



## REGULATED COMMERCE RETAILER ELECTRONIC SERVICES AGREEMENT

### iCONTROL SERVICES

iControl Systems USA LLC (“iControl” or “Company”) will provide electronic funds transfer (EFT) processing and electronic data interchange (EDI) solutions (“Services”) to Retailer in connection with transactions with regulated commerce 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.

Distributor and Retailer (sometimes collectively referred to hereinafter as “trading partners”) 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 Distributor and Retailer.

As of the Effective Date indicated in the Enrollment Form, iControl and Retailer hereby enter into this Regulated Commerce Electronic Services Agreement (“Agreement”) for the provision of Services by iControl to Retailer in accordance with the terms and conditions set forth herein and on the Regulated Retailer Enrollment Form (“Enrollment Form”).

### 1. OBLIGATIONS OF THE PARTIES

#### a. Retailer

- i. Retailer hereby acknowledges and accepts responsibility to ensure integrity of data and notify both iControl and the Distributor upon discovery of any inaccurate data transmissions that originate from the Retailer.
- ii. If the Retailer (payer) bank returns or rejects files submitted by the Distributor (payee) for payment processing, iControl will notify the Retailer upon iControl's receipt of bank notification of the return or rejection. Retailer (payer) shall wire the funds to iControl as soon as practicable, but before 2:00 PM Eastern Time on the day of iControl’s notification to retailer. If such remittance is not timely made in accordance with this paragraph, iControl will debit Distributor’s (payee’s) bank account together with notification from iControl. Retailer shall resolve the debited amount with Distributor without the involvement of iControl.
- iii. Retailer will notify iControl in writing at least 7 business days prior to an EFT start date for a new location, and at least 7 business days in advance of a change in bank accounts. A Bank Account Change Form must be submitted with any changes in bank account information.
- iv. Retailer agrees that iControl will not be held responsible for errors in transmission or in the data transmitted that is caused by the Retailer making changes to its internal hardware or software systems, or by the Retailer’s inability to connect to the internet or to iControl electronically to transmit files, or by other situations which render the Retailer unable to send or receive data through the iControl platform.

- v. Retailer agrees that iControl will not be responsible for supporting any changes made by Retailer without iControl previously being notified of and acknowledging back to the Retailer, in writing, the successful completion of testing and ability to support such changes. Retailer agrees that it is the Retailer's responsibility to notify iControl at least 21 days prior to any changes in data transmission methods or formats.
- vi. Retailer agrees that the responsibility of reconciling and balancing payment activity to submitted files belongs to each trading partner.

**b. iControl**

- i. iControl will process all files submitted by Distributors 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 Retailer's bank account. In the event of a rejection, iControl will work with the Retailer 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 data.

**2. AUTHORIZED PERSONNEL**

Retailer shall designate in writing individuals who are authorized by Retailer to have full access rights and the ability to initiate changes to the payment processing information, including: changes for the initiation of debit or credit entries, and additional bank accounts. Retailer shall provide a written notice to iControl to alter or revoke the designated authorized personnel.

**3. COMMUNICATION PROTOCOLS**

- i. iControl and the Retailer will collaborate and agree, in advance, to the formats, methods and protocols by which the Retailer shall provide, access, and retrieve information to or 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 Retailer incurs to access the Services, shall be at Retailer's cost. In the event that Retailer's processing requirements mandate the use of a Value Added Network (VAN), Retailer will be responsible for payment to iControl for any Value Added Network (VAN) charges iControl incurs as a result of Retailer's processing requirements.
- iii. Retailer 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. TREASURY/BANKING PROTOCOLS**

- i. Retailer 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 Retailer's bank account(s). iControl may require the use of Positive Pay notifications.

- ii. Retailer acknowledges that iControl will assess fees as a result of returns caused by undisclosed filters, blocks or authorizations. iControl may request that Retailer 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. Retailer acknowledges and agrees that iControl may recover such amounts through a charge back to the Distributor for the amount of the return.
- iii. Retailer 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.

## 5. RESPONSIBILITY FOR PROCESSING ERRORS

Retailer acknowledges and agrees that iControl is not obligated to discover errors made by Retailer or Distributor, including erroneous identification of bank account(s); errors in the transaction amount; errors related to the authorization status of a product at the Retailer's store(s); or invalid or duplicate entries by any party. Retailer shall indemnify, defend and hold iControl harmless from and against all claims, damages, losses and expenses, including attorney's fees, arising out of or incurred by iControl in connection with any duplicate entry or other error by the Retailer.

## 6. RETENTION OF DATA

- i. Any Data submitted by Retailer 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 user or designated by Retailer in connection with the Services. Notwithstanding any other provision of this Agreement, iControl agrees that Retailer shall at all times have unconditional access to the Retailer 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. Retailer 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 Retailer and a trading partner regarding data processed, the Retailer may request to 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.

## 7. SERVICE FEES TO iCONTROL

- i. All payment of Fees (the "Fees") to iControl shall be due on the 9<sup>th</sup> business 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 Retailer's designated 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 1.0% per month will be applied to any balance not paid by the due date. All Fees are billed monthly, in arrears. The current Fee, as set forth on the Enrollment Form, is subject to change by iControl with thirty (30) days written notice.
- ii. In the event that Retailer's processing requirements mandate the use of a Value Added Network (VAN), Retailer will be responsible for payment to iControl for any Value Added Network (VAN) charges iControl incurs as a result

of Retailer's processing requirements.

## 8. TERMINATION

Either party may terminate this Agreement at any time for any reason upon thirty (30) days written notice to the other party at the address provided herein or at such address as the parties may later provide. The notice period will begin three (3) business days after deposit of the written termination notice with a recognized overnight carrier (UPS or Federal Express) or upon actual receipt of written notice if personally delivered.

Notwithstanding the foregoing, either party may terminate this Agreement or refuse the Services for any reason by giving thirty (30) days written notice. If the Retailer defaults in the payment when due of any undisputed amount due to iControl pursuant to this Agreement and does not cure such default within thirty (30) days after written notice thereof, iControl may, by giving written notice thereof to Company, terminate this Agreement in its entirety effective immediately. Except as may be prohibited by United States bankruptcy laws, in the event of either party's insolvency or inability to pay debts as they become due, voluntary or involuntary bankruptcy proceedings by or against a party hereto, or appointment of a receiver or assignee for the benefit of creditors, the other party may terminate this Agreement by written notice effective immediately.

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 Retailer 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 Retailer 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 and collection, payment, and resolution of any disputes related to such items will be the sole responsibility of the trading partners.

## 9. REPRESENTATIONS AND WARRANTIES

With respect to each file submitted for processing, the Retailer represents and warrants that:

- (a) The data contained in the file is accurate in all respects; and
- (b) The creation and transmission of the file is fully authorized and approved, and such authorization and approval will be effective with no limits. Each Party warrants that it understands and will comply with all applicable federal and state rules and regulations related to alcoholic beverages.

## 10. INDEMNIFICATION

Each party shall defend, indemnify and hold the harmless the other party, and its respective employees, representatives,

agents and subcontractors (collectively, "Indemnitees") from and against any and all claims, liabilities, demands, causes of action, losses, costs, and expenses (including reasonable attorney's fees and costs) suffered or incurred by or asserted against any Indemnitee of whatever kind or nature as a result of, arising out of or in connection with the actual or alleged:

- (a) Personal injury or property damage resulting from negligence or willful misconduct of the indemnifying party;
- (b) Failure by the indemnifying party to comply with any applicable federal or state law or regulation;
- (c) The indemnifying party's breach or any representation, warranty covenant or provision of this Agreement; and

(d) Regulatory investigations or proceedings initiated by any federal or state alcohol beverage regulatory agency or authority due to the cancellation, or rejection of any EFT initiated by iControl, Retailer or Distributor.

## **11. LIMITATION OF LIABILITY**

The Retailer agrees that in no event shall iControl be liable to Retailer or any other party dealing through, or with Retailer, for any consequential, indirect, special, incidental, exemplary or punitive damages, even if iControl has been advised of or 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 Retailer'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 Retailer for attorney's fees incurred by Retailer in any action brought by Retailer as part of iControl performing services as outlined in this agreement.

## **12. LIMITATION OF LIABILITY**

In no event shall either party be liable to the other party for consequential, special, incidental, or punitive damages, even if it has knowledge of the existence of the particular circumstances giving rise to consequential or other damages. In no event shall iControl be liable to Retailer for attorney's fees incurred by Retailer in any action brought by Retailer as part of iControl performing services as outlined in this Agreement.

## **13. FORCE MAJEURE**

If either party cannot perform any of its obligations because of any act of God, court order, fire, riot, war, or any and other causes beyond a party's reasonable control and which it could not have prevented through the exercise of reasonable care and precautions (a "Force Majeure Event"), then the non-performing party will: (i) immediately notify the other Party; (ii) take reasonable steps to resume performance as soon as possible; and (iii) not be considered in breach during the duration of the Force Majeure Event. In the event a Force Majeure Event continues for a period of fifteen (15) business days, either party may terminate this Agreement by providing written notice to the other party. Notwithstanding the foregoing, under no circumstances shall any delay or failure to perform be excused or forgiven (i) if the cause of the delay or failure could have been prevented or avoided by the exercise of all due diligence; or (ii) if the party whose performance is delayed or prevented fails to use all due diligence to promptly overcome or mitigate the delay or failure to perform.

#### 14. USE OF RETAILER INFORMATION

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

#### 15. 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, pricing and other data (hereinafter "Information"), and the Information may contain proprietary details and disclosures. All Information supplied by one party to the other, expressly including information contained on Distributor's invoices, whether or not 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 party 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.

#### 16. EXCLUSIVE REMEDIES

iControl expressly limits its damages to Retailer 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.

## 17. 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 remainder provisions shall survive any termination or expiration of this Agreement.

## 18. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between iControl and Retailer 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.

## 19. 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.

## 20. 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, Retailer may terminate this Agreement upon 90 days written notice. Retailer 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 Retailer's obligation to pay for Services rendered and the parties' confidentiality obligations) shall survive termination of this Agreement. Retailer 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. Retailer hereby authorizes iControl to communicate with and take direction from such of Retailer's other service providers (such as information technology consultants) as have been designated by Retailer as having applicable authority with respect to iControl and the Services.

## 21. NOTICES

Written notices shall be sent to the following address:

iControl Systems USA LLC:

The iControl Building
3919 National Drive
Burtonsville, MD 20866
Phone: 301.816.4490
<a href="mailto:info@icucsolutions.com">info@icucsolutions.com</a>