

# ACH SERVICES MERCHANT AGREEMENT

COMPANY INFORMATION		
COMPANY NAME		RESELLER NAME
DBA		RESELLER MID
PHYSICAL ADDRESS		CUSTOMER MID
CITY	STATE	ZIP
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)		
CITY	STATE	ZIP
PHONE		FAX
TAX ID NUMBER	WEBSITE ADDRESS	
EMAIL ADDRESS		
YEARS IN BUSINESS		YEARS UNDER CURRENT OWNERSHIP
BUSINESS LOCATION TYPE	<input type="checkbox"/> STOREFRONT	<input type="checkbox"/> HOME WEB-BASED SPECIFY OTHER:
BUSINESS TYPE	<input type="checkbox"/> LIMITED LIABILITY COMPANY	<input type="checkbox"/> CORPORATION
	<input type="checkbox"/> PARTNERSHIP	<input type="checkbox"/> NON-PROFIT
<input type="checkbox"/> SOLE PROPRIETOR		
<input type="checkbox"/> PUBLIC COMPANY		
INDUSTRY/PRODUCT AND/OR SERVICES SOLD		
PRIMARY BANK INFORMATION		
BANK NAME		
NAME ON ACCOUNT		LOCATION
ACCOUNT NUMBER		ROUTING NUMBER
BILLING ACCOUNT INFORMATION		
EMAIL ADDRESS (INVOICING)		
ACCOUNT NUMBER		ROUTING NUMBER



## OWNER/RESPONSIBLE PARTY

OWNER NAME		TITLE	
OWNER ADDRESS		SSN	
CITY	STATE	ZIP	DOB
MAILING ADDRESS (IF DIFFERENT FROM ABOVE)		PHONE	
CITY	STATE	ZIP	
BANKRUPTCY OR LAWSUITS		<input type="checkbox"/> YES	<input type="checkbox"/> NO
IF YES, PLEASE EXPLAIN:			

## AUTHORIZATION/TRANSACTION INFORMATION & PROJECTED PROCESSING VOLUMES

TYPE AUTHORIZATIONS / TRANSACTION TO BE PROCESSED			
PPD ____ % OF TOTAL	CCD ____ % OF TOTAL	WEB ____ % OF TOTAL	TEL ____ % OF TOTAL
ARC ____ % OF TOTAL	RCK ____ % OF TOTAL	OTHER: _____	OTHER ____ % OF TOTAL

### AUTHORIZATION METHOD

WHICH AUTHORIZATION PROCEDURE DOES MERCHANT UTILIZE TO CONFIRM CUSTOMER CONSENT TO AN ACH DEBIT AND/OR CREDIT

#### SIGNED WRITTEN AUTHORIZATION FORM FROM CUSTOMER (DOES NOT APPLY TO WEB)

- PROCESSOR PROVIDED AUTHORIZATION FORM
- MERCHANT CREATED AUTHORIZATION FORM

#### WEB AUTHORIZATIONS (CHECKS BY WEB ONLY)

- CUSTOMER PROVIDES ELECTRONIC SIGNATURE
- CUSTOMER LOGS IN USING A USER AND PASSWORD

#### RECORDED VERBAL AUTHORIZATIONS (CHECKS BY PHONE ONLY)

- PROCESSOR PROVIDED SCRIPT
- MERCHANT CREATED SCRIPT

#### IF UTILIZING RECORDED VERBAL AUTHORIZATION, PLEASE CHECK ONE OF THE FOLLOWING:

MERCHANT HAS EXISTING RECORDING SERVICE TO CAPTURE VERBAL CUSTOMER AUTHORIZATIONS. HOW ARE THE RECORDINGS ACCESSED?

- VIA WEBSITE  
 URL \_\_\_\_\_  
 LOGIN/USER \_\_\_\_\_  
 PASSWORD \_\_\_\_\_
- VIA TELEPHONE  
 NUMBER \_\_\_\_\_  
 PASSWORD \_\_\_\_\_



## TRANSACTION HANDLING

### TRANSACTIONS WILL BE SUBMITTED VIA

- VIRTUAL TERMINAL - TO KEY IN TRANSACTION DATA, MERCHANT WILL USE PROCESSOR PROVIDE WEBSITE **\*\*CREATE PAYMENTS**
- SINGLE       RECURRING       BATCH
- INTERNET GATEWAY - MERCHANT WILL CREATE CODE TO INTERFACE WITH THE PROCESSOR API TO TRANSMIT TRANSACTION DATA **\*\*API**
- SINGLE       BATCH/UPLOAD
- FILE TRANSMISSION - MERCHANT WILL CREATE TEXT FILE (CSV OR ACH) AND TRANSMIT TO PROCESSOR VIA SFTP **\*\*UPLOAD FILES**
- ACH - NACHA STANDARD FORMAT       CSV - COMMA DELIMITED, TAB DELIMITED
- MANUAL - UPLOAD VIA WEBSITE       SFTP - UPLOAD VIA AUTOMATION

## TECHNICAL CONTACT

PLEASE PROVIDE TECHNICAL CONTACT INFORMATION FOR COORDINATION OF TEST FILES, PROVISION OF GATEWAY, OR FILE SPECS, ETC.)

NAME \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

PHONE \_\_\_\_\_

## DEBIT VOLUME

TOTAL NUMBER OF TRANSACTIONS DAILY

TOTAL NUMBER OF TRANSACTIONS MONTHLY

AVERAGE TRANSACTION AMOUNT \$

MAXIMUM TRANSACTION AMOUNT \$

MAXIMUM DAILY AMOUNT \$

MAXIMUM MONTHLY AMOUNT \$

PROCESSING CYCLE     DAILY       WEEKLY       MONTHLY       BI-MONTHLY

## CREDIT VOLUME

TOTAL NUMBER OF TRANSACTIONS DAILY

TOTAL NUMBER OF TRANSACTIONS MONTHLY

AVERAGE TRANSACTION AMOUNT \$

MAXIMUM TRANSACTION AMOUNT \$

MAXIMUM DAILY AMOUNT \$

MAXIMUM MONTHLY AMOUNT \$

PROCESSING CYCLE     DAILY       WEEKLY       MONTHLY       BI-MONTHLY

VERIFICATION SERVICE NEEDS

YES       NO

CURRENTLY PROCESSING PAYMENTS

YES       NO

IF YES, TRANSMISSION METHOD     AUTOMATED SFTP     WEB-BASED SINGLE ENTRY     ACH FILE FORMAT     CSV FILE FORMAT     OTHER

IF YES, CURRENT PROCESSORS NAME

DESCRIPTORS



## CONTACT & USER ROLES

CONTACT	EMAIL	OFFICE PHONE	CELL PHONE	USER PERMISSION
<p><b>CUSTOMER ADMINISTRATOR</b> Has the ability to read and perform all customer level functions in the system (create payments is not default and must be requested).</p> <p><b>CUSTOMER OPERATOR</b> Create Users, Edit Users and Payment Approval (these are READ ONLY)</p> <p><b>CUSTOMER READ ONLY</b> Only has the ability to read all customer level functions in the system</p>				

## NOTICES

- » Authorizations must be kept on file for no less than (2) Two years.
- » Existing relationship between Merchant and customer is required to process ACH initiated by phone authorization or Bill Pay.
- » A relationship exists if the customer has purchased goods/services from the Merchant within the past two (2) years OR there is a written agreement in place between the merchant and the customer for the provision of goods or services. EXAMPLE: The customer has an insurance policy with the Merchant.
- » ACH Services do not include verification if submitting transactions via File Transmission.
- » Some banks will not honor an ACH Transaction from a "corporate account" Provided that the processor continues to receive transactions from the Merchant, funds will be released in: 5-7 business days for ACH Debit; 5 business days for TEL and 3 business days for WEB and 7 business days for eCommerce.

*By signing, the undersigned represents that he or she is authorized to sign and submit this ACH Services Merchant Agreement together with the Terms and Conditions thereto, and the Company Authorization on behalf of undersigned and the Company, which agrees to be bound thereby.*



## COMPANY AUTHORIZATION

As a duly authorized representative for the Company, the undersigned certifies the accuracy of all of the foregoing information and authorizes Priority Payment Systems LLC, ("PRIORITY"), or other investigative entities employed by PRIORITY, or its agents, to investigate the references and information given to PRIORITY. The undersigned further agrees to notify PRIORITY or its processor(s) of any and all changes that may occur from time-to-time in the information and statements contained herein above. The undersigned agrees that PRIORITY will debit the account, specified by attached voided check copy or bank letter, for all setup fees, including the ACH License fee, as an ACH item, upon receipt of the completed application, and all subsequent related monthly service and transaction fees, via an ACH transaction.

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PRINTED NAME

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POSITION/TITLE

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SIGNATURE

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DATE

**\*\* CORPORATE RESOLUTION VERIFYING SIGNATURE AUTHORITY MUST BE INCLUDED IF SIGNED BY SOMEONE OTHER THAN THE PRESIDENT OR CEO \*\***



MERCHANT INITIALS \_\_\_\_\_ PROCESSOR INITIALS \_\_\_\_\_  
MERCHANT AGREEMENT | REV 08.04.17 | CONFIDENTIAL & PROPRIETARY

## TERMS & CONDITIONS

This ACH Services Merchant Agreement between Company and Priority Payment Systems LLC, ("PRIORITY") shall be effective as of the earlier of: (1) PRIORITY's approval of the Application of Company or (2) both parties' execution of this Agreement ("Effective Date"). The Company Application, ACH Services Merchant Agreement and ACH Approval Form, collectively are referred to as the "Agreement" between Company and PRIORITY. Unless otherwise defined herein, all capitalized terms used in the Agreement have the meaning assigned to those terms in the current rules and regulations of the National Automated Clearing House Association ("NACHA").

### 1. DEFINITIONS

- » **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.
- » **BUSINESS BANKING DAY** – Monday through Friday, normal operating hours, excluding Federal holidays.
- » **CREDIT ENTRY** – An ACH Transaction that is intended to deposit funds into a Receiver's (defined below) account which has been withdrawn from a Company's Settlement Account (defined below).
- » **DEBIT ENTRY** – An ACH Transaction that is intended to withdraw funds from a Receiver's account for deposit into Company's Settlement Account.
- » **NACHA** – National Automated Clearing House Association responsible for establishing, revising and enforcing the Operating Rules for the ACH Network.
- » **OPERATING RULES (THE "RULES")** – The operational rules established by NACHA which govern all transactions and parties utilizing the ACH Network.
- » **ODFI** – Originating Depository Financial Institution is the financial institution through which PRIORITY sends transactions to the FED.
- » **RDFI** – Receiving Depository Financial Institution is the financial institution that receives the ACH Transactions from the FED and posts these Transactions to the accounts of the Receivers (defined below).
- » **RECEIVERS** – An organization or individual that has authorized a Company to initiate an ACH Transaction to an account they maintain with a financial institution (RDFI).
- » **SETTLEMENT ACCOUNT** – An account established and maintained by Company 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 Company's Settlement Account that corresponds to the amount owed Company by PRIORITY at the end of each Business Banking Day.

### 2. ACKNOWLEDGEMENT OF ODFI RELATIONSHIP

- » **GENERAL.** The Company acknowledges that the services provided by PRIORITY pursuant to this Agreement are by virtue of PRIORITY's contractual relationship with the ODFI, which is a federally-insured financial institution regulated by federal and state banking agencies ("Agencies"). PRIORITY, the ODFI, and the Agencies are relying upon the accuracy of all information provided by Company pursuant to this Agreement and Company's performance of its obligations hereunder.
- » **ODFI'S RIGHTS.** The Company acknowledges that PRIORITY 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. The ODFI has the right to terminate or suspend an Originator for breach of the NACHA rules and the right to audit an Originator's or Third-Party Sender's and its Originators', compliance with this Agreement and the NACHA Rules.
- » **ODFI IS THIRD-PARTY BENEFICIARY.** The Company and PRIORITY 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.

### 3. SERVICES, USE, LICENSE

- » PRIORITY provides ACH.COM ACH processing services through web-based single entry and/or batched file transmission. Company shall transmit credit and debit entries to PRIORITY through the products and services provided to the Company by PRIORITY. Subject to the terms and conditions of this Agreement, PRIORITY hereby grants to Company a non-exclusive and non-transferable license to access and use PRIORITY's products and services contracted for under this Agreement and Company hereby accepts such license and agrees to utilize and access the products and services in accordance with the practices and procedures established by PRIORITY. Company may use the products and services (a) for its own internal business purposes and operations, and/or (b) as a service provided to its customers.



No license or right to use, reproduce, translate, rearrange, modify, enhance, display, sell, lease, sublicense or otherwise distribute, transfer or dispose of any of PRIORITY's Proprietary Property, as defined in Section 4 below, in whole or in part, is granted except as expressly provided by this Agreement. Neither Company nor any of its affiliates shall reverse, engineer, decompile or disassemble the Proprietary Property. Additionally, nothing in this Agreement shall be construed to provide Company with a license of any third-party proprietary information or property.

## 4. OWNERSHIP

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

## 5. SECURITY PROCEDURES

- » Company and PRIORITY shall comply with the security procedures described hereinbelow and in the ACH Rules ("Security Procedures") with respect to entries transmitted by Company to PRIORITY. Company acknowledges that the purpose of such Security Procedures is for verification of authenticity and not to detect an error in the transmission or content of an entry. No Security Procedures for the detection of any such error have been agreed upon between PRIORITY and the Company
- » Company is strictly responsible for establishing and maintaining procedures to safeguard against unauthorized transmissions. Company warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the Security Procedures and any passwords, codes, security devices and related instructions provided by PRIORITY in connection with the Security Procedures described in the ACH Rules. If Company believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Company agrees to notify PRIORITY, followed by written confirmation. The occurrence of unauthorized access will not affect any transfers made in good faith by PRIORITY prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.
- » Company acknowledges and agrees that the Security Procedures, including (without limitation) any code, password, personal identification number, user identification technology, token, certificate, or other element, means, or method of authentication or identification used in connection with a Security Procedure ("Security Devices") used in connection therewith, constitute commercially reasonable security procedures under applicable law for the origination of Entries (or request for cancellation or amendment of an Entry). Company authorizes PRIORITY to follow any and all instructions entered and transactions initiated using applicable Security Procedures. Company agrees that the initiation of a transaction using applicable Security Procedures constitutes sufficient authorization for PRIORITY to execute such transaction and Company agrees and intends that the submission of Entries and instructions using the Security Procedures shall be considered the same as Company's written signature in authorizing PRIORITY to execute such transaction. Company acknowledges and agrees that Company shall be bound by any and all Entries initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all transactions and activity otherwise initiated by any person(s) authorized by Company to initiate transactions ("Authorized User(s)"), to the fullest extent allowed by law. Company further acknowledges and agrees that the Security Procedures are not designed to detect error in the Entries initiated by Company and that Company bears the sole responsibility for detecting and preventing such error.
- a) Company acknowledges and agrees that it is Company's responsibility for keeping all Security Procedures and Security Devices protected and to provide or make available the same only to Authorized User(s). Company agrees to instruct each Authorized User not to disclose or provide any Security Procedures or Security Devices to any unauthorized person. PRIORITY shall communicate with the Company regarding Security Procedures. Company agrees to periodically change or modify passwords and PINs. Company agrees to notify PRIORITY immediately if Company believes that any Security Procedures have been compromised, or otherwise become known to persons other than Authorized User(s), or if Company believes that any Entry or activity is unauthorized or in error.
- b) Company agrees to notify PRIORITY immediately if the access of any Authorized Users shall change or be revoked.
- c) PRIORITY reserves the right to change, amend, replace, or cancel any or all Security Procedures, at any time and from time to time at PRIORITY's discretion. PRIORITY may make any change in Security Procedures without advance notice to Company if PRIORITY, in its judgment and discretion, believes such change to be necessary or desirable to protect the security of PRIORITY systems and assets. Company's implementation and use of any changed Security Procedures after any change in Security Procedures shall constitute Company's agreement to the change and Company's agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.



#### » PHYSICAL AND ELECTRONIC SECURITY

- a) Company is solely responsible for providing for and maintaining the physical, electronic, procedural, security of data and systems in Company's possession or under Company's control. PRIORITY is not responsible for any computer viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware") resulting from any computer viruses. Company is solely responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to Company's operating systems, and for protecting, securing, and backing up any data and information stored in or on Company's operating systems. PRIORITY is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on Company's operating systems or accessed through an Internet connection.
  - b) Company acknowledges that PRIORITY will never contact Company by e-mail in order to ask for or to verify personal information such as Account numbers, Security Devices, or any sensitive or confidential information. In the event Company receives an e-mail or other electronic communication that Company believes, or has reason to believe, is fraudulent, Company agrees that neither Company nor its Authorized User(s), agents, and employees shall respond to the e-mail, provide any information to the e-mail sender, click on any links in the e-mail, or otherwise comply with any instructions in the e-mail.
  - c) Company agrees that PRIORITY is not responsible for any losses, injuries, or harm incurred by Company as a result of any electronic, e-mail, or Internet fraud.
  - d) In the event of a breach of the Security Procedure, Company agrees to assist PRIORITY in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing PRIORITY, or PRIORITY's agent, access to Company's hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. Company further agrees to provide to PRIORITY any analysis of such equipment, device, or software or any report of such analysis performed by Company, Company's agents, law enforcement agencies, or any other third party. Failure of Company to assist PRIORITY shall be an admission by Company that the breach of the Security Procedure was caused by a person who obtained access to transmitting facilities of Company or who obtained information facilitating the breach of the Security Procedure from Company and not from a source controlled by PRIORITY.
- » SECURITY FRAMEWORK – Company will ensure Policies and Procedures are up to date and address the following items:
- a) Company will ensure that the Originator will implement and maintain security policies, procedures and systems related to the initiation, processing and storage of Entries and resulting Protected Information.
  - b) Company will implement and maintain security policies, procedures, and systems related to the initiation, processing and storage of Entries and resulting Protected Information. The policies, procedures and systems will protect the confidentiality and integrity of Protected Information, will protect against anticipated threats or hazards to the security or integrity of Protected Information, will protect against the unauthorized use of Protected Information, and will include controls on system access. Company will ensure that the Originator will implement and maintain security policies, procedures and systems related to the initiation, processing and storage of Entries and resulting Protected Information.
  - c) Company will ensure proper storage and destruction of authorizations, converted checks, phone recordings, etc.
  - d) The definition of Protected Information not only covers financial information, but also includes sensitive non-financial information (such as non-financial account information contained in Addenda Records for bill payments) that may be incorporated into the Entry or any related Addenda Record.
- » DATA PASSING, Company is prohibited from disclosing a Reciever's account number or routing number to any third-party for use in initiating a debit Entry that is not part of the original authorization; and the company is required to ensure that the Originator does not disclose such information for use in initiating a debit Entry that is not part of the original authorization.

## 6. COMPLIANCE WITH SECURITY PROCEDURES

- » If an Entry (or request for cancellation or amendment of an Entry) received by PRIORITY purports to have been transmitted or authorized by Company, it will be deemed effective as Company's Entry (or request) and Company shall be obligated to pay PRIORITY the amount of such Entry even though the Entry (or request) was not authorized by the Company, provided PRIORITY accepted the Entry in good faith and acted in compliance with the security procedures referred to in the ACH Rules with respect to such entry.
- » If an Entry (or request for cancellation or amendment of an Entry) received by PRIORITY was transmitted or authorized by Company, Company shall pay PRIORITY the amount of the Entry, whether or not PRIORITY complied with the security procedures referred to in the ACH Rules with respect to that Entry or whether or not that entry was erroneous in any respect or that error would have been detected if PRIORITY had complied with such procedures.

## 7. ACH PROCESSING AND TRANSMITTAL SERVICES

- » Company and PRIORITY agree that all entries transmitted to PRIORITY for processing shall comply with the formatting and other requirements set forth in the ACH Rules in regards to the following Standard Entry Class Codes ("SEC Codes"):





**PPD** – Prearranged Payment and Deposit  
**CCD** – Cash Concentration and Disbursement  
**TEL** – Telephone Initiated Payment  
**WEB** – Internet Initiated Payment  
**ARC** – Accounts Receivable Conversion  
**POP** – Point of Purchase  
**BOC** – Back Office Conversion

Please note that ARC, POP, and BOC programs are not supported on PRIORITY's Virtual Terminal though you can send files in either a NACHA File or CSV FileFormat.

- » PRIORITY shall (i) process Entries from Company to conform with the file specifications set forth in the Rules (ii) transmit such Entries as an Originating Depository Financial Institution to the ACH Operator, and (iii) settle for such Entries as provided in the Rules.
- » PRIORITY shall transmit such Entries to the ACH Operator by the deadline of the ACH Operator One Banking Day prior to the Effective Entry Date shown in such Entries, provided (i) such Entries are received by 7:30 pm EST ("Company Cut-Off Time") on a Banking day, (ii) the Effective Entry Date is at least one (1) day after such banking day, and (iii) the ACH Operator is open for business on such banking day. For purpose of this Agreement, Entries sent via electronic transmission shall be deemed received by PRIORITY when the transmission which is in compliance with any related security procedures provided for herein is completed and confirmation of transmission has been received by Company.
- » If any of the requirements of clause (i), (ii), or (iii) of Section 7 is not met, PRIORITY shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator.

## 8. REJECTION OF ENTRIES

- » PRIORITY may reject any Entry that does not comply with the requirements of Section 5, Security Procedures or Section 7, ACH Processing and Transmittal Services, or that contains an Effective Entry Date more than twenty-one (21) calendar days after the banking day such Entry is received by PRIORITY. PRIORITY may reject any Entry if Company has failed to comply with its account balance obligations under Section 14, The Settlement Account. PRIORITY shall notify Company by phone, electronic transmission, or in writing of such rejection no later than the banking day such Entry would otherwise have been transmitted by PRIORITY to the ACH Operator. Notices of rejection shall be effective when given. PRIORITY shall have no liability to Company by reason of rejection of any such entry or the fact that such notice is not given at an earlier time than that provided for herein.

## 9. CANCELLATION OF AMENDMENT BY THIRD-PARTY SENDER

- » Company shall have no right to cancel or amend any Entry after its receipt by PRIORITY. However, if such request complies with the security procedures described in the ACH Rules for the cancellation of data, PRIORITY shall use reasonable efforts to act on a request by Company for cancellation of an Entry prior to transmitting it to the ACH Operator, but shall have no liability if such cancellation is not effected. Company shall reimburse PRIORITY for any expenses, losses, or damages PRIORITY may incur in effecting or attempting to effect the cancellation or amendment of an entry.



## 10. NOTICE OF RETURNED ENTRIES AND NOTIFICATIONS OF CHANGE

» PRIORITY shall notify Company by electronic transmission of the receipt of a returned entry from the ACH Operator no later than one business day after the business day of such receipt. PRIORITY shall have no obligation to retransmit a returned Entry to the ACH Operator if PRIORITY complied with the terms of this Agreement with respect to the original Entry. PRIORITY shall provide Company all information, as required by the NACHA Operating Rules, with respect to each Notification of Change (NOC) Entry or Corrected Notification of Change (Corrected NOC) Entry received by PRIORITY relating to Entries transmitted by Company. PRIORITY must provide such information to Company within one banking day of the Settlement Date of each NOC or Corrected NOC Entry. Company shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) banking days of Company's receipt of the NOC information from PRIORITY or prior to initiating another entry to the Receiver's account, whichever is later.

## 11. PROCESSING LIMITS

» PRIORITY will apply a cap on the single entry amount, daily total amount and monthly total amount it will process for the Company, as shown in the ACH Approval Form attached hereto. These limits may be changed by PRIORITY from time-to-time, upon notice to Company. If the Company exceeds the established limits, PRIORITY may temporarily suspend Transaction processing or temporarily hold the funds that are in excess of the established limits. Company will incur an Over-Limit fee as set forth in Schedule A to this Agreement for each occurrence.

## 12. HOLDING OF FUNDS

- » The standard hold time for debit entries is three (3) business banking days from the Effective Entry Date of the entries but Company's hold time shall be as set forth in the ACH Approval Form, which ACH Approval Form may be modified in the sole discretion of PRIORITY with such modification(s) effective upon notice given to Company by PRIORITY. Credit Entries are settled same day as the Effective Entry day of the Entry. Company may request a reduction in the hold time for debit entries by submitting a written request to PRIORITY. PRIORITY may require a separate security deposit to support such a reduction, but is under no obligation to grant Company's request for reduction.
- » PRIORITY shall (i) process Entries from Company to conform with the file specifications set forth in the Rules (ii) transmit such Entries as an Originating Depository Financial Institution to the ACH Operator, and (iii) settle for such Entries as provided in the Rules.
- » Should PRIORITY observe any irregular Entry or suspected fraudulent activity by Company, or as required by law, PRIORITY reserves the right to place a longer hold time on any Entries without prior written notice to Company. If hold time is increased, PRIORITY will notify Company in writing within 2 (two) business banking days of increase.



### 13. SECURITY DEPOSIT

- » A security deposit or “Reserve” may be required by PRIORITY which shall be used by PRIORITY to offset any returned items or chargebacks that PRIORITY is unable to collect from Company’s Settlement Account or other means as prescribed herein. Should PRIORITY determine that a Reserve is required, such Reserve will be established in the amounts indicated on the ACH Approval Form. The Reserve amount shall be revised based on periodic review of Company’s transaction volumes, transaction amounts, and return ratios. Company hereby grants a security interest in any such Reserve funds held by PRIORITY to secure Company’s existing and future obligations to PRIORITY under this Agreement. The Reserve funds shall be held by PRIORITY for at least ninety (90) calendar days beyond the date of the last item processed by PRIORITY on Company’s behalf. In the event PRIORITY has reason to believe that Company has acted in a fraudulent manner or has not obtained proper authorization from the receiver for transactions processed, PRIORITY may extend the hold on the Company’s Reserve funds up to the maximum time allowed by law.

### 14. THE SETTLEMENT ACCOUNT

- » PRIORITY may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the settlement account of Company identified in the ACH Services Approval Form. Company shall at all times maintain a balance of available funds in the Settlement Account to cover Company’s obligations under this Agreement. Company agrees that PRIORITY or any affiliate of PRIORITY may have the right to debit the Settlement Account in order to collect funds owed to PRIORITY in regards to this Agreement at any time deemed necessary by PRIORITY. Also, PRIORITY may set off against any amount it owes to Company, in order to obtain payment of Company’s obligations under this Agreement. Upon request of PRIORITY, Company agrees to promptly provide to PRIORITY such information pertaining to Company’s financial condition as PRIORITY may reasonably request.

### 15. PAYMENT BY COMPANY FOR ENTRIES; PAYMENT BY PRIORITY FOR ENTRIES

- » Company shall pay PRIORITY the amount of each credit Entry transmitted by PRIORITY pursuant to this Agreement at such time on the Settlement Date with respect to such credit Entry. Payment will result in a single debit to the Company’s Settlement Account on the Settlement Date for the sum of all credit Entries with that day’s Settlement Date.
- » Company shall promptly pay PRIORITY the amount of each debit Entry returned by an RDFI that was transmitted by PRIORITY pursuant to this Agreement. In the case of a Company on Straight Settlement all debit Entries returned by an RDFI will result in a debit to the Settlement Account the day the return is received by PRIORITY from the ACH Operator. If more than one return is received, the debit to the Settlement account will be a total of all returns received for that day by PRIORITY.
- » In the case of a Company on Straight Settlement, PRIORITY shall pay Company the total amount of all debit Entries transmitted by PRIORITY pursuant to this Agreement on the Settlement Date with respect to such debit Entries, resulting in a single credit to the Settlement Account.

### 16. VOLUME AND FINANCIAL RE-EVALUATION

- » Upon Priority’s request, Company shall provide PRIORITY and the ODFI with copies of its annual financial statements within 45 days of PRIORITY’s request therefor. PRIORITY reserves the right to re-evaluate Company’s financial position at its own discretion throughout the course of PRIORITY’s business relationship with Company. Such re-evaluation may result in modification of the fee structure, reserve amount, applicable discount fees or termination of this Agreement in accordance with the terms herein.

### 17. COMPANY REPRESENTATIONS AND AGREEMENTS; INDEMNITY

- » With respect to each and every Entry transmitted by Company, Company represents and warrants to PRIORITY and agrees that (i) each person shown as the Receiver on an Entry received by PRIORITY from Company has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry, (ii) such authorization is operative at the time of transmittal or crediting or debiting by PRIORITY as provided herein, (iii) entries transmitted to PRIORITY by Company are limited to those types of credit and debit Entries set forth in Section



6, (iv) Company shall perform its obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by OFAC, laws, regulations, or orders applicable to the FinCEN; laws applicable to the Unlawful Internet Gambling Enforcement Act, and any state laws, regulations, or orders applicable to the providers of ACH payment services, and (v) Company shall be bound by and comply with the provision of the Rules (among other provisions of the Rules) 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 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. Company shall indemnify PRIORITY against any loss, liability or expense (including attorney's fees and costs) resulting from or arising out of any breach of any of the foregoing warranties, representations, or agreements.

- » Company bears all responsibility for its own employees' actions while in Company's employ. Company shall indemnify and hold harmless PRIORITY 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 attorney's fees and other costs of defense, including settlement costs, that relate to or result from (i) any material breach of Company's representations and warranties contained herein, (ii) any alleged violation by Company of any applicable law, Rule or Regulation, or (iii) any action of Company, its agents or employees in connection with any Entry subject to this Agreement. Further, Company acknowledges that PRIORITY may rely solely on identifying numbers provided by Company to determine the bank and account in question for each Entry even if the numbers identify a bank or account holder that differs from the one Company has identified by name. Company shall indemnify PRIORITY for any losses, liabilities, costs or expenses PRIORITY or any third party suffers or incurs as a result of an incorrect account or other error. All disputes between Company and its Receiver(s) relating to any Entry will be settled by and between Company and Receiver. Company agrees that PRIORITY bears no responsibility for, and shall have no involvement in, any such dispute.
- » Company represents and warrants that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization, that Company has full power to execute and deliver this Agreement and to perform its obligations hereunder and that this Agreement constitutes valid and legally binding obligations of Company and is enforceable in accordance with its terms and conditions.

Company further warrants and represents that: (i) neither the execution and 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. (ii) The information, documents, reports, financial statements, and other documentation provided by Company pursuant to this Agreement are correct, accurate, and complete and do not contain any untrue or misleading statement or fact. (iii) The representations and warranties contained in this section 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 not misleading. (iv) The representations and warranties contained in this section 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 not misleading.

- » 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 PRIORITY 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 damages, reasonable expenses, court costs, and attorney's fees incurred in connection therewith.

## 18. CUSTOMER AUTHORIZATIONS; RECORD RETENTION

- » 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.
- » Records. 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 PRIORITY or the ODFI.



## 19. RULES AND REGULATIONS VIOLATIONS

- » Company shall reimburse PRIORITY for any fines, fees, charges or other costs imposed on PRIORITY for any violation of the Rules or Regulations by the Company. PRIORITY shall provide Company written notice of any such fines, fees, charges or other costs. Assessment of such additional fee will in no way limit PRIORITY's right to obtain other remedies available under applicable law.

## 20. PRIORITY RESPONSIBILITIES; LIMITATIONS ON LIABILITY; INDEMNITY

- » In the performance of the services required by this Agreement, PRIORITY shall be entitled to rely solely on the information, representations, and warranties provided by Company pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. PRIORITY shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for its negligence or willful misconduct in performing those services. PRIORITY shall not be responsible for Company's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal, or authorization of any Entry received from Company) or those of any other person, including, without limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI (including, without limitation, the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Financial Institution's agent. Company agrees to indemnify PRIORITY against any loss, liability, or expense (including attorneys' fees and costs) resulting from or arising out of any claim or any person that PRIORITY is responsible for any act or omission of Company or any other person.
- » PRIORITY shall be liable only for Company's actual damages due to claims arising solely from PRIORITY's obligations to Company with respect to Entries transmitted pursuant to this Agreement. In no event shall PRIORITY be liable for any consequential, special, incidental, punitive, or indirect loss or damage which Company may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by PRIORITY and regardless of the legal or equitable theory of liability which Company may assert, including without limitation loss or damage from subsequent wrongful dishonor resulting from PRIORITY's acts or omissions pursuant to this Agreement.
- » Without limiting the generality of the foregoing provisions, PRIORITY shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond PRIORITY's control. In addition, PRIORITY shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in PRIORITY having exceeded any limitation upon its intra-day funds position established pursuant to present or future Federal Reserve guidelines or in PRIORITY's reasonable judgment otherwise would violate any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.
- » Subject to the foregoing limitations, PRIORITY's liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds rate at the Federal Reserve Bank of New York for the period involved.
- » PRIORITY 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 PRIORITY 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 PRIORITY has been advised of the possibility of such damages. The warranty and remedies set forth above are exclusive and in lieu of all others, either oral or written, expressed or implied.
- » PRIORITY 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, cost of substitute products, claims by third parties, or other similar costs. In no case will PRIORITY's liability; arising from, or in any way related to the Services provided under this Agreement exceed the amount of the fees earned by PRIORITY for 12 months of service.

## 21. PAYMENT FOR SERVICES

- » PRIORITY charges for services rendered to the Company under this Agreement shall be computed in accordance with the ACH Services Approval Form. PRIORITY 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 Billing Account. If a Debit for PRIORITY's fees is returned or uncollectible for a period of three days after its transmittal, then PRIORITY 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.

## 22. AMENDMENTS

- » From time to time PRIORITY may amend any of the terms and conditions contained in this Agreement, including, without limitation, any cut-off time, any business day, and any part of the Appendixes attached hereto. Such amendments shall become effective upon receipt of notice by Company or such later date as may be stated in PRIORITY's notice to Company.



## 23. TERMINATION

- » 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.
- » Termination for Cause. PRIORITY 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 PRIORITY'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) PRIORITY'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 PRIORITY's specifications, (viii) the ODFI is required by the Agencies or other state or federal regulatory bodies to terminate its contractual relationship with PRIORITY.
- » Termination Notice Requirement and Liquidated Damages. If the Company terminates this Agreement without the required 30-days written notice, the Company authorizes PRIORITY to debit the Settlement Account (or, if applicable, the Company's Reserve Account) for an amount that constitutes liquidated damages, and not a penalty. The liquidated damages amount shall be equal to one month's average billing determined with reference to Company's billing for the 12-month period immediately preceding a termination without required notice. In the event that a termination without the required 30-days written notice occurs within the first year of the Agreement, then "one month's average billing", for liquidated damages purposes, will be determined with reference to all full month(s) in which the ACH Services were provided under the Agreement prior to such termination without notice.

## 24. MISCELLANEOUS

- » 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.
- » Tapes and Records. All magnetic tapes and related records that PRIORITY uses in rendering services hereunder shall be and remain its property. Upon termination of this Agreement, PRIORITY shall, at the Company's request and expense, make available information contained in such tapes or records then on hand.
- » Assignment. This Agreement is binding upon and shall inure to the benefit of the legal successors and assigns of the Company and PRIORITY, 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 written consent of PRIORITY. Any request to assign the Agreement must be made in writing at least sixty (60) days prior to the desired date of such assignment.
- » Entire Agreement. This Agreement, together with these Terms and Conditions, and including the ACH Services Approval Form, and Personal Guarantee (if applicable) Company Authorization, and any applicable schedules or exhibits to any of the aforementioned documents, 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.
- » 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.
- » 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 laws of the United States and the State of Tennessee.
- » 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 PRIORITY and the Company, the parties (i) agree that any such action may be commenced only in a court of competent subject-matter jurisdiction in Fulton County, State of Georgia, (ii) consent to venue and personal jurisdiction in such a court, and (iii) waive any defense of lack of venue or personal jurisdiction, or insufficiency of service of process in any such suit, action, or proceeding. The parties further 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 the ACH Services Approval Form attached hereto.
- » Attorney's Fees. The prevailing party in any legal action regarding the enforcement, interpretation, or violation of this Agreement shall be entitled to recover its expenses, court costs, and attorney's fees from the other.



- » 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 legal, valid and enforceable provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible.
- » 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.
- » 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 the ACH Services Approval Form. Failure or refusal of a party to accept receipt of a notice or other communication hereunder shall in no manner invalidate the notice.
- » 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.

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