

## COLLECTION SERVICES AGREEMENT

This Collection Services Agreement is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (hereinafter referred to as "Client") located at \_\_\_\_\_ and Hamilton Cay Inc. located at 22 Lawrence Ave Smithtown, NY 11787 (hereinafter referred to as "Agency").

WHEREAS, the Client has unpaid accounts which it desires collected ("Delinquent Accounts"); and

WHEREAS, Agency desires to handle, and is qualified to collect, Delinquent Accounts in accordance with the terms of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. ENGAGEMENT.** Client retains Agency to collect Delinquent Accounts which the Client in its sole discretion may assign to Agency for collection. Nothing contained in the Agreement shall be construed as requiring Client to use Agency exclusively or to place any set number or type of accounts with Agency. Agency agrees to use its best efforts and work diligently to collect all money due to Client and to forward such money to Client, all in accordance with the terms and conditions of this Agreement.

### **2. PERFORMANCE STANDARDS**

(a) Agency shall commence collection efforts upon receipt of any Delinquent Accounts and shall continue such efforts for the entire period such Delinquent Accounts are held by Agency, in accordance with the terms of this Agreement and the performance standards set forth in Exhibit A attached hereto (the "Performance Standards"). Client may modify the Performance Standards at any time during the term of this Agreement with thirty (30) days prior written notice to Agency.

(b) Agency shall supervise and direct all collection work, devoting enough attention and applying the necessary skill and expertise to perform the work competently and efficiently in accordance with the performance standards set forth in Exhibit A. Agency shall be solely responsible for the means, methods, techniques, sequences and procedures of the collection.

(c) Agency shall promptly undertake, through proper and lawful means, the collections of all Delinquent Accounts referred by the Client. Agency shall not use unlawful threats, intimidation, or harassment of a debtor in the collection of Delinquent Accounts. It is further understood that Agency shall conduct its business in accordance with the provisions of Title VII of the Consumer Credit Protection Act, 15 U.S.C. S1601, "Fair Debt Collection Practices Act", and all other federal, state and local laws and regulations.

**3. QUALITY OF WORK.** Within the framework provided in the preceding paragraph, and in accordance with the performance standards set forth in Exhibit A, Agency agrees to implement thorough collection procedures to achieve a maximum recovery of debts. Such procedures are to include a reasonable number of telephone calls along with appropriate contacts by mail. Skip-tracing procedures will be used whenever necessary. Performance standards are set forth in Exhibit A.

**4. ACKNOWLEDGMENTS.** Agency will acknowledge the receipt of each Delinquent Account and begin collection activity in accordance with the terms and conditions outlined in Exhibit A. Agency will be entitled to its fee for all payments made after receipt of Delinquent Accounts. No commission will be due Agency for payments received after an Account is closed and returned by Agency.

**5. STATUS REPORTS.** Agency agrees to provide status reports and other such reports that Client requires, on such Delinquent Accounts as Client may request after Agency has been working said Delinquent Accounts for a minimum of 30 days.

**6. THE COLLECTION FEE**

Agency will bear all costs of collection and Client shall not be liable for any cost or expense incurred by Agency. The sole consideration paid Agency shall be a commission figured as a percentage of collections according to the following schedule:

<b>Age of the Receivable</b>	<b>Contingency Fee</b>
Up to One Year Delinquent	30%
One Year to 24 Months Delinquent	35%
Over 24 to 36 Months Delinquent	40%
Over 36 Months Delinquent	50%

Recognizing that payments may come from different sources (the customer, a responsible party, insurance Client, relative, employer, etc.), Client agrees to pay Agency its fee without regard to the source of payment.

Agency pledges a vigorous effort to collect every Delinquent Account, but the parties agree that Agency's efforts need not be the proximate cause of payment in order for Agency's fee to be due.

**7. CREDIT BUREAU REPORTING**

At Client's request, Agency agrees to place all uncollectible Delinquent Accounts with the local credit bureaus. Agency also agrees to update the bureaus on an ongoing basis in compliance with all applicable laws, rules and regulations.

**9. RETURN OF ACCOUNTS.** Agency shall close and cancel all Delinquent Accounts which prove uncollectible one hundred twenty (180) days after placement. Agency will be allowed to maintain control, and receive commission on all accounts that maintain a promise to pay. The procedure shall be carried out in such manner as specified by Client.

**10. WITHDRAWAL OF ACCOUNTS.** Client agrees to give Agency a fair and reasonable opportunity to effect collection, a minimum of 180 days, for every assigned Delinquent Account. Client does, however, reserve the right to withdraw any Delinquent Account when in its judgment a valid debt does not exist or if Client decides to absolve debtor of any obligation to pay.

**11. TERMINATION OF CONTRACT.** This contract may be terminated at any time by either party by giving written notice to the other. Such notice shall be effective 30 days after the delivery thereof. In the event of termination, Agency agrees to immediately cease collection efforts and promptly return all Delinquent Accounts to Client, including all information, reports, etc., produced or generated by Agency in furtherance of its obligations hereunder, all of which Agency acknowledges is the sole and exclusive property of Client.

**12. PAYMENTS.**

(a) Collections made by Agency on Delinquent Accounts will be deposited immediately in an interest bearing trust account maintained in a reputable bank. Such collections, less interest, held in trust by Agency, shall be the property of Client and not available for any other use by Agency.

(b) All collections made by Agency on Client's Delinquent Accounts during any calendar month will be remitted, less the appropriate commission due Agency, by the thirtieth (30<sup>th</sup>) day of the calendar month, accompanied by a remittance advice. The remittance will reflect all payments made through the 15<sup>th</sup> of that month. The remittance advice shall contain a list of the customer's name, account number, amount collected, and whether the payment was made directly to Agency or Client, the fee retained by Agency and whether the payment was in settlement of the account. Client agrees to remit monies due Agency within Thirty (30) days of receipt of invoice. DIRECT PAYMENTS – all payments made direct to either the original creditor, or any other company in the chain of title, will be forwarded to Agency within seven (7) days of receipt.

**13. NO AGENCY.** Agency shall act as an independent contractor in fulfilling the terms of this Agreement and there is no relationship between the parties hereto, expressed or implied, creating any agency, partnership, employment relationship or joint venture.

**14. NSF CHECKS.** Client recognizes that Agency may from time to time advance funds against payments received from debtors whose checks subsequently are returned due to insufficient funds ("NSF Checks"). Client acknowledges its obligation to reimburse Agency for all NSF Checks credited to Client's account.

**15. AUDITING.** Each party shall maintain true and correct records pertaining to the Delinquent Accounts which are the subject of this Agreement. Client may, during normal business hours, audit Agency's books and records to verify the accounting of all funds and the accuracy and appropriateness of all charges. Further, whenever Client deems required, it will conduct inventory reconciliation and account reviews on site to review Delinquent Accounts currently with Agency and Delinquent Accounts that were closed/returned or recalled, and discuss past and future performance.

**16. CONFIDENTIAL INFORMATION.**

(a) Confidential Information, as used herein, shall mean any oral, written or documentary information which (i) relates to this Agreement, (ii) is received by the Agency from the Client and, in the case of written information, (iii) is marked "Confidential," "Proprietary" or bears a marking of like import or which the Client states in writing at the time of transmittal to, or receipt by, the Agency is to be considered confidential. Orally disclosed information shall be considered confidential if identified as such in writing at the time of disclosure or within twenty (20) days after an oral disclosure thereof. For purposes of this Agreement, the Delinquent Accounts and all information related thereto, whether provided to Agency, or generated by Agency in furtherance of its obligations under this Agreement, shall be deemed Confidential Information.

(b) The "Confidential Information" does not include information that:

- (1) is already known to the Agency as evidenced by prior documentation thereof;  
or
- (2) is or becomes publicly known through no wrongful act of the Agency; or
- (3) is rightfully received by the Agency from a third party without restriction and without breach of this Agreement or any other Agreement; or
- (4) is approved for release by written authorization of the Client.

(c) For the term of this Agreement plus five (5) years, the Agency will not disclose to others or use for any purpose of the Agency's own any Confidential Information, financial or business data, technical data, or other confidential or proprietary information obtained from Client, or from an affiliated entity of Client, as a result of work done pursuant to this Agreement, or generated or developed in the performance of work under this Agreement. Furthermore, the Agency will not display for any purpose any drawing, letter, report, other document, or any copy or reproduction thereof belonging to or pertaining to the Client, or to an affiliated entity of the Client, without due written authorization from a responsible officer of the Client, unless such drawing, letter, report, or other document has been previously published by the Client. Publication shall not include publication to an affiliated entity of the Client.

**17. INDEMNIFICATION**

**(a) CLIENT SHALL DEFEND, HOLD HARMLESS AND INDEMNIFY AGENCY, ITS SHAREHOLDERS, OFFICERS AND EMPLOYEES AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, COSTS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, SOUGHT OR ASSERTED AGAINST AGENCY, ITS SHAREHOLDERS, OFFICERS AND EMPLOYEES OF AGENCY ARISING OUT OF THE COLLECTION ACTIVITIES OF AGENCY IF SUCH LIABILITIES, CLAIMS, DAMAGES, COSTS, JUDGMENTS OR EXPENSES ARE BASED OR ALLEGED TO BE BASED, IN WHOLE OR IN PART, UPON ANY OF THE FOLLOWING:**

- (1) ANY ACTIONS BY CLIENT, ITS OFFICERS, EMPLOYEES OR CONTRACTORS, INCLUDING ANY OTHER COLLECTION AGENCY; OR**

**(2) INACCURACY IN ANY ACCOUNT INFORMATION SUPPLIED BY CLIENT TO AGENCY, OR FAILURE BY CLIENT TO SUPPLY ACCOUNT INFORMATION TO AGENCY, INCLUDING THE FAILURE TO PROVIDE UPDATED ACCOUNT INFORMATION AS IT BECOMES AVAILABLE.**

**(b) AGENCY SHALL DEFEND, HOLD HARMLESS AND INDEMNIFY CLIENT, ITS AFFILIATES, SHAREHOLDERS, OFFICERS AND EMPLOYEES AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, COSTS, JUDGMENTS AND EXPENSES, INCLUDING ATTORNEY FEES, SOUGHT OR ASSERTED AGAINST CLIENT, ITS AFFILIATES, SHAREHOLDERS, OFFICERS AND EMPLOYEES OF CLIENT ARISING OUT OF THE COLLECTION ACTIVITIES OF AGENCY IF SUCH LIABILITIES, CLAIMS, DAMAGES, COSTS, JUDGMENTS OR EXPENSES ARE BASED OR ALLEGED TO BE BASED, IN WHOLE OR IN PART, UPON ANY OF THE FOLLOWING:**

**(1) ANY ACTIONS BY AGENCY, ITS OFFICERS, EMPLOYEES OR CONTRACTORS; OR**

**(2) FAILURE BY AGENCY TO RELAY ACCOUNT INFORMATION SUPPLIED BY CLIENT TO AGENCY TO CREDIT BUREAU.**

**(c) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE INDEMNIFYING PARTY'S CONTRACTUAL OBLIGATION OF INDEMNIFICATION SHALL NOT EXTEND TO THE CONSEQUENCES OF THE INDEMNIFIED PARTY'S NEGLIGENCE OR OTHER FAULT OR TO STRICT OR VICARIOUS LIABILITY IMPOSED UPON THE OTHER PARTY AS A MATTER OF LAW.**

**(d) THE OBLIGATIONS OF CLIENT AND AGENCY UNDER THIS INDEMNIFICATION SECTION SHALL BE CONTINUING OBLIGATIONS OF CLIENT OR AGENCY, AS THE CASE MAY BE, AND SHALL SPECIFICALLY SURVIVE THE TERMINATION OF THIS AGREEMENT.**

**18. AMENDMENT/MODIFICATIONS.** Neither this Agreement nor any term or provision hereof, may be changed, waived, discharged, amended, modified or terminated orally, or in any other manner other than by an instrument in writing which refers expressly to this Agreement and is signed by authorized representatives of all of the parties hereto.

**19. ASSIGNMENT.** Neither party shall assign or transfer any or all of its rights or interest hereunder without first obtaining the written consent of the other party to such an assignment or transfer; provided, however, that Client party may assign this Agreement to an affiliate without Agency's consent. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

**20. AUTHORITY AND CAPACITY.** Each of the persons signing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement and that this Agreement is binding upon the party for whom such person has signed and that the signature of no other party of person is required in order to bind such party. Each person executing this Agreement on behalf of a corporation represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such in accordance with authority granted under the formation documents of such entity, and all conditions to the exercise of such authority have been satisfied, and that this Agreement is binding upon such entity in accordance with its terms.

**21. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding between the parties hereto pertaining to the subject matter hereof. No provision of this Agreement may be altered, amended, canceled, changed, discharged, modified, terminated or waived except by written agreement signed by a duly authorized officer of each party.

**22. GOVERNING LAW.** This Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of New York, without giving effect to principles or provisions thereof relating to conflict or choice of laws and irrespective of the fact that any one of the

parties is now or may become a resident of a different state. Venue of any action under this Agreement shall be in Westbury, New York.

**23. HEADINGS.** The headings in this Agreement are for convenience only to facilitate reference, do not form a part of this Agreement, and in no way define, limit, extend or interpret the scope of this Agreement or of any particular paragraph hereof.

**24. SEVERABILITY AND SUBSTITUTION OF VALID PROVISIONS.** In the event that any provision of this Agreement shall be found to be invalid, void or unenforceable, such finding shall not be construed to render any other provision of this Agreement invalid, void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are invalid, void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either party.

**25. NO WAIVER.** The failure of any party hereto to insist upon strict performance of any of the covenants and agreements herein contained, or to exercise any option or right herein conferred, in any one or more instances, including the right to declare a breach under this Agreement, or by virtue of any contrary custom or practice of the parties, shall not be construed to be a waiver or relinquishment of any such option or right, or of any other covenants or agreement, but the same shall be and remain in full force and effect and may be enforced on subsequent occasions.

**26. NOTICES.** Notices hereunder shall be given in writing to the other party at the address set forth below, or at such other address as shall have been given by either party to the other in writing, pursuant to this Section 27. Such notice shall be deemed to have been given when delivered personally or five (5) days after posting, if sent postage-prepaid by first class United States mail.

Client: \_\_\_\_\_

Client Address: \_\_\_\_\_

Agency Name: Hamilton Cay Inc.  
Agency Address: 22 Lawrence Ave Smithtown, NY 11787  
Attn.: Michael Harris Client Services

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Client: \_\_\_\_\_

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

Name:

Title:

Agency: **Hamilton Cay Inc.**

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

Name: Michael Harris

Title: Client Services

EXHIBIT A  
PERFORMANCE STANDARDS

1. All Delinquent Accounts will be supplied via tape or electronic mailbox as determined by Client. All Delinquent Accounts will be loaded and activated within 24 hours of receipt and verification of the number and dollars placed will be reported back to Client within 48 hours of receipt. Within 48 hours of receipt, the notification letter sent and the first attempt on all Delinquent Accounts will be completed. These Delinquent Accounts will be called at Agency's discretion, however, they must be called at varying times among morning, and afternoon, evening and weekend until contact is made or the phone number is determined to be bad. If contact is made, calls will continue at Agency's discretion until payment is made. If contact cannot be made, the Delinquent Accounts will be moved to skip trace to locate new points of contact
2. Skip tracing for Delinquent Accounts will be at Agency's discretion. All Delinquent Accounts that have been through skip tracing process without successful contact will be returned to Client.
3. All collection attempts, by collectors and / or the mail, shall request payment of the balance placed by Client. Various Settlement opportunities will be provided to the Agency after discussion and written authorization from the Client. Settlement authorization has been provided to Agency at 50% of the balance due (waive 50% of the balance).
4. The Agency shall obtain a competitive liquidation with the other agencies retained by client working similar Delinquent Accounts. The batch liquidation percentage will be provided to Agency by Client monthly. Subject to the terms of this Agreement, including Client's right to terminate this Agreement with thirty days' notice and no duty on the part of Client to place any particular number or percentage of Delinquent Accounts with Agency, Client generally intends that Delinquent Account placements will be determined by its agencies' liquidation performance.