

## ZIMPLE, INC. TERMS OF USE

We are very pleased that you have taken the time to review Zimple, Inc.'s, ZimpleMoney's and ZimpleAuto's ("Zimple") Terms of Use document. We think it is important for you to understand financial transactions and how to protect yourself and your relationship with Zimple.

These Terms of Use are downloadable so you can read them at your leisure or print them out to review more thoroughly. The Terms of Use will be updated and changed periodically to reflect new services Zimple may offer. The most current Terms of Use will always be available on our website.

If you have any questions, please call Member Service at (949) 209-9844 ext. 500; E-MAIL us at [members@zimplemoney.com](mailto:members@zimplemoney.com); or WRITE to us at Zimple, Inc. Attn: Terms of Use, P.O. Box 11500, Bainbridge Island, WA 98110-5500 USA.

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# Terms of Use

The Terms of Use and the Zimple, Inc. Privacy Policy, Guarantees, Electronic Funds Transfer (EFT) Disclosure, and the Error Resolution Policy Third Party Representative Policy (collectively, the “Incorporated Documents”) constitute the entire agreement between Zimple, Inc., including Zimple, ZimpleAuto and future Zimple assets (“Zimple”) and its clients, and supersede any oral or prior written agreements or representations. By using Zimple’s services, you accept and agree to be bound by this Agreement.

## I. DEFINITIONS

The following capitalized terms shall have the following meanings when used in this Agreement:

“Agreement” and “this Agreement” means these Terms of Use and all Incorporated Documents, which may change from time to time.

“Bank” means any of the bank or banks that holds a bank account “for the Benefit of Zimple’s Customers”: [See ELECTRONIC FUNDS TRANSFER (EFT) DISCLOSURE for Bank and Payment Processing Disclosures].

“Client, Customer, Business or User are used interchangeably” and mean any party, parties, or representative, who is actively using Zimple’s Services.

“Communications” means any notices, e-mails, letters or any electronic or written contact with Member regarding Member’s account and/or their respective use of Zimple’s Services, as discussed herein.

“Documents” mean any documents, including but not limited to loan, leases, settlement, promissory notes, mortgages, trust deeds, and security agreements, in electronic or paper format that have been executed by the Members.

“Effective Date” is the date when any Client registers, or accepts the Agreement as a member of Zimple.

“EFT” means electronic funds transfers as defined and regulated under the Electronic Fund Transfer Act, 15 U.S.C. §1693 et seq. and 12 C.F.R. Part 205 (“Regulation E”).

“Member” means any person or other entity registered with Zimple. The term “Member” is synonymous with the terms Client, Customer, Business, Merchant or User.

“Member’s Agreement” means any underlying agreement hosted by Zimple on behalf of its members: loan, lease, settlement, or other agreements using Zimple’s Services and website.

“Representative” means any person or other entity authorized by a Member or by a court or administrative body of competent jurisdiction to represent the interests of a party or parties in the positions of a Member, whether such authorization is granted at or after creation of the Member’s Agreement. The term “Representative,” shall be deemed synonymous with the terms “Member” as may be applicable. (See Third Party Representative Policy.)

“Services” means Zimple’s database, hosting, note management, payment processing and, document storage, and any related products and services offered by Zimple, or any other services offered by Zimple not specified in this Agreement.

“Signature”, “Sign” and “Signing” are all intended to mean both traditional execution of paper documents as well as electronic signature of documents as defined under the Electronic Signatures in Global and National Commerce Act (“E-SIGN”), 15 USC §7001, et seq., See E-SIGN and Uniform Electronic Transactions Act (“UETA”) Disclosure and Policy.

“Zimple” means Zimple, Inc. a duly formed and authorized Delaware corporation having its principal offices at 403 Madison Ave. N Suite 240, Bainbridge Island Washington, 98110 (MAILING: P.O. Box 11500, Bainbridge Island WA 98110-5500 USA); and any subsidiary or successor companies, affiliates, officers, employees, agents and the name under which Zimple, Inc. conducts business, including on its websites at [www.zimplemoney.com](http://www.zimplemoney.com), [www.zimpleauto.com](http://www.zimpleauto.com), [www.zimple.us](http://www.zimple.us), or any other of its licensee websites.

## **II. Zimple’s Services and Policies**

### **A. Administration of Agreements**

Zimple provides financial service software platform, delivered through the Internet, to track, keep-records, and retain documents for private party financial transactions. The Zimple platform may be used to administer loans, leases, settlements and other financial agreements. Zimple acts as an intermediary for payments between Members, including but not limited to the following: use of EFT to pay, collect and transfer funds between Clients’ accounts, sending payment reminders, processing of paper check payments, providing data for year-end reporting, providing a breakdown of all payments received and how they were applied and other services that may be offered in the future.

If you pay by check, please be aware that you hereby authorize Zimple to use electronic check conversion whereby your check is used as a source of information to initiate a one-time EFT from your account. Zimple reserves the right to increase fees to Clients using paper checks.

Zimple also reserves the right to report payment history to national credit bureaus for accounts that are serviced by Zimple. Zimple does not currently report to credit bureaus. Once credit reporting service begins, Clients may not opt out of credit reporting.

### **B. Refund Policy**

Zimple offers a 100% refund of your purchase, minus any third-party fees incurred. This refund is valid at any time prior to activation of Zimple’s Services. For more information, please see [www.zimplemoney.com](http://www.zimplemoney.com) or call Member Services at (949) 209-9844 x500. For Termination of Use see Section V below.

### **C. Delivery Method and Timing of Delivered Services**

Zimple services are available immediately following a valid credit card payment authorization. If you set up a contract using the Zimple system, your credit card charge occurs immediately after all parties accept the contract. If any party declines to participate in a contract, there is no charge.

### **D. Privacy of Non-Public Personal Information**

The confidentiality of the personal information of our Clients is a top priority for Zimple. Our Privacy Policy discusses how Zimple handles this information and how it is protected.

### **E. Pricing Policy**

Zimple reserves the right to change the pricing of its products and services without notice.

### **III. Changes to this Agreement**

Zimple may amend and/or revise this Agreement at any time. Client will be notified at least seven (7) days in advance of the effective date of any changes. Continued use of the Services will constitute acceptance of the amended and/or revised terms. Changes shall be deemed acceptable to all Members unless a Member elects to terminate this Agreement as provided herein.

### **IV. Patriot Act Verification**

Although Zimple is not a financial institution, Zimple is required to comply with Federal law that requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

Customer: When a customer (all contracts with individuals as participants) sets up an account using Zimple's automated payment and collection back office, we will ask for the following information which allows Zimple to verify the identity of the parties of the contract:

- 1) Name (First, MI, Last)
- 2) Maiden Name (if applicable)
- 3) Home Address
- 4) Date of Birth
- 5) Social Security Number
- 6) Primary and Secondary Telephone Numbers
- 7) E-mail address
- 8) Driver's license number
- 9) State of issuance
- 10) Year of issuance
- 11) Nickname
- 12) Bank Name
- 13) Bank Routing Number
- 14) Bank Account Number
- 15) Valid credit card or debit card
- 16) Other items may be required to verify identity

Business: When a business sets up an account using Zimple's automated payment and collection back office, we will ask for the following information which allows Zimple to verify the identity of the parties of the contract:

- 1) Same Customer requirements referenced above if parties include a customer.
- 2) Legal Business Name
- 3) Description of Business
- 4) Description of purpose of payments
- 5) DBA (if applicable)
- 6) Address
- 7) Customer Service Phone Number
- 8) Website URL
- 9) Entity Type (Corp / LLC / Sub Ch-S / Sole Proprietor )
- 10) Copy of Article of Incorporation, Originating certificate or License
- 11) Employer Identification Number (EIN)
- 12) Estimated Average Payment Amount
- 13) Estimated Maximum Payment Amount

- 14) Estimated Monthly Payment Total
- 15) Primary Entity Contact Person
- 16) Primary Contact Phone Number
- 17) Primary Contact Email
- 18) Principal Owner's Name
- 19) Owner's Home Address
- 20) Owner's SSN
- 21) Owner's Date of Birth
- 22) Driver's License Number
- 23) Driver's License State of Issue
- 24) Driver's License Date of Issuance
- 25) Nicknames
- 26) Valid Credit Card
- 27) Bank Name
- 28) Bank Routing Number
- 29) Bank Account Number

We may also ask for other information and documents to help us verify the identity of a consumer or business. If you have any questions, please contact us at (949) 209-9844 or email us at [members@zimplemoney.com](mailto:members@zimplemoney.com)

## V. Bank Account Validation

### A) Bank Account Validation

**I) Accounts Used for ACH Payment or Deposits.** Every Member account used to make a payment or receive a payment distribution must be validated by the Member's financial services provider.

Each Member is required to provide 1) a bank statement, 2) a copy of a valid government issued valid picture identification and 3) Each Member using a business account to debit or credit an account shall contact their financial services provider and secure a "bank letter" with for following information:

- a. Your Bank Account Number.
- b. Your Bank Account Name.
- c. Show your name as the Account Owner.
- d. Show your name as an authorized signer on the account.
- e. The account can be used for ACH credit and debit payments.

(A sample letter is provided at the bottom of each page of the website.)

Additionally, Members may be required to provide utility bill confirming current address and or further documentation to ensure legal ownership of a banking account.

To validate your bank account, please ask your financial service provider to send ZimpleMoney a "Bank Letter" and upload the documents to your bank account found in your Linked Account tab. Many financial intuitions can provide a bank letter online. Or you may need to contact your provider phone.

## V.I. Termination of Use

### A. Termination by Members

**1) Payment Processing Services.** The authorized Member administering the Member's Agreement may terminate this Agreement without the written consent of the other parties. The Member must provide forty-five (45) days prior notice to Zimple of Member's intent to terminate payment processing. All parties to the Member's Agreement will be notified of the intent to terminate processing service.

**2) Termination of Services by All Members.** Zimple's Services may be terminated at any time only upon receipt of written consent from all Members participating in a Member's Agreement ("Termination Notice"). The Termination Notice must be received by Zimple at least thirty (30) days prior to the effective date of the termination. Upon termination of this Agreement, any monies in process with Zimple, once cleared through the Bank's bank account (please see Electronic Funds Transfer (EFT) disclosure provided below for more details) will be immediately paid to the appropriate Members as provided in this Agreement, less any unpaid applicable fees due to Zimple from the Members. The obligations of the Members to this Agreement shall survive even after termination. Zimple will not be liable in law or equity for a breach of any agreement between the Members relating to Zimple's services.

**3) Termination of Payment Processing and Contract by payer:** Zimple is not obligated to process a payment if a Payer contacts Zimple by any means and requests a contract be cancelled or payment stopped. Payer shall provide Zimple at least 5 business days' notice.

**4) Lost Access to Records.** Zimple is not obligated to maintain any records or access to records if services are terminated, including but not limited to messages, ledgers, payment histories and document files.

**5 Notice.** The Termination Notice may be emailed to Zimple at [members@zimplemoney.com](mailto:members@zimplemoney.com) or by sending a letter to Zimple, Inc., P.O. Box 11500 Bainbridge Island WA 98110-5500.

### B. Termination by Zimple

Zimple, in its sole discretion, reserves the right to terminate this Agreement, access to any or all portions of its website or access to the Services without notice for any reason and at any time. If the Refund Period, as described in the "Refund Policy" section above, has expired, Zimple may retain all fees collected prior to termination, regardless of the grounds for termination.

The Members will remain liable for all outstanding obligations to Zimple under this Agreement even after any such termination. An individual whose account is (or accounts are) terminated may be denied further access to the secure portions of Zimple's websites and future use of the Services.

**ZIMPLE ASSUMES NO LIABILITY FOR ANY CLAIMS ASSERTED AGAINST OR BETWEEN ANY PARTY OR REPRESENTATIVE RESULTING FROM ZIMPLE'S TERMINATION OF ACCESS TO ZIMPLE'S WEBSITES AND/OR SERVICES.**

### C. Prohibited Conduct

The following is a list of prohibited conduct under this Agreement. Members hereby agree not to engage in any such conduct during their use of Zimple's websites or Services. Any party found engaging in such conduct will, at the sole discretion of Zimple, be terminated:

- Multiple registrations by an individual without prior consent by Zimple, whether such registration was completed fraudulently, falsely or unlawfully, or by legitimate and lawful means (such as the use of alternate but valid names, different contact information, separate bank-account numbers, and other pertinent data);
- Fraud, intentional or negligent misrepresentation, or any unlawful act relating to the use of Zimple's websites or Services;
- Intentionally providing Zimple with false or incorrect contact information; and
- Tampering, hacking, modifying or otherwise corrupting the security or functionality of the Services or Zimple's websites;

If Zimple, in its sole discretion, determines that a violation of local, state or federal law has occurred, in addition to terminating access to the Services and Zimple's websites, offending parties will be subject to damages and other penalties, including civil liability and criminal prosecution where available for any such conduct. Zimple will contact appropriate administrative and law-enforcement authorities in all such instances and will cooperate fully with any investigation.

## VII. Electronic Communications

Clients choosing to access Zimple's Services via the Internet hereby consent to receive by electronic means this Agreement and any and all disclosures and/or notices required to be given by applicable law or regulation. The Members also consent to allow Zimple to respond to any inquiries by e-mail regardless of the format of the original inquiry. This consent may be withdrawn at any time. After withdrawal of consent, all subsequent Communications will be sent by regular mail to the last known address on file with Zimple.

## VIII. Credit Reporting

At this time, Zimple is not providing credit reporting to third party credit reporting bureaus.

## IX. Disclaimers

**Legal Representation.** All Members agree and acknowledge that Zimple is not a law firm nor is it authorized to practice law in any jurisdiction. Zimple does not give legal advice in any form or practice law in any way, and Zimple makes no assurances or warranties, express, implied, or statutory that any Member's Agreements or terms of a Member's Agreement are legally enforceable in a specific jurisdiction by any competent court or administrative body.

**Priority of Liens.** Zimple will not guarantee or warrant the priority or position of any lien on real or personal property.

**UCC Financing Statements.** Zimple does not research the status of title nor the presence of prior existing liens for any personal property used to secure a private transaction.

**Documents.** Zimple does not draft, review, approve or otherwise provide any documents. Zimple is not responsible for the legal validity of any documents used in documenting an agreement between parties. Members hereby agree that executed documents and any modifications are intended for the specific transaction between the Members.

**Compliance with state and federal laws.** Members are solely responsible for assuring that requirements under any state or federal laws that may apply to the loan or other agreement have been met, including the preparation and delivery of any disclosures, notices or other documents required by state or federal law.



**Validity of Terms.** Members are solely responsible for establishing the terms of their personal agreements; and for determining whether such agreements are in compliance with any applicable local, state or federal laws, including but not limited to laws relating to usury and income tax liability. Zimple makes no representation regarding the legal validity or enforceability of the terms of any such agreements and further assumes no responsibility under this Agreement for enforcing or interpreting the terms of Members' personal agreements.

Any dispute between or among the Members and their respective successors in interest regarding sums due and paid, or for the compliance with other terms under Members' personal agreements and similar matters is not the responsibility of Zimple. The Members and their respective successors in interest jointly and severally shall indemnify and hold Zimple harmless from any liability, claim, demand, loss or expense by any party against Zimple as a result of or arising out of its performance of the Services described in Section II, above.

**Limitation of Liability. IN NO EVENT SHALL ZIMPLE BE LIABLE FOR (I) DAMAGES CAUSED OTHER THAN BY INTENTIONAL MISCONDUCT OR (II) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, DISCLOSURE OF CONFIDENTIAL INFORMATION, OR LOSS OF PRIVACY), ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SERVICES, THE ZIMPLE WEBSITES OR ANY OF THE ASSOCIATED SERVICES, EVEN IF ZIMPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**Malfunction of Computer Equipment and Software.** Zimple shall not be responsible for any failure in the Services due to malfunction or loss of equipment, software or Internet service providers used by Members or Clients, and from the malfunction or failure of equipment, software or services used by Zimple which are beyond the reasonable control of Zimple.

**Use of Third Parties by Zimple.** Zimple reserves the right to use other companies to perform services for Zimple ("Third Party Service Providers").

## **X. Miscellaneous Provisions**

**Lawful Purpose.** You agree to use the Zimple Software solely for lawful purposes.

**Counterparts.** This Agreement may be executed in counterparts and each counterpart shall have full force and effect against the party that executes the counterpart.

**Choice of Law and Choice of Forum.** This Agreement is governed by the laws of the State of Delaware without reference to that state's conflicts of laws rules. Wherever applicable and after exhaustion of administrative remedies specifically designated in this Agreement, judicial actions taken relative to this Agreement shall be brought in a court of competent jurisdiction, either state or federal, within the State of Delaware.

**Assignment.** Unless otherwise expressly provided in this Agreement, Members may not transfer any rights or obligations under this Agreement without the prior consent of Zimple. In order for Zimple to continue Services in the event of such transfer, it may be necessary for Zimple to verify the transfer and its validity, the identity of the transferee, including relevant contact information, bank-account information and other data necessary to permit Zimple's satisfactory performance of the Services. Where such performance cannot reasonably be ensured, Zimple reserves the right to maintain this Agreement with the transferor only or to terminate this Agreement. Zimple reserves the right to transfer any right or obligation under this Agreement without Members consent.

**Severability.** In the event any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**Indemnification.** Zimple's obligations are expressly limited to those stated in this Agreement. Zimple will be responsible only for the exercise of ordinary care in carrying out its obligations under this Agreement and shall be released from all further liability. Member agrees to indemnify and hold Zimple harmless from and against, and to pay on demand, all costs, damages, losses, judgments, attorney's fees, expenses, obligations and liabilities of every kind and nature suffered or incurred by it or its agents relative to or arising out of this Agreement, except any liability resulting from failure of Zimple to exercise ordinary care in carrying out its obligations under this Agreement.

**Account Information.** In addition to the terms listed above, Members further agree that Zimple may access and disclose information about their accounts when Zimple deems such action necessary or appropriate to comply with the law or legal processes, judicial or administrative, to protect Zimple's systems and other Clients' interests, or to ensure the integrity and operation of Zimple's business and systems. Unless otherwise prohibited by law, such disclosure may include, without limitation, user profile information (e.g., name, e-mail address), transaction information, Internet Protocol (IP) address and traffic information, and usage history. Such disclosures will be made in compliance with Zimple's Privacy Policy, as is incorporated herein.

**Taxes.** Members are responsible for determining what, if any, taxes apply, including sales taxes, to the disbursements, payments and services as a result of using Zimple's Services and for collecting, reporting and remitting the correct tax to the appropriate tax authority or authorities. Members acknowledge that state and federal tax ramifications and liabilities for either or both parties may ensue from engaging in a Member's Agreement; and Members should consult qualified professional advisors regarding potential taxation liabilities. Zimple does not provide tax advice, is not obligated to determine whether taxes apply to a specific loan transaction or any underlying agreement, and is not responsible for collecting, reporting, or remitting any taxes arising from any transaction between Members.

**Member Insolvency.** Members understand and acknowledge that insolvency, whether part of or outside formal bankruptcy proceedings, may impact the efficacy and terms of the Member's Agreement. Members understand and acknowledge that funds transferred by or to an insolvent party may, in some circumstances, be reached and retrieved from the recipient or recipient's successor in interest by action of a bankruptcy court or a trustee in bankruptcy, whether such bankruptcy is voluntary or involuntary, and whether or not such funds were: initially transferred in good faith and for value; a "preference" or "priority" as defined under the United States Bankruptcy Code, 11 U.S.C. §101 et seq.; part of a fraudulent transaction or other transaction subject to reversal in bankruptcy proceedings; or whether the transfers of funds were or are otherwise reversible. Zimple assumes no responsibility for the continued performance of either party in the use of Zimple's services in the event of either party's insolvency, bankruptcy or other circumstances making performance under the Member's personal agreement and this Agreement impossible or impracticable.

**Account Use.** By accepting this Agreement and using the Services, Member respectively represents and warrants that such Member has all the necessary legal authority and capacity to do so. In the event that a Member is a corporation, partnership, limited liability company or other business entity, acceptance of this Agreement warrants that the individual signing on behalf of the business entity is a duly authorized agent of the business entity and that they have the authority to bind the business entity in legal agreements and contracts. The parties will not jointly or individually use the Services or the Zimple websites for any unlawful, illicit, fraudulent or improper activity. Zimple reserves the right to restrict or deny access to or interoperability with the secure, account-specific portions of the Zimple websites and/or to delay or halt its duties under this Agreement, without notice, where substantive allegations or reasonable grounds exist to suspect that a Member has been, are, or will be engaging in fraudulent, unlawful or other improper activity. Members agree and acknowledge they will cooperate fully with Zimple to investigate any suspected unlawful, fraudulent or improper activity.

**Time and Date.** Zimple records and measures the moment transactions are conducted using the Zimple website by reference to the Pacific Time Zone of the USA, unless otherwise noted. Where a user initiates a transaction on a weekend day, national or local holiday or other non-business day, it is the policy of Zimple to consider the transaction date to be that day.

**Marks.** “Zimple,” “ZimpleMoney” and “ZimpleAuto” are trademarks of Zimple, Inc. All related logos, products and services described in this Agreement or the Zimple websites are either service marks, trademarks, registered service marks and trademarks of Zimple, or its licensors, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Zimple. In addition, all page headers, custom graphics, button icons, and scripts are service marks, trademarks, copyrighted materials and/or trade dress of Zimple and may not be copied, imitated, or used, in whole or in part, without the express prior written permission of Zimple

**Arbitration.** Zimple reserves all rights in remedies at law or in equity for any claim it may have against Members of either real or prospective infringement on intellectual property rights. Any other controversy or claim arising out of or relating to this Agreement or the provision of Services, excepting those relating transactions covered by Regulation E (12 CFR 205, et seq.) or those initiated in and remaining subject to the jurisdiction of a Delaware court hearing small-claims matters, shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party, except for the complainant’s counterparty under the Member’s personal agreement where such counterparty chooses to consolidate his, her, their or its claim or controversy with those of the consenting complainant. Where practicable, the arbitration shall be conducted in Dover, Delaware and judgment on the arbitration award may be entered in any court having competent jurisdiction. Any party to this Agreement may seek any interim or preliminary relief from a court of competent jurisdiction in Dover, Delaware necessary to protect that party’s respective rights, remedies or property pending the completion of arbitration. Members agree and acknowledge that arbitration may replace their individual or collective recourse to courts of law and/or administrative bodies, and that the decision of the arbitrator or arbitrating body may be final and binding upon all parties.

**No Third-Party Beneficiaries.** Unless otherwise expressly provided herein or by operation of law, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity, other than Member and Zimple, any rights, remedies or other benefits under or by reason of this Agreement.

**Waiver.** Failure by any party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that provision or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing, whether on paper or via appropriate electronic means as provided for in this Agreement and as permitted under the E-Sign Act and other applicable laws. Where appropriate, such waiver, amendment or other modification shall evidence the mutual agreement of all relevant parties. A party's waiver on one occasion shall not be construed as a bar or waiver of any rights or remedies for subsequent events.

**Entire Agreement.** This Agreement sets forth the entire Agreement between you and Zimple and it supersedes all prior communications, understandings and agreements.

## Personal and Business Guarantee

**Personal and Business Guaranty.** In consideration of Zimple's acceptance of the merchant risk associated with processing payments for the User, the User absolutely and unconditionally guarantees to Zimple full and prompt re-payment of any and all returned items processed by Zimple on behalf of the User.

The User expressly gives Zimple the absolute and irrevocable right to debit the User's bank accounts or other identified accounts to recover payments and the cost of collection payments. Further the User waives any prior notice or demand to debit the User account or accounts.

The User guarantees and further acknowledges and agrees to pay all expenses of collection on this guarantee, including reasonable attorney's fees incurred by reason of the default of the User or the default of the guarantor.

The User waives prior notice of demand. Zimple shall not be required to proceed against User to enforce any other remedy before proceeding against the Users guarantee.

This is a continuing and irrevocable guarantee which shall not be discharged or effected by the death of the User, shall bind heirs, administrators, representatives, and assigns and may be enforced by or for the benefit of any other successor of Zimple. The term of this personal guarantee shall be for the duration Users last transaction on Zimple plus three years.

By Using the Zimple system, the User unconditionally authorizes their Personal and Business Guarantee or all transactions initiated on the system.

# ZIMPLE, INC. PRIVACY POLICY

Zimple, Inc. is committed to protecting the confidentiality and integrity of our customers' information. When we collect information, we protect and preserve its integrity. Whenever we make use of our customers' information, we utilize it with discretion and solely for lawful purposes.

Keeping our commitment to protect your private information is an important obligation to us. Zimple is a business built upon trust. We earn your confidence when we hold true to our commitments by keeping your private data safe, secure, and confidential. We recognize that you have entrusted us with sensitive personal and financial data and special care in protecting it.

The current standards for businesses that collect personally identifiable information fall into four main categories:

- (a) Notice: disclosure of the company's privacy policies;
- (b) Choice: options and a voice about how one's personal information is stored and used;
- (c) Access: your individual right to review, correct and contest data; and
- (d) Security: commitment to and assurances by the business that reasonable steps are taken to safeguard the information people have disclosed.

## **Notice.**

We will provide you with a copy of our current Privacy Policy annually and if we revise our policy, we will provide you with an updated policy before any such disclosure is made. We will always keep the most current Zimple's Privacy Policy available on our web-site, [www.zimplemoney.com](http://www.zimplemoney.com). If you want further information at any time, you can also contact us at [members@zimplemoney.com](mailto:members@zimplemoney.com) or by submitting an inquiry on our website.

## **Choice.**

If you want to make a change in how your information is employed and retained by Zimple, let us know. Log on to our secure website or contact us at [members@zimplemoney.com](mailto:members@zimplemoney.com), and we'll make the changes you request.

## **Access.**

Can't remember what information you've provided to us? Want to supplement, update, or clarify your data? If so, send an inquiry to [members@zimplemoney.com](mailto:members@zimplemoney.com) or log on to our secure website, which is the best and safest way to alert us of any potential discrepancy.

## **Security.**

Periodically revisit our privacy pages. Keep informed about how Zimple stays current with the latest technological advances designed to preserve confidential information. Zimple conducts business in accordance with the laws and regulations relating to our services, including the Gramm-Leach-Bliley Act ("GLB"). Under Title V of the GLB, an individual's nonpublic personal information ("NPPI") is afforded certain legal protections.

## Who is protected?

Applicable laws draw a distinction between a “consumer” and a “customer.” The rules emphasize individuals’ privacy, rather than information pertaining to businesses or other entities. Generally, if you are an individual visiting our website then your privacy is protected under the status of a consumer. A specific type of consumer is a “customer.” A customer is a person with who has a relationship with us (i.e. a Member). If you register as a Member of Zimple, you are, by definition, a customer. If you request information from us or use our website to create a loan proposal for a friend or family member to review, then you may be entitled to protections as a “customer” even though you’re not yet obligated to create the proposed loan or in any way committed to a further relationship with Zimple.

Zimple will treat the information volunteered to us with utmost discretion. Our active customers, for example, can expect secure information storage and even periodic notices regarding Zimple’s Privacy Policy and the status of their information. As for those people who aren’t full-fledged Zimple customers, we will not share collected information except as permitted by law. Even after a relationship with Zimple ends, Zimple’s duties and commitment to its Clients continue.

Zimple will continue to treat your information as though you actively remain our customer. Zimple will abide by applicable record retention and privacy rules even after the loan has been repaid or otherwise has come to a close.

At all times, Zimple will furnish pertinent information where compelled or in order to comply with relevant law, in response to a subpoena, court order and other judicial processes, or as required by competent regulatory authorities.

## What principles guide Zimple’s Privacy Policy?

Given the sensitive nature of your identity, contact details and financial data, Zimple appreciates how important it is to protect the information. We can also understand if you wonder why we request the information we do.

Our Privacy Policy is informed by the following principles:

- Zimple respects customers’ reasonable expectations to safeguard their personal information.
- Collection, retention, usage and dissemination of customer information is limited to legitimate business purposes of Zimple and its affiliates, and when lawfully permitted or necessary to comply with legal requirements or to complete a transaction requested by a consumer.
- Notice, choice, access and security are the four underlying precepts of our information collection process.
- Zimple limits internal access to information to personnel having legitimate business reasons.
- Technological innovations and improving standards for protecting privacy are foremost among Zimple’s objectives. If we believe new products, procedures or services will enhance customer information security; we will adopt appropriate security measures.

- Zimple will disclose customers' information to unaffiliated third parties only for appropriate business purposes, only when we have consent of the individual customer, or are obliged by competent authorities.
- To guard against "downstream" or third-party disclosure of your NPPI, entities such as your financial institution and our business partners may be required by Zimple to satisfactorily demonstrate compliance with applicable laws and regulations as well as compatibility with the Zimple Privacy Policy. If we learn or believe that a third party poses a risk to your NPPI, we may contact you (and, if appropriate, regulators and law-enforcement officials) to express that concern.

## **How broadly does privacy protection extend?**

Zimple collects certain sensitive information to help us serve your financial needs, provide customer service, offer new products and services, and fulfill contractual, legal and regulatory requirements. The type of information that we collect varies according to the products or services that you request, and may include: (i) Information included on your application and related forms (such as name, address, phone number, social security number, credit card and bank account information); (ii) Information about your relationships with us (such as products or services purchased and payment history); and (iii) Information from other non-Zimple sources (such as consumer credit reports).

We are committed to protecting our customer's NPPI. Zimple takes a number of steps to comply with applicable laws regarding NPPI's safeguarding. Protecting NPPI is a mutual responsibility. You should protect your Zimple account number, password and login information. Zimple cannot guarantee the security and integrity of e-mails. They are subject to interception as they travel over the Internet. Zimple recommends you help ensure your own privacy by submitting confidential information over the secure online environment of our website established whenever you log in to Zimple.

Zimple suggests customers and website visitors periodically review this Privacy Policy for revisions. While we do exchange certain information with our customers' financial institutions (for example, Zimple needs the routing number for direct deposit into a Lender's bank account), we do so with express permission or as necessary to process the transactions our customers request. In short, information is properly shared between two financial institutions on behalf of the individual (a person already trusting Zimple and the bank enough to be a customer of both institutions).

## **Loan for a Medical Emergency.**

Health information merits heightened privacy protection, even more than financial data. If your loan is intended to help manage unexpected medical costs, and you've advised that fact to us, Zimple will never divulge this matter in any manner which can be connected to you personally, unless we are required to do so by law.

## **Zimple Permission Marketing Policy.**

Zimple delivers promotional and transactional emails to prospects and customers. Additionally, in order to provide you with innovative products and services that we believe may be of interest to you, we may from time to time share NPPI and other information we collect with affiliates of Zimple. If you would prefer that we not share information about you with our affiliates or send you promotional email, you may email us at [members@zimplemoney.com](mailto:members@zimplemoney.com) or telephone Zimple Member Services at 949-209-9844, to let us know your preference. If you tell us not to share information about you with our affiliates, we will honor your instructions. Please note that if you choose not to hear from us, you will not receive offers about products and services offered by Zimple and our affiliates that may be of value to you. If you decide that you no longer



wish to subscribe to Zimple broadcast emails, please follow the instructions that are located at the bottom of those e-mail messages in order to unsubscribe (opt-out).

## **Updates to Privacy Policy.**

The version of the Zimple Privacy Policy posted online and related web pages supersedes all previously posted or issued versions of same as of the date specified. Zimple reserves the right to change this Privacy Policy at any time. Visitors to and users of the Zimple website are invited to return to the Privacy Policy and related pages periodically to check for revisions. Customers and others having pertinent relationships with Zimple may also be notified of changes to this policy by additional means including, but not limited to, e-mails, letters and telephone calls. We will provide customers with a copy of our current Privacy Policy annually and if we revise our policy to allow for disclosure to additional parties, we will provide our customers with an updated policy before any such disclosure is made.

## **ELECTRONIC FUNDS TRANSFER (EFT) DISCLOSURE**

For purposes of this section, Zimple shall be the Value Added Reseller (VAR), a software development company which has developed a hosted internet based payments collection and financial contract management system (System).

Base Commerce, Inc., (“BASE COMMERCE”), is a Merchant Acquirer and ACH Processor that provides electronic payment services in support of VAR’s business model and system and provide ACH Payment Acceptance Service and or Bank Card Accounts to VAR’s Customers (“Users”) using the VAR’s System in order to facilitate the electronic payment process.

BASE COMMERCE is the “Third Party Originator” and a Bank will process instructions received from VAR’s Customers using the VAR’s System to transmit instructions to Base Commerce and then to the Bank. VAR is authorized to follow the Terms of Use and the instructions of its Customers.

Bank is the Originating Depository Financial Institution (ODFI) and will hold Customer cash for the benefit of VAR’s customers. The VAR shall, at the direction of VAR’s Customer’s instructions as entered in the VAR’s System or/and Terms of Use, direct BASE COMMERCE to deliver payment and/or disbursement instructions to the ODFI to be executed in accordance with those instructions.

Settlement Funds Disclosure: All funds representing settlements of ACH debit payments initiated via the VAR System settle to a BASE COMMERCE Third Party Processor Clearing and Settlement Account at First Premier Bank in South Dakota. Funds representing ACH credit deposits to users for payments collected via ACH debit are settled directly to the user’s designated bank account by First Premier Bank from that settlement and clearing account. At no time do funds representing payments and belonging to lenders settle to a VAR owned or controlled bank account. Base Commerce may, based solely on its own decision, change its bank and will advise VAR and VAR’s Customers at least 30 day prior to any change.

VAR’s business Customers shall execute a separate agreement directly with BASE COMMERCE to process ACH automated payment transactions using VAR’s System.

VAR’s non-business Customers acknowledges the VAR’s processes and relationship with BASE COMMERCE and Bank.

VAR and BASE COMMERCE have agreed for BASE COMMERCE to provide electronic fund transfers (EFTs), via the Automated Clearing House (“ACH”) system, for VAR Customers (“ACH Services”). Such transfers may include debits and credits, including recurrent and preauthorized periodic transactions, to specified bank accounts consistent with the Electronic Fund Transfer Act, 15 U.S.C. §1693 et seq. (EFTA), Regulation E, the Electronic Signatures in Global and National Commerce Act of 2000, 15. U.S.C. §7001 et seq. (E-Sign), the terms of the Terms of Use and this Agreement. ACH services consist of sending and/or receiving ACH transactions; originating entries; reversals; amending entries; and performing all other acts incident to the origination or electronic funds transfers on behalf of Zimple’s Members. Pursuant to the VAR Terms of Use, information and instructions shall be provided to BASE COMMERCE by Zimple’s Members through Zimple’s online software and any agreement between BASE COMMERCE and VAR’s Customers.

Upon receiving such instructions from VAR’s Customer , BASE COMMERCE will initiate a debit and/or credit transactions as instructed by VAR Customer to an account designated by BASE COMMERCE (the “Settlement Account”), in accordance with Member’s instructions and/or the Terms of Use, and as such will be communicated to the Bank by BASE COMMERCE. .

The Account will be held in trust for the customers of BASE COMMERCE and VAR at the Bank for the benefit of VAR's and BASE COMMERCE's s Customers. All bank statements, notices and other communications in respect of the Account or the transactions hereunder shall be directed by Bank to BASE COMMERCE and BASE COMMERCE will provide Bank with administrative instructions pertaining to the Account.

VAR WILL NOT TAKE ANY POSSESSION OF THE ACCOUNT AND WILL NOT HAVE ANY CONTROL OF THE ACCOUNT OTHER THAN AS PROVIDED HEREUNDER. VAR WILL HAVE CONTROL OVER THE COMMUNICATIONS BETWEEN VAR AND VAR'S CUSTOMER RELATIVE TO THE TRANSFER OF FUNDS INTO AND OUT OF THE SETTLEMENT ACCOUNT.

Members have the exclusive authority to instruct BASE COMMERCE to initiate ACH debits and credits from the Settlement Account, solely through VAR's System and in accordance with VAR's Terms of Use.

Member agrees to designate BASE COMMERCE as the Third Party Originator pursuant to the "Designation of Third Party Originator" agreement provided below:

### **Designation of Third Party Originator**

Pursuant to VAR's Terms of Use (Agreement), upon accepting the Terms of Use, the Member agrees to and acknowledges the following:

- 1) Funds representing duly authorized ACH payment debit withdrawals from Members initiating a loan payment, utilizing VAR System shall settle to the BASE COMMERCE ACH Settlement and Clearing Account provided by First Premier Bank, or other bank solely selected by BASE COMMERCE, under a NACHA audited and compliant Originating Depository Financial Institution and Third Party Sender contract executed between the originating Bank and BASE COMMERCE. Funds representing loan payments shall then be settled to the designated Payee by BASE COMMERCE form the Clearing and Settlement Account via a duly authorized ACH Credit to the Payee's bank account.
- 2) VAR does not own the Account.
- 3) VAR will not take any possession of the Account.
- 4) VAR will not have any control of the Account, except as provided in this Agreement and the Terms of Use.
- 5) VAR has control over the communications relative to the transfer of funds into and out of the Account.
- 6) Member has the exclusive authority to instruct BASE COMMERCE to initiate ACH debits and credits from the account, solely through VAR's System and in accordance with VAR's Terms of Use and or BASE COMMERCE's ACH Processing Agreement.
- 7) The Member's relationship is with VAR and BASE COMMERCE.
- 8) Funds may be held for up to five (5) business days.
- 9) The Account aggregates all BASE COMMERCE customers and Members' settlement fund transfers.
- 10) The Terms of Use are provided for the Member on the VAR website and acknowledged each time a Member enters a new contract.

- 11) Terms of Use may, from time to time, be modified, amended or changed.
- 12) BASE COMMERCE shall act as the Bank's agent in originating entries, reversals, amending entries and performing all other acts necessary or incident to the origination of electronic funds transfers on behalf of the Member via instructions delivered to it by VAR or VAR's system.
- 13) Member indemnifies and holds harmless the VAR, BASE COMMERCE and Bank for executing Member's instructions provided to BASE COMMERCE and the Bank, using VAR's System or by other means.
- 14) Member indemnifies and holds harmless BASE COMMERCE, Bank and VAR for any and all actions authorized by the Terms of Use or other agreements acknowledged by the Member.

## **Electronic Fund Transfers**

Members acknowledge the following:

- 1) Scheduled EFTs are limited to no more than two (2) per month, absent extenuating circumstances or Zimple's consent and shall not exceed 150% of the recurring payment amount, without prior approval from Zimple;
- 2) There is a minimum five [5] business day clearing period for all EFTs; Zimple has the right to hold stop distribution of funds to secure written authorization from payers bank or written guarantees;
- 3) The dollar amount of individual EFTs is limited to no more than established monthly payment or an amount equal to a pay-off amount;
- 4) That there is the possibility of liability to Members for any unauthorized EFT;
- 5) Members have a duty to promptly report such unauthorized transfers to VAR and, where applicable, to the party's financial institution;
- 6) Members have a right to stop payment or disbursement of a preauthorized EFT by notifying VAR at least fifteen [15] business days prior to the initiation of a scheduled transfer and VAR's established procedures to initiate such stoppages;
- 7) The right to receive documentation of EFTs electronically, or in paper format where the party explicitly requests;
- 8) VAR shall not be responsible for late or missed payments, payments made to unintended recipients due to the provision of incorrect information by Members or for payments made in incorrect amounts owing to error or omission by either party to a Member's Agreement;
- 9) Members shall immediately notify VAR of any changes to their bank account information. VAR shall make commercially reasonable efforts to ensure payments are made accurately, but VAR will not be responsible for any costs or liabilities incurred by Member resulting from inaccurate or outdated bank account information;
- 10) The necessity of occasional adjustment entries in the Member's accounts, including a reversal of a debit or credit, as a result of inaccurate or mistaken transfer; and

11) VAR's, BASE COMMERCE's, and Banks potential liability pursuant to the EFTA and other applicable laws and regulations. From time to time, it may be necessary for VAR to verify the Members' bank account

information. Members each grant VAR the right to validate the authenticity of their respective bank accounts and shall provide written authorization on behalf of VAR if required by their respective lending institution.

Members shall not request that the VAR, BASE COMMERCE, or Bank effect fund transfers exceeding that party's transfer limitations or the available balance of the nominated checking account (including any overdraft allowances by the party's bank). If there are insufficient funds in a Member's account to cover a requested transaction, or if Member's bank rejects a payment for any other reason, the Member's bank may charge the paying Member an Non-sufficient Funds Fee ("NSF fee"). If an item is rejected for any reason it will not be automatically re-presented until the next due date. Any re-presentation must be done manually by the Member Payer or Member Beneficiary if the Beneficiary is authorized or be VAR with commercially acceptable authorization.

All Member's party to a contract will receive prompt notification of insufficient funds via VAR's System and that the payment due is in arrears. The Member accounts can be suspended, disabled and closed by VAR if payments are returned and or fees are not paid.

Members acknowledge that VAR, BASE COMMERCE and the Bank are not responsible for any problems or delays in the ACH, EFT or banking systems or for other problems or delays associated with such systems beyond its control. While the Bank shall attempt to expedite EFT transactions on behalf of Members, it will not be responsible for any costs or liabilities incurred by the Members owing to delays beyond the time periods ordinarily required for funds clearance or to otherwise complete an ACH or EFT transaction.

In the event the Bank makes an EFT from paying Member's account and is subsequently unable to collect those funds for any reason (including, without limitation, insufficient funds or fraud), the payment will be reversed and the Bank will withdraw such funds from the recipient Member's account. All Members party to a Member's agreement/contract expressly authorizes such reversal consistent with the EFTA and customary and prevailing ACH rules. The Bank, BASE COMMERCE and VAR further reserve the right to use any and all other legal rights and remedies to recover amounts not collected via reversal of the payment as well as to recover other fees paid or losses incurred by the Bank, BASE COMMERCE, or VAR resulting from the reversed transaction.

The VAR, BASE COMMERCE and Bank will report instances of fraud, misrepresentation or other unlawful activity to appropriate administrative, judicial and law-enforcement agencies.

## ERROR RESOLUTION POLICY

Zimple provides this error-resolution notice in compliance with the Federal Reserve's Regulation E, which governs electronic fund transfers (EFTs). You may recognize EFTs by other names, notably ACH, direct deposits and direct debits. Since you have selected EFTs in conjunction with your Loan transaction, the Federal Reserve requires that you be given initial and annual notices of your rights regarding error-resolution procedures involving your account and any EFTs relating to it which you believe may have been made incorrectly or contain an error. Please bear in mind that customer service is a top priority for us. Timeframes noted below are therefore the maximum periods allowed: Zimple's objective of course remains to respond as promptly and accurately as possible to your inquiries.

Please retain this notice for your records and future reference. Further information regarding EFT error resolution is also available in the Zimple Terms of Use, to which you have previously indicated your consent. To review, print or electronically save the Terms of Use, visit [www.zimplemoney.com](http://www.zimplemoney.com) or [www.zimpleauto.com](http://www.zimpleauto.com).

### IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS:

LOG IN to Zimple's secure website at: [www.zimplemoney.com](http://www.zimplemoney.com) or E-MAIL us at [members@zimplemoney.com](mailto:members@zimplemoney.com) or CALL 1.949.209.9844 x500; or WRITE Zimple, Inc, at: P.O. Box 11500, Bainbridge Island WA 98110-5500.

You should contact Zimple as soon as you can if you think there is a problem with your account, that your confirmatory e-mail or bank statement is wrong, that an EFT was made incorrectly or in error, or if you simply need more information about an EFT or other transfer noted on a confirmatory e-mail or statement. We must hear from you no later than sixty (60) days after we sent the FIRST confirmation in which the potential problem or error appeared.

If you contact us regarding an error, please be sure to do the following:

- 1) Tell us your full name and Zimple account number;
- 2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information; and
- 3) Tell us the exact dollar amount of the suspected error.

Please do NOT include sensitive information such as complete bank-account numbers if you wish to contact us via e-mail. Zimple recommends confidential communications sent electronically instead be made by logging in to your account on our secure website.

If you contact us orally, we may require that you also send Zimple your complaint or question in writing (including via e-mail or on our secure website) within ten (10) business days. We will determine whether an error occurred within ten (10) business days after we receive contact from you, and will correct any error promptly. If we need more time, however, we may take up to forty five (45) days to investigate your complaint or question. If we decide to pursue such an investigation, we may credit your account within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. Such credits will be discretionary and made in good faith, taking into account the rights, obligations and expectations of both you and your counterparty under the terms of your personal agreement. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your account.

For errors involving new accounts or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. For new accounts, we may take up to twenty (20) business days to credit your account for the amount you think is in error. We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation (including via e-mail or as a message in your online account on our secure website). You may request copies or summations of documents and information used in our investigation. However, you are advised that given Zimple's largely automated business methods and processes, our investigation may be conducted primarily or entirely by electronic means. Consequently, documentation provided to you may be in similar format or replicated from Zimple's electronic investigation.

## THIRD PARTY REPRESENTATIVE POLICY

Members may designate individuals to act on their behalf in association with using Zimple Services (hereinafter “Representative”).

**Definition of Representative.** “Representative” means that person, real or legal, duly and demonstrably authorized by a Member or by a court or administrative body of competent jurisdiction to represent the interests of a Member, whether such authorization is granted at or after creation of the Loan Documents. The term “Representative,” as used herein, shall supplement, substitute or be deemed synonymous for the term “Member” as may be applicable and as used in the Terms of Use, such as where an existent Representative stands in the place of the respective party or parties.

**Confirmation of Representative’s Authority.** Before a Member may utilize a Representative to act on his or her behalf, Representative and the party such Representative seeks to represent must complete all portions of the attached Representative Confirmation form and return it to Zimple.

**Duties and Responsibilities of Representatives.** By serving as a Representative, a party agrees to and acknowledges the assumption of responsibility for representing the individual and/or collective interests of the authorizing party or parties, as the case may be, regarding the Loan Documents, whether by act or omission, as well as in all communications with Zimple. Representative shall adequately and accurately convey any pertinent information regarding the personal agreement’s administration to the relevant authorizing party or parties not already communicated by Zimple. In addition to communications with Representative, Zimple reserves the right to communicate with a Member including, but not limited to, substantially identical communications made to any or all of them and independent communications to one party or some parties only.

**Communications with Representatives.** A Representative will be recognized by Zimple as having authority to receive communications and to represent any and all authorizing parties unless and until Zimple is expressly notified of revocation of such authority by Member or by competent governmental officials, as may be applicable. Such authorization does not, however, preclude Member from representing or communicating on his or her behalf. Absent express notification to Zimple revoking Representative’s authority, as described below, where applicable and feasible, Representative’s instructions shall govern in the event of conflicting directions by any or all authorizing parties to Zimple. Zimple further reserves the right to refrain from any action where the parties’ instructions are or appear to be contradictory and Zimple shall not be liable for any losses suffered by any party as a result of using a Representative. Further, Member and Representative shall hold Zimple harmless from any and all claims arising from any disputes between any Member or Representative resulting from the use of a Representative to represent a Member’s interests.

**Termination of Use of Representative.** Any party that authorizes a Representative to act on their behalf may terminate said authorization by contacting Zimple either by email at [members@zimplemoney.com](mailto:members@zimplemoney.com) or in writing at Zimple, Inc., Attn: Member Service, P.O. Box 11500, Bainbridge Island, WA 98110-5500.

YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND INCORPORATED DOCUMENTS AND FURTHER UNDERSTAND THE RIGHTS, OBLIGATIONS, TERMS AND CONDITIONS SET FORTH HEREIN. BY CLICKING ON THE ACCEPT BUTTON AND/OR USING THE ZIMPLE SERVICES, YOU EXPRESSLY CONSENT TO BE BOUND BY ITS TERMS AND CONDITIONS AND GRANT TO ZIMPLE THE RIGHTS SET FORTH HEREIN.



# ACH AGREEMENT TERMS AND CONDITIONS

*This agreement is between Zimple (Merchant) and Base Commerce describes the rules and processes of how Zimple initiates Member's electronically authorized transactions. Members are subject to the same terms and conditions outlined below.*

1.0 These ACH Agreement Terms and Conditions govern the relationship between the company ("Merchant") named on the Merchant Application ("Application") to which these Terms and Conditions are incorporated or attached and Base Commerce ("BASE COMMERCE"). The Application, ACH Agreement Terms and Conditions, Personal Guaranty, and any addenda pertaining to ACH transactions thereto, 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 party (Merchant) identified above his or her name.

1.1 ACH PROCESSING. BASE COMMERCE and Merchant have contracted for BASE COMMERCE to provide Automated Clearing House ("ACH") services as a Third Party Processor of ACH transactions. These transactions will be placed through a financial institution used by BASE COMMERCE who will be acting as the Originating Depository Financial Institution ("ODFI"). Merchant shall act as the Originator. BASE COMMERCE will debit funds ("Debit Entry") for the purpose of collecting Automatic Payments from the accounts of the Merchant's customers ("Receivers") 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.

1.2 ACCOUNT AND AUTHORIZATION. Merchant shall, at all times, maintain an account at a bank that is a member of the Federal Reserve ACH System ("Account"). Merchant expressly authorizes BASE COMMERCE to debit and/or credit the Account designated by Merchant according to the terms of this Agreement. Merchant further authorizes BASE COMMERCE to process electronic funds transfers as a Third Party Processor 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 BASE COMMERCE, including, but not limited to, all Entries originated by Merchant, returned Entries, chargebacks, fees, fines and all other obligations owed to BASE COMMERCE and Merchant authorizes BASE COMMERCE to debit its Account for all amounts owed to BASE COMMERCE. Merchant acknowledges and expressly agrees that this authorization applies with the same force and effect to any new bank account information for Merchant that BASE COMMERCE obtains at a future date, regardless of the timing, reason or manner in which BASE COMMERCE obtains information about other bank account(s) for Merchant (including, but not limited to, bank account(s) that Merchant identifies to BASE COMMERCE or bank account(s) for Merchant that BASE COMMERCE identifies through its own lawful research or investigation), and Merchant expressly agrees that BASE COMMERCE may debit any such account held by, or on behalf of Merchant, in order to satisfy any of Merchant's obligations to BASE COMMERCE. Merchant shall provide new Account information to

BASE COMMERCE, 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 in perpetuity until all of Merchant's obligations to BASE COMMERCE are paid in full, including, but not limited to, those obligations described in this Agreement.

**1.3 CANCELLATION.** Either party may cancel this Agreement with 30 days' written notice to the other party, subject to the terms and limitations set forth in the TERM AND TERMINATION paragraph of this Agreement, including, without limitation, Merchant's obligation to pay an Early Termination Fee if BASE COMMERCE does not approve, in writing, Merchant's request to terminate the Agreement before the expiration of the initial term or any renewal term. BASE COMMERCE may also immediately cancel this Agreement and immediately suspend all processing for Merchant without providing advance written notice to Merchant: (1) upon the request of BASE COMMERCE'S ODFI or any regulatory agency, regardless of the reason for the request; (2) if BASE COMMERCE, its ODFI or any regulatory agency believes that Merchant has breached this Agreement, has breached any representations and warranties made in this Agreement, is violating or has previously violated any applicable Rules or Regulations and/or has initiated any unauthorized Entries; or (3) if BASE COMMERCE is unable to process transactions for Merchant for any reason that is out of BASE COMMERCE'S control or BASE COMMERCE no longer has the ability to process transactions for Merchant.

**1.4 CONSUMER CREDIT INQUIRIES.** A credit report may be made in connection with this Application and Agreement. Merchant and the individuals signing this Agreement on behalf of the Merchant, including any Guarantors, authorize BASE COMMERCE, or any credit bureau or any credit reporting agency employed by BASE COMMERCE or any agents of BASE COMMERCE to investigate the references provided or any other statements or data obtained from the Merchant, or any of the above principals, for the purpose of this Application and Agreement. Merchant also authorizes BASE COMMERCE to obtain additional credit reports regarding Merchant on an annual basis, unless BASE COMMERCE, in its sole and absolute discretion, determines that it is necessary for BASE COMMERCE to periodically obtain Merchant's credit report on a more than annual basis, in which case Merchant authorizes BASE COMMERCE to obtain such additional credit reports. Notwithstanding anything in this paragraph, Merchant authorizes BASE COMMERCE to obtain a credit report regarding Merchant if Merchant requests increased processing amounts or parameters, or if Merchant originates sporadic transactional volume.

## **2.0 MERCHANT RESPONSIBILITIES.**

**2.1 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.

**2.2 AUTHENTICATION.** Merchant agrees that BASE COMMERCE 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 BASE COMMERCE in its sole and absolute discretion, or if BASE COMMERCE deems the authentication process Merchant subscribes to is not adequate for standards determined by BASE COMMERCE. BASE COMMERCE at its sole and absolute discretion will determine the standards of authentication and the rate of return acceptable for Merchant. Nothing herein limits the Merchant's obligation to comply with the Rules and all applicable Regulations.

**2.3 REPRESENTATIONS REGARDING AUTHORIZATION.** Merchant represents and warrants with respect to all Entries originated by Merchant and processed by BASE COMMERCE for Merchant that (1) each Receiver has authorized the debiting and or crediting of its account, (2) each Entry is for an amount agreed to by the Receiver, and (3) each Entry is in all other respects properly authorized. In addition to all other indemnity obligations contained elsewhere in this Agreement, Merchant agrees to defend, indemnify and hold harmless BASE COMMERCE for any claims, losses, liabilities, costs or expenses suffered or incurred (including attorneys' fees and costs) relating to, arising out of or involving any breach of these representations and warranties or unauthorized Entries. These representations and warranties by Merchant shall survive termination of the Agreement. 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 BASE COMMERCE 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) and intentional or fraudulent acts.

**2.4 IDENTIFYING NUMBERS.** Merchant understands and agrees that BASE COMMERCE 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. In addition to all other indemnity obligations contained elsewhere in this Agreement, Merchant shall defend, indemnify and hold harmless BASE COMMERCE for any claims, losses, liabilities, costs or expenses suffered or incurred (including attorneys' fees and costs) as a result of an incorrect account or other identification.

**2.5 UNAUTHORIZED OR FRAUDULENT TRANSACTIONS.** Merchant shall be liable for all transactions on its 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 to establish and maintain the procedures to safeguard against unauthorized transmissions. Merchant represents and warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of any passwords, codes, security devices, and related instructions provided by BASE COMMERCE. If Merchant believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Merchant agrees to notify BASE COMMERCE immediately followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by BASE COMMERCE or an ODFI prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

**2.6 REGULATORY COMPLIANCE.** Merchant bears the final responsibility to insure that Merchant's policies and procedures meet the requirements of 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 BASE COMMERCE for Merchant comply with all applicable Rules and Regulations, including without limitation the following Regulations: 1) FTC Act (15 U.S.C. §§ 41, et seq.); 2) TSR (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 rules and sanctions laws of the Office of Foreign Assets

and 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., Jenkins Act (15 U.S.C. §§ 375, et seq. and accompanying regulations; and 9) all applicable state laws and regulations. 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) restricted 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 BASE COMMERCE or Merchant does business. These representations and warranties by Merchant shall survive termination of this Agreement. In addition to all other indemnity obligations contained elsewhere in this Agreement, Merchant shall defend, indemnify and hold harmless BASE COMMERCE for any claims, losses, liabilities, costs, fines or expenses suffered or incurred (including attorneys’ fees and costs) relating to, arising out of or involving any breach of these representations and warranties or failure to comply with any applicable Rules or Regulations. In addition to its cancellation rights described elsewhere in this Agreement, BASE COMMERCE may immediately cancel this Agreement if BASE COMMERCE, 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.

**2.7 TAX NAME AND ID.** Merchant shall provide to BASE COMMERCE its correct and accurate tax filing name and tax identification number for the U.S. Internal Revenue Service (“IRS”). In addition to all other indemnity obligations contained elsewhere in this Agreement, Merchant bears all liability and agrees to defend, indemnify and hold harmless BASE COMMERCE and its ODFI, including all of their directors, officers, employees and affiliates, from any and all claims, liabilities, losses, damages, fines, costs or other expenses (including attorneys’ fees and costs) suffered or incurred arising out of, relating to or involving in any way Merchant’s failure to provide an accurate tax filing name or tax identification number.

**2.8 TAX REPORTING OBLIGATIONS.** Merchant acknowledges that, pursuant to Section 6050W of the Internal Revenue Code, BASE COMMERCE is responsible for filing with the IRS annual information returns for all reportable payment transactions to Merchant for whom BASE COMMERCE processes transactions under this Agreement and any Merchant Card Processing Agreement. Merchant shall cooperate with BASE COMMERCE and take all reasonable steps to aid its reporting obligations and compliance with Section 6050W, including, but not limited to, provide an accurate and verifiable tax filing name and tax identification number (“TIN”) for each Merchant account. Merchant further acknowledges and agrees that, if it fails to provide an accurate tax filing name or TIN information, the IRS notifies BASE COMMERCE of a discrepancy between the information provided by Merchant and the IRS records, or if requested by the IRS for any reason, BASE COMMERCE shall be required to perform backup withholding from Merchant funding by deducting and withholding income tax in an amount based on the IRS withholding regulations at the time withholding is required from the gross amount of each reportable transaction pursuant to Section 6050W and its corresponding regulations. Merchant expressly authorizes BASE COMMERCE to withhold from Merchant’s funding or debit Merchant’s Account (or another account designated by Merchant if there are insufficient funds in the Account to cover the required withholding) for any and all backup withholding amounts required by Section 6050W and its corresponding regulations.

**2.9 RECORDKEEPING REQUIREMENTS.** Merchant shall keep all records of verifiable consumer authorizations for a period of two (2) years from the date an authorization is terminated or revoked.

Merchant agrees to provide copies of such documents or records to BASE COMMERCE immediately upon written request from BASE COMMERCE.

**2.10 NOTICE OF ERRONEOUS UNAUTHORIZED TRANSFER.** Merchant agrees to promptly and regularly review all Entries and other communication received from BASE COMMERCE and to immediately notify BASE COMMERCE if there are any discrepancies between Merchant's records and those provided by BASE COMMERCE, the ODFI or Merchant's bank, or with respect to any transfer not authorized by Merchant. If Merchant fails to notify BASE COMMERCE within 7 days of the date BASE COMMERCE e-mails, mails or otherwise provides a statement of account or other report of activity to Merchant, then Merchant will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer.

**2.11 INDEMNITY.** In addition to all other indemnity obligations contained elsewhere in this Agreement, Merchant agrees to defend, indemnify and hold harmless BASE COMMERCE and its ODFI, including all of their directors, officers, employees and affiliates, from and against any and all claims, losses, liabilities, costs or expenses suffered or incurred (including attorneys' fees and costs) relating to, arising out of or involving any breach of the representations and warranties made by Merchant in this Agreement, the failure of Merchant or a Merchant Administrator to comply with the terms of the Agreement, the failure of Merchant or a Merchant Administrator to comply with the Rules, or any and all other applicable laws or Regulations, or by reason of BASE COMMERCE providing the services set forth in this Agreement. This paragraph shall survive termination of the Agreement.

### **3.0 BASE COMMERCE RESPONSIBILITIES.**

**3.1 ACCEPTING TRANSACTIONS.** BASE COMMERCE will only be responsible for processing Entries that have arrived at its premises in proper format and on a timely basis. BASE COMMERCE will advise Merchant of any applicable cut-off time. Merchant does not have the right to cancel or amend any entry after submission to the ACH Network.

**3.2 ORIGINATING TRANSACTIONS.** BASE COMMERCE will use the information provided by Merchant to originate Entries to the ACH Network. Merchant acknowledges and agrees that BASE COMMERCE may reject Entries for any reason permitted or required by the Rules or applicable Regulations. Merchant also acknowledges and agrees that Entries or files may be rejected which exceed the threshold parameters identified and set for Merchant. Merchant also acknowledges and agrees that an Entry may be rejected if the Entry would cause BASE COMMERCE to violate any Federal Reserve or other regulatory risk control program, any other applicable Rule or Regulation, or BASE COMMERCE'S agreement with its ODFI. At Merchant's request, BASE COMMERCE 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 and faxed, delivered, or mailed to BASE COMMERCE.

**3.3 RETURNED ENTRIES AND NOCS.** BASE COMMERCE will apply returned Entries to Merchant's Account when they are received. As described elsewhere in this Agreement, if Merchant does not have funds available in its designated Account sufficient to cover all returned Entries, Merchant acknowledges and agrees that BASE COMMERCE will debit any other bank account identified by Merchant to BASE COMMERCE (regardless of the timing, method or reason Merchant identified such account to BASE COMMERCE). BASE COMMERCE 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, BASE COMMERCE may do so according to the Rules and Regulations regarding returned Entries. Merchant is solely responsible for all returned Entries.

**3.4 SETTLEMENTS AND FINALITY.** Merchant's Account will settle in accordance with the funding schedule set for Merchant. The first day of the settlement cycle is the following day from the effective Entry date. If any Entry is returned beyond the settlement date, BASE COMMERCE will, at BASE COMMERCE's sole and absolute discretion, either apply the debit to the current day's settlement, or debit the Merchant's 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, Merchant shall immediately remit payment to BASE COMMERCE to fully cover the amount of all returned Entries. As described elsewhere in this Agreement, Merchant agrees that, to fully cover all returned Entries, BASE COMMERCE may also debit any other bank account for Merchant about which it has account information, regardless of the timing, reason or manner in which BASE COMMERCE obtained information about the other bank account(s) for Merchant (including, but not limited to, bank account(s) that Merchant identifies to BASE COMMERCE or bank account(s) for Merchant that BASE COMMERCE identifies through its own lawful research or investigation).

**3.5 NO WARRANTY.** Merchant acknowledges and agrees that neither BASE COMMERCE nor its ODFI has control over the conditions under which Merchant uses the payment processing system, and does and cannot warrant the results obtained by such use. BASE COMMERCE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE PROCESSING AND/OR BASE COMMERCE'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. BASE COMMERCE 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 BASE COMMERCE 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 BASE COMMERCE 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.

**3.6 LIMITS OF LIABILITY.** BASE COMMERCE will be responsible for the performance of ACH services as a Third Party Processor in accordance with the terms of this Agreement and the Rules and applicable Regulations. BASE COMMERCE will not 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. BASE COMMERCE is not responsible for any loss, liability or delay caused by fires, earthquakes, war, civil disturbances, 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 BASE COMMERCE'S control or employ, legal constraints or other events beyond the control of BASE COMMERCE. BASE COMMERCE shall not be liable to Merchant for any delays in receipt or transmittal of funds or errors in credit or debit entries caused by third parties, including, without limitation, the Automated Clearing House, any depository financial institution, or any agent of Merchant.

#### 4.0 ADDITIONAL TERMS AND CONDITIONS.

**4.1 FEES AND PAYMENT.** BASE COMMERCE will notify Merchant in writing of fees due for services rendered. Notice of any changes to the existing fee structure as stated in this Agreement (including new or increased fees) will be made in writing to Merchant within 10 days of such changes or any new fees becoming effective. Merchant has the right to cancel the Agreement in writing at that time. Continued use of the services provided by BASE COMMERCE after notice of fee changes is provided to Merchant shall constitute Merchant's agreement to any new or changed fees. In addition to the fees identified elsewhere in this Agreement and the Application, Merchant shall pay the fees to BASE COMMERCE set forth in this paragraph.

**Return Fees:** If Merchant returns a transaction initiated by BASE COMMERCE and the transaction is in accordance with this Agreement, Merchant will be charged a \$35.00 return fee per occurrence. BASE COMMERCE, in its sole and absolute discretion, may suspend settlements for Merchant until payment for returned Entries or return fees is fully remedied.

**Chargeback and High Return Rate Fees:** If, at the time Merchant is billed for chargebacks, Merchant's High Risk or Unauthorized Return Rate exceeds 0.5% using a NACHA approved method of calculation, a high-risk surcharge of \$15.00 will be added to each chargeback received during that billing period and an additional 1.0% discount rate will be added to Merchant's Account, to be charged retroactively for the previous 30 days. In addition, if Merchant's overall return rate exceeds the rate specified in this Agreement, Merchant will be charged an additional \$5.00 per return until such time that the Merchant's return rate returns to a level that is below the return rate threshold specified in this Agreement or Merchant is approved for a higher return limit.

**Proof of Authorization Fees:** Merchant will be charged a \$10.00 fee for each Proof of Authorization ("P.O.A.") request received by BASE COMMERCE. Merchant agrees to provide BASE COMMERCE with the P.O.A. and all required information by the deadline imposed by BASE COMMERCE. If BASE COMMERCE does not receive the P.O.A. and/or any other required documentation within the time permitted and/or Merchant does provide information but the information provided is not valid or does not meet the NACHA requirements for the type of transaction that is in question, Merchant agrees to pay \$35.00 for each occurrence.

**Refunds and Credits:** BASE COMMERCE reserves the right to issue refunds or credits to any Receiver that has been debited by Merchant at any time and in BASE COMMERCE'S sole and absolute discretion. Merchant is subject to a \$25.00 fee per credit or refund issued. In the event BASE COMMERCE issues any credits or refunds on behalf of the Merchant, the amount of the refund or credit and associated fees will be deducted from Merchant's Account. If there are not sufficient funds in the Account, Merchant agrees that BASE COMMERCE will deduct the amount of refunds or credits issued, as well as associated fees, from Merchant's Reserve Account or may debit any other bank account for Merchant about which BASE COMMERCE has account information, regardless of the timing, reason or manner in which BASE COMMERCE obtained information about the other bank account(s) for Merchant (including, but not limited to, bank account(s) that Merchant identifies to BASE COMMERCE or bank account(s) for Merchant that BASE COMMERCE identifies through its own lawful research or investigation).

**Transactional Limit Fees:** BASE COMMERCE will also impose fees in the event Merchant exceeds any of its imposed maximum single transaction and maximum daily dollar limits. Daily limits will be reset at the beginning of each day. For single transaction and daily dollar amount limits, a \$25.00 fee per transaction that exceeds the limits will be applied.

**Compliance Fees:** Merchant agrees that, for each Merchant account on file with BASE COMMERCE, Merchant will pay a compliance fee of \$24.95 to be billed per quarter.

**Attorneys' Fees:** If Merchant becomes obligated to pay BASE COMMERCE'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. Payment: Merchant agrees that BASE COMMERCE may collect any and all amounts due by 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 BASE COMMERCE 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 or debiting any other bank account for Merchant about which BASE COMMERCE obtains account information, regardless of the timing, reason or manner in which BASE COMMERCE obtained information about the other bank account(s) for Merchant (including, but not limited to, bank account(s) that Merchant identifies to BASE COMMERCE or bank account(s) for Merchant that BASE COMMERCE identifies through its own lawful research or investigation), and/or setting off against any amounts BASE COMMERCE owes Merchant, without any obligation to give prior notice to Merchant. Merchant shall provide BASE COMMERCE the information necessary to collect all amounts owed by Merchant under this Agreement or the Rules or applicable Regulations. Merchant will be responsible for any and all attorneys' fees and other costs and expenses BASE COMMERCE may incur in collecting any fees or other amounts Merchant owes to BASE COMMERCE. Subpoenas, Liens, and Levies: If BASE COMMERCE receives any subpoena for the production of documents, including any Civil Investigative Demand, or any lien, levy, garnishment or other third-party claim pertaining to any amounts due to Merchant pursuant to the terms of this Agreement (collectively "Third Party Payment Demand"), in addition to all other rights and remedies available to BASE COMMERCE herein, including but not limited to BASE COMMERCE's right to terminate this Agreement for cause, Merchant shall pay a \$250 fee for each subpoena as well as for each and every month or partial month in which BASE COMMERCE is obligated to reply to, remit funds to, or otherwise administer such Third Party Payment Demand.

**4.2 VOLUME ANALYSIS.** BASE COMMERCE 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 BASE COMMERCE in its sole and absolute discretion, BASE COMMERCE determines Merchant's business is operating in a manner that BASE COMMERCE believes could cause a financial or legal risk, or if Merchant ceases to do business with BASE COMMERCE for any reason, BASE COMMERCE shall have the right at any time to place all of the provisional or final credit provided to Merchant for each Debit Entry originated by it into an account held by BASE COMMERCE for a period of 2 years from the last Debit Entry. The above determining factors are at the sole and absolute discretion of BASE COMMERCE. In addition to all other Merchant accounts from which BASE COMMERCE is authorized under this Agreement to obtain payment of funds owed by Merchant, BASE COMMERCE shall have the right to offset and pay itself from the account described in this paragraph for all returned Entries, chargebacks, refunds or credits issued, fees, damages (including liquidated damages), or other costs and expenses (including attorneys' fees and costs) that may arise out of ACH processing for Merchant and for which Merchant has agreed to pay BASE COMMERCE pursuant to the terms of this Agreement. Additionally, if the Merchant's average transaction volume drops by more than 75% or Merchant processes less than 75% of the projected volume set forth in the Requested Transaction Volume section in the Application, BASE COMMERCE may increase Merchant's fees without prior notice to Merchant.

**4.3 LIQUIDATED DAMAGES.** Notwithstanding any other provision of this Agreement, in the event that Merchant violates any applicable Regulation or Rule, or is in breach of the representations and warranties made in this Agreement regarding Merchant's compliance with all applicable Regulations and Rules, Merchant shall pay to BASE COMMERCE as liquidated damages an amount



up to 30% of the provisional or final credit for each Debit Entry that may otherwise be provided to Merchant at the conclusion of the 2-year VOLUME ANALYSIS period. Merchant acknowledges and agrees that BASE COMMERCE may deduct the amount of liquidated damages owed pursuant to this paragraph from the amount of provisional or final credit that may otherwise be provided to Merchant at the conclusion of the 2-year VOLUME ANALYSIS period. The parties agree that BASE COMMERCE'S damages for Merchant's violation of any applicable Regulation or Rule, or breach of Merchant's representations and warranties regarding Merchant's compliance with all applicable Regulations and Rules, would be uncertain and difficult to ascertain and that the liquidated damages described in this paragraph are reasonably related to BASE COMMERCE'S actual damages and are a reasonable estimate of the damages which BASE COMMERCE would in fact suffer in the event of Merchant's failure to comply with all applicable Regulations and Rules, or Merchant's breach of its representations and warranties regarding its compliance with applicable Regulations and Rules and that such Liquidated Damages are not a penalty.

**4.4 CONFIDENTIALITY.** Each party represents, warrants and mutually agrees that all information concerning the other party which comes into its possession during the term of this Agreement shall be maintained as confidential and shall not be used or divulged to any other party except as necessary to permit the activities contemplated under this Agreement or as required by law. Notwithstanding the foregoing, it shall not be a breach of this Confidentiality provision for BASE COMMERCE to disclose Merchant's confidential information if required to do so under law or in a judicial or other governmental investigation or proceeding, provided Merchant has been given prior notice to the extent not prohibited or requested by the government agency or Court Order and BASE COMMERCE has sought all available safeguards against widespread dissemination prior to such disclosure.

**4.5 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 BASE COMMERCE, or Merchant's business relationship with BASE COMMERCE are governed by, and shall be construed under, the laws of the State of Arizona without regard for the principles and conflicts of law. All such claims shall exclusively be adjudicated in a State or Federal Court located in Maricopa County, Arizona, which the parties agree has exclusive personal jurisdiction over them and is the proper venue. The parties waive any objections to personal jurisdiction or venue in Maricopa County, Arizona. 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.

**4.6 JURY TRIAL WAIVER.** BASE COMMERCE 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, BASE COMMERCE'S SERVICES, OR THE TRANSACTIONS RELATING TO SUBJECT MATTER OF THIS AGREEMENT.

**4.7 AGREEMENT MODIFICATION.** BASE COMMERCE may modify the terms and conditions of this Agreement upon 10 days' written notice. Use of services after any such modification will evidence acceptance of the modification(s).

**4.8 NOTICES.** Each notice required by this Agreement shall be in writing and will be effective when sent unless notice is provided by First Class Mail, return receipt requested, which shall be effective when received. Notice may be provided by:

I. To Merchant:

- a. by First Class Mail, return receipt requested, at the Merchant's business address listed in this Agreement;
- b. by facsimile at Merchant's fax number currently on file;
- c. by electronic mail at the Merchant's email address currently on file; or
- d. by posting notice to the Merchant Portal, which shall be effective at the next Merchant login to the Merchant Portal.

2. To BASE COMMERCE:

- a. by First Class Mail, return receipt requested to 5055 E. Washington Street, Suite 300, Phoenix, AZ 85034; or
- b. by email to Legal@BaseCommerce.com with a copy to Alex.Sidel@BaseCommerce.com

4.9 EXCLUSIVE AGREEMENT. Merchant agrees and warrants that, during the term of this Agreement, Merchant will exclusively use BASE COMMERCE's products and services as set forth in this Agreement, and shall not use or contract with any competing ACH or electronic funds transfer organization unless first specifically approved in writing by BASE COMMERCE.

4.10 TERM AND TERMINATION. This Agreement is effective from the date hereof and shall continue for a term of one (1) year. Thereafter, this Agreement shall be automatically renewed for consecutive one (1) year periods unless either party gives the other written notice of non-renewal at least 30 days prior to the expiration date of the current term. This Agreement may be terminated by BASE COMMERCE at any time with 30 days' written notice or as otherwise provided by the terms of this Agreement. If Merchant wants to terminate the Agreement before the initial one-year term or any renewal term has expired, Merchant shall give BASE COMMERCE 30 days' written notice of Merchant's intent to terminate the Agreement. BASE COMMERCE must approve the Merchant's request for early termination in writing, which approval will not be unreasonably withheld. If BASE COMMERCE does not provide such written approval, Merchant acknowledges and agrees that it will be charged an early termination fee of \$500.00 or the amount mutually agreed upon in the Early Termination Fee section of the Agreement. Notwithstanding BASE COMMERCE'S rights to cancel this Agreement as stated elsewhere in this Agreement, BASE COMMERCE may also immediately terminate this Agreement and immediately suspend all processing for Merchant without providing advance written notice to Merchant: (1) upon the request of BASE COMMERCE'S ODFI or any regulatory agency (regardless of the reason for the request); (2) if BASE COMMERCE, its ODFI or any regulatory agency believes that Merchant has breached this Agreement, has breached any representations and warranties made in this Agreement, is violating or has previously violated any applicable Regulations or Rules and/or has initiated any unauthorized Entries; or (3) if BASE COMMERCE is unable to process transactions for Merchant for any reason that is out of BASE COMMERCE's control or BASE COMMERCE no longer has the ability to process transactions for Merchant. Immediately upon termination of the Agreement, whether by expiration or otherwise and whether or not the Agreement was terminated for cause, BASE COMMERCE'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. At the time of termination, BASE COMMERCE will place all unsettled funds due to be settled into a Reserve Account to be released in accordance with the RESERVE BALANCE paragraph of this Agreement.

**4.11 DAMAGE WAIVER.** BASE COMMERCE will not be liable to Merchant for any special, consequential, indirect or punitive damages whether or not: (1) any claim for these damages is based on tort or contract law, or (2) either party knew or should have known the likelihood of these damages in any situation. BASE COMMERCE makes no representations or warranties other than those expressly made in this Agreement.

**4.12 RESERVE ACCOUNT.** For Merchants where Reserve Accounts are required, in BASE COMMERCE's sole and absolute discretion, Merchant acknowledges and agrees that an amount equal to or greater than 100% percent of highest monthly origination total amount will be held in a Reserve Account by BASE COMMERCE. Merchant further acknowledges and agrees that its Reserve Account may be commingled with reserve funds held for other merchants. This amount will remain in the Reserve Account for a period of 2 years following the last debit Entry initiated by Merchant. Merchant acknowledges and agrees that this Reserve Account will be used to fund any and all returned items. In addition, BASE COMMERCE shall also have the right to offset and pay itself from the Reserve Account for all returned Entries, fees, damages, or other costs and expenses (including attorneys' fees and costs) that may arise out of ACH processing for the Merchant and for which Merchant has agreed to pay BASE COMMERCE pursuant to the terms of this Agreement. For purposes of funding the Reserve Account, BASE COMMERCE agrees to deduct an amount equal to no more than 100% percent of each debit origination until such time that the entire 100% percent reserve amount is reached. In the event a reserve is held, it is solely the responsibility of Merchant to notify BASE COMMERCE of an impending release based on the 2-year calculation. 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 BASE COMMERCE in full, all funds in the Reserve Account shall be considered to be held by BASE COMMERCE for BASE COMMERCE sole interest, benefit, and protection, shall be considered to be the property of BASE COMMERCE, 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. Notwithstanding any of the foregoing, as an additional and cumulative right under this Agreement, if BASE COMMERCE 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, BASE COMMERCE may also identify, sequester, segregate or transfer to itself (including its own bank account(s)) any portion of the Reserve that BASE COMMERCE 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. The aforementioned rights and remedies are not intended to be exclusive and are intended to be cumulative of all of BASE COMMERCE'S other rights and remedies under this Agreement and applicable law. In the event Merchant does not notify BASE COMMERCE in writing for an accounting and request, in writing, that BASE COMMERCE release any Reserve Account within 30 days prior to the expiration of the 2 years following the last debit transaction, the Reserve Account shall be forfeit and may be transferred or applied to a company-wide reserve account that may be used, applied or offset, in BASE COMMERCE's sole and absolute discretion, to pay or reduce other unfunded liabilities of any and all BASE COMMERCE merchants, whether or not affiliated with Merchant and Merchant's processing activity. Any funds held in accordance with the VOLUME ANALYSIS provisions of this Agreement are to be considered reserve funds and subject to the requirement of this paragraph that Merchant must request, in writing, that BASE COMMERCE release funds in the Reserve Account within 30 days prior to the expiration of the 2-year period. In the event of a forfeit Reserve Account, BASE COMMERCE is granted all rights to the Reserve Account and the entire remaining balance therein. Moreover, in the event the Agreement is terminated, suspended or canceled for any

reason, any and all unfunded settlements otherwise due to Merchant will be placed in the Reserve Account and subject to the terms of this paragraph.

4.13 FUNDING POLICY. Merchant acknowledges and agrees that funding for each origination will be set by BASE COMMERCE at BASE COMMERCE's sole and absolute discretion. Unless expressly agreed to in writing the amount disbursed will be the origination amount less returned items, processing fees and any reserve amount as required. WEB merchants are required to have an unfunded amount of no less than 12.5 percent of the highest consecutive 30-business day average. BASE COMMERCE reserves the right to change the funding schedule, average balance requirements or reserve requirements at its sole and absolute discretion for any Merchant regardless of SEC type.

4.14 AUDIT REQUIREMENTS. BASE COMMERCE and its ODFI shall have the right to audit Merchant concerning its compliance with the Rules and applicable Regulations.

4.15 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. If Merchant fails to maintain a working customer service telephone line, then BASE COMMERCE will, at its sole discretion, process customer services calls on behalf of Merchant at a charge of \$5.00 per inbound/outbound call and \$5.00 per refund processed.

4.16 NON-SOLICITATION. Merchant agrees that, without BASE COMMERCE'S prior written consent, it will not, for a period of one (1) year from the date this agreement is terminated, directly or indirectly solicit for employment or employ any person who is now employed by BASE COMMERCE.

4.17 ENTIRE AGREEMENT. This Agreement makes up the entire Agreement between the parties concerning ACH 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.

4.18 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.

4.19 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.

4.20 ASSIGNMENT. BASE COMMERCE shall have the right to assign this Agreement, including its rights and performance obligations under the Agreement, to any corporation or other entity which BASE COMMERCE may hereafter merge or consolidate, or to which BASE COMMERCE may transfer all or substantially all of its assets provided such corporation or other entity assumes all of BASE COMMERCE'S obligations hereunder. Upon assignee's or transferee's assumption of BASE COMMERCE'S obligations pursuant to this Agreement, BASE COMMERCE shall have no further liability

to Merchant and Merchant shall look solely to any assignee or transferee for performance of any and all obligations arising under or related to this Agreement.

4.21 EXECUTION IN COUNTERPARTS COPIES. This Agreement, including all Exhibits and Addendums thereto (which are incorporated as part hereof) may be executed in the original or by facsimile or e-mail in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and photocopies of this Agreement shall be considered originals for all purposes, including, but not limited to, any court or arbitration proceedings. Merchant acknowledges that they may not receive a countersigned Agreement, exhibits or addendums from BASE COMMERCE unless such countersigned Agreement is requested by Merchant in writing. Acceptance of all terms and conditions is upon BASE COMMERCE's receipt of the agreement executed by Merchant.

5.0 PERSONAL GUARANTY. To endure and in consideration of BASE COMMERCE's acceptance of the Merchant Application and this Agreement, the undersigned absolutely and unconditionally guarantees to BASE COMMERCE full and prompt payment and performance when due of each any every condition and obligation of Merchant under this Application and Agreement, including all exhibits and amendments thereto. The undersigned guarantor(s) further acknowledges and agrees to pay all expenses of collection on this guaranty, including reasonable attorneys' fees incurred by reason of the default of the Merchant or the default of the guarantor(s). The undersigned guarantor(s) waives prior demand on Merchant. BASE COMMERCE shall not be required to first proceed against Merchant to enforce any other remedy before proceeding against the undersigned personal guarantor(s). This is a continuing and irrevocable guaranty which shall not be discharged or affected by the death of the undersigned, shall bind heirs, administrators, representatives and assigns and may be enforced by or for the benefit of any other successor of BASE COMMERCE. The term of this personal guaranty shall be for the duration of the Agreement, and any other addendum or amendment thereto, and shall guarantee all obligations which may arise or accrue during the term thereof although enforcement may be sought subsequent to any termination.

## **ACH ACKNOWLEDGEMENT**

Member wishes to originate ACH (Automated Clearing House) debit and/or credit items as a form of payment for financial agreements, loans, installment credit, goods or services and to facilitate funds transfer utilizing the Zimple and BASE COMMERCE System. User has received and read the current version (v6.8.2020) of the separate BASE COMMERCE “ACH Processing Agreement” applicable to ACH processing and the Zimple Terms of Use. Updates to the current version of the BASE COMMERCE “ACH Processing Agreement” shall be made available on the Zimple web-site. Users shall acknowledge the current Zimple and BASE COMMERCE agreements at each use of the Zimple system.

By using the Zimple system, User agrees to be bound by the terms and conditions of the BASE COMMERCE ACH Processing Agreement, the Zimple Terms of Use and accepts the Fee Schedule associated Zimple, Inc. for services. Zimple’s system shall provide debit/credit instructions to BASE COMMERCE. User authorizes Zimple to provide debit and credit instructions to BASE COMMERCE to debit and or credit the bank account indicated herein with respect to the receipt of settled funds, returned items established by Users agreements with BASE COMMERCE, Zimple and Zimple’s Terms of Use.

The ACH Processing Agreement and this Addendum will be effective upon Zimple and BASE COMMERCE acceptance and upon the User submission of first transaction for use of the Zimple, Inc. software system and BASE COMMERCE, Inc. Payment Services through Zimple’s Web Site, as defined in the BASE COMMERCE ACH Processing Agreement.

The information I have provided in this User application will be provided to Zimple and BASE COMMERCE for the sole purpose of establishing ACH origination privileges and utilized confidentially and exclusively by Zimple, BASE COMMERCE and its sponsoring financial institutions in order to determine eligibility. I also acknowledge that a personal consumer credit inquiry may be required and I hereby consent and provide my permission for this inquiry.

I represent that all the information provided herein is truthful and accurate to the best of my knowledge.

By using the Zimple system I authorize the release of this information to Zimple and BASE COMMERCE.

**YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND INCORPORATED DOCUMENTS AND FURTHER UNDERSTAND THE RIGHTS, OBLIGATIONS, TERMS AND CONDITIONS SET FORTH HEREIN. BY CLICKING ON THE ACCEPT BUTTON AND/OR USING THE ZIMPLE SERVICES, YOU EXPRESSLY CONSENT TO BE BOUND BY ITS TERMS AND CONDITIONS AND GRANT TO ZIMPLE THE RIGHTS SET FORTH HEREIN.**