



# MERCHANT CHECKLIST

MERCHANT NAME:

DBA(if applicable):

## REQUIRED DOCUMENTS FOR STANDARD MERCHANT

For Standard Merchants (Up to **\$30,000.00** monthly volume - **\$360,000.00** annual volume) the following documentation must be included with Merchant Application package.

- COMPLETED MERCHANT APPLICATION/AGREEMENT
- COVER LETTER EXPLAINING AUTHORIZATION PROCEDURES AND WHAT YOU ARE USING OUR SERVICES FOR
- ARTICLES OF INCORPORATION PLUS MINUTES NAMING CURRENT BOARD OF DIRECTORS OR OFFICERS
- COPY OF YOUR CORPORATE RESOLUTION **OR** L.L.C. **OR** PARTNERSHIP AGREEMENT
- D.B.A. CERTIFICATE (WHEN APPLICABLE)
- VOIDED CHECK FROM THE ACCOUNT TO BE USED FOR THE SETTLEMENT OF FUNDS
- COPY OF TWO (2) MONTHS BANK STATEMENTS FROM THE SAME ACCOUNT AS THE VOIDED CHECK
- MARKETING MATERIALS
- WEB SITE URL (Must be working URL) www. \_\_\_\_\_
- IF YOU CURRENTLY HAVE A MERCHANT ACCOUNT, PROVIDE TWO (2) MONTHS PROCESSING STATEMENTS

## ADDITIONAL ITEMS NEEDED FOR HIGHER VOLUME OR NON-STANDARD MERCHANTS

Merchants are considered non-standard when their monthly volume exceeds **\$30,000.00** per month or their annual volume exceeds **\$360,000.00**. Merchants are also considered non-standard when their type of business is classified as an exception to policy. In addition to the above standard documentation requirements, ACH Direct, Inc. **may request one or more of the following types of documentation** for non-standard applications.

- SIGNED FINANCIAL STATEMENT FOR THE LAST YEAR, INCLUDE BALANCE SHEETS AND INCOME STATEMENTS
- COPY OF SIGNED MERCHANT BUSINESS OR PERSONAL FEDERAL TAX RETURN FOR THE TWO (2) MOST RECENT YEARS WITH ALL SCHEDULES ATTACHED
- COPY OF GOVERNMENT ISSUED I.D. FOR AUTHORIZED SIGNER(S)
- MEMO EXPLAINING ANY DEROGATORY CREDIT BEING REPORTED
- DOCUMENTS REFLECTING DEROGATORY CREDIT HAS BEEN RELEASED OR SATISFIED
- MAIL/TELEPHONE MERCHANTS:** COPIES OF BUSINESS CATALOGUES, SOURCES OF MAILING LISTS OR ADVERTISEMENTS, SCRIPTS, SUPPLIERS, REFERENCES AND DESCRIPTION OF THE MERCHANTS REFUND POLICY AND NAME AND ADDRESS OF THE FULFILLMENT HOUSE (IF NEEDED)
- TELEPHONE SOLICITOR (TELEMARKETER):** DATE OF REGISTRATION WITH THE STATE ATTORNEY GENERAL
- TRAVEL AGENCIES:** COPY OF THE CERTIFICATE OF APPROVAL FROM THE AIRLINE REPORTING CORPORATION (ARC). A COPY OF REGISTRATION AS A TRAVEL AGENCY WITH THE STATE CONSUMER AFFAIRS DEPARTMENT
- STATE FRANCHISE TAX BOARD NON-PROFIT EXEMPTION (WHEN APPLICABLE)
- INTERNAL REVENUE NON-PROFIT LETTER (WHEN APPLICABLE)

## OVERNIGHT APPLICATION AND SUPPORTING DOCUMENTS TO:



# MERCHANT APPLICATION

**CHECK ONE**

- NEW MERCHANT SET UP
- EXISTING MERCHANT

**TYPE OF REQUEST (CHECK ALL THAT APPLY)**

- BUSINESS OWNERSHIP CHANGE     ADDITIONAL LOCATION
- BUSINESS NAME CHANGE     OTHER

**PRODUCT(S) REQUESTED****(CHECK ALL THAT APPLY)**

- VIRTUAL TERMINAL     DIRECT BILLING     SOFT TERMINAL     TRANSPORTER     BATCH PROCESSING     ON LINE CHECK

**SERVICE(S) REQUESTED****(CHECK ALL THAT APPLY)**

- ACH PROCESSING     ATM VERIFY     NCN VERIFY     CREDIT CARD PROCESSING ( CHECK ONE:  EXS     GLOBAL     NOVA )

**PRINT OR TYPE ONLY**

COMPLETE BUSINESS NAME/CORPORATE NAME: \_\_\_\_\_ BUSINESS PHONE: \_\_\_\_\_ BUSINESS FAX: \_\_\_\_\_

DBA NAME (IF DIFFERENT): \_\_\_\_\_ CUSTOMER SERVICE # ( # THAT WILL APPEAR ON YOUR CUSTOMER'S BANK STATEMENT ) \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

NAME OF PRIMARY CONTACT FOR THE BUSINESS: \_\_\_\_\_ PHONE # ( W / EXT. ) \_\_\_\_\_ E MAIL: \_\_\_\_\_

**BUSINESS TYPE : ( CHECK ONE ONLY PLEASE)**

- SOLE PROPRIETOR     PARTNERSHIP     LIMITED LIABILITY COMPANY (LLC)     CORPORATION
- FEDERAL TAX I.D. #     NONPROFIT     SUB CHAPTER "S"     PUBLICLY HELD     OTHER :

YEAR ESTABLISHED: \_\_\_\_\_ LENGTH OF CURRENT OWNERSHIP: \_\_\_\_\_ YEARS: \_\_\_\_\_ MONTHS: \_\_\_\_\_ # OF LOCATIONS: \_\_\_\_\_ # OF EMPLOYEES: \_\_\_\_\_

**OWNERSHIP: ( PRINCIPAL / PARTNER / OWNER / MANAGER NAME , MUST HAVE AT LEAST 51% OWNERSHIP REPRESENTED)**

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_ % EQUITY OWNERSHIP: \_\_\_\_\_

RESIDENCE: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

HOW LONG: \_\_\_\_\_ RENT OR OWN: \_\_\_\_\_ HOME PHONE #: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ DRIVERS LICENCE STATE: \_\_\_\_\_ DRIVERS LICENCE #: \_\_\_\_\_ SOCIAL SECURITY#: \_\_\_\_\_

BANKRUPTCY OR LAWSUITS:  YES     NO ( IF YES PLEASE SEND COURT EXPLANATION AND DISCHARGE LETTER )

**OWNERSHIP: ( PRINCIPAL / PARTNER / OWNER / MANAGER NAME , MUST HAVE AT LEAST 51% OWNERSHIP REPRESENTED)**

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_ % EQUITY OWNERSHIP: \_\_\_\_\_

RESIDENCE: \_\_\_\_\_ CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

HOW LONG: \_\_\_\_\_ RENT OR OWN: \_\_\_\_\_ HOME PHONE #: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ DRIVERS LICENCE STATE: \_\_\_\_\_ DRIVERS LICENCE #: \_\_\_\_\_ SOCIAL SECURITY#: \_\_\_\_\_

BANKRUPTCY OR LAWSUITS:  YES     NO ( IF YES PLEASE SEND COURT EXPLANATION AND DISCHARGE LETTER )

TYPE OF GOODS SOLD/SERVICE: \_\_\_\_\_

URL: \_\_\_\_\_ % OF SALES THAT ARE SINGLE PAYMENTS: \_\_\_\_\_ % OF GOODS SOLD THAT ARE RECURRING PAYMENTS: \_\_\_\_\_

% SALES RETAIL: \_\_\_\_\_ % SALES PHONE: \_\_\_\_\_ % SALES INTERNET: \_\_\_\_\_ % SALES MAIL ORDER: \_\_\_\_\_

PROJECTED AVG. DEBIT TICKET SIZE: \_\_\_\_\_ PROJECTED MONTHLY DEBIT TRANSACTIONS: \_\_\_\_\_ PROJECTED MONTHLY DEBIT DOLLAR AMOUNT: \_\_\_\_\_ MAXIMUM SINGLE DEBIT AMOUNT: \_\_\_\_\_

PROJECTED AVG. CREDIT TICKET SIZE: \_\_\_\_\_ PROJECTED MONTHLY CREDIT TRANSACTIONS: \_\_\_\_\_ PROJECTED MONTHLY CREDIT DOLLAR AMOUNT: \_\_\_\_\_ MAXIMUM SINGLE CREDIT AMOUNT: \_\_\_\_\_

**LOCATION OF BUSINESS**

- RETAIL STOREFRONT     PRIVATE RESIDENCE     OFFICE SUITE     OTHER ( SPECIFY )

The statements I (we) have made in this application are true. I (we) agree to notify ACH Direct, Inc. of any important changes in the facts listed above. This application now belongs to ACH Direct, Inc. I (we) further understand that a Consumer Report of each of the officers/partners/members/managers/proprietors of the applicant firm may be requested from a Consumer Reporting Agency and that other credit and financial information and reference inquiries will be made of other persons or entities. A Consumer Report is a routine report on credit worthiness, frequently used by creditors. If this application for merchant service is approved, subsequent Consumer Reports and inquiries may be required or used in conjunction with an update, renewal or extension of the contract. I (we) agree that all business references, including banks, may release any and all credit and financial information to ACH Direct, Inc. In order to process this application, it is necessary that a majority of the officers, partners, members, managers, or proprietors sign below. Each of the undersigned ("you") understand that State Vehicle Code requires the Department of Motor Vehicles to hold information concerning your residential or mailing address in confidence, to be released only to courts, to governmental or law enforcement agencies, and under some circumstances, to insurance companies. Generally, anyone else seeking that information must obtain your written waiver of your right to confidentiality before it is released. By signing this form, you hereby waive your right to confidentiality as to this information with respect to ACH Direct, Inc. and authorize the Department of Motor Vehicles to release such information to ACH Direct, Inc. or its representatives or agents when such information is sought in connection with any business you have conducted or are conducting with ACH Direct, Inc.

**MAJORITY OF PRINCIPALS MUST SIGN PRIOR TO PROCESSING**

1) SIGNATURE	PRINT NAME/ TITLE	PHONE #	DATE
2) SIGNATURE	PRINT NAME/ TITLE	PHONE #	DATE
3) SIGNATURE	PRINT NAME/ TITLE	PHONE #	DATE
4) SIGNATURE	PRINT NAME/ TITLE	PHONE #	DATE



# FEE SCHEDULE

REQUESTED SERVICES			MONTHLY FEES			
(CHECK ALL THAT APPLY)	PER ITEM	PER ITEM FEES	(CHECK ALL THAT APPLY)	QTY	PRICE	EXTENDED
		RETURNED ITEM	DISCOUNT FEE			
<input type="checkbox"/>	ACH PROCESSING			<input type="checkbox"/>	MONTHLY ACH STATEMENT	
<input type="checkbox"/>	ATM VERIFY			<input type="checkbox"/>	GATEWAY SERVICES	
<input type="checkbox"/>	ATM CHECK			Gateway service monthly fee is required for all merchants needing "Real-time" transaction processing or merchants who process credit cards in batch or real-time mode. Gateway charges are for up to 300 transactions. Gateway charges are on top of applicable fees for the type of service being performed, such as: debit or credit card, verification, or real time debit.		
<input type="checkbox"/>	NCN VERIFY			<b>NSF FEE REBATE PROGRAM</b>		
<input type="checkbox"/>	GATEWAY OVERAGE			You have the option for ACH Direct to collect an NSF Fee from your customer if one of their transactions is returned NSF (non-sufficient funds.) If so, you receive a 40% REBATE for each NSF Fee collected.		
<input type="checkbox"/>	PAPER DRAFTS			<input type="checkbox"/> COLLECT \$ _____ PER NSF ITEM <input type="checkbox"/> DO NOT COLLECT		
<input type="checkbox"/>	OTHER _____					

REQUESTED PRODUCTS	ONE TIME FEES		
(CHECK ALL THAT APPLY)	QUANTITY	PRICE	EXTENDED
<input type="checkbox"/>	DIRECT BILLING		
<input type="checkbox"/>	VIRTUAL TERMINAL		
<input type="checkbox"/>	SOFT TERMINAL		
<input type="checkbox"/>	TRANSPORTER		
<input type="checkbox"/>	REAL TIME VERIFICATION CERTIFICATION		
<input type="checkbox"/>	REAL TIME PAYMENT CERTIFICATION		
<input type="checkbox"/>	BATCH VERIFICATION CERTIFICATION		
<input type="checkbox"/>	BATCH PAYMENT CERTIFICATION		
<input type="checkbox"/>	OTHER _____		

HARDWARE	QUANTITY			PRICE	EXTENDED
	USB	SERIAL	KB WEDGE		
<input type="checkbox"/>	MAGTEK CREDIT CARD MSR				
<input type="checkbox"/>	MAGTEK CHECK READER	N/A			
<input type="checkbox"/>	MAGTEK COMBO READER	N/A	N/A		
<input type="checkbox"/>	MAGTEK CHECK IMAGER	N/A			
<input type="checkbox"/>	MAGTEK CHECK IMAGER COMBO	N/A	N/A		

**TOTAL SETUP FEES:**

ONE- TIME/ SETUP FEES	SETTLEMENT ACCOUNT	OPTIONAL MONTHLY FEES ACCOUNT
FOR ALL INITIAL SOFTWARE, HARDWARE & PRODUCT FEES	FOR FUNDING OF ALL DAILY TRANSACTIONS	FOR MONTHLY RECURRING FEES IF DIFFERENT THAN SETTLEMENT
ACCOUNT #	ACCOUNT #	ACCOUNT #
TRANSIT ROUTING #	TRANSIT ROUTING #	TRANSIT ROUTING #
NAME ON ACCOUNT	NAME ON ACCOUNT	NAME ON ACCOUNT
BANK CONTACT PERSON	BANK CONTACT PERSON	BANK CONTACT PERSON

**MERCHANT AUTHORIZATION** As a duly authorized representative for the merchant named herein, I authorize ACH Direct to debit the accounts listed for the one time fees requested in addition to the monthly transaction and monthly fees will be billed on or about the 10th of each month following the month the services are rendered. If paying by check, please be advised that all checks will be converted to an ACH payment and electronically deposited to our account. If your payment is returned unpaid you understand and authorize the item plus a \$25.00 processing fee will be electronically debited from your account.

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

S.P. \_\_\_\_\_ SIGNATURE \_\_\_\_\_ PRINT NAME \_\_\_\_\_ LEAD TRACKING # \_\_\_\_\_ S.P. ID# \_\_\_\_\_

REP. \_\_\_\_\_ SIGNATURE \_\_\_\_\_ PRINT NAME \_\_\_\_\_ REP. ID# \_\_\_\_\_



# MERCHANT AGREEMENT

This Agreement by and between the merchant that signs the Application which incorporates the terms and conditions here ("Merchant") and ACH Direct, Inc. ("ACHD"), a California corporation, is for ACHD to provide Automated Clearing House ("ACH") services as a Third Party Processor of ACH transactions services, and is effective upon ACHD's approval of the Application of Merchant and execution of this Agreement. The related addenda and schedules are part of these terms and conditions, and individually and collectively, all these items are referred to as the "Agreement" between Merchant and ACHD. This Agreement may include provisions for processing credit card and ATM/debit card transactions, which will apply depending on Merchant's decision to receive such services and authorization of services by ACHD's Credit Card Processing Affiliate.

### 1. Definitions.

- a) ACH Network - Automated Clearing House Network is a batch processing, store-and-forward system that accumulates and sorts ACH transactions by destination for transmission during a predetermined time period;
- b) NACHA - National Automated Clearing House Association;
- c) Rules and Regulations - the operational rules of the NACHA, VISA and Mastercard; All federal, state and local regulations that govern ACH transactions, including but not limited to federal Regulation E and Title 31 of the Code of Federal Regulations Part 210;
- d) ODFI - Originating Depository Financial Institution is the institution that receives payment instructions from Merchant and forwards the entries to the ACHD;
- e) RDFI - Receiving Depository Financial Institution is the institution that receives the ACH entries from ACHD and posts the entries to the accounts of Receivers;
- f) Receivers - Merchant's clients that have authorized Merchant to initiate an ACH entry to Merchant's account with the RDFI;
- g) Debit Entry - Monies debited from Receiver's accounts;
- h) Credit Entry - Monies credited to Merchant's account after collection from Receiver's accounts;
- i) Transaction - Any Debit or Credit Entry as defined above;
- j) Returned Entries - Any Transaction returned by the RDFI.

**2. Services.** ACHD, or its authorized Agent, agrees to provide Merchant with ACH services as a Third Party Processor of ACH transactions. These transactions will be placed through a bank with whom ACHD has a relationship, which will act as the ODFI. ACHD will process Debit Entries for the purpose of collecting automatic payments from the accounts of designated Receivers and/or Credit Entries for the purpose of paying Merchant's accounts payable in accordance with the terms of this Agreement, the Rules and Regulations governing ACH transactions.

**3. Confidentiality.** Merchant shall not use for its own purposes, shall not disclose to any third party, and shall retain in strictest confidence all information and data belonging to or relating to the business of ACHD (including without limitation the terms of this Agreement), and will safeguard such information and data by using the same degree of care that Merchant uses to protect its own confidential information. Merchant authorizes ACHD to disclose its name, address and other basic demographic information to any third party who requests or otherwise has a reason to know such information.

### 4. Responsibilities of Merchant.

- a) Authorization: Merchant shall obtain authorization from Receiver prior to requesting a debit and/or credit to Receiver's account. Merchant shall retain proof of Receiver's authorization for a period of two (2) years after receipt of the authorization, or for the appropriate period designated by the Rules;
- b) Submitting Transactions: (i) Service Bureau-Merchants shall submit by facsimile or regular mail only, fully executed Receiver's authorization forms in a format pre-approved by ACHD. (ii) Check Conversion-Merchants shall, through the use of a check reader and POS terminal, create a Debit Record that will be transmitted to ACHD's Host Processing System. (iii) All Other-Merchants shall create a file or electronic message containing Transaction(s) in a format pre-approved by ACHD and deliver the file or message through electronic transmission to ACHD's Host Processing System or in person or by regular mail to ACHD during regular business hours;
- c) Receiving Reports and Transaction Files: Merchant is solely responsible for communicating with ACHD's Host Processing System to receive daily reports and/or transaction files. ACHD is under no obligation to transmit this data to Merchant;
- d) Representations: Merchant represents and warrants that with respect to all Transactions originated by ACHD on behalf of Merchant that (i) each Receiver has authorized the debiting and/or crediting of its account (ii) each Transaction is for an amount agreed by the Receiver and (iii) each Transaction is in

- all other respects properly authorized (iv) Merchant shall provide proof of authorization for any Transaction to ACHD upon request;
- e) Ceasing Activities: If and when Merchant receives notice that any pre-notification has been rejected, Merchant shall not initiate any Transaction until the cause for rejection has been corrected and another pre-notification has been submitted by Merchant and accepted by RDFI. Merchant shall cease initiating Transactions immediately upon receipt of any actual or constructive notice of Receiver's termination or revocation of authority;
- f) Regulatory Compliance: Merchant is solely responsible for ensuring that Merchant's policies and procedures meet the requirements of the Rules and Regulations. ACHD bears no responsibility for any lack of compliance of these Rules and regulations and directs Merchant to seek the counsel of outside legal assistance should Merchant have questions or concerns regarding compliance with such;
- g) Notice of Erroneous or Unauthorized Transfers: Merchant shall regularly and promptly review all Transactions and other communication from ACHD and shall immediately notify ACHD upon discovery of any and all discrepancies between Merchant's records and those provided by ACHD, the ODFI or Merchant's bank, or with respect to any transfer that Merchant believes was made without proper authorization. Upon notification by Merchant, ACHD will use its best efforts to reverse the Transaction notified of. However, Merchant acknowledges that the Transaction may have progressed beyond ACHD's ability to control by the time of such notice and under such circumstances, Merchant accepts full responsibility for all losses, liabilities, costs or expenses Merchant, ACHD or any third party suffers or incurs as a result of ACHD's inability to reverse the transaction;
- h) Identifying Numbers: Merchant acknowledges that ACHD may rely solely on identifying numbers provided by Merchant to determine the bank and account of Receivers even if the numbers identify a bank or account holder that differs from the one Merchant has identified by name. Merchant accepts full responsibility for any losses, liabilities, costs or expenses Merchant, ACHD or any third party suffers or incurs as a result of an incorrect account or other identification.
- i) Disputes With Receivers: All disputes between Merchant and its Receiver(s) relating to any Transaction will be settled by and between Merchant and Receiver. Merchant agrees that ACHD bears no responsibility or involvement in any such dispute.
- j) Employee Actions: Merchant bears all responsibility for its own employees' actions while in Merchant's employ.

### 5. Responsibilities of ACHD.

- a) Accepting Transactions: (i) For Service Bureau-Merchants, ACHD shall accept Transaction(s) via facsimile on a 24-hour basis, or in person or by regular mail delivery during regular business hours. (ii) For Check Conversion-Merchants, ACHD shall accept Transactions via the check reader/terminal hardware on a 24-hour basis. ACHD is responsible only for processing Transactions that are received by ACHD in the proper format, pre-approved by ACHD. (iii) For All Other-Merchants, ACHD shall accept Transactions in the pre-approved format via electronic transmission on a 24-hour basis, or by personal delivery during regular business hours;
- b) Originating Transactions: ACHD shall use the information provided by Merchant to originate Merchant's Transactions to the ACH Network. ACHD may delay or reject any such Transactions without prior notification to Merchant for any reason permitted or required under the Rules or federal or state regulations governing ACH transactions, including but not limited to any violation of said Rules or Regulations;
- c) Returned Entries and Notices of Change (NOC): ACHD shall apply returned entries to Merchant's account upon receipt. Upon receipt of returned Transaction, ACHD shall create and make available to merchant a report containing the detailed information regarding all return entries. ACHD shall accept responsibility for correcting all NOCs received;

- d) Transaction Modification or Deletion: Merchant acknowledges that once a Transaction is submitted to the ACH Network, it cannot be modified or deleted. However, if the Transaction has not yet been submitted to the ACH Network at the time of Merchant's request, ACHD shall make reasonable efforts to comply with Merchant's request. ALL such request must be submitted to ACHD in proper form, executed by authorized personnel of Merchant and delivered by hand or facsimile to ACHD within the timeframe established by the Rules. Merchant agrees that ACHD will not be held responsible for any losses, directly or indirectly, incurred by Merchant or other third parties as a result of ACHD's failure to accomplish the requested modification or deletion before the Transaction has been submitted to the ACH Network;
- e) Method of Transfer: ACHD shall transfer all funds collected on behalf of Merchant to a custodial account located with the ODFI. ACHD shall hold such funds until all preliminary returns have cleared, at which point ACHD shall transfer the funds to the financial institution and account designated by Merchant in its Application or by prior written notice. The standard period during which ACHD will hold funds in this account is 4 banking days. ACHD shall reduce the holding period on funds to Merchant's account upon receipt of a written guarantee of the funds from Merchant's designated financial institution. ACHD reserves the right to place a longer hold period on any funds collected on behalf of Merchant should questionable activity occur, or in the event that Merchant's return rate increases significantly enough to warrant a longer hold period or as required by law;
- f) Settlement and Finality: (i) Upon expiration of the hold period for Debit Entries, ACHD shall credit Merchant's designated account the full amount of funds collected on behalf of Merchant, less any fees and costs as outlined in this Agreement. The credit to Merchant's designated account shall not be final until ACHD has the appropriate funds available. (ii) Should any Debit Entry be returned to ACHD, in a timely manner as prescribed by the Rules, ACHD shall debit Merchant's designated account for the amount of the returned item and all fees and costs incurred by ACHD relating to the returned debit transaction. (iii) In the event the funds in Merchant's designated account are insufficient to cover Merchant's obligations under this Agreement, Merchant agrees to submit payment of amounts owing to ACHD upon demand and through alternative means. Unless otherwise agreed upon, ACHD may debit any alternative account maintained by Merchant for the amounts due and owing without further notice to or approval from Merchant. (iv) Any Credit Entries created by Merchant shall be debited from Merchant's designated account in accordance with the standard hold period prior to the credit being distributed to Merchant's payee's accounts. In the event that a Debit Entry is returned for any reason, all Credit Entries shall be cancelled or reversed, in whole or any part thereof, if currently available funds are insufficient for payment of scheduled Credit Entries and associated fees and costs to ACHD.

**6. Pricing and Payment.** ACHD shall provide written notice of fees to Merchant on a regular basis, as indicated on the attachment to this Agreement entitled Fee Schedule. Said fees shall be due and payable by Merchant within the time period established by the Fee Schedule. Fees may differ for funds transfer, pre-note, returned item or change item and may be modified by ACHD upon written notice to Merchant. Additionally, there is a monthly access fee, the current amount of which is provided on the Fee Schedule. ACHD does not charge an additional fee for any data storage. ACHD is authorized to obtain payment for these fees and any other amounts due under this Agreement by directly debiting Merchant's bank account, as per the information provided by Merchant on the attached Merchant Application. A \$25.00 fee shall be assessed for any return of a debit processed to Merchant's account. ACHD shall have the right to offset against any amount payable by ACHD to Merchant under any provision of this Agreement, any amounts owed ACHD by

INITIALS: \_\_\_\_\_ DATE: \_\_\_\_\_

INITIALS: \_\_\_\_\_ DATE: \_\_\_\_\_

Merchant, or any damages sustained by ACHD as a result of Merchant's violation, breach or non-performance of its obligations under this Agreement. In the event of any willful violation of the Rules, Merchant shall be assessed a fee of \$100.00 per item in violation of the Rules.

**7. Processing Limits.** ACHD may impose a cap on the dollar amount of Transactions it will process for Merchant. This limit may be changed by ACHD from time to time, upon notice to you. If such notice is given orally, it will be confirmed in writing. If Merchant exceeds the established limit, ACHD may suspend Transaction processing and either return Transaction funds or hold those funds in a separate account.

**8. Security Deposit.** Should ACHD determine that a security deposit or "Reserve" is required, such funds shall be used by ACHD to offset any returned items or charge-backs that occur after the termination of this Agreement. Merchant hereby grants a security interest in any such funds held by ACHD to secure Merchant's existing and future obligations to ACHD under this Agreement. The secured funds shall be held by ACHD for ninety (90) days beyond the date of the last item processed by ACHD on Merchant's behalf. In the event the Reserve or security deposit is insufficient to cover the items that are returned after termination of this Agreement, ACHD is authorized to debit Merchant's bank account(s) for the shortage amount.

**9. Collections.** Upon request of Merchant, ACHD may perform certain collection actions to recover monies owed Merchant from a designated Receiver(s). Should ACHD agree to perform such collection services on behalf of Merchant, it may at its own discretion, utilize a third party licensed collection agent to perform the services.

**10. NSF Fee Rebate Program.** Merchant may request that ACHD collect the NSF fee, allowable under the laws of Merchant's domiciliary state, from a designated Receiver upon any return of an ACH transaction from that Receiver either for insufficient funds (NSF) or uncollected funds. ACHD shall rebate Merchant a percentage, as established in attached Fee Schedule, of any such funds collected from Receiver. Rebates are to be paid to Merchant on a monthly basis following the successful collection of the funds from each designated Receiver.

**11. Investigative Report.** Merchant is on notice that an investigative or Consumer Report shall be made in connection with all Merchant applications. Merchant applicants authorize ACHD or any Credit Bureau or any Credit Reporting Agency employed by ACHD or any of its agents to investigate the references given or any other statements or data obtained from Merchant, or any of its principals, for the purpose of this application.

**12. Re-Evaluation.** ACHD reserves the right to re-evaluate Merchant's financial position at its own discretion throughout the course of ACHD's business relationship with Merchant. Further, such re-evaluation may result in modification of the fee structure, reserve amount, applicable discount fees or termination of this Agreement in accordance with the terms herein.

**13. Personal Guaranty.**

- a) As a primary inducement to ACHD to enter into this Agreement, the Guarantor(s) indicated on the Application form, if applicable, by signing this Agreement, if applicable, jointly and severally, unconditionally and irrevocably, guarantee the continuing full and faithful performance and payment by Merchant of each of its duties and obligations to ACHD pursuant to this Agreement, as it now exists or as amended from time to time, with or without notice;
- b) Guarantor(s) understand further that ACHD may proceed directly against Guarantor(s) without first exhausting its remedies against any other person or entity responsible therefore to it or any security held by ACHD or Merchant. Guarantor(s)' obligations are independent of Merchant's obligations, and ACHD may sue the Guarantor without suing Merchant;
- c) This guarantee will not be discharged or affected by the death of the Guarantor(s), will bind all heirs, administrators, representatives and assigns and may be enforced by or for the

- benefit of any successor of ACHD;
- d) Guarantor(s) understand that the inducement to ACHD to enter into this Agreement is consideration for the guaranty and that this guaranty remains in full force and effect even if the guarantor(s) receive no additional benefit from the guaranty;
- e) Guarantor(s) understand that ACHD may require the Guarantor to pay even if a statute of limitations or disability bars recovery from Merchant, or the Obligations are or become otherwise unenforceable. Guarantor(s) waive the benefit of any statute of limitations that would apply to the Guaranty;
- f) ACHD may, at its option, request periodic financial statements from Guarantor(s). Guarantor(s) will supply these statements promptly upon ACHD's request. If Merchant is a corporation or partnership, ACHD is not required to investigate the powers of anyone acting on Merchant's behalf;
- g) Guarantor(s) does not have any: (1) right of subrogation, reimbursement, indemnification or contribution arising from the existence or performance of this Guaranty. This includes any rights arising from contract, statutory law or otherwise, and includes any claim of subrogation under the Bankruptcy Code (Title 11 of the U.S. Code) or any successor statute; (2) right to enforce a remedy which ACHD now has or may later have against Merchant; (3) right to participate in security now or later held by ACHD; or (4) right to any defense based on a claim that the responsibilities of Guarantor(s) under the Guaranty are more burdensome than or exceed amounts due ACHD by Merchant;
- h) Guarantor shall pay all reasonable attorney fees, including allocated costs of ACHD's in-house counsel, court costs and all other expenses ACHD incurs in enforcing this Guaranty.

**14. Indemnification.** Merchant agrees to hold ACHD harmless from, and indemnify ACHD against any and all claims, demands, actions, losses, damages, and liabilities, expenses, expenditures, and costs including but not limited to attorneys' fees and other costs of defense, including settlement costs, that relate to or result from any alleged violation by Merchant of any applicable law or regulation or any action of Merchant, it's agents or employees in connection with any Transaction subject to this Agreement.

**15. Limits of Liability.**

- a) Errors of Others: ACHD is responsible for its performance of the ACH services as a Third Party in accordance with the terms of this Agreement, the Rules and Regulations. ACHD shall not be held responsible for errors, acts or failures to act of others, including, and among other entities, banks, communications carriers or clearing houses through which Transactions may be originated or through which ACHD may receive or transmit information, and no such entity shall be deemed an agent of ACHD;
- b) Damage Waiver: Neither party shall be held liable to the other party for any special, consequential, indirect or punitive damages incurred in relation to this Agreement, whether or not (i) any claim for these damages is based on tort or contract; or (ii) either party knew or should have known the likelihood of such damages occurring under the circumstances. ACHD makes no representations or warranties other than those expressly documented in this Agreement;
- c) Force Majeure: Neither party shall be liable for, or be considered in breach of or default under this Agreement on account of any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such party's reasonable control and that such party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected party shall give prompt written notice to the other party and shall use all commercially reasonable efforts to minimize the impact of the event.

**16. Amendment of Terms.** ACHD reserves the right to amend the terms of this Agreement upon at least ten (10) days written notice to Merchant. Merchant's continued use of ACHD's services after receipt of such notice shall indicate Merchant's acceptance of the new terms of the Agreement.

**17. Modification of Terms.** This Agreement is subject to such modifications, changes, and additions as may be required, or

deemed to be required by ACHD, by reason of any state or federal statute, judicial decision, or NACHA Rule or any other ruling of a federal or state agency having jurisdiction over ACHD or Merchant.

**18. Assignability.** The rights granted under this Agreement are and shall be personal to Merchant and shall not be assigned by any act of Merchant or by operation of law. Any attempt on the part of Merchant to sub-license or assign to third parties its rights under this Agreement shall constitute a material breach of this Agreement and grounds for termination. ACHD may assign its rights and obligations under this Agreement without the approval of Merchant.

**19. Termination.** Either party may terminate this Agreement without cause upon thirty (30) days' written notice to the other party. ACHD may terminate this Agreement without prior notice in the event Merchant is or becomes bankrupt or is unable to pay its debts as they become due, or if ACHD reasonably determines that Merchant has violated any term, condition, covenant, or warranty of this Agreement, or if ACHD determines in its sole discretion that Merchant has abused its privileges under this agreement. Upon the effective date of such termination, Merchant's rights hereunder to use ACHD's services shall cease, but Merchant's obligations in connection with any transaction processed by ACHD on behalf of Merchant (whether before or after such termination) shall survive such termination.

**20. Dispute Resolution.** If at any time during the term of this Agreement any dispute, difference, or disagreement shall arise between the parties that cannot be resolved through meetings and discussions among the parties, or should any dispute, difference or disagreement arise in respect of this Agreement, the meaning, interpretation and construction thereof, then the dispute shall be submitted to binding arbitration, under the Rules of the American Arbitration Association. The parties shall share equally the costs of the arbitration proceedings. Any award may include an award for attorney's fees and costs.

**21. Notice.** Any notice required to be given under this Agreement shall be in writing and delivered personally to the other designated party, or mailed by certified, registered or Express mail, return receipt requested or by Federal Express. Either party may change the address to which notice is to be sent by written notice to the other under any provision of this paragraph.

**22. General Provisions.** This agreement shall be binding on the parties only upon execution of this Agreement by an authorized representative of both parties. This Agreement shall be governed by and construed in accordance with the internal laws of the state of California, and the parties consent to the jurisdiction and venue of the federal and state courts sitting in Riverside County, California. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement. Should any term, clause or provision hereof be found invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement. This Agreement constitutes the entire understanding of the parties, and revokes and supersedes all prior agreements between the parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the parties hereto and specifically referring to this Agreement. This Agreement shall take precedence over any other documents that may conflict with this Agreement. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**23. Merchant Authorization.** Merchant's signature authorizes ACHD to verify the information given in the Merchant Application attached, including credit references and to obtain credit reports on the business and each of the signatories individually, including Guarantor(s) (including a spouse if in a community property state). This Agreement becomes effective when signed by an authorized representative of Merchant and ACHD.

<b>MERCHANT APPROVAL</b>	
As a duly authorized representative for the merchant named above, I agree to be bound by the Terms and Conditions for Electronic Funds Transfer Services and authorize the account(s) above to be debited and/or credited by ACHD according to the aforementioned Terms and Conditions. This authorization is also applicable to any new account information provided to ACHD at some future time. I understand that the approval, per-item limit, hold period, and reserve amount required (if any) is determined by ACHD. I certify that the information provided in this application is true and correct to the best of my knowledge.	
SIGNATURE: <small>(Owner/Officer/General Partner/LLC Manager/Member of Board of Directors/Designated Signer)</small>	DATE:
PRINTED NAME:	TITLE:
SIGNATURE: <small>(Owner/Officer/General Partner/LLC Manager/Member of Board of Directors/Designated Signer)</small>	DATE:
PRINTED NAME	TITLE: