



## UNC MERCHANT TERMS AND CONDITIONS

The UNC MERCHANT TERMS AND CONDITIONS together with the Network Registration (Merchant Direct) Form (hereinafter "Agreement") is entered into as of the date set forth in the UNC Network Registration ("Merchant Direct") form, by and between United Medical Credit, Inc., a California corporation, d/b/a United National Credit (hereinafter "UNC") and the Merchant executing this Agreement (hereinafter "Merchant").

### RECITALS

A. Merchant is lawfully engaged and properly licensed to conduct business in providing consumer goods and products and/or services related thereto, including but not limited to installation services (hereinafter the "Package") to individual customers of Merchant ("Clients");

B. UNC coordinates with Merchant and the Clients to offer the UNC Program (the "Program") which facilitates qualified Clients in obtaining financing from Merchant or a 3<sup>rd</sup> party to cover the costs associated with a purchasing the Package from Merchant;

C. Merchant desires to participate in the Program whereby Merchant's Clients may apply for and, if qualified, obtain through the Program financing from Merchant or a 3<sup>rd</sup> party to facilitate Client's payment for the purchase of the Package; and

D. Merchant desires to participate in the Program in compliance with the terms, conditions and covenants set forth in this Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree as follows:

1. Program. Merchant hereby subscribes to the Program, and UNC authorizes Merchant within its approved "Core Business" to participate in the Program, as set forth herein. For purposes of this Agreement, the term "Core Business" means the business operated by Merchant, and approved by UNC in the enrollment process.

2. Financing Options. For purposes of this Agreement, the term "Lender" shall mean any financial institution or entity (or parent, subsidiary, or affiliate thereof) with whom UNC has a contractual relationship under the Program that offers, or has at any time in the past, offered financing to any Clients who have submitted applications for credit under the Program. The term "Buyer" shall mean any person who purchases from Merchant any financing contract Merchant enters into with Client ("Merchant RIS Contract"). The term "Financing Agreement" shall mean either Loan Agreement signed by client with Lender or a Merchant RIS Contract signed with Merchant.

3. Referral of Clients and Non-Discrimination. Except as set forth herein, Merchant shall refer all Clients who desire to obtain private financing for the purchase of Merchant's Package to UNC or to the UNC website. Merchant agrees that its owner(s)/principal(s) and employees will not submit personal applications for financing through UNC without prior written permission by UNC. Clients shall deliver to UNC all required personal information necessary for Lender's application and underwriting requirements to ascertain whether Client qualifies for financing through UNC's Lenders. Lenders, Buyers, UNC, and Merchants shall fully comply with the state and federal credit discrimination laws. No person shall discriminate against any Client or take any other adverse action against a Client because Client is a



member of a protected class, as defined by applicable law, or because Client has chosen to use credit to finance the purchase of Package. No person shall engage in any practice that has or could have an impermissible negative or disparate impact on member of any protected class, as defined by applicable law.

4. Qualification of Clients. UNC shall notify Client whether he or she qualifies for the financing requested from Lenders or Merchant through the Program. Merchant shall not be obligated to assess or pre-qualify any Client to ascertain his or her creditworthiness and is not authorized to make any representations or promises about whether or not Client will qualify to obtain such financing, including the likelihood of approval, applicable finance charge rates, or any terms or conditions of the financing arrangement. UNC makes no promises, representations, or guaranties that financing for a particular Client will be approved by a Lender or Merchant and all credit decisions shall be based upon applicable underwriting and origination guidelines under the Program.

5. Verification of Client Identity. Merchant shall take all reasonable steps to verify the identity of each Client (and any co-signer or guarantor for any Client), including, without limitation, inspecting the government-issued photo identification of Client and/or of Client's co-signer or guarantor. Merchant shall not refer any Clients to UNC for credit under the Program whose identification, documentation, or financial information Merchant believes, or has reason to believe, is not accurate, valid, and genuine.

6. Cost of Package Financed. As part of a Client's application for financing, Merchant shall obtain Client's waiver and release of Client's privacy rights under applicable local, state, and federal laws (including, without limitation, under the Gramm-Leach-Bliley Act to allow UNC and/or Lenders to assess the cost of the desired Package as related to the amount of financing desired by Client.

7. Financing Application and Consumer Credit Disclosures. A full and complete application which includes all income, expense, assets and liability information is necessary to underwrite credit requests. Upon receipt of such information, UNC on behalf of Client shall submit the same to one or more Lenders for processing and underwriting with respect to obtaining financing of the Package for Client. Upon receiving approval for financing by a Lender, UNC may, but is not obligated, to assist as needed in facilitating delivery of all Lender disclosure documents required for such financing. Merchant shall not participate in handling any Lender disclosure documents related to any financing. Nothing contained herein is intended to preclude any Lender from offering financing to a Client or to deal directly with Client in making required disclosures and closing any financing.

8. Approval, Funding Process, and Payment of Financing Funds. Upon satisfaction of the underwriting requirements, the Financing Agreement shall be executed by Client. Upon execution of all required disclosure documents and the Financing Agreement, and as directed by Client, the proceeds from such Financing Agreement shall be delivered to Merchant directly for the Package. The manner and timing of funding shall be based on the circumstances and timing of Client's application, approval and funding of each Financing Agreement, as well as the timing of the planned delivery of Package. To receive the funds via Automated Clearing House ("ACH"), Merchant shall execute the ACH Debit and Credit Authorization ("ACH Authorization") authorizing UNC to make electronic debits and credits to Merchant's checking account ("Merchant's Bank Account") listed in the ACH Authorization, and shall provide UNC check marked "VOID" from Merchant's Bank Account to verify the bank routing and account numbers. By signing the ACH Authorization, Merchant authorizes UNC to initiate ACH transfer entries and to credit and/or debit Merchant's Bank Account as set forth in this Agreement. The ACH Authorization shall remain in effect unless and until UNC receives written notification from Merchant that this it has been terminated in such time and manner to allow UNC to act. The undersigned represents and warrants to UNC that the person executing the ACH Authorization is an authorized signatory on Merchant's Bank



Account and all information regarding Merchant's Bank Account is true and correct. If Merchant does not sign an ACH Authorization, then Merchant shall receive the funds via Check from UNC. If a Client is approved for UNC's Direct Funding Program, funds are distributed to Client directly from the Lender. In such case, Client is responsible to pay Merchant directly, and Merchant agrees to remit to UNC the fees set forth in Section 9. Further, Merchant acknowledges and agrees that UNC shall not be responsible if a Client uses proceeds received directly from the Lender for any purposes other than payment of the Package, and Merchant agrees that it is responsible for all fees set forth in Section 9, and shall remit same to UNC.

9. UNC Fees. The amount of the UNC Fee ("UNC Fee") shall be based upon the terms and conditions of Program available through UNC at the time Client applies, and the financing Client receives under the Program. Pricing relating to UNC Fees under this Agreement will be provided by UNC in a Fee Schedule which UNC may distribute from time to time. If financing to Merchant's Client is approved and funded by a Lender, then Merchant shall pay the UNC Fee an automatic deduction by UNC from the financing proceeds. Merchant hereby authorizes UNC to deduct and retain any and all UNC Fees from any financing arrangement provided to Client for which the proceeds of such financing are to be paid to Merchant for Package as contemplated by this Agreement. The available financing options under the Program and corresponding UNC Fees for each financing option are subject to unilateral modification by UNC. Merchant shall be notified in advance by UNC of any modification in the UNC Fee Schedule in advance of the funding of any financing for the benefit of Client.

10. Manner of Payment of the UNC Fee. Merchant hereby expressly authorizes UNC to automatically deduct the UNC Fees from the proceeds of financing prior to payment to Merchant. All UNC Fees shall be automatically deducted from the total financing proceeds prior to disbursement to Merchant. Merchant hereby agrees and accepts the proceeds from the financing less UNC Fees as payment in full by Client to Merchant of the cash price of the Package.

11. Restrictions on Merchant Surcharging Client for UNC Fees. Merchant shall not add any finance or credit related fees into the cash price it charges to Client for the Package and shall not surcharge or seek to recover from Client any UNC Fees paid to UNC by Merchant. Merchant hereby expressly agrees to defend, indemnify and hold UNC, and its shareholders, directors, officers, employees, and agents and any Lender involved in any Financing Agreement, harmless from and against any and all losses, claims, demands, liabilities, costs, damages, and expenses (including attorneys' fees) of any nature or kind that arises from or in connection with any breach of this covenant by Merchant. Merchant agrees to immediately refund such amounts to UNC.

12. Timely Delivery and/or Performance of the Package. The Package shall be performed or delivered in entirety within Thirty (30) days from the date of disbursement of funds to Merchant (the "Package Delivery Period") unless an extension is received in writing from UNC pursuant to Section 14 below.

13. Cancellation of the Package. If financing proceeds are paid to Merchant prior to Merchant's delivery of the Package in entirety to Client, and the Package are either (i) canceled by Client or (ii) not performed within the Package Delivery Period and rescheduled pursuant to Section 14, then Merchant shall within three (3) days of the end of the Package Delivery Period or cancellation of the Package, whichever is earlier, refund to UNC all funds Merchant received for such Package. In addition, UNC may charge Merchant a Cancellation Fee in the amount set forth in the Fee Schedule referenced in Section 9. Merchant shall not charge UNC, Lender or Client any fee in any form for any such cancellation. If Merchant has signed an ACH Authorization, UNC shall debit such amounts owing under this Section 13 from Merchant's Bank Account via ACH debit. If Merchant has not signed an ACH Authorization, Merchant shall immediately send such amounts owing under this Section 13 to UNC. Failure to comply



with this provision shall constitute a material breach of this Agreement.

14. Postponement of the Package. Merchant may notify UNC in writing and request that the Package Delivery Period be extended. UNC may accept or deny the extension request in its sole and absolute discretion. Any extension granted shall be in writing, and shall be for a period of no more than Thirty (30) days ("Postponement Period"). Further, if financing proceeds are paid to Merchant and Client incurs finance charges before Merchant completes the delivery of the Package in entirety to Client, then UNC may in its sole discretion charge back Merchant for any finance charges incurred by Client during the period prior to delivery of the Package in entirety. Merchant shall not charge UNC, Lender or Client any fee in any form for any delay in rendering the Package. If Merchant has signed an ACH Authorization, UNC shall debit such amounts owing under this Section 14 from Merchant's Bank Account via ACH debit. If Merchant has not signed an ACH Authorization, Merchant shall immediately send such amounts owing under this Section 14 to UNC. Failure to comply with this provision shall constitute a material breach of this Agreement.

15. Refunds on the Cost of the Package. If there is a refund by Merchant of any portion of the cost of any Package delivered by Merchant to Client that was paid for by financing, the refund shall be made to UNC for handling and not to Client, unless other arrangements are agreed upon in writing between UNC and Merchant. If Merchant has signed an ACH Authorization, UNC shall debit such amounts owing under this Section 15 from Merchant's Bank Account via ACH debit. If Merchant has not signed an ACH Authorization, Merchant shall immediately send such amounts owing under this Section 15 to UNC. Failure to comply with this provision shall constitute a material breach of this Agreement.

16. Person Receiving the Package. UNC will issue a "Merchant Disbursement Form" prior to disbursement of any funds to Merchant that lists the person receiving the Package. UNC requires and Merchant agrees and acknowledges that the person who receives the Package shall be the person listed Disbursement Form. Merchant must notify UNC immediately if Merchant believes or has reason to believe that the person listed on the "Merchant Disbursement Form" is not the person receiving Package. If at any time, UNC believes or has reason to believe that that person listed on the "Merchant Disbursement Form" is not the one who is receiving or has received the Package, Merchant hereby authorizes UNC to automatically charge-back the advanced amount to Merchant.

17. Fraudulent Accounts. If there is any dispute on a Financing Agreement regarding a Client's identity, Merchant will be required to show proof that Client's government-issued photo identification was verified, and such verification was documented prior to any Financing Agreement executed by Client. If Client files a fraud affidavit with any law enforcement authority, claims that arrangement with Merchant was procured through fraud, or without Client's consent, or otherwise disputes the validity or enforceability of any agreement or arrangement between Client and Merchant, Merchant hereby authorizes UNC to charge-back the advanced amount paid to Merchant. In addition, the parties acknowledge that any person involved in defrauding UNC shall be personally liable to UNC for damages incurred. If Merchant has signed an ACH Authorization, UNC shall debit such amounts owing under this Section 17 from Merchant's Bank Account via ACH debit. If Merchant has not signed an ACH Authorization, Merchant shall immediately send such amounts owing under this Section 17 to UNC. Failure to comply with this provision shall constitute a material breach of this Agreement.

18. Charge-Back Rights. The Program is a non-recourse Program for Merchant, meaning UNC will not seek repayment from Merchant if Client fails to repay his or her obligations under the Financing Agreement. UNC shall provide Merchant with written notice of any and all disputes and allegations of breach or misrepresentation. Furthermore, Merchant hereby expressly authorizes UNC to immediately and automatically charge-back all or a portion of the financing proceeds paid to Merchant:



- (a) In the event of any dispute or controversy between a Client and Merchant, including without limitation any dispute or controversy resulting from any alleged breach of agreement or misrepresentation by Merchant related to the Package or financing, if UNC has given Merchant an opportunity to respond and UNC determines that Client's dispute is valid;
- (b) In the event the goods or services rendered in any financed Package are not performed, provided or delivered;
- (c) In the event the goods or services financed in the Package are not performed, provided or delivered under the Core Business approved by UNC upon enrollment;
- (d) In the event Merchant or any of Merchant's employees, contractors, agents, officers, or agents, are not properly licensed at the time of the Package being performed;
- (e) Upon the filing of any lawsuit or arbitration by Client alleging negligence, breach of contract, or any other cause of action claiming damages in excess of the financed Package against Merchant related to any Package financed under the Program;
- (f) In the event UNC believes or has reason to reasonably believe that Merchant, its owner(s)/principal(s) and employees submitted personal applications for financing through UNC without prior written permission by UNC;
- (g) In the event UNC believes or has reason to reasonably believe that any information provided by Client or by Merchant to UNC was incorrect, inaccurate, incomplete, or misleading (including, without limitation, Client's identity and Merchant's Warranties and Representations set forth in Section 25;
- (h) In the event any of Merchant's representations or warranties contained in this Agreement are materially untrue or incorrect;
- (i) In the event UNC believes or has reason to believe that any agreement provided by Merchant or Client to UNC is not a bona fide legal obligation of Merchant or Client, or any document provided by Merchant or by Client to UNC is the subject of fraud, is invalid, or has been tampered with in any way;
- (j) In the event that any Lender charges-back UNC for funds delivered to Merchant or Merchant's Client under the Program on the basis of non-receipt of the Package;
- (k) In the event that any Lender charges-back UNC for funds delivered to Merchant or Merchant's Client under the Program relating to Merchant's failure to provide the Package Verification Form within seven (7) business days of request by UNC;
- (l) Any other occurrence constituting a material breach or default of this Agreement.

If Merchant has signed an ACH Authorization, UNC shall debit such amounts owing under this Section 18 from Merchant's Bank Account via ACH debit. If Merchant has not signed an ACH Authorization, Merchant shall immediately send such amounts owing under this Section 18 to UNC. Failure to comply with this provision shall constitute a material breach of this Agreement.

19. Assignment of Financing Agreements. Any Financing Agreement executed by any Client of Merchant for financing to pay for the Package under this Agreement may be assigned by the holder of such Financing Agreement. Upon seeking prior approval from Buyer, Merchant may enter into RIS Contracts and shall sell, transfer, assign and convey to Buyer all of its right, title and interest in such in a form acceptable to Buyer evidencing consummated credit sales of the Package provided by Merchant to



Client. Buyers shall have the right, but not the obligation, to purchase any and/or all of the Merchant RIS Contracts. The purchase shall be at a price to be agreed to between Buyer and Merchant. Each purchase shall be subject to the following terms and conditions: (i) agreement of the price by Buyer and Merchant for the Merchant RIS Contract; (ii) Merchant's execution and delivery to UNC of a Completion Statement, Bill of Sale and Assignment, which shall include a warranty that the services financed by Merchant in the Package have been competently performed, or delivery of such services have commenced within Thirty (30) days of the date of the Merchant RIS Contracts; (iii) delivery of the signed Merchant RIS Contract by Client and Merchant and any other required supporting documentation (e.g. copy of government-issued photo identification, proof of income); and (iv) delivery of a copy of Merchant's business licenses in good standing. Merchant shall give notice to the obligor on a purchased Merchant RIS Contract of the assignment of each purchased Merchant RIS Contract that Buyer is the owner of the Merchant RIS Contract and that all payments thereafter shall be made directly to Buyer. Merchant shall remit, without offset or deduction and within five (5) days of receipt, all payments received by Merchant in connection with a purchased Merchant RIS Contract.

20. Term and Termination. The initial term ("Initial Term") of this Agreement shall be for a period of one (1) month commencing upon the date of this Agreement. Upon the expiration of the Initial Term, this Agreement shall remain in effect until either party terminates it as provided herein. This Agreement may be terminated: (i) by either party on thirty (30) days advance written notice to the other party; (ii) by UNC upon notice to Merchant in the event (1) Merchant fails to comply in any material respect with any representation, warranty, term or obligation under this Agreement; (2) Merchant suffers a material adverse change in its business, financial condition, business practices, products or services; (3) Merchant sells all or a substantial portion of Merchant's business or assets; (4) UNC deems Merchant to be financially insecure; or (5) there are, as determined by UNC in its sole discretion, excessive Chargebacks on financing transactions submitted by Merchant or Merchant's Clients in any calendar quarter. Upon termination of this Agreement, UNC shall reconcile all existing accounts between the parties and all earned UNC Fees, charge-backs, and refunds shall be credited as appropriate to each respective party. In the event, any issues arise under any Financing Agreement executed pursuant to this Agreement that requires refunds or charge-backs for any reason, the party subject to such refund or charge-back shall pay such amounts upon demand.

21. UNC and Merchant Advertising. If Merchant agrees to use the Internet-based website banner for UNC on Merchant's website, Merchant shall remove said banner from Merchant's website within ten (10) days of termination of this Agreement.

22. Merchant's Liability Insurance and Indemnity. Merchant represents and warrants that at all times during this Agreement, Merchant shall maintain an appropriate amount of liability insurance to satisfy any claims against Merchant by Clients. Buyers or any Lenders providing financing hereunder and UNC providing financing opportunities are independent of Merchant, and Merchant shall defend, indemnify, and hold UNC, Buyers and any Lender, or assignee of any Financing Agreement executed by a Client of Merchant, harmless against any losses, demands, liabilities, costs, damages, and expenses (including attorneys' fees) of whatever form or kind, from claims made against Merchant by Client arising out of the Package sold by Merchant.

23. Non-Circumvention. Merchant hereby expressly represents, warrants, and agrees that it and all of its officers, directors, agents, affiliated companies, successors in interest or assignees shall not directly or indirectly attempt to circumvent UNC by contacting, dealing with, entering into any agreement with, partnering with, or otherwise doing business with or attempting to obtain financing directly or indirectly from any Lender (or any employee, officer, director, agent, or individual affiliated with any Lender) for the later of the following: (i) two (2) years from the date this Agreement is terminated; (ii) five (5) years from the date of the agreement, or (iii) two (2) years after a receipt by UNC of an application from



any current or prior patient of Merchant, regardless of whether such application is provided to UNC directly by Merchant.

24. Confidentiality. The parties each acknowledge and agree that during the term of this Agreement, private, confidential and proprietary information, nonpublic personal information, including, without limitation, financial data and client information (“Proprietary Information”) will be exchanged between the parties in order to accomplish the objectives of this Agreement. Each party agrees, covenants and warrants to keep confidential all Proprietary Information obtained from the other party, and shall not use or disclosed such information to any third party (including, without limitation, any business, operation, corporation, partnership, association, agency or other person or entity which is in the same business or industry as, or contemplates operating in the same business or industry as, UNC) for any reason beyond the purpose of this Agreement. Merchant agrees to strictly limit access, use, dissemination, disclosure, reproduction, and distribution of the Proprietary Information obtained from UNC only in the course of performance pursuant to this Agreement and disclose Proprietary Information only to those of its employees, representatives, agents and contractors that need to know it in performing the obligations under this Agreement. Neither party shall sell, assign, lease or otherwise dispose of or disclose to third parties or commercially exploit the Proprietary Information. Any failure by Merchant to keep the Proprietary Information strictly confidential shall be deemed an immediate and material breach of this Agreement and will entitle UNC to institute any and all necessary action against Merchant that UNC deems appropriate, including, but not limited to, seeking temporary and permanent injunctive relief against Merchant and any other persons or entities, in addition to any and all other remedies available under this Agreement, or at law, in equity or by statute. Each party represents and warrants that it has established and will maintain safeguards against the destruction, loss or alteration, and shall otherwise maintain the integrity of Proprietary Information in its possession in accordance with federal and state law privacy requirements. If a party becomes aware of any incidents of unauthorized access or a breach of security resulting in unauthorized access to Proprietary Information, then the party agrees to notify the other within a commercially reasonable time of any such breach and the nature of such breach. Neither party shall not make any public statement regarding any unauthorized access to or loss of Proprietary Information, without the prior written approval of the other party, including as to the content and timing of such statement. When directed by UNC, Merchant shall return to UNC or delete and destroy UNC’s Proprietary Information. Each party agrees that its obligations hereunder continue during the contractual relationship of the parties and following termination. Each party shall have the right to disclose Proprietary Information as required by law or legal process.

25. Representations and Warranties. Merchant hereby represents, warrants, and covenants to UNC as follows, upon which representations, warranties, and covenants UNC has expressly relied in entering into this Agreement and agreeing to engage in the transactions described herein and contemplated hereby:

(a) If Merchant is an entity, then Merchant is currently, and shall be throughout the term of this Agreement, duly organized, validly existing, and in good standing in the state of its incorporation or organization as such, and has full power to carry on its business;

(b) Merchant is in compliance with, and will continue to comply with, all applicable laws, rules and regulations, including but not limited to, laws relating to (i) the goods and services provided in the Package; (ii) the advertising or sale of products and services provided in the Package; and (iii) laws relating to privacy and data security;

(c) Merchant has not increased the price of the Package or taken any adverse action against any Client as defined by applicable law, and Client has no claim or defense to payment for the Package.

(d) To the extent required by law, all of Merchant’s operations are duly



licensed and permitted under all federal, state and local laws, rules and regulations of any governmental authority, including without limitation, all licenses, registrations, certifications, and permits necessary or appropriate to carry on its business and to own and operate its assets, properties, and businesses;

(e) Merchant will provide only truthful and complete information to UNC, including but not limited to the cost of the Package, that the Package are truly and accurately described, and being rendered as agreed with Client, and will take no action to prevent any obligation from being valid and enforceable against any party;

(f) Merchant has duly paid any and all license, franchise, corporation or other taxes, fees, duties or charges levied, assessed or imposed upon it or upon any of its properties of whatsoever kind or description;

(g) The execution and delivery of this Agreement by Merchant and Merchant's performance of the transactions contemplated herein have been duly and validly authorized by all necessary action, including any action required under Merchant's governing instruments;

(h) The execution, delivery and performance of this Agreement constitute a legal, valid and binding obligation of Merchant enforceable in accordance with its terms, without any offsets or counterclaims, and no further actions are required for Merchant to enter into this Agreement and such other instruments;

(i) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will constitute a violation or default of any statute, rule or decree of any court, administrative agency or governmental body to which Merchant is or may be subject;

(j) There are no investigations, claims, proceedings, or litigation pending or, to the best of Merchant's knowledge, threatened against itself by any regulatory body or governmental agency having jurisdiction over it regarding its business, licenses, permits, or assets, or that would affect Merchant's ability to perform each and every of its obligations under this Agreement or any Agreement or instrument related hereto;

(k) Merchant covenants that, at no time during the Term will it knowingly communicate to UNC or any Lender any incorrect, inaccurate, incomplete, or misleading information of any kind or nature;

(l) Merchant has, and will continue to have throughout the Term, legal capacity to timely sell and deliver the goods and services necessary for the Package;

(m) Merchant shall require each Client to present appropriate government-issued photo identification to verify Client's identity;

(n) Merchant will complete a UNC Program Overview and ensure that Merchant's employees operate in accordance with applicable law, the Program guidelines, this Agreement and any materials provided by UNC; and

(o) No false, fraudulent or misleading representations were made nor were unfair or deceptive trade practices engaged in by Merchant or by Client, and no statements, promises or representations were made by Merchant to Client, except as stated in writing in any Financing Agreement.

The representations and warranties contained herein shall be deemed to be continuing representations, warranties and covenants of Merchant and shall continue beyond the term of this Agreement and until all obligations of Merchant hereunder have been fully performed and all sums due to UNC have been paid in full without any contingent liability to return any amounts received.

26. Default. In addition to all other breaches and defaults described herein, the occurrence of any one or more of the following shall constitute a material breach and default under and in connection with this Agreement. Merchant's failure to fully and timely pay or refund any amounts at any time due





and owing to UNC under this Agreement: (i) The failure of either party to fully and timely perform any duty or obligation under this Agreement within ten (10) days after receiving written notice of such failure; (ii) Merchant ceases to do business, dissolves, becomes insolvent, files for bankruptcy, or has a receiver appointed for any portion of its property or assets; or (iii) If any representation or statement (including, without limitation, the Warranties and Representations set forth in Section 25 made or furnished by or on behalf of Merchant to UNC or any other person or entity is or was incorrect, inaccurate, incomplete, or misleading when made.

27. Insufficient Funds Fee, Attorneys' Fees and Collection or Enforcement Costs. If any check or ACH debit to Merchant's account is returned for any reason, Merchant agrees to pay UNC a fee in the amount of the highest amount allowed by law or \$50, whichever is less. In any legal action, small claims action, arbitration, bankruptcy proceeding, appellate proceeding, post-judgment enforcement proceeding or other post-judgment enforcement activities or other proceeding brought to enforce or interpret the terms of (i) this Agreement, (ii) any RIS Contract purchased by Buyer under this Agreement, or (iii) any individual continuing guaranty of any principal or officer of a party to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and any costs incurred in that proceeding or activity in addition to any other relief to which it is entitled. The provisions of this Section 27 constitute a distinct and severable agreement from the contractual rights created by this Agreement. In the event of a judgment against one party concerning any aspect of this Agreement or the subject matter hereof, the right to recover post-judgment attorneys' fees and other costs incurred in enforcing the judgment shall not be merged into and extinguished by any money judgment.

28. Mutual Indemnifications. Each party hereby agrees to defend, indemnify and hold harmless each other, and the other party's affiliates, subsidiaries, employees, officers, directors, shareholders, attorneys and agents, from and against any and all losses, claims, liabilities, demands and expenses whatsoever, including, without limitation, reasonable attorneys' fees and costs, arising out of or in connection with any breach by the indemnifying party of its representations, warranties, covenants or obligations or any negligent or wrongful act of or by such party in the performance of its duties under this Agreement. All indemnities and obligations contained herein shall survive the expiration or termination of the Agreement. Each party agrees to provide the other party with prompt notice of any claim or suit within the scope of the indemnities contained in this Agreement, and to furnish all relevant facts in such party's possession or control, cooperate fully with the other party hereto in its defense of any such action, and not to settle any such matter without the other party's prior written consent, unless any such settlement contains an unconditional release from liability of the other party.

29. Relationship of Parties. The parties to this Agreement are independent contractors. Nothing in this Agreement creates or shall be deemed to create a partnership, joint venture, agency, or employer-employee relationship between the parties. Neither party shall, under any circumstances, hold itself out to be an agent or employee of the other party.

30. Notices. Any notice required or permitted hereunder shall be in writing and shall be deemed to be delivered either: (i) upon personal delivery to the party to whom such notice is addressed, (ii) Any electronic form of communication (Facsimile, E-Mail) or (iii) three (3) days after being deposited in the United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the respective party at such party's address set forth on Merchant Application, or at such other address as may be subsequently designated by such party in writing to the other party hereto and delivered in accordance with this Section 30.

31. Entire Agreement. This Agreement is binding upon the successors, heirs, personal representatives, and assigns of the Parties, and constitutes their entire agreement with respect to the matters discussed herein. Any and all prior agreements, representations, negotiations and



understandings made by the parties, oral and written, express or implied, are hereby superseded and merged herein. In the event of a conflict between the terms of this Agreement and the terms of any Disbursement Form from UNC, the terms of the Disbursement Form shall supersede the conflicting terms of this Agreement.

32. Severability. Should any of the provisions in this Agreement be declared or be determined to be illegal or invalid, all remaining parts, terms or provisions shall be valid, and the illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

33. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the United States and the State of California. The parties consent to the sole and exclusive jurisdiction of the state courts and federal courts having jurisdiction in Orange County, California for any dispute arising out of or related to this Agreement.

34. Jury Waiver. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE ARISING OUT OF, CONNECTED WITH, OR INCIDENTAL TO THE RELATIONSHIPS ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. INSTEAD, ANY DISPUTES RESOLVED IN COURT WILL BE RESOLVED IN A BENCH TRIAL WITHOUT A JURY.

35. Amendments. This Agreement may be amended from time to time by UNC upon thirty (30) days prior written notice to Merchant. The available terms of financing available to a Client are not fixed by this Agreement and are governed by market conditions. The parties acknowledge that terms and interest rates provided by Lenders may fluctuate day to day and may change without notice between the parties.

36. Waivers and Remedies. No waiver by a Party of any of such Party's rights, or any breach or default of another Party shall operate as a waiver of any other right, breach, or default, or of the same right, breach, or default in the future.

37. Survivability. Any termination of this Agreement shall not terminate the accrued rights between the parties at the time of such termination. Each party agrees to fully and promptly perform all accrued obligation owed to the other party upon termination. The covenants of confidentiality and nondisclosure set forth herein shall survive the termination of this Agreement.

38. Assignment. This Agreement is not assignable or delegable by Merchant without UNC's prior written consent, which consent may be withheld for any reason in UNC's sole discretion. It is acknowledged and agreed by Merchant that UNC may assign its rights hereunder at any time and without notice to Merchant.

39. Execution. The Agreement shall be executed by signing the Network Registration (Merchant Direct) Form. To the extent permitted by law, if any signature to this Agreement or any amendment hereto is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.