Merchant Services
Application and Agreement

PLEASE REMIT APPLICATION TO: (OVERNIGHT DELIVERY RECOMMENDED)

BE SURE TO INCLUDE THE FOLLOWING MATERIALS:

    VOIDED CHECK FROM SETTLEMENT ACCOUNT

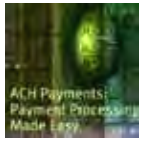   BUSINESS FORMATION DOCUMENTS (DBA, ARTICLES OF INCORPORATION, ETC)

THE FOLLOWING ADDITIONAL DOCUMENTATION MAY BE REQUIRED:

    TWO MONTHS BANK STATEMENTS

    FINANCIAL STATEMENTS

ACH DIRECT™

Merchant Services
Application and Agreement

MERCHANT INFORMATION

DBA / OUTLET NAME	CORPORATE NAME (IF DIFFERENT THAN DBA):

PHYSICAL STREET ADDRESS: (NO P.O. BOX)	ADDRESS:

CITY	STATE	ZIP	CITY	STATE	ZIP

PHONE:	FAX:	PHONE:	FAX:

CUSTOMER SERVICE PHONE NUMBER (REQUIRED FOR ALL MERCHANTS)	WEB SITE ADDRESS: (REQUIRED FOR INTERNET MERCHANTS)

PRIMARY CONTACT - SYSTEM ADMINISTRATOR | ## BILLING CONTACT

NAME:	NAME:

BUSINESS PHONE:	MOBILE PHONE:	BUSINESS PHONE:	MOBILE HONE:

E-MAIL:	E-MAIL:

BUSINESS PROFILE

TYPE OF OWNERSHIP:
SOLE PROPRIETORSHIP   PARTNERSHIP GENERAL / LIMITED   LIMITED LIABILITY CORP.
CLOSELY HELD CORP.   PUBLICLY HELD CORP.   GOVERNMENT (FED / STATE / LOCAL)
TAX EXEMPT / NON-PROFIT   OTHER: _____

YEARS IN BUSINESS:	# OF LOCATIONS:	LENGTH OF CURRENT OWNERSHIP (YEARS):	FEDERAL TAX ID / SSN:

LOCATION OF BUSINESS: OFFICE SUITE   RETAIL STOREFRONT   PRIVATE RESIDENCE   OTHER (SPECIFY):

TYPE OF BUSINESS:

HAS MERCHANT OR ANY PRINCIPAL DISCLOSED HEREIN FILED BANKRUPTCY OR BEEN SUBJECT TO INVOLUNTARY BANKRUPTCY?   YES   NO
IF YES, EXPLAIN:

SETTLEMENT BANK ACCOUNT INFORMATION

TRANSIT ROUTING / ABA NUMBER (9 DIGITS):	DDA / CHECKING ACCOUNT #:

ALTERNATE BANK ACCOUNT FOR BILLING (IF DIFFERENT THAN SETTLEMENT ACCOUNT)

TRANSIT ROUTING / ABA NUMBER (9 DIGITS):	DDA / CHECKING ACCOUNT #:

OWNER / OFFICER INFORMATION

OWNER / OFFICER NAME:	% OWNERSHIP	OWNER / OFFICER NAME:	% OWNERSHIP
SOCIAL SECURITY #:	TELEPHONE #:	SOCIAL SECURITY #:	TELEPHONE #:
ADDRESS:	CITY:	ADDRESS:	CITY:

STATE:	ZIP:	YEARS THERE:	OWN/RENT:	STATE:	ZIP:	YEARS THERE:	OWN/RENT:

DRIVER'S LICENSE #:	DATE OF BIRTH:	DRIVER'S LICENSE #:	DATE OF BIRTH:

E-MAIL ADDRESS:	E-MAIL ADDRESS:

PRODUCTS REQUESTED (CHECK ALL THAT APPLY)

CREDIT CARD GATEWAY *(PLEASE ATTACH TEAR SHEET WITH MERCHANT ACCOUNT INFORMATION)*

VIRTUAL TERMINAL   TRANSPORTER   SECURE WEBPAY   SOFT TERMINAL

DIRECT INTERFACE/API   DIRECT BILLING   OTHER – SPECIFY _____

ESTIMATED MONTHLY ACH / E-CHCECK VOLUME

WILL YOU BE USING ACH TO COLLECT FUNDS? IF YES, COMPLETE BELOW:	WILL YOU BE USING ACH TO DISBURSE FUNDS? IF YES, COMPLETE BELOW:
YES NO	YES NO
AVERAGE SALE: $ _____	AVERAGE DISBURSEMENT: $ _____
MAXIMUM SALE: $ _____	MAXIMUM DISBURSEMENT: $ _____
MONTHLY SALES: $ _____	MONTHLY DISBURSEMENTS: $ _____
PLEASE SPECIFY THE PRODUCTS / SERVICES THAT YOU WILL BE COLLECTING VIA ACH?:	PLEASE SPECIFY THE PAYMENTS THAT YOU WILL BE DISBURSING VIA ACH?: (E.G., PAYROLL, COMMISSION, VENDOR PAYMENTS, ETC.)
_____	_____

TRANSACTION TYPES

HOW WILL YOU BE OBTAINING AUTHORIZATION FOR YOUR TRANSACTIONS?
(PLEASE INDICATE BY FILLING IN THE PERCENTAGES.)

_____ % FACE-TO-FACE (PPD/CCD/BOC/POP)   _____ % SINGLE

_____ % INTERNET ORDER (WEB)   _____ % RECURRING

_____ % MAIL ORDER (ARC)   _____ % TOTAL

_____ % TELEPHONE ORDER (TEL)

_____ % FAX (PPD/CCD)

_____ % TOTAL

FEES

ACH PROCESSING FEES

MONTHLY STATEMENT: $ _____   PER TRANSACTION: $ _____   RETURNED FEE: $ _____   DISCOUNT FEE: _____ %

NSF FEE REBATE PROGRAM

DO NOT COLLECT NSF FEES   COLLECT $ _____ PER NSF ITEM   _____% REBATE

VERIFICATION AND AUTHENTICATION SERVICES (*CHECK ALL THAT APPLY*)

ATM VERIFY $ _____ PER ITEM   ESTIMATED ATM VERIFY VOLUME: _____   NCN VERIFY $ _____ PER ITEM

ID VERIFY $ _____ PER ITEM

OTHER FEES

GATEWAY: $ _____ (*PER MONTH*) $_____ (*PER ITEM*)   CHARGEBACK FEE: $_____ (*PER OCCURRENCE*)   SET-UP FEE: $_____ (*ONE-TIME*)

MINIMUM: $_____ (*MONTHLY*)   EXCESSIVE RETURNS: $_____ (*PER OCCURRENCE, Greater than 40%*) EARLY FUNDING: $_____ (*PER OCCURRENCE*)

PERSONAL GUARANTY

I/We hereby guarantee to ACH Direct, its successors and assigns, the full, prompt, and complete performance of Merchant and all of Merchant's obligations under the Merchant Services Application and Agreement (the "Agreement"), including but not limited to all monetary obligations arising out of Merchant's performance or non-performance under the Agreement, whether arising before or after termination of the Agreement. This guaranty shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variation of terms of the Agreement, unless specifically discharged or amended. I/We understand that my/our obligations are independent of Merchant's obligations. I/We understand that I/we have no right to enforce a remedy which ACHD now has or may later have against merchant nor to participate in security now or later held by ACHD. I/We hereby waive any notice of acceptance of this guaranty, notice of nonpayment or non-performance of any provision of the Agreement by Merchant, and all other notices or demands regarding the Agreement. I/We agree to promptly provide to ACH Direct any information reasonably requested by ACH Direct from time to time concerning my/our financial condition(s), business history, business relationships, and employment information. I/We have read, understand, and agree to be bound by the Terms & Conditions provided to Merchant and those terms and conditions contained in the Merchant Application and Agreement.

PRIMARY GUARANTOR _____ , an individual   NAME PRINTED_____ DATE _____

SECONDARY GUARANTOR _____ , an individual   NAME PRINTED_____ DATE _____

MERCHANT AUTHORIZATION AND ACCEPTANCE OF TERMS AND CONDITIONS

This Merchant Services Application and Agreement ("MSAA"), along with the Terms and Conditions attached hereto, serves as the Merchant Agreement by and between ACH Direct, Inc. ("ACHD") and the Merchant named above ("Merchant""you"). A copy of the Terms and Conditions, version number _____ has been provided to you. As a duly authorized signatory of Merchant, the undersigned certifies the following: 1) You have received a copy of the Terms & Conditions and that Merchant agrees to be bound by all terms and conditions contained therein and as may be modified or amended in compliance with those terms; 2) You understand that IF MERCHANT SUBMITS A TRANSACTION TO ACHD HEREUNDER, MERCHANT WILL BE DEEMED TO HAVE ACCEPTED THE MERCHANT SERVICES TERMS & CONDITIONS; 3) All information provided in this MSAA and supporting documents is true and accurate; 4) Merchant authorizes ACHD to debit and/or credit the account(s) listed above, or other accounts maintained by Merchant, for any amounts owed in accordance with the MSAA and the Terms and Conditions; 5) Merchant authorizes ACHD to order a credit report on Merchant and/or any affiliate that is listed on the MSAA or any supporting document; 6) Merchant will use the Verification and/or Authentication Services provided by ACHD for a purpose that is permissible under section 604(a) of the Fair Credit Reporting Act and that Merchant will follow proper procedures for adverse action notification to its customers, as provided in Appendix B to the Terms and Conditions.

SIGNATURE: DATE: SIGNATURE: DATE:

PRINTED NAME: TITLE: PRINTED NAME: TITLE:

ACH DIRECT™
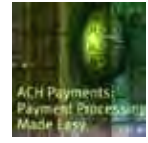
Merchant Services
Application and Agreement
Credit Card Gateway Tear Sheet

GATEWAY CREDIT CARD PROCESSING OPTION (CHECK ALL THAT APPLY)

$ _____ PER TRANSACTION

EXISTING PROVIDER   TSYS   ELAVON   FIRST DATA   GLOBAL

IF ELAVON, FIRST DATA OR GLOBAL:

BIN#: _____ TERMINAL ID (TID) #: _____ MID #: _____

IF TSYS:

BIN#: _____ TERMINAL ID (TID) #: _____ AGENT #: _____ CHAIN #: _____

STORE #: _____ TERMINAL #: _____

DISCOVER: EXISTING - MID# _____

AMERICAN EXPRESS: EXISTING - MID# _____

1. GENERAL

ACH Direct, Inc. ("ACHD") and its affiliates provide transaction processing services including but not limited to Automated Clearing House ("ACH"), Credit and Debit Card processing, account verification and customer identification (the "Services") to ACHD's customers ("Merchant(s)") engaged in the business of selling goods or services. The Merchant Services Application and Agreement ("Agreement") consists of these Terms and Conditions and all attachments hereto, including but not limited to all appendices, addendums and the Merchant Services Application and is made by and between ACH Direct, Inc. ("ACHD") and Merchant. Under the terms of the Agreement, Merchant will be furnished with the products and services described herein which are selected by Merchant (collectively and individually, as applicable, the "Services").

2. USE LICENSE.

2.1 ACHD hereby grants to Merchant a non-exclusive and nontransferable license to access and use the Services contracted for under this Agreement and Merchant hereby accepts such license and agrees to utilize and access the selected Services in accordance with the practices and procedures established by ACHD.

2.2 Merchant may use the Services (a) for its own internal business purposes and operations, and/or (b) as a service provided to its customers, unless otherwise notified by ACHD.

2.3 No license or right to reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of any of ACHD's Proprietary Property, as defined in Section 3 below, in whole or in part, is granted except as expressly provided by these Terms and Conditions. Neither Merchant nor any of its affiliates shall reverse engineer, decompile or disassemble the Proprietary Property.

2.4 Nothing in the Agreement shall be construed to provide Merchant with a license of any third-party proprietary information or property.

3. OWNERSHIP

3.1 All computer programs, trademarks, service marks, patents, copyrights, trade secrets, know-how, and other proprietary rights in or related to ACHD's products and services (the "Proprietary Property"), are and will remain the sole and exclusive property of ACHD, whether or not specifically recognized or perfected under applicable law.

3.2 ACHD shall own all rights, title and interest, including all intellectual property rights, in and to any improvements to the existing ACHD products or services and/or any new programs, upgrades, modifications or enhancements developed by ACHD in connection with rendering any services to Merchant (or any of its affiliates), even when refinements and improvements result from Merchant's request. To the extent, if any, that ownership in such refinements and improvements does not automatically vest in ACHD by virtue of Merchant's agreement to these Terms and Conditions or otherwise, Merchant hereby transfers and assigns (and, if applicable, shall cause its affiliates to transfer and assign) to ACHD all rights, title, and interest which Merchant or any of its affiliates may have in and to such refinements and improvements.

3.3 All reference to any of ACHD's service marks, trademarks, patents or copyrights, or those of ACHD's partners or vendors, shall be made in compliance with the requirements, including

periodic updates thereto, as provided at http://www.achdirect.com/resources/trademark.asp.

4. TRANSACTION PROCESSING SERVICES.

4.1 Accepting Transactions. ACHD shall accept Transactions on a 24-hour basis. Transactions received after the designated cut-off time will be included in the next day's processing. ACHD is responsible only for processing Transactions that are received by ACHD in the proper format, pre-approved by ACHD and on a timely basis.

4.2 Processing Limits. ACHD may impose a cap on the number or dollar amount of Transactions it will process for Merchant. These limits may be changed by ACHD from time to time, upon notice to Merchant. If Merchant exceeds the established limits, ACHD may temporarily suspend Transaction processing or temporarily hold the funds that are in excess of the established limits.

4.3 Receiving Reports and Transaction Result Files. Merchant is responsible for communicating with ACHD's Host Processing System to receive daily reports and/or transaction result files. ACHD is under no obligation to transmit this data to Merchant.

4.4 Modifying Transactions.

4.4.1 At Merchant's request, ACHD will make reasonable efforts to reverse, modify, or delete a Transaction after it has been submitted by Merchant prior to being submitted to the applicable Transaction Network. All requests must be made by an individual pre-authorized by Merchant to make such requests, and delivered to ACHD.

4.4.2 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 inability to accomplish the requested modification or deletion before the Transaction has been submitted to the applicable Transaction Network. Further, Merchant acknowledges that once a Transaction is submitted to the applicable Transaction Network, it cannot be modified or deleted.

4.5 Rejecting, Delaying or Returning Transactions. ACHD may reject, delay or return any Transaction without prior notification to Merchant for any reason permitted or required under any applicable Rules, Regulations or if ACHD has reason to believe such Transaction is fraudulent or improperly authorized. ACHD shall have no liability to Merchant by reason of the rejection, delay or return of any such Transaction. ACHD shall make available to Merchant details related to any such Transaction and ACHD may retransmit a returned or rejected Transaction at Merchant's request, but shall have no obligation to do so.

4.6 Reserve Account.

4.6.1 ACHD may require a security deposit or "Reserve Account" to process transactions for Merchant. The Reserve Account may be used by ACHD to offset any returned items, chargebacks, fees/fines, billing or other Merchant obligations to ACHD that ACHD is unable to collect from Merchant. Should ACHD determine that a Reserve is required, Merchant shall be provided notice in writing. Merchant and Merchant's guarantor hereby grant ACHD a security interest in all said accounts and authorizes ACHD to make such withdrawals at such times and in such amounts as may be necessary under this Agreement. The Reserve amount may be revised based on periodic review of Merchant's transaction volumes, transaction amounts and return ratios resulting in a greater or lesser Reserve amount.

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4.6.2 The Reserve Account may be funded through any or all of the following: (a) Direct payment by Merchant; or (b) A percentage of the transactions processed on Merchant's behalf. Merchant and Merchant's guarantor hereby instruct said financial institutions to honor any requests made by ACHD under the terms of this provision.

4.6.3 The Reserve funds shall be held by ACHD for a minimum of ninety (90) calendar days beyond the date of the last item processed by ACHD on Merchant's behalf. In the event ACHD has reason to believe that (a) Merchant has acted in a fraudulent manner; or (b) Merchant has not obtained proper authorization for one or more transactions; or (c) Merchant will not be able to meet its obligations to ACHD; or (d) that ACHD is at risk of incurring additional expenses due to Merchant's actions, ACHD may extend the hold on Merchant's Reserve funds up to two (2) years from the last transaction activity date or the maximum time allowed by law. The Reserve Deposit will then be returned to Merchant less any fees and/or any other amounts owed to ACHD.

5. ACH PROCESSING SERVICES.

5.1 Description of Services. ACHD shall use information provided by Merchant to send Merchant's ACH Transactions to the ACH Network on Merchant's behalf. For Debit Entries, ACHD shall first originate each debit transaction through its ODFI to the ACH Network for withdrawal from the Receiver's account. All funds collected on behalf of the Merchant will be transmitted to a custodial account located with ACHD's ODFI and scheduled for settlement to Merchant. For Credit Entries, ACHD will submit each Credit Transaction to the end-of-day settlement process and then schedule each transaction for Origination. On the date scheduled, each Credit Transaction is then originated through ACHD's ODFI to the ACH Network for deposit to the Receiver's account.

5.2 Holding of Funds.

5.2.1 The standard hold time of Merchant's funds for settlement of Debit transactions and origination of Credit transactions is four (4) Business Banking Days. Merchant may request a reduction of hold time on Debit and/or Credit Entries by submitting the applicable form provided by ACHD and supporting documents. ACHD may require separate security safeguards from Merchant to support such a reduction but is under no obligation to grant Merchant's request.

5.2.2 Should ACHD observe any irregular Transaction or fraudulent activity by Merchant, or as required by law, ACHD reserves the right to place a longer hold time without prior written notice to Merchant.

5.3 Settlement and Finality.

5.3.1 At the close of each Business Banking Day, ACHD will calculate Merchant's Settlement Amount, including all applicable debits, credits, fees and adjustments. In the event the sum total of the Settlement Amount is a non-zero value, ACHD will initiate a Settlement transaction to Merchant's Settlement Account. Positive totals will result in a Credit to Merchant's Settlement Account; negative totals will result in a Debit to Merchant's Settlement Account.

5.3.2 In the event that a Debit Entry to Merchant's Settlement Account is returned for any reason, all Credit Entries initiated by Merchant may be cancelled or reversed at ACHD's discretion.

5.4 Transaction Authorization.

5.4.1 Receiver Authorization. Merchant shall obtain authorization from Receiver prior to originating a Transaction to Receiver's account.

5.4.2 Retention. Merchant shall retain proof of Receiver's authorization for a period of not less than two (2) years for standard transactions and for a period of five (5) years for health-related transactions from the authorization date or revocation of authorization date and shall provide such proof of authorization to ACHD upon request within five (5) business days of the request.

5.4.3 Revoked Authorization. Merchant shall cease initiating Transactions to a Receiver's account immediately upon receipt of any actual or constructive notice of that Receiver's termination or revocation of authority. Merchant may re-initiate Transactions to a Receiver's account only upon receiving new authorization from Receiver.

5.5 ACH Chargebacks.

5.5.1 Merchant will be charged a chargeback fee as specified on the MSA, on a per occurrence basis, for every ACH Chargeback posted to Merchant's account.

5.5.2 Using limits established by NACHA as a standard for review, ACHD reserves the right to suspend and/or terminate Merchant's access to the Services should Merchant's chargeback ratio exceed allowable limits during the span of forty-two (42) consecutive Business Banking Days.

5.5.3 ACHD will make reasonable efforts to provide Merchant with notice and a time to cure its excessive chargebacks prior to suspending or terminating Merchant's access to the Services.

5.5.4 In compliance with the Rules, Merchant authorizes ACHD to provide to ODFI and NACHA Merchant's company and contact information as well as transaction details should Merchant's ACH chargeback ratio exceed the allowable limits.

5.5.5 Merchant acknowledges ACHD's right to reimbursement of any chargebacks or returns that post to Merchant's account that ACHD is unable, for any reason, to debit from Merchant's bank account.

5.6 NSF Fee Rebate Program. If Merchant is participating in ACHD's NSF Fee collection and rebate program, ACHD will attempt to electronic debit an 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 of any such funds successfully collected from Receiver, as established on the MSA.

6. ACCOUNT VERIFICATION AND AUTHENTICATION SERVICES.

6.1 Representation by Merchant. Each request for data through the Verification and Authentication Services shall constitute a representation, warranty and certification by Merchant that the data (i) shall be used and disclosed only in accordance with the terms of the Agreement, and in accordance with any applicable Rules or laws; (ii) shall be used solely for the intended use as stated by Merchant on the MSA and that use is in compliance with the permissible uses under the FCRA as provided in the FCRA Requirements Addendum located at http://www.achdirect.com/resources/fair-credit-reporting-act.asp ; (iii) Merchant will follow proper procedures for adverse action notification to its customers, as provided in the FCRA Requirements Addendum ; and (iv) Merchant acknowledges it

has implemented security measures to prohibit the unauthorized access to the information provided.

6.2 PERMISSIBLE USES. MERCHANT SHALL USE THE VERIFICATION SERVICES ONLY IN CONNECTION WITH PAYMENTS PRESENTED TO MERCHANT BY ITS CUSTOMERS IN EXCHANGE FOR GOODS OR SERVICES. MERCHANT SHALL NOT RESELL THE VERIFICATION DATA OR SERVICES TO ANY THIRD PARTIES.

6.3 No Retention of Data. Merchant acknowledges and agrees that it shall not retain, store, compile or aggregate the results of verification or authentication inquiries received from ACHD except as required by applicable law or to perform its obligations under this Agreement.

7. PRICING AND PAYMENT.

Merchant shall pay for all products and services according to the MSA, and as those fees may be amended by ACHD from time to time in accordance with these Terms and Conditions. Fees will differ depending on type of Services and/or level of Services Merchant has requested and may be modified by ACHD upon a minimum of ten (10) days' written notice to Merchant. Continued use of the Services after the designated effective date shall be deemed acceptance of the revised fees.

7.1 Fees shall be immediately due and payable by Merchant upon receipt of services unless otherwise agreed upon between the parties. Fees will be automatically debited from Merchant's designated account on the 10th of each month for the prior month's activity unless agreed upon between the parties.

7.2 Failure to pay any amount due to ACHD within the time period or on the terms set forth in this section shall constitute a material breach of the Agreement by Merchant. ACHD shall assess a late fee of one and one-half percent (1½%) per month on all amounts due and payable after the monthly deadline. In addition to imposing such late fees, ACHD may elect to terminate Merchant's access to the Services in accordance with Section 22 below. Additionally, a $25.00 fee shall be assessed for any return of a debit processed to Merchant's account.

7.3 ACHD shall have the right to offset against any amount payable by ACHD to Merchant under any provision of these Terms and Conditions, any amounts owed ACHD by Merchant, including chargebacks or returns posted to Merchant's account, or any damages sustained by ACHD as a result of Merchant's violation, breach or non-performance of its obligations under these Terms and Conditions.

7.4 In the event the funds in Merchant's designated account are insufficient to cover Merchant's obligations, 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.

8. TAXES.

Merchant is solely responsible for payment of any taxes (including sales or use taxes, transfer taxes, excise taxes, intangible taxes, property taxes, and similar taxes and duties) resulting from Merchant's acceptance of the license granted hereunder and use of ACHD's products and services, excluding, however, any taxes payable by ACHD as a result of income earned by ACHD hereunder. Merchant shall reimburse ACHD should ACHD be charged for any tax obligation of Merchant. Merchant shall hold ACHD harmless from all claims and liability arising from Merchant's failure to report or pay such taxes.

9. REPRESENTATIONS AND WARRANTIES.

9.1 ACHD's Representations and Warranties. ACHD represents and warrants to Merchant that:

9.1.1 ACHD's agreement to perform the Services hereunder does not violate any agreement or obligation between ACHD and any third party.

9.1.2 ACHD shall comply with all state and federal regulations regarding the proper treatment of nonpublic consumer information and shall handle Merchant's information and that of its customers with the level of care it does ACHD's own Confidential Information.

9.1.3 To the best of ACHD's knowledge, none of its products or services violates any international, federal, state, or local law or regulation.

9.2 Merchant's Representations and Warranties. Merchant represents and warrants to ACHD that:

9.2.1 Merchant's agreement to license ACHD's products and services and to engage ACHD to perform the Services hereunder does not violate any agreement or obligation between Merchant and any third party.

9.2.2 To the best of Merchant's knowledge, neither any information delivered by Merchant to ACHD in support of the Agreement nor Merchant's performance of its obligations hereunder will infringe on any copyright, patent, trade secret or other proprietary right held by any third party.

9.2.3 None of the activities for which Merchant has engaged the services of ACHD shall violate any international, federal, state, or local law or regulation. Neither Merchant nor any of its affiliates will use the ACHD products and/or services for (i) any unlawful, fraudulent, libelous, defamatory, threatening, abusive or otherwise objectionable usage of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offense, give rise to civil liability or otherwise violate any local, state, national or foreign law, including without limitation the U.S. export control laws and regulations.

9.2.4 When executed and delivered by Merchant, the agreement with ACHD will constitute the legal, valid, and binding obligation of Merchant, enforceable in accordance with its terms.

9.2.5 If applicable, Merchant represents and warrants that with respect to all ACH 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 within five (5) Business Banking Days.

9.2.6 Merchant agrees to adhere to the several warranties specific to each SEC Code as set forth in the ACH Operating Rules, a copy of which may be purchased through ACHD or is available from your local Regional Payments Association or NACHA.

10. CONFIDENTIALITY.

10.1 Merchant's Confidentiality. Merchant acknowledges that the products, services and information relating to ACHD's products and services (including without limitation these Terms and Conditions) contain confidential and proprietary information

developed by, acquired by, or licensed to ACHD (the "ACHD Confidential Information"). Merchant will take (and will cause its affiliates to take) all reasonable precautions necessary to safeguard the confidentiality of the Confidential Information. Neither Merchant nor any of its affiliates will make any unauthorized use of the Confidential Information or disclose, in whole or in part, the Confidential Information to any individual or entity, except to those of Merchant's employees or affiliates who require access for Merchant's authorized use of the products or services and agree to comply with the use and nondisclosure restrictions applicable to the Confidential Information. Merchant acknowledges that any unauthorized use or disclosure by it or any of its affiliates of the Confidential Information may cause irreparable damage to ACHD. As such, if ACHD becomes aware of Merchant's breach or threatened breach of this Section 12, ACHD may suspend any and all rights granted to Merchant under the Agreement and shall be entitled to injunctive relief, without the need of posting a bond, in addition to all legal or equitable relief that may be available to ACHD.

10.2 ACHD's Confidentiality. In performing its duties under this Agreement, ACHD will comply with all applicable federal and state Regulations relating to privacy and security of non-public consumer financial information, including requirements under Gramm Leach Bliley Act, the NACHA Rules and PCI Data Security Standards.

10.3 Exceptions. This Section 10 will not apply to Confidential Information that (i) was already available to the public at the time of disclosure, (ii) becomes generally known to the public after disclosure to the other party, through no fault of the other party, (iii) is disclosed under force of law, governmental regulation or court order, (iv) is required to be disclosed by the ODFI or applicable Payment Network.

11. INDEMNIFICATION.

11.1 Mutual Indemnity. Each party bears all responsibility for its own employees' actions while in that party's employ. Each party shall indemnify and hold harmless the other party and its officers, directors, employees, and agents, from and against any and all claims, demands, actions, losses, damages, 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 material breach of this Agreement.

11.2 Merchant Indemnity. Merchant acknowledges that ACHD may rely solely on identifying numbers provided by Merchant to determine the bank and account in question for each Transaction even if the numbers identify a bank or account holder that differs from the one Merchant has identified by name. Merchant shall indemnify ACHD for any losses, liabilities, costs or expenses ACHD or any third party suffers or incurs as a result of an incorrect account or other identification.

12. THIRD PARTY DISPUTES.

All disputes between Merchant and its customer(s) or another third party will be settled by and between Merchant and its customer(s). ACHD shall be responsible only for performing the Services expressly as provided for in this Agreement, and shall be liable only for its acts or omissions in performing those Services. Merchant agrees that ACHD bears no responsibility for the acts or omissions or alleged acts or omissions of Merchant, its customer(s) or another third party.

13. LIMITS OF LIABILITY.

13.1 Errors of Others. 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.

13.2 Damages Waiver.

13.2.1 Neither party shall be liable to the other or any third party for any special, consequential, incidental or punitive damages of any kind or nature incurred in relation to the Agreement whether or not (i) any claim for these damages is based on tort or contract; or (ii) the other party knew or should have known the likelihood of such damages occurring under the circumstances. Neither party shall assert any such claim against the other party or its subsidiaries or affiliated companies or their respective officers, directors, or employees.

13.2.2 ACHD's maximum liability hereunder for any claims whatsoever shall not exceed the total amount of all fees paid by Merchant to ACHD during the three-month period preceding the origination of the claim giving rise to liability.

13.2.3 No claim may be brought by Merchant or any of its affiliates more than one (1) year after the accrual of the claim. The limitations of liability contained in this section shall apply without regard to whether other provisions of the Terms and Conditions have been breached or have proven ineffective.

14. COMPLIANCE WITH RULES, REGULATIONS AND LAWS.

In performing its duties under this Agreement, each party agrees to comply with all applicable Rules, Regulations and Laws, including but not limited to any applicable data security requirements under the PCI-DSS Standards. ACHD bears no responsibility for any lack of compliance with these Rules and Regulations by Merchant and directs Merchant to seek the counsel of outside legal assistance should Merchant have questions or concerns regarding compliance with such. Merchant agrees to cooperate and provide information requested by ACHD to facilitate ACHD's compliance with any applicable Law, Rule or Regulation. Additionally, Merchant shall reimburse ACHD for any fines or loss of funds imposed on ACHD for any violation of applicable Rules, Regulations, laws or the PCI Data Security Standards by Merchant.

15. NOTICE OF ERRONEOUS OR UNAUTHORIZED TRANSFERS.

Merchant shall regularly and promptly review all Transactions and other communications 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.

16. ACHD SERVICE POLICY.

Merchant acknowledges and understands that ACHD does not warrant that the Services will be uninterrupted or error free and that ACHD may occasionally experience delays or outages due to disruptions that are not within ACHD's control. Any such interruption shall not be considered a breach of the Agreement by ACHD. ACHD shall use its best efforts to remedy any such interruption in service as quickly as possible.

17. USAGE.

17.1. Use Restricted to Lawful Purpose. Merchant agrees to use the Services solely for lawful purposes. Merchant agrees that it will not transmit any material through ACHD's Payments Gateway in violation of any Federal, State or foreign law, including but not limited to, copyrighted material, material legally judged to be threatening, obscene, or material protected by trade secret laws. ACHD reserves the right to use all means necessary to monitor Merchant's actions in the event of a real or perceived security breach.

17.2 Objectionable Material. Merchant agrees that ACHD, at its discretion, may remove objectionable materials residing on ACHDs servers. ACHD shall use its discretion to define what constitutes objectionable material. ACHD reserves the right to terminate Services to Merchant should ACHD deem Merchant's use of the Services are for an unlawful purpose. In the event of such an occurrence, ACHD shall make reasonable efforts to notify Merchant prior to taking any such action, but is not required to do so.

17.3 Proper Usage. Merchant agrees to comply with the reasonable and acceptable use policies, rules, regulations, terms and conditions of any networks accessed by Merchant through ACHD's Services. ACHD reserves the right to deny access to, or close any account(s) which, in ACHD's opinion, is (are) causing or may cause, harm to or negatively affect an ACHD server or third party network accessed through ACHD. In the event of such an occurrence, ACHD shall make reasonable efforts to notify Merchant prior to taking any such action, but is not required to do so.

18. AUDIT REQUIREMENTS.

Merchant agrees to cooperate fully with ACHD in conducting a review of Merchant's use of the Services to verify that Merchant is using the services in compliance with this Agreement. Specifically, Merchant authorizes ACHD to audit its use of ACHD's systems and Services in order to comply with ACHD's annual NACHA and PCI-DSS audit requirements. Merchant agrees to undertake a self-audit per the NACHA Rules and PCI Security Data Standards compliance standards, if applicable.

19. DISCLAIMER OF WARRANTIES.

Except as otherwise specifically provided herein, ACHD's products and services are provided hereunder "As Is" without warranty of any kind. Except as otherwise specifically provided herein, to the maximum extent permitted by law, ACHD expressly disclaims any and all warranties, conditions, representations, and guarantees with respect to the ACHD products and services, whether express or implied, arising by law, custom, prior oral or written statements, or otherwise, including without limitation, any warranty of merchantability, fitness for a particular purpose or non-infringement. No representation or other affirmation of fact, including, without limitation, statements regarding capacity, suitability for use or performance of the ACHD products or services, whether made by employees of ACHD or otherwise, which is not contained in these Terms and Conditions, shall be deemed to be a warranty by ACHD for any purpose, or give rise to any liability of ACHD whatsoever.

20. INVESTIGATIVE REPORT.

Merchant is on notice that an investigative or Consumer Report may be made in connection with the Agreement. Merchant authorizes 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, in connection with the Agreement or for the purpose of obtaining services from ACHD. Subsequent Consumer Reports and inquiries may be required or used in conjunction with an update, renewal or extension of the Agreement.

21. VOLUME AND FINANCIAL 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. Such re-evaluation may result in modification of the fee structure, reserve amount, applicable discount fees or termination of the agreement between Merchant and ACHD in accordance with these Terms and Conditions.

22. TERM AND TERMINATION.

22.1 Term. The Agreement shall have an initial term of one (1) year from and after the Effective Date and shall automatically renew for successive one (1) year periods unless either party provides thirty (30) days' written notice of termination to the other party prior to the end of the current term. Merchant's account will be closed at the end of the then-current billing cycle.

22.2 Early Termination Fee. Merchant agrees and acknowledges that should the Agreement be terminated for any reason prior to the expiration of the initial term of one (1) year, Merchant shall be assessed an early termination fee of $99.00, payable to ACHD along with any and all other financial obligations due ACHD in connection with any transaction processed by ACHD on behalf of Merchant (whether before or after such termination). An exception to this early termination fee will be made should Merchant terminate without cause within the first 30 calendar days of the initial term.

22.3 Immediate Termination. ACHD may immediately terminate the Agreement without prior notice under the following conditions: (i) in the event Merchant is or becomes bankrupt or is unable to pay its debts as they become due; (ii) if ACHD reasonably determines that Merchant has violated any term, condition, covenant, or warranty of the Agreement or Terms and Conditions; (iii) ACHD determines that the type of business in which Merchant is engaged is or becomes an industry or business that ACHD is prohibited from providing its services to or (iv) if Merchant is using the Services for a purpose other than a permissible use.

22.4 Post-termination Rights and Obligations. Upon the effective date of termination of the Agreement, Merchant's rights hereunder to use the 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 termination. Promptly upon termination of the Agreement for any reason, Merchant shall return or destroy, as requested by ACHD, all materials pertaining to the Services, including all copies thereof.

23. AMENDMENT OR MODIFICATION OF TERMS.

Unless otherwise provided for in these Terms and Conditions, ACHD reserves the right to amend the terms of its agreement with Merchant upon at least ten (10) days written notice to Merchant. Merchant's continued use of the Services after the

designated Effective Date shall indicate Merchant's acceptance of the new terms. These Terms and Conditions are subject to such modifications, changes, and additions as may be required, or deemed to be required by ACHD, by reason of any applicable Rule or Regulation.

24. ASSIGNMENT.
The rights granted under the Agreement are and shall be personal to Merchant and shall not be assigned by any act of Merchant or by operation of law, without the prior consent of ACHD, which shall not be unreasonably withheld. Any attempt on the part of Merchant to sub-license or assign to third parties its rights or obligations hereunder without such consent shall constitute a material breach of its agreement with ACHD and grounds for termination of the Agreement. ACHD may assign its rights and obligations under the Agreement without the approval of Merchant, but shall provide notice of such assignment to Merchant.

25. NOTICE.
Any notice required to be given by either party hereunder, excluding notice of changes in fees, shall be in writing and delivered personally to the other designated party, or sent by any commercially reasonable means of receipted delivery, addressed, to that party at the address most recently provided in writing. 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.

26. GENERAL PROVISIONS.
26.1 Binding Agreement. The agreement between the parties hereto shall be binding on the parties only upon ACHD's approval of Merchant's signed or e-signed application.
26.2 Jurisdiction/Venue. The Agreement shall be governed by and construed in accordance with the internal laws of the state of Texas, and the parties consent to the jurisdiction and venue of the federal and state courts sitting in Collin County, Texas. 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 the Agreement.
26.3 Force Majeure. Neither party shall be liable for, or be considered in breach of or default under the Agreement on account of any delay or failure to perform its obligations hereunder 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.
26.4 Severability. 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 construed to most closely reflect the original intent of the parties.
26.5 Waiver. The waiver of any breach or default of this Agreement will not constitute a waiver of any subsequent breach or default, and will not act to amend or negate the rights of the waiving party.
26.6 Entire Agreement. The Agreement along with these Terms and Conditions constitute the entire understanding of the parties, and revoke and supersede all prior agreements between the parties and are intended as a final expression of their agreement.

27. ELECTRONIC SIGNATURES.
Under the Electronic Signatures in Global and National Commerce Act (E-Sign), this Merchant Services Agreement and all electronically executed documents related hereto are legally binding in the same manner as are hard copy documents executed by hand signature when (1) your electronic signature is associated with the Merchant Services Agreement and related documents, (2) you consent and intend to be bound by the Merchant Services Agreement and related documents, and (3) the Merchant Services Agreement is delivered in an electronic record capable of retention by the recipient at the time of receipt (i.e., print or otherwise store the electronic record). This Merchant Services Agreement and all related electronic documents shall be governed by the provisions of E-Sign.

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Account Maintenance – A fee assessed to a Merchant for changing the settlement bank account from the existing bank account to a different bank account. This fee covers the costs associated with verifying the new account. The current fee amount, as well as periodic updates thereto, is provided at http://www.achdirect.com/resources/other-fees.asp.

ACH Network – Automated Clearing House Network is a batch processing, store-and-forward system that accumulates and distributes ACH transactions that are received from ODFI (defined below) and are forwarded to the specified RDFI (defined below) according to the specific schedules established by the participants.

ACH Transactions – All Entries, including but not limited to Debit and Credit Entries (defined below) that are transmitted through the ACH Network.

Affiliate – A business entity effectively controlling or controlled by another or associated with others under common ownership or control.

ACH Chargeback – Any ACH item which is returned designated with the following return codes: R05, R07, R10, R29 and R51. The current fee amount, as well as periodic updates thereto, is provided at http://www.achdirect.com/resources/other-fees.asp.

Business Banking Day – Monday through Friday excluding banking holidays.

Credit Entry – An ACH Transaction that is intended to deposit funds into a Receiver's (defined below) account which has been withdrawn from Merchant's Settlement Account (defined below).

Debit Entry – An ACH Transaction that is intended to withdraw funds from a Receiver's account for deposit into Merchant's Settlement Account (defined below).

Excessive Returns – Any merchant with more than the defined percentage of returns in a single billing cycle (calendar month), will be assessed an additional fee per returned item.

NACHA – National Automated Clearing House Association responsible for establishing, revising and enforcing the Operating Rules for the ACH Network.

ODFI – Originating Depository Financial Institution is the financial institution that receives ACH Transactions from Merchant through ACHD and then forwards these Transactions (defined below) to the ACH Network.

Originator – A Merchant who has contracted with ACHD to initiate ACH entries, on their behalf, to the ACH Network.

Payment Association – VISA, M/C, Discover, American Express, NACHA, STAR, Pulse or other Transaction Networks.
PCI-DSS Standards – System security measures established by the various credit card companies, known as the Payment Card Industry Data Security Standards.

RDFI – Receiving Depository Financial Institution is the financial institution that receives the ACH Transactions from the ODFI through the ACH Network and posts these Transactions to the accounts of Receivers (defined below).

Recall– Similar to a Reversal (see below) but used for recovery of a transaction beyond the four banking day timeframe. The current fee amount, as well as periodic updates thereto, are provided at http://www.achdirect.com/resources/other-fees.asp.

Receivers – An organization or individual consumer that has authorized Merchant to initiate an ACH Transaction to an account they maintain with a financial institution (RDFI).

Regulations – All federal, state and local regulations that govern Internet business, consumer information, credit card transactions and Transactions (as defined below), including but not limited to the FCRA, federal Regulation E and Title 31 of the Code of Federal Regulations Part 210, Gramm-Leach-Bliley Act, and Driver's Privacy Protection Act.

Returned Entries – Any Transaction returned or rejected by ACHD, ODFI or RDFI.

Reversal– A request made to the RDFI within four days of effective entry date for return of a duplicate or erroneous entry that has already been introduced into the ACH system. The current fee amount, as well as periodic updates thereto, is provided at http://www.achdirect.com/resources/other-fees.asp.

Rules – The Operational Rules established by each applicable Payment Association to govern all transactions and parties that participate in the associated Transaction Network.

Settlement Account – An account established and maintained by Merchant with a financial institution through which the deposit of funds for Debit Entries and the extractions of funds for Credit Entries are made.

Settlement Entry – A Debit or Credit Entry to Merchant's Settlement Account which corresponds to the net amount owed Merchant by ACHD at the end of each Business Banking Day.

Transactions – Any transfer of data or information from Merchant to ACHD in a format pre-approved by ACHD, including but not limited to ACH Transactions, Debit Entries, Credit Entries, Verification Entries and Authentication Entries.

Transaction Network – Any payment network maintained by a third party including but not limited to ACH, credit card or debit card networks.

WSUPP – Written Statement Under Penalty of Perjury – A written statement obtained by the RDFI from the consumer prior to initiating a return for an entry that the consumer claims is unauthorized, ineligible or improper or for which the authorization has been revoked. The current fee amount, as well as periodic updates thereto, is provided at http://www.achdirect.com/resources/other-fees.asp.