

## **ACH NETWORK PROCESSING AGREEMENT**

This ACH Network Processing Agreement ("Agreement") is entered into on the Effective Date defined below, between the business indicated in the COMPANY NAME section of the Company Processing Application ("Company") and Electronic Payment Providers, Inc. ("EPP").

### **RECITALS**

Company desires to accept checks validly issued by a United States Bank. EPP has developed a communications and database system (the "EPP System") and desires to provide to electronic check services (the "Services" to Company). Therefore, Company and EPP agree as follows:

### **TERMS AND CONDITIONS**

#### **1. TRANSACTIONS**

A. Authorization to Originate Transactions. Company hereby authorizes EPP to originate entries on Company's behalf to Company's Customer's accounts.

B. Records. Company shall obtain and retain all records related to authorization, including all voice authorizations, and standard authorization agreements executed by Payors authorizing EPP to collect funds through the Automated Clearing House by electronic funds transfer transactions for a period of no less than two (2) years following the date of transaction. Company shall produce such original executed Payor authorization agreements or other records within eight (8) days of request by EPP. Company shall be liable to EPP for any and all of EPP's liabilities, claims, costs, expense, reimbursement obligations, fines and penalties which arise due such failure to timely produce original records, Payor authorization agreements or receipts, and Company hereby authorizes EPP to recover any such amount by debit to Company's account. Company's obligations and EPP's rights under this paragraph shall survive the expiration or earlier termination of this Agreement.

C. Security Procedures. Company shall take reasonable security precautions to prevent unauthorized or fraudulent use of the EPP System by Company, its employees, agents and customers. EPP may, but shall not be required to, assign to Company one or more identification numbers and passwords for Company's use in obtaining the Services. Once such identification number(s) and password(s) have been assigned and validated by EPP, the use and confidentiality of such numbers and passwords shall be the sole responsibility of Company. EPP shall not assume any responsibility to discover any possible breach of Company's security. Company shall immediately notify EPP if it discovers any breach of security of the EPP System.

C. Hardware and Communications Services. Company shall be solely responsible for (i) its own point of sale and internet data processing and transmission equipment and (ii) establishing and maintaining its telecommunications lines, internet service and equipment necessary to transmit data between Company's equipment and EPP.

#### **2. ACCOUNTS**

A. Designated Account. Company may be required to establish and maintain an account at an ACH receiving depository institution approved by EPP ("Designated Account"). Company will maintain sufficient funds in Designated Account to satisfy all obligations, including fees, contemplated by this account.

B. Clearing Account. EPP may, at its sole discretion, apply money management techniques to clearing account funds for the purpose of generating interest income. All revenues generated through the management of clearing account funds shall remain the sole possession of EPP.

C. Debit/Credit Authorization. Company authorizes EPP, or its assignee, in accordance with this Agreement to initiate debit/credit entries to the Designated Account, Reserve Account, or any other account maintained by Company at any institution, all in accordance with this Agreement and the ACH Authorization attached on the Company Application. The authority is to remain in full force and effect until (a) EPP has received a written notification from Company of its termination in such a manner as to afford EPP reasonable opportunity to act on it; and (b) all obligations of Company to EPP that have arisen under this Agreement have been paid in full. Company will notify EPP of any changes in its checking account at least ten (10) business days prior to such change being effective and will forward a Voided Check from such new account and any other documents requested of Company to EPP prior to changing such account.

D. Account Monitoring. Company acknowledges that EPP will monitor Company's daily deposit, returned items, and settlement activity. Company agrees that EPP may, upon reasonable grounds, divert the disbursement of Company's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. EPP will make good faith efforts to notify Company immediately. EPP shall have no liability for any losses, either direct or indirect, which Company may attribute to any diversion of funds disbursement. Any funds diverted shall be deposited immediately into a non-interest bearing account and not be released until such time that questionable/suspect/fraudulent Transactions or Returned Items have been resolved to EPP's satisfaction.

#### **3. SECURITY & RESERVES**

A. Security Agreement. This Agreement is a security agreement under the Uniform Commercial Code. Company grants to EPP a security interest in and lien upon: (i) all funds at any time in the Designated Account, regardless of the source of such funds; (ii) all funds at any time in the Reserve Account, regardless of the source of such funds; (iii) present and future Payee Authorizations; and (iv) any and all amounts which may be due to Company under this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Company agrees to provide other collateral or security to EPP to secure Company's obligations under this Agreement and any other agreements now existing or later entered into between Company and EPP. EPP may exercise this security interest without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets.

B. Reserve Account. Company may be required to establish and maintain a non-interest bearing deposit account ("Reserve Account") at a financial institution of EPP's choice initially or at any time in the future as requested by EPP, with sums sufficient to satisfy Company's current and future obligations as determined by EPP. Company authorizes EPP to debit the Designated Account or any other account Company has at any financial institution to establish or maintain funds in the Reserve Account. EPP may deposit into the Reserve Account funds it would be otherwise obligated to pay Company, for the purpose of establishing, maintaining, or increasing the Reserve Account in accordance with this section, if it determines such action is reasonably necessary to protect its interests. Furthermore, EPP has the right to recoup and off-set. This means that they may recoup or offset any outstanding/uncollected amounts owed by Company.

#### **4. FEES & AMOUNTS OWED**

A. Fees and Taxes. Company shall pay EPP fees for services, forms, or equipment in accordance with the rates set forth on the End User Agreement for ACH Network Processing Agreement which include the following: \$25 per deposit correction, \$100 per Prohibited transaction, \$250.00 for first offense ineligible item fee, \$750.00 for second offense ineligible item fee and \$1,500.00 for third offense ineligible item fee. Provided the percentage does not exceed NACHA's thresholds for the then current monthly period the Unauthorized Return Fee will be assessed

based on the rate set forth on the fee schedule. If the number of Unauthorized Returns exceeds NACHA's return rate threshold the rate will increase by \$10 per item and will be billed at this rate until the monthly rate is below NACHA's unauthorized return rate thresholds. The quantity and dollar volume of transactions upon which fees and charges are based shall be recorded by EPP or EPP's computer system that shall be presumed to be correct. Such fees will be calculated and debited from the Designated Account once each business day or month for the previous business day's or month's activity. EPP reserves the right to adjust the fees set forth on the Application and this Section in accordance with Section 9E below. Company is also obligated to pay all taxes and other charges imposed by any governmental authority on the services provided under this agreement.

B. Other Amounts Owed. Company will immediately pay EPP any amount incurred by EPP attributable to this agreement, including but not limited to unauthorized returns, fines imposed by NACHA, non-sufficient fund fees, and ACH debits that overdraw the Designated Account, Reserve Account or are otherwise dishonored. Company authorizes EPP to debit via ACH the Designated Account, Company Account, or any other account Company has at any financial institution for any amount Company owes EPP under this agreement or under any other contract, note, guaranty, instrument, or dealing of any kind now existing or later entered into between Company and EPP, whether Company's obligation is direct, indirect, primary, secondary, fixed, contingent, joint, or several. In the event EPP demands sums due or such ACH does not fully reimburse EPP for the amount owed, Company will immediately pay EPP such amount.

## 5. TERM & TERMINATION

A. Term. This Agreement will become effective on the date EPP executes this Agreement ("Effective Date"). This Agreement will remain in effect for a period of 3 year(s) ("Initial Term") and will renew for successive 1 year terms ("Renewal Term") unless terminated as set forth below:

B. Termination. This Agreement may be terminated by any party by giving written notice of an intention not to renew at least 90 calendar days before the end of the written term. Furthermore, EPP may cease rendering the Services to any or all of Company's locations with or without notice and with or without cause. These reasons may be, but are not limited to: (i) if any of the information provided by Company to EPP contains any material misstatement or omission; (ii) if Company becomes insolvent or makes an assignment for the benefit of its creditors or any proceeding is commenced by or against EPP under any bankruptcy, liquidation or other debtor's protection law or statute; (iii) if Company violates any of EPP's operating rules, or any applicable governmental law, regulation or rule (including without limitation NACHA rules) under any bankruptcy, liquidation or other debtor's protection law or statute.

C. Action upon Termination. (i) All your obligations regarding Payor Authorizations will survive termination. Company must maintain in the Designated Account and the Reserve Account enough funds to cover all returned items, deposit charges, refunds and fees incurred by Company for a reasonable time, but in any event not less than the time specified in this agreement. Company authorizes EPP to charge those accounts, or any other account maintained under this Agreement for such amounts. If the amount in the Designated Account or Reserve Account is not adequate, Company will pay EPP the amount Company owes it upon demand, together with all costs and expenses incurred to collect that amount, including reasonable attorney's fees. (ii) Within 14 business days of the date of termination, Company must return all equipment owned by EPP and immediately pay EPP any amounts Company owe them for equipment costs.

## 6. COMPLIANCE

A. Laws, Rules, & Regulations. The parties hereto agree to comply with all applicable laws, rules and regulations, including without limitation, such laws and regulations of Federal, State, local governmental authorities, and the Laws of the United States, the National Automated

Clearing House Association and all publications of Regulation E (12 C.F.R. Part 1005 & 205). EPP may from time to time establish reasonable rules, regulations and operational guidelines with respect to use of the Service by Company and Company's customers, and such rules, regulations and guidelines shall be binding upon Company 15 days after delivery thereof to Company.

B. Transactions. All transactions are bona fide. No transactions are known to be fraudulent. No transactions will be sent to EPP without the prior authorization of the account holder.

C. Unauthorized Transactions. The following check types will not be processed by Company to EPP for submission to the ACH Network: (i) money orders, (ii) cashier's checks, (iii) traveler's checks, (iv) credit card convenience checks, (v) government checks, (vi) insurance checks, (vii) amount encoded checks, (viii) checks over 180 days in age, (ix) third-party checks, and (x) payroll checks (x) Converted drafts.

D. Audit. Company authorizes EPP to audit Company's records to confirm compliance with this Agreement. Company will obtain, and will submit a copy of, an audit of the business when requested by EPP. During the term this Agreement is in effect and for one (1) year after termination of this Agreement, EPP or its representatives may, audit and inspect the agreements and business records of Company relating to transactions conducted under this Agreement to verify compliance with this Agreement. While conducting an audit and inspection, EPP and its representatives will be entitled to photocopy and retain any item that Company may possess which documents a violation of this Agreement for evidentiary purposes.

## 7. APPLICATION, LIMITATIONS, COLLECTION, & INDEMNIFICATION

A. Application. Company represents to EPP that all information in the Application is correct and complete. Company must notify EPP in writing of any changes to the information in this Application. The notice of change must occur in writing to EPP within 10 days of the change. Company is liable to EPP for all losses or expenses incurred by EPP arising out of Company's failure to report such a change. EPP may immediately terminate this Agreement upon notification of a change to the information in the Application.

B. Warranty; Limitations on Liability. EPP is a service provider not an insurer. Company acknowledges that data processing entails the risk of human and machine errors, omissions, delays and losses, including inadvertent loss or misstatement of data that may give rise to loss or damage. Accordingly, Company agrees that EPP SHALL NOT BE LIABLE FOR ANY ERRORS, OMISSIONS, DELAYS OR LOSSES UNLESS CAUSED BY EPP'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. In no event shall EPP be liable for indirect, special or consequential damages even if EPP has been advised of the possibility of such potential claim, loss or damage. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Further, EPP shall not be responsible for delays in receipt of Company information or processing of Company information because of causes beyond its reasonable control, including, without limitation, failures or limitations on the availability of third-party telecommunications or other transmission facilities and Company's failure to properly enter and/or transmit information.

C. Collections. Company authorizes EPP to act as Company's agent in debiting customer's checking accounts for the principal amount of returned checks and service-processing fees to the maximum extent permitted by applicable law.

D. Indemnification. Company shall defend and indemnify EPP and hold them harmless from and against any and all liability, loss, damages, costs or expenses (including court costs and reasonable attorneys fees) arising as a result of Company's breach of this Agreement, failure to comply with National Automated Clearing House Association ("NACHA") rules or regulations or applicable laws, any fraudulent, wrongful or

negligent act or omission of Company or any of its employees, agents, independent contractors or customers, any unauthorized transmission by Company of data from Company, any unauthorized entry by Company of information into the EPP System, or any use by Company of the EPP System or the any use by Company of the EPP System or the Services other than in strict compliance with the procedures and terms set forth in this Agreement. The indemnification provisions hereof shall survive the expiration or earlier termination of this Agreement.

E. Investigative Consumer Credit Report. An investigative or credit report may be requested in conjunction with this application and anytime in the future during the initial term and/or the renewal term. Company authorizes EPP or any of its agents to investigate the references provided or any other statements or data obtained from Company or from any of the undersigned individuals assuming financial responsibility. You have a right, upon written request, to a complete and accurate disclosure of the nature and scope of the investigation requested.

## 8. PROPRIETARY INFORMATION & NONDISCLOSURE

All systems, programs, operating instructions, documentation and know how utilized in or by the EPP System shall be and remain the exclusive proprietary property of EPP. Company hereby agrees to hold in the highest confidence all information that Company may receive from EPP with respect to the EPP System (the "EPP Information"). Company shall disclose or provide the EPP Information only on a need-to-know basis. Company's obligations apply to all EPP Information, whether oral or written, in drawings or machine readable form, whether or not expressly marked "confidential," except (i) to the extent EPP Information was lawfully in Company's possession prior to its disclosure to Company hereunder or it enters the public domain through no fault of Company; or (ii) upon reasonable prior notice to EPP and opportunity to seek protective provisions with respect therein if the EPP Information is required to be disclosed in connection with any kind of adversarial proceeding or (iii) if the EPP Information is legally required to be disclosed in connection with the resolution of any dispute that may arise in connection with this Agreement provided that Company shall cooperate with in reasonable measures to protect the EPP Information from disclosure into the public record. Company acknowledges that it may not use any of the EPP Information for its own account except in the furtherance of its activities under this Agreement.

## 9. GENERAL PROVISIONS

A. Entire Agreement. This is the entire agreement between Company and EPP with respect to the subject matter hereof, and supersedes any prior Agreement, oral or written, between Company and EPP and/or its representatives(s). Company agrees that the failure of EPP to enforce any terms or conditions of this agreement is not a waiver of any terms or conditions herein contained. Company agrees to abide by the terms and conditions contained in this agreement and EPP reserves for its sole discretion to determine if all terms and conditions have been complied with by Company.

B. Governing Law. This agreement shall, in all respects, be governed by the Laws of the State of Arizona, County of Maricopa applicable to agreements executed and to be wholly performed within the State of Arizona, County of Maricopa.

C. Exclusivity. EPP's pricing is based upon Company's exclusive use of EPP for all ACH Network Transaction Services. Accordingly, during the Initial and any Renewal term of this Agreement, Company agrees to use and hereby appoint EPP as its exclusive provider of ACH Network Transaction Services to Company. Further, Company may not enter into an agreement with another entity that provides ACH Network Transaction services similar to that of EPP as contemplated in this Agreement without the written permission of EPP.

D. Attorneys' Fees. If any action (whether legal or equitable and whether litigation or arbitration or some other proceeding) related to obligations hereunder (including obligations to a third-party beneficiary), the prevailing party (as shall be determined by the court or other adjudicator) shall be entitled to recover its reasonable attorneys' fees and costs of suit from the other party in addition to such other relief as may be granted.

E. Amendments. EPP may change all terms and conditions set forth in this Agreement at any time upon written notice. Such changes shall supersede any previous terms and conditions. Company will be deemed to have agreed to the change if Company continues to present transactions to EPP after 7 business days following the mailing of the notice. Company may terminate this agreement upon such change solely by written notice of Company's intentions to do so within ten (10) calendar days after receipt of amendment from EPP.

F. Force Majeure. EPP shall not be liable for failure or delay in performing their respectful obligations hereunder if such failure or delay is due to circumstances beyond EPP's reasonable control, including without limitation, acts of any governmental body, war, insurrection, sabotage, embargo, fire, earthquake, flood, strike or other labor disturbance, interruption of or delay in transportation, or inability to obtain supplies, telecommunications services or power used in or equipment needed for the performance of the Services.

G. Status of the Parties. Nothing herein shall be construed to create a partnership, joint venture, franchise, employer-employee relationship by or between the parties' and/or EPP. No party shall have the authority to commit or bind any other party without such party's prior written consent.