

Dear ACH Applicant:

Thank you for your interest in National Cash Flow Systems, Inc. We appreciate the opportunity to work with you and look forward to providing you with exceptional service.

Our ability to process and move your financial transactions directly through the Federal Reserve Bank via our network of ACH processors is very unique in the marketplace. Strategic relationships with “partnering” banks allow us this access and it provides qualifying companies with numerous benefits and state of the art processing capabilities.

Since September 11<sup>th</sup>, there has been heightened concern regarding electronic funds transfer by Federal agencies. Our partner banks are required to “know their customers.” National Cash Flow Systems must therefore disclose details of your application to one or more of our partner banks for review. However, be assured that both National Cash Flow Systems and the banks are bound by law to adhere to strict privacy laws to protect your valuable information.

In order to streamline the application process for all parties, National Cash Flow Systems has designed a 2-step application process. Pre-qualification is where we learn basic information about your business and the type of transactions you need to process. A copy of this step of the application process is attached.

Once pre-qualification is complete, National Cash Flow Systems will contact you to obtain additional financial information needed from the bank in order to proceed into the contract phase. Our goal is to properly evaluate your needs and provide you with favorable settlement terms while assisting our financial institutions in complying with applicable laws and regulations.

Pre-qualification takes approximately three (3) business days. Once we receive your information, final approval takes approximately five (5) business days.

In closing, I would like to personally thank you for allowing us the opportunity to serve your processing needs. Should you have any questions regarding the application, please do not hesitate to contact us at 888-942-7401. If you have other questions or comments on how we can improve our services, please do not hesitate to contact me. We look forward to working with you.

Sincerely,  
The NCFS Team

**PLEASE MAIL AND FAX THE ENTIRE APPLICATION TO:**

National Cash Flow Systems, Inc.  
Attn: New Accounts  
204 North El Camino Real, #102 · Encinitas, CA 92024  
888.942.7401 Toll Free · 760.454.2395 Fax

## **ACH SERVICES APPLICATION**

**Thank you for showing interest in National Cash Flow Systems. Please take a few moments to complete this application to help us get to know your company better. For quicker processing, please carefully read and complete the entire application.**

Below is a check list of information that *is needed* for the application process:

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

- 3-months of recent bank statements (front and last pages only)
- Articles of Incorporation, LLC or relevant business docs (i.e., business license)
- Copy of D.B.A. filing (if operating under different name than corporation).
- Two (2) years of company financial statements or tax returns
- 2 years of principle/owner financial statements or tax returns (if Company is less than two (2) years)
- Product list, marketing material and/or telephone script
- A detail or sample of the products and/or services that you sell

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Attn: New Accounts  
204 North El Camino Real, #102  
Encinitas, CA 92024  
Ph: 888.942.7401  
eFax: 760.454.2395

# ACH Application

## GENERAL BUSINESS INFORMATION

Company Name: \_\_\_\_\_ DBA Name: \_\_\_\_\_

Physical Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Primary Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Technical Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Billing Contact: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Date Established: \_\_\_\_\_ Number of Locations: \_\_\_\_\_ Number of Employees: \_\_\_\_\_

Federal Tax ID: \_\_\_\_\_ D&B Number: \_\_\_\_\_ SIC: \_\_\_\_\_

Business Structure:  Corporation  Sole Proprietorship  General Partnership  LLC  Publicly Held  Other \_\_\_\_\_

Web Address: \_\_\_\_\_ Days & Hours of Operation: \_\_\_\_\_ Business Time Zone: \_\_\_\_\_

Business Site:  Office Suite  Retail Storefront  Private Residence  Other \_\_\_\_\_

Annual Sales Volume: \_\_\_\_\_ % Check Sales \_\_\_\_\_ % Credit Card Sales \_\_\_\_\_

## BANK REFERENCE INFORMATION

Primary Bank: \_\_\_\_\_ Branch Name or Number: \_\_\_\_\_

Bank Officer: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Name On Account: \_\_\_\_\_ Date Opened: \_\_\_\_\_

Bank routing #: \_\_\_\_\_ Account #: \_\_\_\_\_

## BUSINESS CREDIT REFERENCES

(1) Company Name \_\_\_\_\_ Years of Business Relationship: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Business Telephone: \_\_\_\_\_ Business Fax: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

(2) Company Name \_\_\_\_\_ Years of Business Relationship: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Business Telephone: \_\_\_\_\_ Business Fax: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

## OWNERSHIP & PERSONAL INFORMATION

*Note: Named individuals must be majority owners. (N/A for Publicly Held Companies)*

(1) Name: \_\_\_\_\_ Title: \_\_\_\_\_ % Ownership: \_\_\_\_\_

Residence: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Drivers License Number & State of Issue: \_\_\_\_\_

Social Security #: \_\_\_\_\_ Bankruptcy or Lawsuits:  Yes  No (If Yes, please include explanation letter.)

(2) Name: \_\_\_\_\_ Title: \_\_\_\_\_ % Ownership: \_\_\_\_\_

Residence: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Drivers License Number & State of Issue: \_\_\_\_\_

Social Security #: \_\_\_\_\_ Bankruptcy or Lawsuits:  Yes  No (If Yes, please include explanation letter.)



204 North El Camino Real, #102  
 Encinitas, CA 92024  
 888.942.7401  
 www.ncfsystems.com

# ACH Application

## PRODUCT & SALES INFORMATION

Brief Business Description: \_\_\_\_\_

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Goods/Services to be Purchased with Electronic Checks: \_\_\_\_\_

Payments or Purchases Are From:  Businesses  Consumers What % from Businesses: \_\_\_\_\_% Consumers \_\_\_\_\_%

How are you obtaining authorization?  Telephone  Written  Internet  Other \_\_\_\_\_

How Do You Advertise These Goods/Services?  Catalog  Direct Mail  TV/Radio  Telemarketing  Newspaper/Magazine

Merchant Refund Policy:  No Refund  Refund in 30 Days or Less  Other \_\_\_\_\_

Have You Accepted ACH Payments Before?  Yes  No Name of Previous Processor: \_\_\_\_\_

## PROJECTED TRANSACTION ACTIVITY

Type of ACH Payments:  Direct Debit \_\_\_\_\_  Telephone Checks \_\_\_\_\_  Internet Checks \_\_\_\_\_  Paper Check Conversion \_\_\_\_\_  RCK \_\_\_\_\_

Frequency, Volume and Description of ACH Transactions: (Please complete separate line for each type of payment.)

Frequency of Files (Weekly, Daily, Monthly, Other)	Payments Are For (Payroll, Dues, Retail etc.,)	Number of Payments	Average Pmt. Amount	% Expected Returns (NSF, Account Closed, etc.)
Weekly	Loan Payment	EXAMPLE 100	\$50.00	1% or Less

Expected Increase in Sales Volume within the Next 12 Months: \_\_\_\_\_

Type of Authorization:  Recorded Verbal  Written  Other

*The undersigned certifies the accuracy of all the foregoing information and authorizes Bank or Credit Bureau or other investigative agency employed by National Cash Flow Systems, Inc., or its Agents, to investigate the reference given to National Cash Flow Systems, Inc., or its Agents, or statements or other data contained herein obtained from Merchant or from other persons pertaining to Merchant's credit, financial responsibility or accuracy of any of the foregoing information. I/We further agree to notify National Cash Flow Systems, Inc., or its processor(s), of any and all changes which may occur from time to time in the information and statements contained herein. We understand that National Cash Flow Systems, Inc., or its processor ACH Commerce, LLC, will debit the account specified below for all setup fees, including \$99.00 non-refundable application fee, as an ACH item, upon receipt of this completed application, and all subsequent related monthly service and transaction fees, via an ACH transaction:*

*(All applicants without a U.S. BANK account must submit a cashiers check or money order for setup and application fee(s). If this type of payment is necessary, the application process will be delayed until funds are received and cleared.)*

\_\_\_\_\_  
 Name and Title

\_\_\_\_\_  
 Company Represented

\_\_\_\_\_  
 President/CEO Signature

\_\_\_\_\_  
 Date Completed

*(Corporate Resolution verifying signature authority must be included if signed by someone other than the President or CEO.)*

Please allow approximately 5-7 business days for the application process to be complete. That estimate assumes that all requested documents have been provided to NCFS, Inc.

THIS COMPANY AGREEMENT FOR ACH ORIGINATOR (the "Agreement") is made and entered into this day of, \_\_\_\_\_ 200\_\_\_\_\_, by and between, \_\_\_\_\_ (the "Company") and ACH COMMERCE, LLC, a Tennessee limited liability company (the "Processor").

WHEREAS, The Processor is a third-party processor affiliated with one or more Originating Depository Financial Institutions (individually, each is an "ODFI");

WHEREAS, The Processor and the ODFI are associated with the National Automated Clearing House Association ("NACHA");

WHEREAS, The Company desires that the Processor permit the Company to initiate through the ACH Operator, as permitted by the ODFI, for the deposit ("Credit") and/or collection ("Debit") of money to and/or from the accounts of the Company's employees, customers, vendors or clients ("Customers") maintained at Participating Depository Financial Institutions, by means of the Automated Clearing House Network; and

WHEREAS, The Processor, subject to the approval of the ODFI, is willing to allow the Company to initiate such Entries in accordance with the terms of this Agreement and the Rules of the National Automated Clearing House Association.

NOW, THEREFORE, in consideration of the premises and mutual covenants set forth herein, the receipt and legal sufficiency of which is hereby acknowledged, the parties agree as follows:

## ARTICLE I - DEFINITIONS

1.1 General. Unless otherwise defined herein, capitalized terms shall have the meaning provided in the Rules, which are incorporated into this Agreement by reference.

1.2 Defined Terms. The following terms shall have the meanings provided for the purpose of this Agreement and the Exhibits attached hereto:  
ACH or Automated Clearing House shall mean the funds transfer system governed by the Rules, which provides for the interbank clearing of electronic entries for participating financial institutions.

**ACH Operator shall mean the Automated Clearing House Operator who is the central clearing facility, operated by the Federal Reserve Bank (FRB) on behalf of depository financial institutions to or from which certain participating financial institutions transmit or receive Entries. ACH Operator shall also have the meaning set forth in Section 13.1.1 of the Rules.**

**Agreement** shall mean this agreement by and among Processor and the Company, and all addenda, schedules, exhibits and attachments hereto.  
Automated Clearing House Network or "ACH Network" shall mean the network of participants involved in an ACH transaction, including parties originating Entries, ODFIs, RDFIs and parties receiving Entries.  
Data shall mean, as applicable, prenotifications, returned entries, adjustment entries, notifications of change and/or other notices or data transmitted through one or more ACH Operators pursuant to the Rules.

Effective Entry Date shall have the meaning set forth in Appendix Two of the Rules.

Entry or Entries shall have the meaning set forth in 13.1.20 of the Rules.

Maximum Exposure Limit shall mean the maximum amount of funds in aggregate that the Company is permitted to have outstanding and unsettled at any given time.

Originating Depository Financial Institution or ODFI shall have the meaning set forth in Section 13.1.29 of the Rules.

Receiver shall have the meaning set forth in Section 13.1.39 of the Rules.

Returns shall mean all Entries that are returned as Return Entries as set forth in Appendix Five of the Rules.

Rules shall mean the Operating Rules of the National Clearing House Association, as amended from time to time.

Special Returns shall mean the type of returned Entries for which the risk is not typically mitigated within (3) days from the date on which the Entry was initiated. Transaction Limit shall mean the maximum amount of funds that the Company may initiate or authorize for a single Entry or transaction.

## ARTICLE II - ACKNOWLEDGEMENT OF ODFI RELATIONSHIP

2.1 General. The Company acknowledges that the services provided by the Processor pursuant to this Agreement are by virtue of the Processor's contractual relationship with the ODFI, which is a federally insured financial institution regulated by federal and state banking agencies ("Agencies"). The Processor, ODFI, and the Agencies are relying upon accuracy of all information provided by Company pursuant to this Agreement and Company's performance of its obligations hereunder.

2.2 ODFI's Rights. The Company acknowledges that the Processor and the ODFI have the right to periodically review the volume and character of the Entries initiated by the Company and the Company's business operations to evaluate the credit risk associated with processing Entries on behalf of the Company.

2.3 ODFI Is Third-Party Beneficiary. The Company and the Processor acknowledge that the ODFI is a third-party beneficiary of this Agreement, and the ODFI has all the rights under this Agreement as if it were a party thereto.

## ARTICLE III - CUSTOMER AUTHORIZATIONS; RECORDS RETENTION; COMPLIANCE

3.1 Authorization. Before the Company initiates any Entry on behalf of a Customer, the Company shall obtain from the Customer such authorization as is required by the Rules. The Company shall initiate no Entry after such authorization has been revoked or the arrangement between the Company and the Customer has terminated.

3.2 Records. The Company shall retain the original or copy of each authorization for the period specified by the Rules, and will furnish a copy thereof if requested by the Processor or the ODFI.

3.3 Compliance with Rules. The Company shall at all times comply with the Rules and has all of the rights, responsibilities, obligations, and liabilities of an "Originator" under the Rules. The Company agrees to comply with the Rules in effect as of the date of this Agreement and as amended from time to time, as well as the additional obligations set forth in this Agreement.

3.4 Compliance with Laws. The Company shall comply with all applicable U.S. laws when initiating Entries. The Company shall not, among other things, violate any prohibitions promulgated or enforced by the Office of Foreign Assets Control, or act on behalf of, or transmit funds to or from, any party subject to such prohibitions.

3.5 Financial Statements. Company shall provide Processor and the ODFI with copies of its annual financial statements within 45 days of Company's fiscal year end; provided, however, that if the Company has been in business less than two years, Company shall provide Processor and the ODFI with copies of its quarterly financial statements within 15 days of each fiscal quarter.

## ARTICLE IV - SUBMISSION AND PROCESSING OF ENTRIES

4.1 General. The Company shall deliver each Entry or file of Entries to the Processor in accordance with the Rules and specifications issued by Processor, which are subject to change at any time upon reasonable notice to the Company. Processor shall not be liable for any loss or damages resulting from Company's failure to deliver any Entry or files of Entries in accordance with the foregoing.

4.2 Authentication. The Company shall, contemporaneously with the submission of each Entry or file of Entries, send the Processor authenticating data by fax or e-mail. This authenticating data shall consist of the file name, the total number and aggregate dollar amount of Debits, the total number and aggregate dollar amount of Credits, the file modifier, and the name of the individual submitting the authenticating data. The Processor may contact the Company to ascertain the validity of the file before it is accepted for processing. The Processor assumes no responsibility for file rejection due to its inability to confirm file validity.

4.3 Time Specifications. The Company shall present ACH files to the Processor in accordance with the following time specifications:

Credit Transactions are to be delivered at least two business days prior to the earliest Effective Entry Date of the transactions contained within the file.

Debit Transactions are to be delivered at least one business day prior to the earliest Effective Entry Date of the transactions within the file.

All files must be delivered to the Processor by 4:00p.m. Eastern Standard Time on the business day as

<sup>1</sup> At the Company's request, the Processor shall provide the Company with one or more current copies of the *(ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network)* published by NACHA.

stated above for the type of transaction. Any Entry or file of Entries received after this time will be deemed to have been delivered on the next succeeding business day. Files that are received and processed after the deadline are subject to fees stated in Exhibit B.

**4.4 Effective Date For Entries.** The effective date for an Entry is the date the Company intends the Debit or Credit to post to the account of the employee, vendor, customer, or other recipient, as stated in the Entry or file of Entries. The effective date for an Entry may be converted to a settlement date by the ACH Operator if the effective date is the same day or prior to the transmission date, or if the effective date falls on a Saturday, Sunday, or holiday on which the ACH Operator is closed.

**4.5 Suspension of Services.** If the Company initiates or attempts to initiate Entries, which exceed the Maximum Exposure Limit, Processor shall suspend its services and Processor shall initiate no additional Entries on behalf of Company until Processor receives the consent of ODFI. In addition, if Company attempts to initiate an Entry, which exceeds the Transaction Limit, Processor shall not initiate such Entry until Processor receives the consent of ODFI.

#### **ARTICLE V - SETTLEMENT ACCOUNT**

**5.1 Settlement Account.** Processor shall establish a checking account ("Settlement Account") on behalf of Company with the ODFI. Processor shall, on Company's behalf, maintain funds in the Settlement Account sufficient to offset (i) all Entries submitted and against which Returns Entries may be credited or debited as described on the Fees Schedule herein this Agreement, and (ii) all fees and other charges imposed by the Processor under this Agreement including those set forth in Article VII and in the Fees Schedule herein this Agreement. The Company hereby grants the Processor and ODFI the right to access the Settlement Account for the purpose of performing the services contemplated by this Agreement and ensuring that the Company performs its obligations hereunder.

**5.2 Operations of Settlement Account.** The Processor shall be entitled to debit the Settlement Account for (i) fees charged under Article VII and the Fees Schedule herein this Agreement, (ii) the settlement of Credit Entries, (iii) the offsetting, of any Debit Entries that are rejected or returned by the ACH Operator, or (iv) any overpayments that the Processor may make to the Company in error.

**5.3 Settlement by Company for Entries.** The Processor will either debit or credit the Settlement Account to offset any Credit or Debit Entry initiated by the Company on the date prescribed on the Fees Schedule herein this Agreement. The Company shall reimburse the Processor with good and collected funds if, after settlement has been made, (i) any Debit Entry is rejected or returned, or (ii) the Processor receives any other adjustment that relates to any such Debit Entry. The Company shall make such reimbursement on the date of such rejection or the date the Processor receives notification of the adjustment.

#### **5.4 Erroneous Entry by Company.**

(a) If the Company discovers that any Entry it has initiated was in error, it may notify the Processor of such error and the Processor will utilize its best efforts, consistent with the Rules, to correct the Entry.

In all such cases, it shall be the responsibility of the Company to notify its affected Customers that an Entry has been made that is at variance with the Customer's authorization or is otherwise erroneous.

(b) The Processor and the ODFI shall have no liability to the Company or any Customer arising out of the Company's initiation of erroneous Entries or the Processor's attempts to correct such Entries, and the Company shall indemnify and hold the Processor and the ODFI harmless from any such liability and any pecuniary loss therefrom, including all reasonable expenses, court costs, and attorney's fees, incurred in connection with any claim or claims asserting such liability.

#### **5.5 Rejected or Returned Entry.**

(a) In the event any Entries are rejected or returned by the ACH Operator and rejection was due to mishandling of such Entries by the Processor and sufficient data is available to the Processor to permit it to remake such Entries, then the Processor shall remake such Entries. The Company shall retain and make readily available to the Processor on request all information necessary to remake any files of Entries for the preceding 10 business days.

(b) Except as provided in Subsection (a) of this Section, in the event any Entries are rejected or returned by the ACH Operator or the Processor for any reason whatsoever, it shall be the responsibility of the Company to remake and resubmit such Entries or otherwise resolve the rejection or return in accordance with the Rules. The Processor's responsibility shall be limited to receiving rejected and returned Entries from the ACH Operator, performing necessary processing, control, and settlement functions, and forwarding such Entries to the Company.

(c) The Processor and the ODFI have the right to reject any Entry if (i) the Company has failed to comply with its Reserve Account (as defined in Section 6.1(a) hereof) requirements or the Company fails to maintain the Reserve Balance (as defined in Section 6.1(b)); (ii) failed to make any payment to Processor when due; (iii) failed to maintain sufficient funds in its Settlement Account; or (iii) breached any of its obligations under this Agreement. The Processor shall attempt to notify the Company by phone, fax, or e-mail of such rejection no later than the business day that the Processor would otherwise have transmitted such Entry to the ACH Operator. The Processor and the ODFI shall have no liability to the Company by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

#### **ARTICLE VI - RESERVE ACCOUNT, TRANSACTION LIMITS AND MAXIMUM EXPOSURE LIMITS**

##### **6.1 Reserve Account (When Applicable).**

(a) Company shall maintain the Reserve Balance in a reserve account ("Reserve Account") to be held in escrow by Processor at a financial institution designated by Processor for the term of this Agreement and a period of ninety (90) days after the termination of this Agreement.

(b) The Company shall maintain a Reserve Balance (the "Reserve Balance") in its Reserve Account as set forth. The Reserve Balance shall be established by the Processor and ODFI and may be modified by the Processor and ODFI at any time upon providing the Company with written notice. The Company shall

maintain readily available funds in its Reserve Account that shall not be less than the Reserve Balance. The Reserve Balance for the Reserve Account shall be based on the Company's return history and file activity. The time period in which the Company shall have to fund the Reserve Balance shall be determined by the ODFI on a case-by-case basis.

(c) If the Reserve Balance for the Reserve Account falls more than the lesser of five percent (5%) or \$1000.00 below the amount established for the Company, the Processor shall notify the Company via telephone, facsimile, or other form of electronic communication, and the Company shall immediately transfer funds to the Reserve Account so that the funds available in the Account are equal to or greater than the Reserve Balance.

(d) The Processor and ODFI shall have access to such Reserve Account and shall have the right to debit such Reserve Account for any amount due and payable to the Processor by the Company, directly or indirectly, or to settle any Return or any other loss corresponding to an Entry initiated by or on behalf of the Company. The Processor and ODFI shall have no obligation to provide notice or obtain the consent of the Company prior to accessing such Reserve Account. The Company shall provide all authorizations and consents necessary for the Processor and ODFI to effect the foregoing.

(e) Without limiting the foregoing, the Processor and ODFI shall have the right to access the Reserve Account for the following purposes: (i) to receive payment for any Returns; (ii) to reimburse the Processor or ODFI for any Entries for which the Processor or ODFI expended any funds on behalf of the Company; and (iii) to indemnify the Processor or ODFI in case of any errors, mistakes or other unforeseen problems that may arise which are associated with any Entries.

(f) The Company shall maintain the Reserve Balance in the Reserve Account throughout the period in which the Company continues this contractual relationship with Processor and for a period of at least ninety (90) days thereafter.

**6.2 Transaction Limits and Maximum Exposure Limit.** Prior to or contemporaneous with the execution of this Agreement, the Processor and ODFI shall review the financial and business history of the Company and establish the Company's Transaction Limit and Maximum Exposure Limit. The Company and ODFI shall have the right to modify the Transaction Limit and Maximum Exposure Limit established for the Company at any time upon providing the Company written notice.

#### **ARTICLE VII - FEES**

The Processor's charges for services rendered to the Company under this Agreement shall be computed in accordance with the Fees Schedule herein this Agreement. The Processor may change the fees upon 30 days' prior written notice to the Company. Payment of these fees will be made by a direct charge to the Settlement Account. If a Debit for the Processor's fees is returned or uncollectible for a period of three days after its transmittal, the Processor may cease providing services for Company and will be excused from the performance of all its obligations hereunder until the fees and all service charges with respect thereto have been paid in good funds.

## **ARTICLE VIII - REPRESENTATION.**

### **WARRANTIES, AND INDEMNIFICATION**

8.1 Representations of Company. The Company represents and warrants the following; now and as of the time it initiates each Entry:

(a) With respect to each and every Entry initiated by the Company and to the best of Company's knowledge; (i) each person shown as the Receiver on an Entry transmitted by Processor has authorized the initiation of such Entry and the crediting of its account in the amount and on the Effective Entry Date shown on such Entry; and (ii) such authorization is operative at the time of transmittal by the Company. The Company is aware of and bound by the Rules including, without limitation, the provision making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Company specifically acknowledges that it has received notice of the Rule regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have paid the Receiver the amount of the Entry.

(b) Company is in compliance with the rules and directives of the United States Treasury Department and the Office of Foreign Assets Control ("OFAC").

(c) Company has complied with all applicable laws (including rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder) of all federal, state, local and foreign governments and all agencies thereof, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of them alleging any failure to comply.

(d) Company is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization.

(e) Company has full power and to execute and deliver this Agreement and to perform their obligations hereunder. This Agreement constitutes valid and legally binding obligations of Company and is enforceable in accordance with its terms and conditions.

(f) Neither the execution delivery of this Agreement, nor the consummation of the transactions contemplated hereby will violate any statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, government agency, or court to which Company is subject or any charter of Company, or conflict with or create any right to accelerate, terminate, modify, or cancel or require any notice under any other agreement, or other arrangement to which Company is a party or by which either is bound.

(g) The information, documents, reports, financial statements, and other documentation provided by Company pursuant to this Agreement is correct, accurate, and complete and do not contain any untrue or misleading statement or fact.

(h) The representations and warranties contained in this Section 8.1 do not contain any untrue statement of fact or omit to state any fact necessary in order to make these statements and information contained in this Section 8.1 not misleading.

8.2 Indemnification. In the event of any breach of any of the warranties stated above or otherwise contained in this Agreement, the Company shall indemnify and defend the Processor and the ODFI and hold each harmless against and from any pecuniary loss arising out of or in respect of any such breach, including all reasonable expenses, court costs, and attorney's fees incurred in connection therewith.

## **ARTICLE IX -**

### **PROCESSOR'S RESPONSIBILITIES**

9.1 Reliance on Company. In the performance of the services required by this agreement, the Processor shall be entitled to rely on the information, representations, and warranties that the Company provides, and shall not be responsible for the accuracy, completeness, or authenticity thereof.

9.2 Misconduct, Force Majeure. The Processor shall be answerable for its own fraudulent act or willful misconduct, but shall not otherwise be responsible for any action taken, allowed, or omitted by or under this agreement, or for any liability, loss, claim, or damage arising from an act of God, from delay occasioned in transit of data or processed work, or from other cause of event beyond the Processor's control.

9.3 Disclaimer. PROCESSOR MAKES NO WARRANTY WITH RESPECT TO THE SERVICES TO BE RENDERED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ACCURACY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL THE PROCESSOR BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES OR FAULTY SERVICE EVEN IF THE PROCESSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE WARRANTY AND REMEDIES SET FORTH ABOVE ARE EXCLUSIVE AND IN LIEU OF ALL OTHERS, ORAL OR WRITTEN, EXPRESS OR IMPLIED.

PROCESSOR IS NOT RESPONSIBLE FOR ANY COSTS INCLUDING, BUT NOT LIMITED TO, THOSE INCURRED AS A RESULT OF LOST PROFITS OR REVENUE, LOSS OF TIME OR USE OF THE SERVICES, LOSS OF DATA, COSTS OF CONSULTANTS, COSTS OF SUBSTITUTE PRODUCTS, CLAIMS BY THIRD PARTIES, OR OTHER SIMILAR COSTS. IN NO CASE WILL PROCESSOR'S LIABILITY EXCEED THE AMOUNT OF THE FEES OF A SINGLE MONTH OF SERVICE.

## **ARTICLE X - TERMINATION**

10.1 General. This Agreement may be terminated upon thirty (30) days' written notice by either party, provided that applicable portions of this Agreement shall remain in effect for ninety (90) days after the effective date of termination with respect to the Reserve Account and any Entries that the Company initiates prior to the effective termination date, to clear all returns against the Settlement Account.

10.2 Termination for Cause. The Processor shall also have the right to terminate this contract immediately for cause, which shall include but not be limited to (i) the Company's failure to pay or settle

Entries, (ii) the Company's failure to maintain the requisite balance in the Settlement Account or Reserve Account, (iii) the Company's failure to pay the Processor's fees or service charges within three days after transmittal of a Debit to the Settlement Account therefore, (iv) the Company's noncompliance with applicable laws or the Rules, (v) excessive returned or rejected Entries submitted by the Company, in terms of number or amount, (vi) the Processor's receipt of unauthorized, false, or fraudulent Entries or files of Entries, or inaccurate or fraudulent authentication data, (vii) the Company's failure to conform to the Processor's specifications, (viii) the ODFI is required by the Agencies or other state or federal regulatory bodies to terminate its contractual relationship with the Processor.

10.3 Notice Requirement. If the Company terminates this Agreement without the required notice, the Company authorizes the Processor to debit the Settlement Account (or, if applicable, the Company's Reserve Account) for an amount equal to the Company's average monthly billing.

## **ARTICLE XI - MISCELLANEOUS**

11.1 Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that the Agreement or any section thereof was drafted by the party.

11.2 Tapes and Records. All magnetic tapes and related records that the Processor uses in rendering services hereunder shall be and remain its property. Upon termination of this Agreement, the Processor shall, at the Company's request and expense, make available information contained in such tapes or records then on hand.

11.3 Assignment. This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of the Company and the Processor, except that the Company shall not have the right to assign this Agreement or any of the rights and duties hereunder to any person or entity without the Processor's written consent upon 60 days' advance written notice.

11.4 Entire Agreement. This Agreement, including the exhibits and schedules hereto, constitutes the entire agreement between the parties, supersedes all prior agreements, oral or written, and may be modified or amended only by a writing signed by both parties.

11.5 Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect any of the terms or provisions hereof.

11.6 Governing Law. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the internal laws of the United States and the State of Tennessee.

11.7 Jurisdiction and Venue. In the event that either party commences legal action seeking monetary, declaratory, or injunctive relief with respect to enforcement, interpretation, or violation of this Agreement or any other agreement between the Processor and the Company, the parties (i) agree that any such action may be commenced only in a court of competent subject-matter jurisdiction in Hamilton County, Tennessee, (ii) consent to venue and personal

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jurisdiction in such a court, and (iii) waive any defense of lack of venue or personal jurisdiction in any such suit, action, or proceeding. The parties further (A) agree that process in any such suit, action, or proceeding may be served by mailing a copy thereof by certified mail, return receipt requested, to the other party at the address set forth on Exhibit D hereto, and (B) waive any defense of insufficiency of service of such process.

11.8 **Attorney's Fees.** The prevailing party in any legal action regarding the enforcement, interpretation, or violation of this Agreement shall be entitled to an award of all reasonable expenses, court costs, and attorney's fees incurred in connection with such litigation.

11.9 **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part hereof; and the remaining provisions herein shall remain in full force and effect. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

11.10 **Waiver.** Waiver of the benefit of any provision of this Agreement must be in writing to be effective. The waiver by any party hereto of a breach of any

provision hereof shall not operate or be construed as a waiver of any subsequent breach. No action taken pursuant to this Agreement shall be deemed to constitute a waiver by such party of compliance by the other party hereto with any of the covenants or other obligations contained herein. A failure by a party to insist upon strict compliance with any term of this Agreement, enforce any right, or seek any remedy upon any default of any other party shall not affect, or constitute a waiver of, such party's right to insist upon such strict compliance, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default.

11.11 **Notice.** Any notice or other communication required or permitted by this Agreement shall be in writing and may be given by personal delivery, overnight delivery service, or certified mail (return receipt requested) (postage prepaid). Notice shall be deemed given upon personal delivery thereof, on the day after such notice is deposited with an overnight delivery service or upon receipt of delivery of such notice by certified mail. Notices shall be sent to the addresses set forth on Exhibit D hereto. Failure or refusal of a party to accept receipt of a notice or other communication hereunder shall in no manner invalidate the notice.

11.12 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. This Agreement may be executed by facsimile signatures, which shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, the parties have cause this Agreement to be duly executed effective on the day and year first written above but actually signed on the dates indicated below by their respective signatures.

Company: \_\_\_\_\_

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

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Date: \_\_\_\_\_

Processor: <b>ACH COMMERCE, LLC</b>
By: _____
Print Name: _____
Print Title: _____
Date: _____

## SERVICE REQUESTED

- ePay**® – Online Internet ACH Capabilities & Virtual Terminal
- Matchtrac** – Routing Number (RTN) Database Verification System
- Veritrac w/ Matchtrac** – ATM Check Verification with secondary RTN database verification.
- eLockbox**® – ARC/Electronic Check Conversion
- DuoCash**<sup>SM</sup> – Stored Value Card

## FEE SCHEDULE

<b>ePay</b> – ACH Services	\$	per trans.
<b>Veritrac (w/ Matchtrac)</b> – StarATM® Network	\$	per trans.
<b>Matchtrac</b> – RTN Database Verification System	\$	per trans.
<b>eLockbox</b> – ARC/Electronic Check Conversion	\$	per trans.
<b>DuoCash</b> – Stored Value Card	\$	per trans.
<b>Return Item Charge</b>	\$	per trans.
<b>Monthly Access Fee</b>	\$	
<b>Setup Fee (including \$99.00 Non-refundable App Fee)</b>	\$	
<b>Standard Funding Days (debits)</b>	4 days	
<b>Standard Funding Days (credits)</b>	2 days	
<b>Total amount to be debited by NCFS:</b>	\$	



204 North El Camino Real, #102  
 Encinitas, CA 92024  
 888.942.7401  
 www.ncfsystems.com

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## SETTLEMENT ACCOUNT AUTHORIZATION

The Company has created the Settlement Account described below, to or from which all transactions that the Processor originates for the Company will be settled. All capitalized terms shall have the meaning set forth in the Agreement.

<b>Settlement Bank Name:</b>	
<b>Bank ABA Number:</b>	
<b>Bank Account Number:</b>	
<b>Account Name:</b>	

## SETTLEMENT WILL OCCUR AS FOLLOWS:

**Debits**  
 All Debit Entries originated by the Company will be settled via ACH Credit by the Processor four (4) business days (excluding bank holidays and weekends) following the effective Entry Date or the settlement date assigned by the ACH Operator whichever is later, *provided* that settlement may be delayed in the event that the frequency of transactions, number of items per transmission, or dollar amount of each transaction exceeds those set forth by Processor. Settlement may also be held if the percentage of Returns exceeds those set forth by Processor.

**Credits**  
 All Credit Entries originated by the Company will be settled via ACH Debit by the Processor two (2) business days prior to the effective entry date.

**Returns**  
 All Returns received by the Processor for the Company shall be debited or credited to Settlement Account immediately upon receipt of Return.

The Processor and ODFI reserve the right to debit the Settlement Account for a period of ninety (90) business days after the termination of this Agreement for the purpose of reclaiming funds owed to the Processor or ODFI for any fees or returns incurred by the Processor or ODFI during the period of the Agreement or for losses Processor or ODFI have incurred due to Company.

Merchant Initials \_\_\_\_\_

Processor Initials \_\_\_\_\_

NCFS OFFICE USE ONLY			
ISO Company:	_____	IC#:	_____
Reviewed By:	_____	Date:	_____