



## **REGULATED COMMERCE ELECTRONIC SERVICES TERMS AND CONDITIONS**

### **DISTRIBUTOR SERVICE DESCRIPTION**

iControl Systems USA LLC ("iControl" or "Company") provides electronic funds transfer (EFT) processing and electronic data interchange (EDI) solutions ("Services") to regulated commerce Retailers and Distributors by utilizing the Automated Clearing House (ACH) standards established by the National Automated Clearing House Association ("NACHA") and the Federal Reserve System. iControl's regulated commerce services relate to the payment of invoices at retail.

Retailer and Distributor are solely responsible for establishing the terms of their contractual relationship with each other and for ensuring that such terms are in compliance with the laws of each jurisdiction where the transactions occur, including but not limited to all applicable state and federal laws and regulations pertaining to the purchase and sale of alcoholic beverages. iControl's involvement in the transmission of data or payment information between the Distributor and the Retailer shall remain separate from, and shall not supersede or replace any contractual terms agreed upon by the Retailer and Distributor.

As of \_\_\_\_\_, 2013 ("Effective Date"), iControl and Distributor mutually intend and desire to enter into an agreement ("Agreement") for the provision of Services by iControl to Distributor in accordance with the terms and conditions set forth herein. Now therefore, the parties agree as follows:

### **1. RESPONSIBILITIES OF THE PARTIES**

#### **a. iControl**

- i. iControl will process all files submitted by Distributor through the ACH payment network within the timeframe indicated on the Distributor's invoice to Retailer.
- ii. iControl will ensure setup of a bank account(s) within iControl's platform, and/or perform changes to bank accounts related to processing ACH payments through the Federal Reserve System. This setup process also involves the testing of a prenotification transaction to ensure the validity of the Distributor's bank account data. In the event of a rejection, iControl will work with the Distributor to ensure successful acceptance by the receiving bank. Successful completion of the prenotification is a prerequisite to commence payment processing.
- iii. iControl will adhere to NACHA rules for processing all Distributor data.

## **b. Distributors**

- i. Distributor hereby acknowledges and accepts responsibility to ensure integrity of data and notify both iControl and the Retailer upon discovery of any inaccurate data transmissions that originate from the Distributor.
- ii. Distributors may submit up to 12 files daily.
- iii. If the Retailer (payer) bank returns or rejects files submitted by the Distributor (payee) for payment processing, iControl will notify the Distributor upon iControl's receipt of bank notification of the return or rejection. It will be the responsibility of the Retailer (payer) to wire the funds to iControl as soon as practicable, but before close of business (2:00 PM Eastern Time) on the same day of notification. In the event restitution is not timely made in accordance with this paragraph, iControl will initiate a debit to the originating Distributor (payee) bank account along with notification from iControl. It will be the responsibility of the originating Distributor to collect its funds by means other than through iControl.
- iv. Distributor agrees to notify iControl in writing at least 5 business days prior to an EFT start date for a new location, and at least 5 business days in advance of a change in bank accounts. A new Distributor Enrollment form must be submitted with any changes in bank account information.
- v. Distributor agrees that iControl will not be held responsible for errors in transmission or in the data transmitted that is caused by the Distributor making changes to its internal hardware or software systems, or by the Distributor's inability to connect to the internet or to iControl electronically to transmit files, or by other situations which render the Distributor unable to send or receive data through the iControl platform.
- vi. Distributor agrees that iControl will not be responsible for supporting any changes made by a Distributor without iControl previously being notified of and acknowledging back to the Distributor, in writing, the successful completion of testing and ability to support such changes. Distributor agrees that it is the Distributor's responsibility to notify iControl at least 30 days prior to any changes in data transmission methods or formats.
- vii. Distributor agrees that the responsibility of reconciling and balancing payment activity to submitted files belongs to each trading partner.

## **2. AUTHORIZED PERSONNEL**

Distributor shall, in writing, designate those individuals who shall be authorized on behalf of the Distributor to have full access rights and the ability to initiate changes to the payment processing information, including: bank account additions, or changes to debit or credit entries. Designation of the authorized customer representative(s) may be altered or revoked from time to time upon written notice to iControl from the authorized personnel.

## **3. CONNECTIVITY**

- i. iControl and the Distributor will collaborate and agree, in advance, to the formats, methods and protocols by which the Distributor shall provide, access, and retrieve information from iControl. iControl reserves the right to reject a format or method should the format or method be proven

unreliable, in iControl's sole discretion, or otherwise inconsistent with iControl's commitment to provide accurate information.

- ii. Any expenses, such as purchasing a computer or a mobile device, connectivity to the Internet, and other expenses, if any, which Distributor incurs to access the Services, shall be at Distributor's cost. iControl will not pay any charges for any other third party services (for example, Valued Added Networks ("VAN")) for Distributor to access or use the Services. Distributor and iControl shall adhere to all security measures, instructions or guidelines concerning access to and/or use of the Services or related procedures as required by iControl.

#### **4. DATA RETENTION**

- i. Any Data submitted by Distributor pursuant to this Agreement may be shared by iControl as necessary to provide the Services, including, without limitation, distribution to or through a third party used or designated by Distributor in connection with the Services. Notwithstanding any other provision of this Agreement, iControl agrees that Distributor shall at all times have unconditional access to the Distributor Data (including data held by third party providers), and to ensure that such access will not be impeded in any manner or for any reason, including termination or breach of this Agreement.
- ii. Distributor acknowledges full responsibility regarding the retention of all records and data submitted to and received from iControl. In the event a dispute arises between the Distributor and a trading partner regarding data processed, the Distributor may request that iControl enter into a separate agreement with iControl to provide support in the form of documentation of processed data, archival searches from the iControl data warehouse, data entry, or other manual research that may pertain to that particular event.

#### **5. USE OF DISTRIBUTOR INFORMATION**

- i. iControl may use Distributor's name, logo (if any) and Distributor's brand names and logos (with appropriate trademarks as applicable), for as long as this Agreement remains in effect. Moreover, iControl is entitled to list Distributor, including its logo, as a Distributor doing business with iControl on iControl's website along with Distributor's address, phone numbers, e-mail address and fax numbers as reference information:
  - a. As necessary to provide the Services;
  - b. On iControl's Distributor lists or directories; or
  - c. In communications to third parties to promote use of the Services. Distributor understands that neither this Agreement nor the Services provided hereunder give Distributor any rights to any of the Data provided by other users of the Services, or to other services offered by iControl to which Distributor does not subscribe.

## **6. BANK FILTERS, DEBIT BLOCKS, DEBIT AUTHORIZATION**

- i. Distributor agrees to inform iControl, in writing, regarding existing or newly instituted filters, blocks, authorization limits, or other restrictions impacting any debits generated by iControl or a Retailer against the Distributor's bank account(s). iControl, in its sole discretion, may require the use of Positive Pay notifications to allow debits that might otherwise be blocked.
- ii. Distributor acknowledges that iControl will assess fees as set forth in the fee schedule as a result of returns caused by undisclosed filters, blocks or authorizations. iControl may request that Distributor immediately wire funds to iControl the same day to mitigate the return, or additional fees may be incurred and may continue to accrue until a wire transfer is made to rectify the situation. Additionally, Distributor acknowledges and agrees that iControl may execute its right to recover such funds through a charge back for the amount of the return.
- iii. Distributor acknowledges and agrees to accept the responsibility to monitor, report, and adjust, as needed, any limits related to filters, blocks, or authorization limits to minimize bank returns.

## **7. ERROR DETECTION**

Distributor acknowledges and agrees that iControl has no obligation to discover and shall not be liable to either trading partner for errors made by one or both of the trading partners, including but not limited to: errors made in identifying bank account(s), errors in the transaction amount, or errors related to the authorization status of a product at the Retailer's store(s). Distributor acknowledges and agrees that iControl has no duty to discover and shall not be liable for duplicate or invalid entries issued by the trading partners. In the event that the Distributor makes an error, the Distributor shall indemnify, defend all claims, and hold iControl harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by iControl in connection with the error caused by the Distributor.

## **8. PAYMENT FOR SERVICES**

- i. All payment of Fees (the "Fees") to iControl shall be due on the 20<sup>th</sup> day of each calendar month. iControl will prepare and present the invoice for its services on the 5<sup>th</sup> business day of the month, and will automatically debit the fee from the Supplier's account on the 9<sup>th</sup> business day of the month, pursuant to the bank information provided in the enrollment form. A finance charge of 1.5% per month will be applied to any balance not paid by the 20<sup>th</sup> calendar day of the month. All fees are billed monthly, in arrears, pursuant to the current fee schedule. The current fee schedule is subject to change by iControl with thirty (30) days written notice.
- ii. In the event that Distributor's processing requirements mandate the use of a Value Added Network (VAN), Distributor will be responsible for payment to iControl for any Value Added Network (VAN) charges iControl incurs as a result of Distributor's processing requirements.

## **9. WARRANTIES, REPRESENTATIONS AND COVENANTS**

With respect to each payment file submitted for processing, the Distributor warrants, represents, and

covenants that:

- (a) The data contained in the file is accurate in all respects; and
- (b) The creation and transmission of the payment file is fully authorized and approved, and such authorization and approval will be effective, with no filters, or authorization limits, until such entry is made to the account. The Distributor further warrants, represents and covenants that it understands and complies with the Operating Rules of the National Automated Clearing House Association including current federal and state rules and regulations related to electronic payments for alcoholic beverages.

## **10. INDEMNIFICATION**

The Distributor agrees to defend, indemnify and hold iControl harmless from all claims, demands, losses, liabilities, expenses and costs, including attorney's fees and costs, resulting or arising, directly or indirectly, from:

- (a) The issuance of an entry by Distributor or a trading partner;
- (b) Any act or omission by the Distributor or any of its agents, employees or representatives with respect to an entry;
- (c) Any failure on the part of the Distributor to comply with any federal or state law or regulation;  
or
- (d) Any default, failure or breach by the Distributor with respect to any warranty, representation, covenant or disclosure herein contained.

This indemnification expressly includes, but is not limited to, damages (including attorney's fees and related costs) resulting from any regulatory actions initiated by any federal or state alcohol beverage regulatory agency or authority due to the cancellation or rejection by the Distributor or its agent of any EFT initiated by iControl or its authorized trading partners pursuant to the Distributor's Distributor Program Enrollment.

## **11. LIMITATION OF LIABILITY**

iControl shall not be liable to Distributor for any damages or expenses incurred by Distributor as the result of iControl's acceptance or failure to accept entire files, or particular entries, submitted by Distributor. The Distributor agrees that in no event shall iControl be liable to Distributor or any other party dealing through, or with Distributor, for consequential, special, incidental, or punitive damages, even if iControl has knowledge of the existence of the particular circumstances giving rise to consequential or other damages. In the event iControl shall commit an error in connection with the processing or transmission of an entry, except as required by applicable law, the Distributor's sole remedy against iControl shall be to request iControl to correct the error within a reasonable amount of time. In no event shall iControl be liable to Distributor for attorney's fees incurred by Distributor in any action brought by Distributor as part of iControl performing services as outlined in this agreement.

## **12. FORCE MAJEURE**

Distributor acknowledges and agrees that iControl shall not be responsible or liable for any failure by iControl to perform any obligation under this Agreement due to any cause(s) beyond its reasonable control, including, without limitation, acts of God, acts of other parties, acts of civil or military authorities, fires, strikes, floods, changes in laws or regulations, interruption of voice, data, or electronic communication or computer facilities; suspension of payments by financial institutions,

radio frequency interference, war, emergency conditions, labor disputes, or other circumstances beyond the control of iControl.

### **13. TERMINATION**

Either party may terminate this Agreement if the other party commits a breach of any material term of this Agreement and fails to cure the same within ninety (90) days of receipt of written notice thereof; commits a material breach of any other agreement made and entered into by and between iControl and Distributor and fails to cure the same with thirty (30) business days of receipt of written notice thereof; or in the event the Retailer terminates its agreement with iControl.

iControl may immediately terminate the Services or may refuse to accept and process entire files or particular entries within a file without notice upon the happening of any of the following events or circumstances: the Distributor's violation, breach of, or default in its performance or observance of any term, condition, representation, obligation, or warranty contained in the enrollment paperwork or these Terms and Conditions; Distributor's failure or delay in remittance of fees or other sums owed to iControl; court order or legal process places restrictions on any portion of the Distributor's bank accounts, alcohol license, or assets; insolvency, bankruptcy, or dissolution of the Distributor; default by the Distributor under any other agreement between the Distributor and iControl; and if, in iControl's sole discretion, iControl determines that the Distributor has misrepresented material facts or failed to perform in good faith its obligations under this Agreement or if iControl believes it will suffer a loss or other damage if the Agreement is not terminated. All substantive and procedural provisions hereof relative to liabilities of the parties and all warranties, representations and covenants thereto made shall survive any termination of this Agreement. All sums owing by the Distributor to iControl shall be due and payable in full immediately upon the termination of the Services.

In the event of the termination of this Agreement, in an effort to ensure compliance with any and all state requirements regarding processing of regulated product invoices, the Distributor must provide the following to iControl, in writing:

- a) The last invoice date for which invoices can be presented for processing by iControl.
- b) The last business day iControl can process files through the bank system.
- c) Availability of the Distributor designated bank account for three (3) business days following the last day iControl can process invoices through the bank system.

Invoices submitted in non-compliance with these requirements or items returned due to unavailability of the Retailer designated bank account will be returned to the Distributor for collection and will be the sole responsibility of the Distributor to collect.

### **14. CONFIDENTIALITY/NON-DISCLOSURE**

In the performance of this Agreement or in contemplation thereof, each party and its employees and agents may have access to private or confidential information owned or controlled by the other party relating to products, services, software, plans, specifications and other data (hereinafter "Information"), and the Information may contain proprietary details and disclosures. All Information supplied by one party to the other which is clearly marked 'Proprietary' shall remain the exclusive property of the party supplying same. The receiving party shall use a reasonable degree of care, which

in any event shall not be less than the same degree of care which the receiving party uses to protect its own proprietary and confidential information, to keep, and have its employees and agents keep, confidential any and all Information. In keeping therewith, the recipient shall not copy or publish or disclose the Information to others, or authorize its employees, or agents or anyone else to copy, publish or disclose it to others, except as required to fulfill its duties under this Agreement, nor shall the receiving party make use of the Information except for the purposes of executing its obligations hereunder, and shall return the Information to the disclosing party at its request. These nondisclosure obligations will not apply to Information which: (a) becomes generally known to the public by publication or by any means other than a breach of duty on the part of the recipient hereunder; (b) is information previously known to the recipient; (c) is information independently developed by or for the recipient; or (d) is information that is also the property of the Retailer.

#### **15. EXCLUSIVE REMEDIES**

iControl expressly limits its damages to Distributor for any non-accessibility time or other down time to the pro-rata monthly charge during the system unavailability. iControl specifically denies any responsibilities for any damages, direct or indirect, arising as a consequence of such unavailability. In no event shall either party be liable to the other for any exemplary, special, indirect, incidental or consequential damages, including, without limiting the generality of the foregoing, any loss of business, profits, savings, data or goodwill, even if the party has been advised of the possibility of such loss, had reason to know, or in fact knew of the possibility thereof.

#### **16. SEVERABILITY**

In the event that any provision or any portion of any provision of this Agreement is held illegal, unenforceable, or invalid by any Court, such provision or portion thereof shall be deemed to be deleted from this Agreement, and the validity of the remainder of this Agreement shall remain unaffected thereby.

#### **17. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between iControl and Distributor and supersedes all prior agreements, representations, understandings and communications, either verbal or in writing, between the parties. This Agreement is binding upon and inures to the benefit of the parties' respective successors and permitted assigns. This Agreement may only be amended by a written amendment executed by officers of both parties.

#### **18. GOVERNING LAW**

The laws of the State of Maryland shall govern this Agreement and the performance of the Services. Any claim arising out of or relating to this Agreement must be commenced within one (1) year from the date such claim shall have first arisen and shall be brought in a court of competent jurisdiction in Montgomery County, Maryland.

#### **19. MISCELLANEOUS**

iControl may sell or assign its rights and obligations under this Agreement; provided, however, if the person or entity acquiring the rights of iControl hereunder does not agree to abide by all the obligations of iControl under this Agreement, Distributor may terminate this Agreement upon 90 days

written notice. Distributor shall not transfer, assign, provide or resell the Services to any other person.

All notices pursuant to this Agreement, including modifications to the terms of this disclosure, shall be given by any commercially reasonable means.

The obligations of the parties, which by their nature accrue and remain owing notwithstanding termination of this Agreement (such as Distributor’s obligation to pay for Services rendered and the parties’ confidentiality obligations) shall survive termination of this Agreement. Distributor acknowledges and agrees that iControl may utilize third party assistance (such as trainers or implementers) in performing certain of its duties and obligations under this Agreement. Distributor hereby authorizes iControl to communicate with and take direction from such of Distributor’s other service providers (such as information technology consultants) as have been designated by Distributor as having applicable authority with respect to iControl and the Services.

**20. CONTACT INFORMATION**

If you have questions about our Services Terms and Conditions, contact iControl at the following:

iControl Systems USA LLC  
3919 National Drive  
2<sup>nd</sup> Floor  
Burtonsville, MD 20866  
Phone: 301.816.4490  
[info@icontroldsd.com](mailto:info@icontroldsd.com)

The signature of an authorized representative of Distributor below signifies Distributor’s agreement to the terms and conditions contained in this Agreement.

Distributor: \_\_\_\_\_  
[COMPANY NAME]

By: \_\_\_\_\_

Title: \_\_\_\_\_