

Electronic Check - Automated Clearing House (ACH) Agreement

| Merchant Information | | | eCheck Services | |
|----------------------|--------|-----------------|-----------------|--|
| Merchant: | | Merchant ID: | | |
| Address: | | Federal Tax ID: | | |
| City: | State: | Zip: | State Tax ID: | |
| Telephone: | Fax: | Email: | Web Address: | |

| Principal(s) / Individual(s) | | | | |
|------------------------------|--------------------|-------|-----------------|-----------------|
| Name (1): | | DOB: | Title: | % of Ownership: |
| Residence Address: | | City: | State: | Zip: |
| Residence Telephone #: | Social Security #: | | Drivers Lic. #: | State: |
| Name (2): | | DOB: | Title: | % of Ownership: |
| Residence Address: | | City: | State: | Zip: |
| Residence Telephone #: | Social Security #: | | Drivers Lic. #: | State: |

| Trade References | | | |
|------------------|----------|---------|---------|
| Business Name: | Address: | Contact | Phone # |
| Business Name: | Address: | Contact | Phone # |
| Business Name: | Address: | Contact | Phone # |

| Bank References | | | |
|-----------------|----------|------------|--------|
| Bank Name: | Address: | Account #: | Phone: |
| Bank Name: | Address: | Account #: | Phone: |

| Estimated Transaction Volume and Threshold Parameters | | | |
|---|-------------------------|------------------------|-----------------------------|
| Maximum Monthly Transactions: | Maximum Monthly Amount: | Maximum Single Amount: | Maximum Daily Transactions: |

| Return Thresholds | |
|-------------------|---|
| Zero Amount | Notification of Change and Rejected Prenote Items |
| Standard | All Positive Value Items Excluding High Risk |
| High Risk | Customer Advises Not Authorized, Authorization Revoked and Stop Payment |
| Total | |

| Fees | | | | | |
|------------------|-------------|----------------|----------------------|-----------------|---------------------|
| Per Transaction: | Per Return: | Discount Rate: | Monthly Maintenance: | Chargeback Fee: | Application/ Setup: |
| \$ | \$ | % | \$ | \$15.00 | |

Counterparts - This Agreement may be executed in any number of counterparts with the same effect as if the parties had all signed the same document. All counterparts shall be construed together and shall constitute one Agreement.

Binding Contract - This Agreement, which includes Schedule A, ELECTRONIC CHECK - ACH AGREEMENT TERMS AND CONDITIONS, and SCHEDULE B, BUSINESS QUESTIONNAIRE, shall be binding on both parties only upon execution by an authorized representative of TransFirst ePayment Services, Inc.

Personal Guarantee - To endure and in consideration of TransFirst ePayment Services' acceptance of the merchant application, the undersigned unconditionally guarantees performance of the merchant's obligation under this merchant Agreement and payment of all sums due thereafter and, in the event of a default, hereby waives notice of default and agrees to indemnify TransFirst ePayment Services for any and all funds due from merchant pursuant to terms of this Agreement.

TransFirst ePayment Services, Inc.

Merchant Name:

X

 Authorized Signature

 Name (Print or Type)

 Title

 Date

 Authorized Signature (Duly Authorized Officer Only)

 Name (Print or Type)

 Title

 Date

SCHEDULE A: ELECTRONIC CHECK – ACH AGREEMENT TERMS AND CONDITIONS

AUTHORIZATION

As a duly authorized representative for the Merchant named above, I authorize the account above to be debited and or credited by TransFirst ePayment Services, Inc. (EPAY) according to the ELECTRONIC CHECK - ACH AGREEMENT TERMS AND CONDITIONS. I further authorize EPAY to process electronic funds transfers as a Third Party Originator through the account listed above. This authorization is also applicable for any new account information provided by me at a future date. I agree to be bound by the ELECTRONIC CHECK - ACH AGREEMENT TERMS AND CONDITIONS ("Agreement") as stated on elsewhere in this Agreement. I agree to provide new account information to EPAY at least 10 days prior to closing or changing the above account.

TERMINATION

Either party may cancel this Agreement with thirty (30) days written notice to the other party. Any termination will not affect the rights or obligations of either party arising before termination of this Agreement. EPAY may terminate this Agreement effective immediately for any of the following reasons: (1) Merchant insolvency, receivership, voluntary or involuntary bankruptcy, assignment of any of the Merchant's assets for the benefit of Merchant's property creditors, or any part of the Merchant's property is or becomes subject to any levy, seizure, assignment or sale for or by any creditor or governmental agency without being released within thirty (30) days thereafter; (2) in the event that any entity which established the Rules and Regulations identifies the Merchant, its principal(s), or associated parties as being in violation of such Rules and Regulations; and (3) if Merchant is inactive for a consecutive ninety (90) day period and has not previously informed EPAY of such inactivity.

CONSUMER CREDIT INQUIRIES

A credit report may be made in connection with this application. Applicant(s) authorize EPAY, or any credit bureau or any credit reporting agency employed by EPAY or any agents of EPAY to investigate the references provided or any other statements or data obtained from the Company, or any of the above principals, for the purpose of this application.

DESCRIPTION OF SERVICES

EPAY and Merchant have contracted for EPAY to provide Automated Clearing House ("ACH") services as a third party processor of Electronic Check – ACH ("eCheck") transactions. These transactions will be placed through a financial institution used by EPAY who will be acting as the Originating Depository Financial Institution ("ODFI"). EPAY will debit funds ("Debit Entry") for the purpose of collecting Automatic Payments from the accounts of the Merchant's customers ("Receivers") and/or credit funds ("Credit Entry") for the purpose of paying the Merchant's accounts receivable in accordance with the terms of this Agreement, the Operating Rules ("Rules") of the National Automated Clearing House Association ("NACHA"), and applicable Federal regulations ("Regulations") governing eCheck transactions. The terms and conditions of this Agreement do not limit Merchant's obligation to comply with the Rules and Regulations. "Entry" or "Entries" shall mean a Credit Entry, a Debit Entry, or a Return Entry.

MERCHANT RESPONSIBILITIES

AUTHORIZATION

Merchant agrees to obtain authorization from Receivers' prior to debiting and or crediting Receivers' accounts. Merchant will maintain copies of the authorizations as necessary to resolve disputes for a period of two (2) years.

REPRESENTATIONS

Merchant represents and warrants with respect to all Entries originated by EPAY for the Merchant that (1) each Receiver has authorized the debiting and or crediting of its account, (2) each Entry is for an amount agreed to by the Receiver, and (3) each Entry is in all other respects properly authorized. Merchant agrees to indemnify EPAY for any losses,

liabilities, costs or expenses suffered or incurred as a result of the breach of these representations and warranties.

IDENTIFYING NUMBERS

Merchant understands that EPAY may rely solely on identifying numbers provided by the Merchant to determine the bank and account of a Receiver even if the numbers identify a bank or account holder different from the one identified by the Merchant by name. Merchant will indemnify EPAY for any losses, liabilities, costs or expenses suffered or incurred as a result of an incorrect account or other incorrect identification provided to EPAY from Merchant.

REGULATORY COMPLIANCE

Merchant bears the final responsibility to insure that the Merchant's policies and procedures meet the requirements of the Rules and Regulations. Merchant is encouraged to consult counsel regarding compliance with authorization and payment procedures whenever there is any doubt about compliance.

NOTICE OF ERRONEOUS UNAUTHORIZED TRANSFERS

Merchant agrees to promptly and regularly review all entries and other communication received from EPAY for erroneous and unauthorized transfer of funds, including errors, and to immediately notify EPAY if there are any discrepancies between Merchant's records and those provided by EPAY, the ODFI or Merchant's bank, or with respect to any transfer not authorized by Merchant. If Merchant fails to notify EPAY within seven (7) days of the date EPAY mails or otherwise provides a statement of account or other report of activity to Merchant, then the Merchant will be responsible for all losses or other costs associated with any erroneous and/or unauthorized transfer.

EPAY RESPONSIBILITIES

ACCEPTING TRANSACTIONS

EPAY will only be responsible for processing Entries that have arrived at EPAY's premises in proper format and on a timely basis. EPAY will advise Merchant of any applicable cut-off time. Merchant does not have the right to cancel or amend any entry after submission to the ACH.

ORIGINATING TRANSACTIONS

EPAY will use the information provided by the Merchant to originate Entries to the ACH. Merchant understands that EPAY may reject Entries for any reason permitted or required in the Rules or Regulations. Merchant also understands that Entries or files may be rejected by EPAY that exceed the Threshold Parameters identified and set for the Merchant in this Agreement. Merchant also understands that an Entry may be rejected if the Entry would cause EPAY to violate any Federal Reserve or other regulatory risk control program or any other law or regulation. At Merchant's request EPAY will make reasonable efforts to reverse, modify, or delete an entry, but will have no responsibility for the failure to comply with that request. All requests must be made in writing with authorized signature and may be faxed (with hardcopy to follow), hand-delivered, or mailed to EPAY.

RETURNED ENTRIES AND NOCS

All Return Items, including non-monetary Return Items such as Notification Of Change (NOC) and other administrative returns, will be electronically delivered to, and presented by, the EPAY system to the Merchant. Merchant agrees that those Items eligible for Return Entry will be re-presented through use of the EPAY System to the ACH by Merchant, or by EPAY at Merchant's direction, in a timely manner and in accordance with the Rules and Regulations. Any Return Item previously credited and paid to Merchant will be debited from Merchant's Designated Account upon receipt at EPAY, and the Return Items eligible for re-presentation will be Settled upon the final disposition of Return Entry activity. Merchant agrees to fund all Return Items that are material to this Agreement. EPAY will create and make available to the Merchant a report containing detailed information about returned Entries. If the

Merchant requests that the returned Entries be provided electronically, EPAY may do so according to the Rules and Regulations regarding those Transactions.

SETTLEMENT AND FINALITY

Merchant's account will settle not less than five (5) business days following the effective date of Entries originated. If any Entry is returned beyond this settlement, EPAY will at EPAY's discretion, either apply the debit to the current day's settlement, or debit the Merchant's account for the amount of the returned Entry plus associated fees.

LIMITS OF LIABILITY AND INDEMNITY

EPAY will be responsible for the performance of eCheck services as a Third Party Processor in accordance with the terms of this Agreement, the Rules and Regulations and applicable law. EPAY will not accept responsibility for errors, acts, or failure to act by others, including but not limited to, banks, communication common carriers or clearing houses through which Entries may be passed and/or Originated. EPAY will not be responsible for any loss, liability or delay caused by fires, earthquakes, war, civil disturbances, power surges or failures, acts of governments, labor disputes, failures in communication networks, legal constraints or other events beyond the control of EPAY.

Merchant shall indemnify, defend, and hold harmless EPAY and its representatives, successors and permitted assigns from and against any and all claims made or threatened by any third party and all related damages, to the extent such damages arise out of or relate to the following: (a) any negligent act or omission by Merchant, or its representatives in the performance of Merchant's obligations under this Agreement; (b) any material breach in a representation, covenant or obligation of Merchant contained in this Agreement; or (c) any failure by Merchant to comply with applicable government statutes or regulations, and the Rules and Regulations.

ADDITIONAL TERMS AND CONDITIONS

INTERNET INITIATED (WEB) ENTRIES

A WEB Entry may be transmitted by Merchant pursuant to an authorization that is obtained from the customer via the Internet to effect a transfer of funds from a consumer account of the customer. The authorization process must evidence both the customer's identity and the customer's assent to the authorization.

For all WEB Entries, Merchant warrants that: (1) it employs a commercially reasonable fraudulent transaction detection system that screens each Entry; (2) it uses commercially reasonable procedures to verify that routing numbers are valid; (3) it has established a secure Internet session with each customer using commercially reasonable security technology, providing a level of security that, at a minimum, is equivalent to 128-bit encryption technology, prior to the customer's key entry and through transmission to the Merchant of any banking information, including, but not limited to, the routing number of the customer's financial institution, account number and PIN number or other identification symbol; and (4) that it conducts or has conducted by an independent third-party annual audits to ensure that the financial information it obtains from customers is protected by security practices and procedures that include, at a minimum, adequate levels of (a) physical security to protection against theft, tampering or damage, (b) personnel and access controls to protect against unauthorized access and use, and (c) network security to ensure secure capture, storage and distribution.

TELEPHONE INITIATED (TEL) ENTRIES

A TEL Entry may be transmitted by Merchant pursuant to an oral authorization that is obtained from the customer by the Merchant to effect a transfer of funds from a consumer account of the customer.

For all TEL Entries, the following information must be included as part of the authorization for Merchant to initiate a Debit Entry to the customer's account: (1) the date on or after which the Debit Entry to the consumer's account will occur; (2) the amount of the transaction; (3) Merchant's

name; (4) a Merchant telephone number for inquiries that is answered during normal business hours; (5) the date of the oral authorization; and (6) a statement by the customer that the authorization obtained from the Merchant is a single-entry ACH debit. Merchant must either tape record the oral authorization or provide the customer with written notice confirming the oral authorization prior to the Settlement Date (the date on which an exchange of funds is reflected on the books of the Federal Reserve Bank) of the Entry. Merchant must retain the original or a micro-film or micro-film equivalent copy of the written notice or the original or a duplicate tape recording of the oral authorization for two (2) years from the date of the authorization. Merchant must provide the original or copy of the authorization at the request of EPAY.

For all TEL Entries, Merchant warrants that: (1) it employs a commercially reasonable procedures to verify the identity of the customer; and (2) it utilizes commercially reasonable procedures to verify that routing numbers are valid

FEES AND PAYMENT

EPAY will notify Merchant in writing of fees due for services rendered. Any changes to the existing fee structure as stated in this Agreement must be made in writing to the Merchant with thirty (30) days notice. Merchant has the right to cancel the Agreement in writing at that time. Merchant also agrees to provide EPAY the information necessary to ACH debit Merchant's account(s) for fees due.

VOLUME ANALYSIS

EPAY will routinely analyze Merchant origination and return activity. In the event the Merchant exceeds its established threshold parameters or ceases to do business with EPAY, EPAY shall have the right at any time to place a percentage of the provisional or final credit provided to Merchant for each Debit Entry originated by it in a Reserve Account (as described under RESERVE BALANCE herein and below) for a period of not less than one hundred eighty (180) days after the last return item.

CONFIDENTIALITY

Each party represents, warrants and mutually agrees that all information concerning the other party which comes into its possession during the term of this Agreement shall be maintained as confidential and shall not be used or divulged to any other party except as necessary to permit the activities contemplated under this Agreement or as required by law.

GOVERNING LAW

The Agreement will be deemed to be a contract made under the laws of the State of Colorado, and will be construed in accordance with the laws of Colorado without regard to principles of conflicts of law. **THE PARTIES TO THIS AGREEMENT HEREBY EXPRESSLY AGREE AND CONSENT TO VENUE IN THE STATE OR FEDERAL COURTS SITUATED IN BOULDER COUNTY, COLORADO, TO THE EXCLUSION OF ANY OTHER VENUE SITE, OR ANY ACTION OR LAWSUIT BROUGHT, RELATING TO, OR ARISING UNDER THIS AGREEMENT AND/OR ANY TRANSACTION GOVERNED BY THIS AGREEMENT. MERCHANT HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, AND WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OR ANY SUCH ACTION OR PROCEEDING BROUGHT IN SUCH COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM.**

ARBITRATION

Any dispute between the parties shall be submitted to binding arbitration, to be conducted pursuant to the rules of the American Arbitration Association. Any award may include an award for attorney fees and costs.

AGREEMENT MODIFICATION AND TERM

Unless otherwise provided herein, modification(s) to this Agreement, by either party, will require written notice and authorized signature agreement prior to any such modification(s).

DAMAGE WAIVER

IN NO EVENT SHALL EPAY BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSS OR DAMAGES WERE FORESEEABLE OR EPAY WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. EPAY SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT. THIS AGREEMENT IS A SERVICE AGREEMENT AND THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY TO IT.

RESERVE BALANCE

At EPAY’s request, and as condition for providing eCheck services, Merchant may, be required to deposit, or EPAY may deposit by deducting from any payment due to Merchant or from any funds in the Settlement Account, into an account maintained by EPAY (the “Reserve Account”), initially or at any time in the future as requested by EPAY, sums sufficient to satisfy Merchant’s current and/or future obligations as determined by EPAY in its sole and absolute discretion. Merchant acknowledges that during the term of this Agreement or upon its Termination, this Reserve Account will be used to fund any and all unfunded returned items, unpaid fees due EPAY, and any unpaid

penalties and/or fines resulting from Merchant’s violations of the Rules and Regulations.

For purposes of funding the Reserve Account, EPAY may deduct a percentage of each Debit Entry and/or require additional funds from Merchant for deposit to the Reserve Account until such time that, in EPAY’s sole and absolute discretion, the obligations of Merchant can be met.

Merchant acknowledges that any release of funds, in whole or in part, to Merchant from the Reserve Account shall occur over a period of not less than one-hundred and eight (180) days, and only upon EPAY’s sole and absolute determination that Merchant is satisfying, or has satisfied, all of the obligations herein.

FUNDING POLICY

Merchant acknowledges that funding for each origination will be delayed for up to five (5) business days, and the amount disbursed will be the origination amount less: (a) returned item amounts, (b) processing fee amounts, (c) any reserve amount as required, and (d) any penalty and/or fine amounts resulting from Merchant’s violations of the Rules and Regulations. Merchant must maintain at least five (5) business days worth of unfunded transactions with EPAY. Unfunded amount may not be less than 12.5 percent of the highest consecutive 30 business day average.

ENTIRE AGREEMENT

This Agreement makes up the entire Agreement between the parties concerning eCheck services. If any provision of this Agreement is deemed unenforceable, the remaining provisions shall still be enforceable. There are no third party beneficiaries of this Agreement.

TransFirst ePayment Services Inc.

Authorized Signature

Name (Print or Type)

Title

Date

Merchant Name:

X

Authorized Signature (Duly Authorized Officer Only)

Name (Print or Type)

Title

Date

NOTICE-CUSTOMER IDENTIFICATION PROGRAM

Federal regulations enacted pursuant to Section 326 of the USA PATRIOT Act require all financial institutions to verify the identity of every person who seeks to open an account or become a signatory on an account with a financial institution. All persons are subject to the identity verification requirements even though they may be a long term customer of and well known to the institution.

For the purpose of the regulation, an "account" includes every formal banking relationship that entails ongoing services, dealings or transactions.

If you request to open an account or become a signatory on an account with EPAY and EPAY’s Bank has not previously verified your identity under the new regulatory requirements, EPAY will request documentary verification of your identity, such as a driver’s license or passport and/or it will verify your identity through other non-documentary methods. Similar identification requirements apply to business entities such as corporations and partnerships.

EPAY is required to retain a copy of any document it relied on to verify your identity

SCHEDULE B: BUSINESS QUESTIONNAIRE

| |
|----------------|
| Business Name: |
| Business DBA: |

| | | |
|--|------------------|------|
| Year Business Established: | | |
| Type of Business: | | |
| Corporation: _____ Partnership: _____ Other: _____ | | |
| State Incorporated In: | Year: | |
| Business License No: | Issued By: | |
| Physical Street Address: | | |
| City: | State: | Zip: |
| Customer Service Phone No: | Hours Available: | |

| |
|--|
| Describe specific product or services the company offers for which the eCheck - ACH services will be used: |
|--|

| |
|---|
| How are authorizations received? (internet, telephone, etc) Please be specific. |
|---|

| |
|---|
| What percentage of payments are from: Businesses: _____% Consumers: _____% |
| Is there a refund policy? Yes _____ No _____ If yes, please describe refund policy <u>exactly</u> as presented to consumer: |

Have you received complaints from the Better Business Bureau, Attorney General or similar organization? Yes _____
 No _____ If yes, please attach a full explanation, including dates and disposition of all complaints:

Have you accepted eCheck – ACH and/or ACH payments before? Yes _____ No _____

Name of previous processor:

For Internet merchants, please list all url's for which the eCheck - ACH services will be used. Include passwords for any "membership" type websites.

Please include the following with your application. If any items are not included, provide a written explanation.

A voided check for primary business account (**business name must be imprinted on check**)

Articles of incorporation, LLC or relevant business documents.

Most recent 3 months of credit card processing statements.

Any relevant marketing materials

A **clear, enlarged** copy of Principal/Owners drivers license or Passport

Attach voided check of primary account here:

TransFirst ePayment Services, Inc.

 Authorized Signature

 Name (Print or Type)

 Title

 Date

Merchant Name:

X

 Authorized Signature (Duly Authorized Officer Only)

 Name (Print or Type)

 Title

 Date