

## OBA SERVICES COMPANY ENDORSED VENDOR POLICY

Endorsement by the Oklahoma Bankers Association applies only to products or services covered by written agreement signed by both parties after review by the Chief Operating Officer of the OBA Services Company, Inc. (“OBASCO”) and approved by the OBASCO Board of Directors. Endorsement by the Oklahoma Bankers Association means a product or service has been thoroughly investigated by the Association and satisfies an identifiable need. The product/service to be offered must be made available at terms, prices, and conditions more advantageous to OBA members than would otherwise be available without the OBA endorsement.

On an annual basis (or more frequently if necessary) the Association will review the performance of the vendor against the criteria used in originally selecting the product or service. Contracts will be renewed only if the OBA is satisfied that those criteria and any other factors deemed appropriate by the Association are still being met.

The Association will not enter into any agreement which includes quotas or other minimum volume requirements.

Outlined below are issues to be addressed by vendors desiring consideration as an endorsed vendor of the OBA Services Company, a wholly owned subsidiary of the Oklahoma Bankers Association:

1. Provide a history and description of the company in some detail. This should include the names and biographies of officers, majority shareholders and current balance sheet and income statement. It should also include the name of the company’s bank or other financial institution.
2. Provide a complete list of references, including banks or other financial institutions currently utilizing the product or service; information on all state bankers associations which have endorsed the company; and whether or not such endorsement has been withdrawn, and if so, under what circumstances.
3. Provide a complete description of your product or service.
4. Describe the manner in which your product or service is implemented within a bank.
5. Describe how your product or service benefits an OBA-member bank. Does it help the bank hone its competitive edge? Enhance profitability? Protect or defend itself?
6. Please describe how your product or service is better than your competitors’ in terms of price, quality and service. Please name your competitors.

7. Please describe any potential risks or liabilities that may be associated with the use of your service or product by OBA-member banks or their directors and employees?
8. Does your service or product meet with the approval of all state and federal regulatory agencies? How will ongoing legal and regulatory questions be handled if applicable?
9. Please include any marketing research for your product or service. How often do you plan to advertise your product/service and where? How often do you intend to contact bankers regarding your product/service?
10. How would you propose that OBASCO introduce your product or service to OBA-member banks? What OBASCO administrative, marketing or staffing requirements would be needed? What would be the approximate cost thereof? Please include samples of all documents/materials which will be provided to the banks.
11. Discuss price discounts to be provided to member banks as a result of OBASCO's endorsement of your product or service. This information needs to be very specific. Include information on pricing alternatives, if applicable.
12. Describe the financial compensation proposed in exchange for OBASCO's endorsement and promotion of your product or service. Include sales projections for the first year and the basis for such projections.
13. Disclose any subcontractors who will assist your company in providing products or services.

The endorsement agreement will provide that your company must submit a written report on a monthly basis showing the number and name of the OBA members contacted, product/service sold, financial disclosure of the Association's fee for product/service sold and remittance to the Association of fees. In addition, all endorsed vendors must be associate members of the OBA.

When appropriate, OBASCO may conduct a member survey. Vendor may be requested to appear before an appropriate committee to review performance of the product/service provided. During the term of the endorsement agreement, your company will not seek endorsement with other organizations in the territory agreed upon and designated by the agreement. Any subcontractors used must be bound to the terms and conditions of the endorsement agreement.

## ENDORSEMENT AGREEMENT

This Agreement is entered into by and between the Oklahoma Bankers Association (“OBA”), an Oklahoma nonprofit corporation; OBA Services Company, Inc. (OBASCO”), an Oklahoma corporation; and \_\_\_\_\_, a \_\_\_\_\_ (“COMPANY”) (collectively “Parties”).

### RECITALS

A. OBASCO is a wholly owned subsidiary of OBA, a trade association with membership composed of commercial banks domiciled throughout the State of Oklahoma, and is in the business of arranging for the offering of quality products and services to members of OBA.

B. COMPANY is in the business of [**General description of business**].

C. COMPANY wishes to provide its products and services, as specifically described in Exhibit A hereto (hereinafter, the “Services”), to OBA members and strategic members, and OBASCO wishes to endorse such use by the banks which are members of the OBA and the associate members of the OBA.

D. OBA wishes to license the use of its name and logo as provided herein.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein, the Parties hereby agree as follows:

1. Services. COMPANY will offer the Services for sale to OBA members and strategic members. COMPANY and OBASCO agree to effectuate a marketing and promotion program as more particularly described in EXHIBIT B hereto (hereinafter, the “Marketing Program”).

2. Benefit Conferred Upon OBA Members and Strategic Members. It is expressly understood by COMPANY that a material provision of this Agreement is that COMPANY offer a benefit to OBA members and strategic members that such members would not otherwise have the opportunity to have, were it not for this Agreement. Therefore, throughout the term of this Agreement, COMPANY will make the Services available to OBA members and associate members at the rates described on Exhibit A hereto. If COMPANY makes changes to its rates

such that the discount conferred upon OBA members and strategic members is lessened, then the rates payable by OBA members and strategic members will be adjusted such that the percentage discount expressed on Exhibit A hereto is maintained.

3. License of Name and Logo. OBA hereby agrees to license the use of its name and logo for use by the COMPANY solely for use in conjunction with the Marketing Program for sales of the Services to OBA members and strategic members (the "License"). OBA shall not promote or market the Services and OBA does not in any way approve, certify, or guarantee the COMPANY or the COMPANY's Services. OBA's granting of the License is merely the passive act of granting permission to the Company to use OBA's name and logo to promote the Services, as provided in the Marketing Program. COMPANY agrees to obtain **prior written** approval from OBASCO for any use of OBA's name and/or logo on any marketing brochure, pamphlets, letters or other materials produced by COMPANY. Such approval shall not be unreasonably withheld.

4. Endorsement. As provided in the Marketing Program, OBASCO endorses the Services of COMPANY to the members and strategic members of the OBA. The COMPANY agrees to provide marketing materials when requested by OBASCO and OBASCO will assist the COMPANY in the promotion, marketing and sale of the Services to OBA's members and strategic members, as specifically provided in the Marketing Program.

5. Limitation of License and Endorsement. The granting of the License and OBASCO's Endorsement, as described in paragraphs 3 and 4 herein, are non-exclusive, are specifically limited to the COMPANY's Services in connection with the Marketing Program, and are not, and shall not be, interpreted, communicated or exercised as a granting of any further license or as any endorsement of the COMPANY, any subsidiary or affiliate of the COMPANY, agents of the COMPANY, or any other product or service offered or developed by the COMPANY. OBASCO does not in any way approve, certify, or guarantee the COMPANY or the COMPANY's Services, except as specifically provided in the Marketing Program. The granting of the License and OBASCO's Endorsement to COMPANY, as described in paragraphs 3 and 4

herein, shall not be construed to preclude OBA and/or OBASCO from entering into endorsement and licensing agreements with other companies, even if those companies offer products or services that are similar in nature or in competition with COMPANY'S products or services.

6. Additional Products and Services. COMPANY expressly recognizes and agrees that (i) this Agreement will provide access to OBA members and strategic members that Company would not otherwise have, (ii) this Agreement is intended to provide Company such access only as it relates to the Services, and (iii) without the restrictions contained in this Section, Company would be able to sell additional products and services to OBA members and strategic members, thereby taking advantage of the access provided by this Agreement in a way that is not intended or contemplated by the Parties hereto. COMPANY agrees that the covenants and restrictions contained within this Section are an integral part of the consideration provided by COMPANY and that such covenants are fair and equitable. COMPANY expressly agrees as follows:

- a. In the event the COMPANY offers products or services now or in the future that are not covered by this Agreement, the COMPANY shall neither express, orally or in writing, nor infer or imply, directly or indirectly, that OBASCO endorses such products or services and the COMPANY shall not use the OBA name or logo associated therewith.
- b. In the event the COMPANY offers new products or services subsequent to entering into this Agreement (the "Future Services"), COMPANY agrees to give notice of the addition of the Future Services within thirty (30) days to the OBA and OBASCO. Further, COMPANY agrees discuss with the OBA and OBASCO at such time the addition of the Future Services to the definition of the term "Services" hereunder and compensation the Parties hereto may agree upon, at the option of the Parties; it being understood that no Party shall be required to agree to the amendment of this Agreement by virtue of this subparagraph.
- c. COMPANY expressly agrees that it will not directly solicit OBA members or offer any products or services other than the Services as contemplated hereunder, for a

period of one year following the termination of this Agreement, unless it obtains the prior written consent of the OBA and OBASCO.

7. Licensing/Endorsement Fee. In consideration of this Agreement, COMPANY agrees to pay OBASCO, for itself and as agent for OBA, a fee based upon the sales of the Services made by the COMPANY to OBA members and/or strategic members on or after the Effective Date, as calculated on the fee schedule attached hereto as Exhibit C (the "Fee Schedule") or a minimum quarterly royalty fee, as described in Exhibit C, *whichever is greater*. COMPANY shall pay the monthly fee as calculated under the Fee Schedule within ten (10) days following the end of each calendar month ("Payment Date") in which sales occur. Monthly payments as provided under the Fee Schedule shall be due and owing for each month that this Agreement is in effect and except as provided in Section 11(d), shall continue to accrue for a period of twenty-four (24) months following the termination of this Agreement by either party. The Parties agree that the licensing/endorsement fee and/or the quarterly royalty fee due from the COMPANY under this Agreement shall be paid to "OBA Services Company." COMPANY'S obligation to make any payments hereunder shall survive the termination of this Agreement. Neither OBA nor OBASCO has any financial obligation to make payments of any kind to the COMPANY. In any quarter where the total monthly fees for the quarter is less than the quarterly royalty fee, the quarterly royalty fee is payable no later than thirty (30) days following end fo the calendar quarter. OBA agrees to grant a credit against the quarterly royalty fees for sponsorships fees paid by the COMPANY.

8. Use of Subcontractors. COMPANY anticipates that a portion of the Services will be performed and/or certain functions of the Services will be provided the following named subcontractors: **[list name of subcontractor(s) and functions to be performed]**. To the extent that the above-named subcontractor(s) or any other subcontractor is retained by COMPANY related to performance of the COMPANY'S duties under this Agreement, COMPANY expressly agrees that for the purpose of this Agreement any such subcontractor shall be consider the legal agent for COMPANY and COMPANY shall remain fully responsible for the actions of any such

subcontractor. In addition, COMPANY shall cause any such subcontractor to execute the confidentiality agreement in the form attached hereto as Exhibit D and shall cause a copy of any such confidentiality agreement to be delivered to OBA and OBASCO.

9. Reports. COMPANY shall provide OBASCO with a written report on each Payment Date during the term of this Agreement. The report shall contain:

(a) Every financial institution that purchased the Services during the previous calendar month and the name of the individuals who served as each financial institutions' contact ("Primary Contact").

(b) Every financial institution contacted during the previous calendar month that declined to purchase the Services.

(c) The date on which the Company contacted the Primary Contact listed on any e-mail from OBASCO staff.

(d) The Primary Contacts that, in the sole discretion of the COMPANY, would provide OBASCO with testimonials regarding their financial institutions' utilization of the Services;

(e) All monies received by the COMPANY from financial institutions during the preceding month; and

(f) Any changes in users of the COMPANY's Services.

Upon request, the COMPANY shall provide OBASCO with a written report that provides OBASCO with monthly revenue projections to be generated from this Agreement.

10. Term. This Agreement shall be for a term of one year beginning on \_\_\_\_\_, 20\_\_ and ending on \_\_\_\_\_, 20\_\_, and shall automatically renew for an additional year at the end of the initial one-year term and thereafter for successive one year terms unless written notice of termination is given to COMPANY by OBASCO or by COMPANY to OBASCO at least thirty (30) days prior to the end of any term.

11. Termination.

(a) This Agreement may be terminated by OBA or OBASCO immediately upon giving written notice to COMPANY if:

(i) OBA, in its sole discretion, determines that COMPANY's actions or the quality of the Services reflect poorly upon the OBA or if the continuation of this Agreement is otherwise harmful to the OBA or its members or strategic members;

(ii) COMPANY has filed a petition of insolvency or bankruptcy;

(iii) COMPANY has had a petition of insolvency or bankruptcy filed against it;

(iv) COMPANY has become insolvent; or

(v) COMPANY has executed any assignment for the benefit of its creditors.

(b) Any party may terminate this Agreement if (i) another party has materially breached any term of this Agreement; (ii) written notice of such breach(es) have been given to the breaching party; and (iii) the breaching party has not cured the breach(es) that were explicitly stated in the written notice within fourteen (14) days of receipt of the notice.

(c) This Agreement may be terminated by the mutual consent of all parties at any time upon exchange of written notices evidencing each party's intent to terminate the Agreement.

(d) In no event will termination affect obligation to pay the licensing/endorsement fees or minimum quarterly payments, as provided under Section 7 of this Agreement; provided, however, in the event that OBA terminates this Agreement as provided under Section 11(a)(i) above, COMPANY shall have no obligation to pay any licensing/endorsement fee or minimum quarterly payment that has not actually accrued as of the date of such termination by OBA.

12. Remedies. In the event this Agreement is terminated, COMPANY acknowledges and admits that its failure to promptly discontinue promotion of its Services as an endorsed service or its failure to promptly discontinue use of the OBA name or logo will result in immediate and irreparable harm and damage to OBA and OBASCO. COMPANY acknowledges and admits that there is no adequate remedy at law for such failure to terminate promotion of the Services as an endorsed service and use of the OBA name and logo and agrees that in the event of such failure, OBA and OBASCO shall be entitled to equitable relief by way of temporary restraining orders and temporary injunctions until arbitration is concluded pursuant to Section 22 of this Agreement. Any such claim, dispute, or disagreement brought pursuant to this Section

shall be heard exclusively by a court in the State of Oklahoma, County of Oklahoma, and the Parties hereby consent to personal jurisdiction in the State of Oklahoma for any such claim, dispute or disagreement.

13. Indemnification. Notwithstanding any violation or breach of any provision of the Agreement, COMPANY will hold harmless and indemnify OBA, OBASCO and their respective agents and employees, successors and assignees, as well as all OBA members and strategic members acquiring the Services, from any and all damages, claims, losses, costs, expenses, suits, actions, causes of action, lawsuits, and liability of every kind, including all expenses of litigation, court costs and attorneys fees for injury to or death of any person, for damage to any property, for any losses arising out any OBA member's or strategic member's purchase of or use of the Services or otherwise related to or in connection with this Agreement. COMPANY's obligations under this Section shall survive the termination of this Agreement.

14. Relationship of Parties. Each party acknowledges and agrees that each is an independent contractor in the performance of this Agreement and no agency, partnership, joint venture or employer-employee relationship is intended or created by this Agreement and that no party can create any obligation for any other party. Neither OBA, OBASCO, nor any employee or agent of OBA or OBASCO is an employee or an agent of the COMPANY. Neither COMPANY nor OBA or OBASCO is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf or in the name of the other parties or to bind the other parties in any manner whatsoever.

15. Confidentiality and Restrictions.

(a) The Parties agree to keep the terms and conditions described in this Agreement confidential.

(b) COMPANY acknowledges and agrees that all information provided by OBA, OBASCO, or any successor entity, including, but not limited to, OBA membership information, is, and shall remain, the exclusive property of OBA, OBASCO, or any successor entity. COMPANY agrees that such information is confidential. COMPANY shall not disclose,

reproduce, sell or disseminate such information, for any reason, without the prior written consent of OBA, OBASCO, or any successor entity (“Nondisclosure Obligations”). The Nondisclosure Obligations of the COMPANY shall survive and continue after the expiration or termination of this Agreement. COMPANY agrees to protect the confidentiality of member banks that purchase its services and agrees to obtain permission from any OBA member bank or strategic member prior to using such member’s or strategic member’s name for advertising, solicitation or promotion purposes.

16. Other trade associations and affiliates. COMPANY agrees that it will not seek or obtain the endorsement of any trade association (or affiliate) that competes with the Oklahoma Bankers Association or its affiliates with respect to banks in Oklahoma, including specifically the Community Bankers Association of Oklahoma and the Independent Bankers Association of Texas, or any of their respective affiliates.

17. Representations of the Company. The Company represents and warrants to the OBA and OBASCO that it is, and will remain during the term of this Agreement, in compliance with all federal, state and local laws and regulations; that it has and will continue to maintain all licenses or certifications that are required by law, and that may be required by law during the term of this Agreement; and that the Services conform, and will remain in conformance with the standards and quality of its industry.

18. Parties in Interest. All the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the successors and assigns of the Parties. However, the Parties shall not assign any of their rights or obligation hereunder without the prior written consent of the other Parties hereto.

19. Notices. Any notices, requests, demands, claims, and other communications hereunder shall be in writing and delivered by certified or registered mail (first class, postage pre-paid), guaranteed overnight delivery, or via facsimile transmission (but only if such facsimile transmission is confirmed by delivery via certified or registered mail (first class postage pre-paid) or guaranteed overnight delivery), to the following addresses and telecopy numbers (or to

such other addresses or telecopy numbers which such party shall designate in writing to the other party):

To OBA: Oklahoma Bankers Association  
Attn: \_\_\_\_\_  
643 NE 41<sup>st</sup> Street  
Oklahoma City, OK 73105  
facsimile: (405) 424-4518

To OBASCO: OBA Services Company, Inc.  
Attn: \_\_\_\_\_  
643 N.E. 41st Street  
Oklahoma City, OK 73105  
facsimile: (405) 424-4518

To COMPANY: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
facsimile: \_\_\_\_\_

Notice shall be deemed given on the date sent if sent by facsimile transmission before 5:00 p.m. and on the date delivered (or the date of refusal of delivery) if sent by overnight delivery or certified or registered mail.

20. Strategic Membership in OBA. The COMPANY agrees to apply for, and maintain, continuously during the term of this Agreement, strategic membership in OBA, with all of the rights and privileges conferred by such strategic membership.

21. Exhibitor at OBA Annual Convention. The COMPANY agrees to purchase at least one exhibit booth at each OBA annual convention during the term of this Agreement.

22. Miscellaneous.

(a) This Agreement, including the exhibits attached hereto constitutes the entire agreement of the parties. This Agreement may not be modified or amended except by written instrument specifically referencing this Agreement and signed by all the Parties hereto.

(b) In the event that any portion of this Agreement shall be held to be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect.

(c) This Agreement has been entered into in the State of Oklahoma, and the validity, interpretation, enforcement, and legal effect of this Agreement shall be governed by the laws of the State of Oklahoma, as it applies to a contract executed, delivered, and performed solely in such state. Any conflict, dispute, or controversy concerning this Agreement, except a claim brought by OBA or OBASCO pursuant to Section 12 of this Agreement, shall be resolved by binding arbitration administered by the American Arbitration Association in accordance with its Commercial (or other applicable) Arbitration Rules (including the Emergency Interim Relief Procedures), and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The arbitrator shall prepare in writing an award that includes the legal and factual reasons for the decision. Except as may be required by law, neither the Parties nor the arbitrator shall disclose the existence, content, or results of any arbitration without the prior consent of all the Parties hereto. The arbitration shall take place in Oklahoma City, Oklahoma.

(d) The individuals executing this Agreement on behalf of the respective parties hereto represent that they have the proper authority to enter into this Agreement.

(e) Neither OBASCO nor OBA makes any warranties or representations, express or implied, as to the market potential for the Services.

(f) No right or remedy conferred upon or reserved by any party hereunder shall be exclusive of any other right or remedy which may be available to any party.

(g) The failure of any party to insist upon the strict performance of any term or condition of this Agreement or the failure of any party to enforce any right or remedy available to it under this Agreement shall not be construed as a waiver of any such term, condition, right or remedy in the future.

(h) Except as expressly provided hereunder, no provision of this Agreement shall be construed to provide or create any third party beneficiary right or any other right of any kind in any third party, and all terms and provisions hereof shall be personal among the Parties to this Agreement.

(i) This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. A telecopy signature of any party shall be considered to have the same binding legal effect as an original signature.

(j) In the event that any dispute between the Parties should result in litigation or arbitration, the prevailing party(ies) to such dispute shall be entitled to recover from the other party(ies) all reasonable fees, costs, and expenses of enforcing any right of the prevailing party(ies), including, without limitation, filing fees, arbitration fees, reasonable attorneys fees, expert witness fees, and expenses. Attorneys fees and costs include costs for such items for any appeals.

**IN WITNESS WHEREOF**, the undersigned duly authorized officers or representatives enter into this Agreement, to be effective as of the date and for the term set forth in Section 10 herein, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

OKLAHOMA BANKERS ASSOCIATION

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

Lea Ann Jackson, CPA

Chief Financial Officer

OBA SERVICES COMPANY, INC.

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

Lea Ann Jackson, CPA

Chief Operating Officer

COMPANY

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

EXHIBIT A  
DESCRIPTION OF THE SERVICES

**[This description should be very detailed. In most cases, we will not be endorsing all services offered by vendor. What we are endorsing should be made very clear. Description should include pricing information and how such pricing compares to standard charges. This should reflect the extra benefits that are conferred on OBA members as a result of entering into this Agreement. If prices are subject to change, so state.]**

EXHIBIT B  
MARKETING PROGRAM

1. OBASCO will distribute marketing materials prepared and provided by the COMPANY (and at the COMPANY's expense) ("Marketing Materials") through (a) an introductory letter drafted by OBASCO announcing the Endorsement and enclosing the COMPANY's Marketing Materials, which will be mailed at OBASCO's expense, and (b) two mailings per year thereafter, mailed at OBASCO's expense. The marketing requirement described at subparagraph 1(b) above may be fulfilled by including an article prepared by the COMPANY, and approved by the Editor of the *Oklahoma Banker* newspaper, in one issue of the *Oklahoma Banker* newspaper. OBASCO has the express right to promote other OBASCO endorsed products and services, as well as other OBA seminars and events, in the mailings referenced in (a) and (b) above.
2. OBASCO staff will describe the Services to OBA Members responding to marketing efforts. Such staff will forward names of OBA Members inquiring about the Services to the COMPANY via e-mail to the COMPANY-appointed contact.
3. OBASCO shall make one announcement in the *Oklahoma Banker* newspaper notifying readers the Services are endorsed by the Oklahoma Bankers Association.
4. OBASCO shall display COMPANY's Marketing Materials in the product display area located at OBA headquarters.
5. OBASCO shall provide advertisement(s) in the *Oklahoma Banker* newspaper promoting COMPANY and including "satisfied customers", as provided by COMPANY. Such advertisement is limited to one two-thirds page ad or two one-third page ads during each year Agreement is in effect. COMPANY must provide either actual-size negatives or camera-ready advertisements. Additional charges will be assessed for color ads utilizing Oklahoma Banker Newspaper standard advertising prices. Additional advertising in OBASCO publications, such as the *Oklahoma Banker* newspaper and the *Oklahoma Directory of Financial Institutions*, may be obtained by COMPANY at member rates.

The marketing requirement of an advertisement may be fulfilled by including an article prepared by the COMPANY in one issue of the Oklahoma Banker newspaper.

EXHIBIT C

FEE SCHEDULE

**[Describe how endorsement fee will be calculated each month.]**

**QUARTERLY ROYALTY PAYMENTS**

**[Describe the amounts here and reiterate that they are to pay their commissions/endorsement fees on a monthly basis and only when the amount for a quarter is less than the quarterly royalty payment are they required to instead pay the quarterly royalty payment]**

## EXHIBIT D

### CONFIDENTIALITY AGREEMENT

In consideration of serving as agent and subcontractor for [COMPANY], [SUBCONTRACTOR], a \_\_\_\_\_, does hereby agree as follows:

WHEREAS, COMPANY is a party to a certain Endorsement Agreement entered into between COMPANY, the Oklahoma Bankers Association (the "OBA") and OBA Services Company, Inc. ("OBASCO") dated \_\_\_\_\_, 2009, wherein the OBA provided a limited license to COMPANY for use of its name and logo and OBASCO endorsed the Services (as that term is defined in the Endorsement Agreement) provided by COMPANY;

WHEREAS, COMPANY and SUBCONTRACTOR have agreed to have SUBCONTRACTOR to assist COMPANY in fulfilling its duties under the Endorsement Agreement;

WHEREAS, pursuant to the terms of the Endorsement Agreement, COMPANY is required to have any subcontractor execute an agreement in the form of this Confidentiality Agreement; and

WHEREAS, in consideration of serving as a subcontractor to COMPANY, SUBCONTRACTOR is willing to enter into this Confidentiality Agreement.

NOW, THEREFORE, SUBCONTRACTOR here by agrees as follows:

1. No license or endorsement. SUBCONTRACTOR expressly recognizes that it has no right to use the name and/or logo of the OBA or OBASCO and has received no endorsement for any product or services from the OBA or OBASCO. SUBCONTRACTOR agrees that it will not use the name and/or logo of the OBA or OBASCO other than as strictly limited to the fulfillment of its duties as a subcontractor for COMPANY under the Endorsement Agreement.

2. Non-Solicitation. SUBCONTRACTOR agrees that except as it relates to its preexisting clients as of the date of this Agreement, it will not directly solicit any OBA member or offer any products or services to any OBA member for a period of one year following the termination of the Endorsement Agreement, unless it obtains the prior written consent of the OBA and OBASCO.

3. Confidentiality and Restrictions.

- a. For purposes of this Section 3, the term "Confidential Information" shall include, but not limited to, all data, records, files, concepts, reports, analysis, pricing, rates, operations, systems, security, trade names, trademarks, trade secrets, financials, pricing, marketing materials, applications, credit reports, documents, policies,

procedures, correspondence, databases, lists, mailings, networks, products, software, hardware configurations, correspondence, consumer information, and customer information, regardless of format, alteration, or markings of confidentiality. Confidential Information shall also include the Confidential Information of OBA's members, affiliates, and subsidiaries. Confidential Information shall remain the property of the discloser, unless otherwise specifically agreed to in writing and signed by authorized representative of each party. For purposes of this Agreement, Confidential Information shall not include information that is (i) independently developed by the other party without the use of or reference to Confidential Information, (ii) disclosed to the receiving party by a third party without any restriction of confidentiality, or (iii) in the possession of the other party without a legal obligation of confidentiality and prior to this Agreement.

- b. SUBCONTRACTOR agrees not to disclose, use, compile, sell, communicate, disseminate, or otherwise make known to anyone or any third parties, any Confidential Information of the OBA, OBASCO, or any OBA member.
- c. SUBCONTRACTOR agrees not to use or distribute any Confidential Information for its own gain or profit, without the express written consent of the OBA and OBASCO. SUBCONTRACTOR agrees to take reasonable security precautions to protect against the unauthorized use, publication, destruction, or disclosure of the Confidential Information, including, but not limited to, the use of appropriate security control technologies (including, but not limited to, encryption of data, firewalls, passwords, authentication, data access and transmission controls and procedures, virus and anti-spy protection software), and physical security measures, (including, but not limited to, limited security access to facilities, proper disposal procedures, and signed confidentiality agreements or acknowledgements with persons having access to Confidential Information). SUBCONTRACTOR shall notify CONTRACTOR, the OBA and OBASCO immediately of any actual or suspected breach of the Confidential Information, and shall reasonably cooperate in order to halt the unauthorized disclosure and mitigate any damages.
- d. All Confidential Information shall remain the sole and exclusive property of the disclosing party and shall be returned or destroyed, at the sole discretion of the disclosing party, upon any request, expiration of the legal retention period, and/or any termination of the parties' relationship. SUBCONTRACTOR shall return (or destroy) and shall cause its agents, employees and affiliates to return (or destroy), at its cost and expense, the Confidential Information and all copies or other reproductions of Confidential Information, regardless of format, including any reports or notes referencing Confidential Information. For any destruction of Confidential Information, all Confidential Information shall be destroyed in such a manner so as to render it as unreadable and unable to be reproduced. Any return or destruction of Confidential Information shall be conducted within thirty (30) days of the triggering event.

4. Remedies. SUBCONTRACTOR acknowledges and admits that its breach or threatened breach of this Confidentiality Agreement will result in immediate and irreparable harm and damage to OBA and OBASCO. COMPANY acknowledges and admits that there is no

adequate remedy at law for such breach or threatened breach, and that OBA and OBASCO shall be entitled to equitable relief by way of temporary restraining orders and temporary injunctions in addition to any other remedy that may be available to OBA and OBASCO. Any such claim, dispute, or disagreement brought pursuant to this Section shall be heard by a court in the State of Oklahoma, County of Oklahoma, and SUBCONTRACTOR hereby consents to personal jurisdiction in the State of Oklahoma for any such claim, dispute or disagreement.

5. Miscellaneous.

- a. In the event that any portion of this Agreement shall be held to be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect.
- b. The validity, interpretation, enforcement, and legal effect of this Agreement shall be governed by the laws of the State of Oklahoma, as it applies to a contract executed, delivered, and performed solely in such state.
- c. The individual(s) executing this Agreement on behalf of SUBCONTRACTOR represents that he or she has the proper authority to enter into this Agreement.
- d. The failure of any party to insist upon the strict performance of any term or condition of this Agreement or the failure of any party to enforce any right or remedy available to it under this Agreement shall not be construed as a waiver of any such term, condition, right or remedy in the future.
- e. A telecopy signature of this Agreement shall be considered to have the same binding legal effect as an original signature.
- f. In the event that any dispute related to this Agreement should result in litigation or arbitration, the prevailing party(ies) to such dispute shall be entitled to recover from the other party(ies) all reasonable fees, costs, and expenses of enforcing any right of the prevailing party(ies), including, without limitation, filing fees, arbitration fees, reasonable attorneys fees, expert witness fees, and expenses. Attorneys fees and costs include costs for such items for any appeals.

**IN WITNESS WHEREOF**, the undersigned duly authorized officers or representatives enter execute this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

SUBCONTRACTOR

\_\_\_\_\_

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

(Name and Office)