \_\_\_\_\_

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

ISO DBA: \_\_\_\_\_

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

**Owner's Contact Info [Email, Phone, Cell]:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_