



FUSION FUNDING, LLC REFERRAL AGREEMENT

This Referral Agreement (“Agreement”) is entered into as of _____, 2019, and is between Fusion Funding, LLC (“Fusion Funding”), and _____ (“AFFILIATE”) and together with Fusion Funding, the (“Parties”) and each individually, a (“Party”).

RECITALS

Whereas, Fusion Funding is engaged in the business of, among other things, providing working capital to merchants (individually a “Merchant” and collectively, “Merchants”) by purchasing a percentage of future receivables (“Receipts”) of the Merchant (the “Program”) pursuant to the terms of Merchant Agreements between Fusion Funding and applicable Merchants (“Merchant Agreements”); and

Whereas, AFFILIATE is in the business of, among other things, locating merchants in need of working capital who may be interested in the Program, and desires to refer such prospective Merchants to Fusion Funding, subject to the terms and conditions set forth herein.

Now, therefore, in consideration of the mutual promises contained herein, the Parties hereto agree as follows:

AGREEMENT

I. AFFILIATE RESPONSIBILITIES:

1.1 AFFILIATE shall (i) market and promote the Program, (ii) assist prospective Merchants in

completing and submitting to Fusion Funding an application and supporting documentation to participate in the Program, in forms acceptable to Fusion Funding, (iii) collect contact information, previous monthly processing and/or bank statements no more than 90 days old (unless otherwise requested), and other relevant information regarding such prospective Merchants as required by Fusion Funding, (iv) list Fusion Funding on its preferred vendor list in all marketing material to prospective Merchants, and (v) provide approved solicitation materials to prospective Merchants.

- 1.2 AFFILIATE shall make no commitments, representations or warranties on behalf of Fusion Funding, nor shall AFFILIATE have the ability to bind Fusion Funding, without the express, prior written consent of Fusion Funding.
- 1.3 AFFILIATE shall comply with all policies and procedures of Fusion Funding related to the solicitation of prospective Merchants. AFFILIATE will not change any term, amount or rewrite, edit, add to, or otherwise modify any of the existing language contained within any Merchant Agreement without Fusion Funding's prior written consent. Fusion Funding shall have the right to approve or disapprove of any of the AFFILIATE'S marketing materials containing Fusion Funding's name. In the event Fusion Funding disapproves of any such marketing material AFFILIATE shall promptly revise all marketing material to comply with the requirements of Fusion Funding, and at AFFILIATE's cost. AFFILIATE shall not knowingly refer any prospective Merchant to Fusion Funding that it knows to be insolvent based upon financial statements, personal knowledge, background search results, credit reports, bankruptcy searches, or any other documentation or information, written or verbal, delivered by the prospective Merchant to AFFILIATE in an effort to apply for financing through AFFILIATE.
- 1.4 AFFILIATE shall maintain the highest standards of professionalism, shall not engage in any misleading or deceptive sales practices, and shall not knowingly provide Fusion Funding or any Merchant with any false or misleading information.
- 1.5 AFFILIATE shall use its best efforts not to refer prospective Merchants to Fusion Funding (i) which are existing clients of Fusion Funding, whether in the Program or otherwise, (ii) that have been referred to Fusion Funding by a different affiliate of Fusion Funding, or (iii) which have been previously contacted by, or previously made contact with, Fusion Funding or a different affiliate of Fusion Funding (collectively "Existing Merchants"). In the event AFFILIATE submits an application for an Existing Merchant to Fusion Funding shall notify AFFILIATE that the Merchant is an Existing Merchant. AFFILIATE shall not be entitled to any Compensation under this Agreement in connection with any Existing Merchant for which it submits an application or information. In the event AFFILIATE disputes whether the prospective Merchant is an Existing Merchant, Fusion Funding shall present to AFFILIATE evidence of any form of communication, whether electronic, written, telephonic or by facsimile with such prospective Merchant that predates the date of notice of when AFFILIATE provided the name of the prospective Merchant to Fusion Funding, and such evidence shall be sufficient proof of such prospective Merchant's status as an Existing Merchant.
- 1.6 So long as AFFILIATE is receiving any Compensation, AFFILIATE shall immediately notify Fusion Funding (i) if AFFILIATE becomes aware of any information about the insolvency, bankruptcy or change of ownership or business of any Merchant, and/or (ii) if AFFILIATE becomes aware of any adverse information concerning the financial condition of a Merchant or any information indicating that any Merchant's participation in the Program is other than the good faith sale of goods and services provided by the Merchant evidenced by Receipts.

II. Fusion Funding's RESPONSIBILITIES:

- 2.1 Upon receipt of a prospective Merchant referral from AFFILIATE, Fusion Funding will contact AFFILIATE if the Application form is incomplete. Fusion Funding may accept or reject a prospective Merchant referred to Fusion Funding based on criteria established by Fusion Funding, in its discretion. Fusion Funding may terminate any Merchant Agreement in accordance with the terms of such Merchant Agreement at any time. Prospective Merchants will be permitted to participate in the Program only after Fusion Funding's approval of a Merchant application and execution of a Merchant Agreement.
- 2.2 AFFILIATE will not be liable for Losses. As used herein, the term "Losses" shall mean any loss incurred by Fusion Funding for any reason attributable to a Merchant, including but not limited to losses due to uncollected chargebacks and fees. Notwithstanding the foregoing, AFFILIATE will be liable to Fusion Funding for any amount incurred by Fusion Funding arising out of AFFILIATE's or any of its sales agent's breach of this Agreement, negligence or fraud, and such other items set forth in Article VI below. AFFILIATE will notify Fusion Funding immediately of any information of which AFFILIATE is aware concerning any Merchant that would indicate Losses may occur.
- 2.3 The Parties understand and agree that all right, title and interest in all Merchant Agreements is vested solely in Fusion Funding.
- 2.4 Fusion Funding will determine all fees charged to Merchants. As used herein the term "Fees" shall mean any and all fees arising from the Merchant Agreement and the ongoing relationship between Fusion Funding and Merchant. These fees include, not are by no means limited to, fees associated with ACH debits. Merchant fees may be revised within Fusion Funding's discretion. All fees must be clearly and conspicuously disclosed and agreed in writing in the Merchant Agreement.

III. INTELLECTUAL PROPERTY:

- 3.1 Neither Party will use the other's name or trademarks in any promotional or marketing materials without the other Party's prior written consent.
- 3.2 The Parties acknowledge that in their performance of their duties hereunder either Party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning the Program and the know-how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information") all of which are confidential and proprietary to, and trade secrets of, the disclosing Party. "Confidential Information" shall also include (i) all confidential or proprietary written, recorded, electronic or oral information or data about the Program including, without limitation, information regarding the business, assets, properties, or facilities of the disclosing Party and any accounting records, tax returns and other business, financial and corporate records, reports and documents pertaining to the disclosing Party that are provided to the receiving Party by the disclosing Party for purposes of aiding discussions related to the Program, (ii) the fact that discussions are taking place with respect thereto or the status thereof, and (iii) the fact that

Confidential Information has been made available to the receiving Party or its representatives. Confidential Information does not include information that: (a) is public knowledge at the time of disclosure by the disclosing Party; (b) becomes public knowledge or known to the receiving Party after disclosure by the disclosing Party other than from a Merchant or by breach of the receiving Party's obligations under this section or by breach of a third party's confidentiality obligations; (c) was known by the receiving Party prior to disclosure by the disclosing Party other than by breach of a third party's confidentiality obligations; (d) is independently developed by the receiving Party; or (e) is required to be disclosed by state or federal law, court order or subpoena, provided, however, that the receiving Party shall promptly inform the disclosing Party of the operation of this sub-section (f) to enable the disclosing Party to defend nondisclosure of its Confidential Information. As a condition to the receipt of the Confidential Information from the disclosing Party, the receiving Party shall: (1) not disclose in any manner, directly or indirectly, to any third party any portion of the disclosing Party's Confidential Information; (2) not use the disclosing Party's Confidential Information in any fashion except to perform its duties hereunder or with the disclosing Party's express prior written consent; (3) disclose the disclosing Party's Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the receiving Party's internal business purposes; (4) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (5) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure. The receiving Party shall promptly notify the disclosing Party of any unauthorized disclosure or use of the Confidential Information. The receiving Party shall cooperate and assist the disclosing Party in preventing or remedying any such unauthorized use or disclosure. Upon termination of this Agreement the receiving Party shall return or destroy all Confidential Information (including all copies thereof) within 30 days of such termination. Fusion Funding shall have the right to inspect AFFILIATE'S premises and the premises of all sales personnel to ensure that Fusion Funding's Confidential Information is properly protected from disclosure, damage or theft.

- 3.3 All media releases, public announcements and other disclosures by either Party relating to this Agreement or the subject matter hereof, including promotional or marketing material, but excluding announcements intended solely for internal distribution or to meet legal or regulatory requirements, shall be coordinated with and approved by the other Party prior to release. In addition, the receiving Party shall refrain from removing, overprinting or defacing any notices of copyright, trademark, logo or other proprietary identifications or notices of confidentiality, from any originals or copies of the disclosing Party's Confidential Information.
- 3.4 In the event of a breach of Article III, the Parties agree that the non-breaching Party will suffer irreparable harm, and that the amount of monetary damages would be impossible to calculate. Thus, the non-breaching Party will be entitled to injunctive relief in addition to any other rights to which the non-breaching Party may be entitled, without the necessity of proof of actual damages.

IV. AFFILIATE COMPENSATION:

- 4.1 In consideration for the services rendered by AFFILIATE hereunder, Fusion Funding shall compensate AFFILIATE in accordance with the AFFILIATE Compensation Schedule, attached as Schedule A hereto (the "Compensation"). Along with each Compensation payment to AFFILIATE pursuant to Schedule A, Fusion Funding shall provide to AFFILIATE a written report setting forth the basis for such Compensation. If AFFILIATE disputes any Compensation paid to it, AFFILIATE agrees to inform Fusion Funding within 45 days of the date it receives such Compensation. AFFILIATE waives any claim against Fusion Funding regarding any Compensation it fails to dispute within such 45-day period. In the event that this Agreement is terminated by AFFILIATE for any reason, or by Fusion Funding due to an Event of Default (defined below), Fusion Funding shall have no further obligation to pay Compensation to AFFILIATE and AFFILIATE shall have no further right to receive any Compensation after the date of such termination.
- 4.2 If AFFILIATE refers a prospective Merchant to Fusion Funding, but such prospective Merchant does not execute a Merchant Agreement within 90 days of such referral, then the AFFILIATE shall have no right to Compensation (defined below) with respect to such prospective Merchant, regardless of whether prospective Merchant enters into a Merchant Agreement with Fusion Funding thereafter.
- 4.3 In the event that any third party assisted AFFILIATE in referring a Merchant to Fusion Funding shall not be required to pay any compensation to such third party and said third party shall only be entitled to look to AFFILIATE for compensation therefore.
- 4.4 AFFILIATE shall be responsible to pay all federal, state and local income taxes, Social Security and Medicare taxes, and any and all employment or business taxes to be paid on its behalf to any taxing authority, whether federal, state or local. In the event AFFILIATE is required to be licensed in any jurisdiction in which it is contacting Merchants in connection with the Program, it shall be the sole responsibility of AFFILIATE to obtain the necessary licensing or permission from any licensing authority prior to soliciting Merchants within that jurisdiction. AFFILIATE agrees to complete and return an IRS Form W-9, or similar forms, as required by Fusion Funding from time to time.

V. NON-SOLICITATION:

During the term of this Agreement and for 1 year after its termination, neither AFFILIATE, nor any salesperson, nor any principal or affiliate of AFFILIATE will directly or indirectly solicit for itself or for any third party, or contract with any Merchant for any product or service that is similar to the Program or any service offered by Fusion Funding. During the term of this Agreement and for 1 year after termination of this Agreement, AFFILIATE will not solicit or endeavor to obtain any Fusion Funding employee, affiliate, syndication partner, participant to a participation agreement or agent to work for, or contract directly with, AFFILIATE. For clarification, the term "Merchant" as used in this Section shall include all parties to Merchant Agreements with Fusion Funding regardless of whether such Merchants were referred to Fusion Funding by AFFILIATE or a third party.

VI. INDEMNIFICATION AND LIMITATION OF LIABILITY:

6.1 AFFILIATE agrees to indemnify, defend and hold Fusion Funding and its affiliates, parents,

stockholders, subsidiaries, officers, directors, members, managers, employees, agents, successors and assigns (such indemnified persons are collectively hereinafter referred to as "Indemnified Persons"), harmless from and against any and all claims, demands, liabilities and damages, of whatever kind and nature, including, but not limited to, actual attorney's and court fees and costs, which any Indemnified Person may suffer, sustain, incur or become subject to arising out of or related to: (i) any failure by the AFFILIATE or any employee, agent, or affiliate of the AFFILIATE to comply with the terms of this Agreement; (ii) any warranty or representation made by the AFFILIATE or any employee, agent, or affiliate of the AFFILIATE being false or misleading; (iii) fraud or negligence of the AFFILIATE or its subcontractors, agents or employees; (iv) any alleged or actual violations by AFFILIATE or its subcontractors, employees, or agents of any governmental laws, or regulations; or (v) any governmental or NACHA inquiry or investigation related to AFFILIATE's acts or omissions. AFFILIATE will promptly notify Fusion Funding of any claim, demand, suit or threat of suit of which AFFILIATE becomes aware which may give rise to a right of indemnification under this Agreement. Fusion Funding shall be entitled to participate in, or take over, the settlement or defense of any such suit. The provisions of this Section shall survive the termination or expiration of this Agreement. In the event Fusion Funding suffers any loss, liability or damage relating, directly or indirectly, to an indemnified claim hereunder, Fusion Funding may withhold and set-off against any Compensation due to AFFILIATE under this Agreement until Fusion Funding has fully recovered the amount of such loss, liability or damage.

6.2 In no event will any Party be liable for any special, incidental, consequential or punitive damages of any nature or for any reason whatsoever regardless of the form or action, whether in contract, tort, or otherwise even if advised of that possibility. The liability, if any, of Fusion Funding under this Agreement for any claims, costs, damages, losses and expenses for which it is or may be legally liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed in the aggregate the amount of any Compensation paid to AFFILIATE for the preceding 4-month period measured from the date the liability accrues.

6.3 This Agreement does not constitute or represent any form of employment of AFFILIATE by Fusion Funding. In performing its obligations pursuant to this Agreement, AFFILIATE shall act solely as an independent contractor and shall not be deemed an agent or partner of, or joint venture with, Fusion Funding. As an independent contractor, AFFILIATE shall accept directions issued by Fusion Funding pertaining to the goals to be attained and the results to be achieved by AFFILIATE, but shall be solely responsible for the manner in which AFFILIATE shall perform services under this Agreement. AFFILIATE hereby releases Fusion Funding and waives all defenses and claims of every kind or nature, whether existing by virtue of state or federal law, by agreement or otherwise, against Fusion Funding, whether previously or now existing or arising out of or relating to AFFILIATE's classification as an independent contractor. AFFILIATE's employees shall not be deemed to be employees of Fusion Funding and are not be eligible to participate in any of Fusion Funding's employee benefit plans, fringe benefit programs, group insurance arrangements, or other similar programs, if any exist. AFFILIATE shall be responsible for paying all costs, fees and penalties (i) for failure to properly classify its workers as employees, (ii) involved in the location of prospective Merchants, and (iii) the submittal of a prospective Merchant to Fusion Funding for consideration. AFFILIATE shall not be the only AFFILIATE used by Fusion Funding in connection with seeking Merchants for its Program.

VII. NOTICES:

All notices or communications required by this Agreement, or by law to be given or served upon either Party to this Agreement, shall be in writing and shall be deemed duly served when personally delivered to a Party or to an officer of such Party, or in lieu of such personal service, after being sent and delivered either by regular U.S. mail, email or through facsimile transmissions to the Parties' contact information provided below. In the event that either Party changes their address, it is hereby agreed that they shall notify the other Party no less than 30 days after a change of address has occurred.

VIII. TERM, TERMINATION, DISPUTES & REMEDIES:

8.1 This Agreement shall have an initial term of 12 months and shall automatically renew for successive 12-month periods unless terminated by either Party upon 30 days written notice. This Agreement may be terminated immediately by Fusion Funding upon the occurrence of an Event of Default. Each of the following occurrences will constitute an Event of Default under this Agreement: (i) a breach by AFFILIATE of any of its obligations hereunder, (ii) AFFILIATE causes a detrimental effect to the Program, Fusion Funding or its officers, employees or Merchants, as determined by Fusion Funding in its reasonable discretion, (iii) it is discovered by Fusion Funding that AFFILIATE has provided false, misleading, or fraudulent information to Fusion Funding with regard to a Merchant Application, contract, or other documentation provided to Fusion Funding from AFFILIATE (iv) AFFILIATE fails to return compensation which was paid out prior to a Merchant Default, as expressed in Schedule A: Affiliate Compensation Schedule (attached hereto), within Five (5) business days of notice by Fusion Funding (v) AFFILIATE files for bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or any similar proceeding, (a) has such a proceeding instituted against it and such proceeding is not dismissed within 60 days, (b) makes an assignment for the benefit of its creditors or an offer of settlement, extension or composition to its creditors generally; or (c) a trustee, conservator, receiver or similar fiduciary is appointed for that party or substantially all of that party's assets.

8.2 In the event of a default hereunder the non-defaulting Party shall have such rights and remedies as may be available at law or in equity, including the right to terminate this Agreement and the right to sue for and recover any damages caused by such default and including also the rights of specific performance and injunctive relief.

8.3 No termination of this Agreement will affect any right of Fusion Funding under any Merchant Agreement. After any termination of this Agreement, AFFILIATE shall continue to bear total responsibility for all amounts then due or which thereafter may become due to Fusion Funding under this Agreement.

8.4 THIS AGREEMENT AND ALL ISSUES AND QUESTIONS CONCERNING THE CONSTRUCTION, VALIDITY, ENFORCEMENT AND INTERPRETATION OF THIS AGREEMENT, WILL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICT OF LAW RULES OR PROVISIONS THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF NEW YORK. The parties irrevocably submit to the exclusive

jurisdiction of any state court in New York County, New York (and any federal court having jurisdiction in New York County, New York), in any action, suit or proceeding brought under this Agreement and waive, to the fullest extent it may do so, the defense of forum non conveniens.

8.5 THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY.

IX. ADDITIONAL PROVISIONS:

- 9.1 AFFILIATE acknowledges that all funds to be received or paid in connection with the Program shall be under the sole control of Fusion Funding. AFFILIATE agrees that if any such fees, payments, or funds are inadvertently sent to AFFILIATE, AFFILIATE shall be deemed to have received such monies in trust for the benefit of Fusion Funding and shall immediately remit such monies directly to Fusion Funding.
- 9.2 AFFILIATE acknowledges and agrees that Fusion Funding may sell, transfer, encumber or assign this Agreement and/or any rights to any Merchants or Merchant Agreements without AFFILIATE's consent. AFFILIATE may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Fusion Funding. Any such assignment in violation of this provision shall be null and void.
- 9.3 This Agreement, including the Schedules attached hereto, constitutes the entire Agreement between the Parties with respect to the subject matter herein. All prior to contemporaneous agreements, understanding, representation, warranties and statements, oral or written, relating to the subject matter hereof are superseded. No modification of or amendments to this Agreement shall be binding unless in writing and executed by both Parties.
- 9.4 If any term, covenant, condition or provision of this Agreement is unlawful, invalid or unenforceable for any reason whatsoever, and such illegality, invalidity or unenforceability does not affect the remaining parts of this Agreement, then such remaining parts shall be valid and enforceable and have full force and effect as if the invalid or unenforceable part had not been included.
- 9.5 The rights of each of the Parties under this Agreement are cumulative and may be exercised as often as any Party considers appropriate under the terms and conditions specifically set forth. The rights of each of the Parties hereunder shall not be waived or modified unless otherwise expressly stated in writing. Any failure to exercise or any delay in exercising any such rights shall not operate as a waiver or variation of that or any other such right. Any defective or partial exercise of any such rights shall not preclude any other or further exercise of that or any other such right. No act or course of conduct or negotiation on the part of any Party shall in any way preclude such Party from exercising any such right or constitute a suspension or any variation of any such right.
- 9.6 The headings contained in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement or any provision hereon.

- 9.7 This Agreement may be executed and delivered in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement. A facsimile of this document bearing a party's signature or a printed copy of the original, signed document scanned in .pdf or .tiff format shall have the same legal force and effect as an original of such signature and shall be treated as an original document for evidentiary purposes.
- 9.8 If any court holds that a Party has breached this Agreement, then the non-defaulting Party will be entitled to recover expenses incurred in enforcing the provisions of this Agreement, including reasonable attorneys' fees and costs.
- 9.9 Neither Fusion Funding nor AFFILIATE will be liable for any failure to perform any obligation (other than payment or reimbursement obligations) hereunder, or from delay in the performance thereof, due to causes beyond its control, including without limitation industrial disputes of whatever nature, acts of God, public enemy, acts of government, failure of telecommunications, or other calamity, and which is not due or contributed to by the fault or negligence of such party.

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be executed by their respective, fully authorized representatives as of the date first written above.

Fusion Funding, LLC

By:

Arthur Jacobs, CEO

Address:

750 Lexington Avenue New
York, NY 10004

Business Phone:

(516) 500 8050

AFFILIATE:

By: _____

Print: _____

Its: _____

Address: _____

Business Phone: _____

Fax Number: _____

Schedule A

AFFILIATE COMPENSATION SCHEDULE:

- i) Definitions: Capitalized terms used but not otherwise defined in this Schedule A shall have the meaning ascribed to such terms as follows:
 - a. **Factor Rate.** A variable rate as defined in Section (iv) below.
 - b. **New Merchant.** A party to a Merchant Agreement that has not previously executed a Merchant Agreement or other contract with Fusion Funding or its affiliates.
 - c. **Purchased Amount.** The amount defined as the “Purchased Amount” in the applicable Merchant Agreement between the applicable Merchant and Fusion Funding and which is the amount the Merchant is obligated to pay Fusion Funding.
 - d. **Purchase Price.** The amount defined as the “Purchase Price” in the applicable Merchant Agreement between the Merchant and Fusion Funding and which is the amount of all of such Merchant’s future accounts, contract rights and other obligations arising from or relating to the payment of monies from Merchant’s customers’ and/or other third party payors including all payments made by cash, check, electronic transfer or other form of monetary payment in the ordinary course of the merchant’s business, for the payment of Merchant’s sale of goods or services, which are purchased by Fusion Funding under its Merchant Agreement.
 - e. **Repeat Merchants.** A party to a Merchant Agreement that has previously executed a Merchant Agreement or other contract with Fusion Funding or its affiliates.
- ii) New Merchant Payments: Compensation shall be paid to AFFILIATE as follows for New Merchants: Up to twelve percent (12%) of the total amount of the Purchase Price of the factor up sell for any New Merchant, based off the buy rate schedule attached hereto as schedule A. This amount shall be paid to AFFILIATE on the Wednesday following the date the Purchase Price is paid to the Merchant. (For Example: if a deal is funded on a Tuesday, commissions will be paid out to AFFILIATE on the following Wednesday *not* the day after.)
- iii) Factor Rate: All Compensation owed to AFFILIATE pursuant to Article IV above is based upon the buy rate schedule attached hereto as schedule A. The specific buy rate program shall be specified at the time of approval. Fusion Funding shall have the right, in its sole discretion, to change the Factor Rate at any time. In the event Fusion Funding decreases the Factor Rate for any Merchant to an amount below the Factor Rate listed above, Fusion Funding shall have the right, at any time, to decrease the amount of Compensation owed to AFFILIATE on a pro-rata basis.
- iv) Merchant Default Provision: In the event of a Merchant Default as defined within the Merchant Agreement, (By way of example: “Default” is typically declared after a “Stop Payment,” Four (4) NSFs and/or the Merchant becoming unresponsive after four (4) attempts at communication, within the first 30 days of funding, however, the Events of Default are subject to change by Fusion Funding without further notice and the definition of “Default” will be solely

governed by the Merchant Agreement) AFFILIATE shall refund to Fusion Funding the full Compensation amount. This includes any compensation and/or commission that the AFFILIATE may have made to sub-agents or independent brokers within or outside of AFFILIATE's organization. If the Compensation amount is not returned within five (5) days of Fusion Funding's request, Fusion Funding has the right to withhold future compensation or ACH the full amount directly from the account to which Compensation was originally paid.

v) General Terms:

- a. All Compensation payments shall be deemed earned by AFFILIATE and payable only when payments giving rise to such Compensation are irrevocably received by Fusion Funding from the respective Merchants. In the event that a Merchant charges back or rejects a debit/ payment required to be made under the Merchant Agreement *after* Fusion Funding has paid the applicable Compensation amount to AFFILIATE pertaining to that Merchant transaction, AFFILIATE shall return such Compensation payment to Fusion Funding within Five (5) business days of notice by Fusion Funding. Notice may be provided via phone call, electronic mail, facsimile, text message, or USPS. AFFILIATE's failure to return such amount within the time period specified above, shall constitute an Event of Default under this Agreement. In the event that Fusion Funding is able to reverse the chargeback or debit and receives all amounts then owed by the applicable Merchant, Fusion Funding shall thereafter repay the Compensation owed to AFFILIATE.
- b. AFFILIATE hereby grants Fusion Funding the right to recoup and/or setoff against all Compensation owed to AFFILIATE hereunder any amount owing from AFFILIATE to Fusion Funding.
- c. Notwithstanding anything to the contrary set forth herein, no Compensation payments shall be paid to AFFILIATE until the total amount owed by Fusion Funding to AFFILIATE is at least \$100.00.