

## ACH APPLICATION INTRODUCTION

Welcome to TELEDRAFT, Inc. We look forward to being of service to you. These instructions are for the purpose of assisting you in completing the TELEDRAFT Application for ACH Origination. We appreciate your time in completing this application.

### APPLICATION TIPS

- ✓ This application is available in a writable pdf electronic file at <http://www.teledraft.com>. If filling out a paper copy of the form, please make your application as clear and legible as possible.
- ✓ **Please pay careful attention to the required documents that must be submitted with your application. Your application cannot be processed until all applicable documents have been provided.** We highly recommend imaging all documents and submitting them via email as opposed to fax. Faxed applications and documents, specifically the Photo ID's often times are not legible.
- ✓ Please ensure that the name of the entity or business on the application (either the legal name or DBA) is the same exact name that appears on the Articles of Incorporation, Voided Check, and Bank Statements.
- ✓ Please sign the ACH Processing Agreement on page 10.
- ✓ The typical application processing time is two (2) business days from receipt of **complete** application (including all required documents) to Merchant account activation.
- ✓ Based upon the nature of your business, Teledraft Underwriting/Risk Management may require additional documentation prior to approval for account activation. In this case please allow additional time for application processing.
- ✓ Read the ACH Processing Agreement in its entirety.
- ✓ Include ALL pages of this application in your returned package.

If you have any questions in regard to your application, our Customer Service hours are 7:30 AM to 4:30 PM **Mountain Standard Time**. You can reach us at 800-848-5826 or at [applications@teledraft.com](mailto:applications@teledraft.com).

### TYPICAL SERVICE CONFIGURATION

The typical merchant account will be configured as follows:

- Net Settlement; Processing fees are deducted from the merchant settlement
- Transactions received by **4:00 PM Mountain Standard Time** will be submitted to the Federal Reserve for Clearing that day making the "Effective Date" of the transaction the following banking day
- Credits or Electronic Funds Transfer payments are submitted to the Federal Reserve for clearing the same day they are received by the Teledraft System such that the funds are available to the recipient the next banking day.
- Credit Items or Returned Items received by the Teledraft System in a given day are totaled and an off-setting debit will be initiated that day to the merchant bank account.

Options to include Gross Settlement (processing fees are billed to the merchant at the conclusion of the month), Next Day Settlement (funds from transactions received in a given banking day are available funds in the merchant bank account the following banking day).

Based upon the nature of your business, modifications to the Typical Service Configuration may be required to include extended settlement times, credits and returns debited out of pending settlement funds and possible retention of reserves.

Training on the use of the Teledraft system is available to you at no cost once your account is activated.

*Final account terms will be communicated to you upon account activation.*



| BUSINESS BANK INFORMATION (PROVIDE COPIES OF TWO (2) RECENT BANK STATEMENTS AND ONE (1) VOIDED CHECK)                           |                  |
|---|------------------|
| BENEFICIARY BANK NAME:  | PHONE NUMBER:    |
| STREET ADDRESS:   | CITY, STATE, ZIP |
| ABA ROUTING NUMBER (should be 9 digits):  | ACCOUNT NUMBER:  |
| NAME ON ACCOUNT (Must match name on bank statements and checks as well as name on merchant information section of application): |                  |

| PRINCIPAL INFORMATION (PROVIDE LEGIBLE COPY OF DRIVERS LICENSE FOR EACH PRINCIPAL)                                      |   |  |   |
|---|---|--|---|
| PRINCIPAL 1 NAME: FIRST, LAST, MI   |   | PRINCIPAL 2 NAME: FIRST, LAST, MI  |   |
| PRINCIPAL 1 TITLE:  |   | PRINCIPAL 2 TITLE:   |   |
| HOME STREET ADDRESS:  |   | HOME STREET ADDRESS:   |   |
| CITY, STATE, ZIP:   | RENT <input type="checkbox"/><br>OWN <input type="checkbox"/> | CITY, STATE, ZIP:  | RENT <input type="checkbox"/><br>OWN <input type="checkbox"/> |
| HOME PHONE NUMBER:  |   | HOME PHONE NUMBER:   |   |
| EMAIL:  |   | EMAIL:   |   |
| SOCIAL SECURITY NUMBER:   | DOB:  | SOCIAL SECURITY NUMBER:  | DOB:  |
| DRIVER LICENSE NUMBER / STATE:  |   | DRIVER LICENSE NUMBER / STATE:   |   |
| IF ADDITIONAL INFORMATION REQUIRED:<br><input type="checkbox"/> CONTACT MERCHANT <input type="checkbox"/> CONTACT AGENT |   | PREFERRED CONTACT METHOD:<br><input type="checkbox"/> PHONE <input type="checkbox"/> EMAIL |   |
| PRIMARY CONTACT (PROVIDE NAME, EMAIL, PHONE NUMBER):  |   |  |   |

| MERCHANT BUSINESS PRACTICE ADDENDUM   |
|---|
| PLEASE DESCRIBE IN DETAIL THE PRODUCT(S) AND/OR SERVICE(S) THAT YOU MARKET:   |
| HOW DO YOU GENERATE/ ADVERTISE/ SOLICIT BUSINESS?   |
| HOW DOES THE CUSTOMER ORDER YOUR PRODUCT?   |
| DO YOU USE A THIRD PARTY FULFILLER (A third party who produces and/or stores your product)? If yes, list Name and Address; List address of where inventory is located.  |
| WHAT IS YOUR RETURN/REFUND POLICY?  |
| DO YOU PERFORM RECURRING BILLING? <input type="checkbox"/> YES <input type="checkbox"/> NO    If yes, what is the frequency?<br><input type="checkbox"/> Weekly <input type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually <input type="checkbox"/> Other_____ |
| SAMPLES OF MARKETING MATERIAL SUBMITTED? <input type="checkbox"/> YES <input type="checkbox"/> NO   |

Please Be Sure to Include:

- \_\_\_ Voided Check from account to be used for settlement (or letter from bank);
- \_\_\_ Last 2 months Bank Statements from settlement account;
- \_\_\_ Copy of Article of Incorporation or license;
- \_\_\_ Last 2 months Statements from current ACH processing (if applicable);
- \_\_\_ Signatures, 2 locations, page 10:
  - Authorizations and Representations
  - Personal Guarantee
- \_\_\_ All Pages of application

**NOTE:** Teledraft may request additional documentation



## Authorizations and Representations

- 1.) This complete and legible ten (10) page Merchant Application for ACH Origination, Teledraft ACH Processing Agreement and Merchant Fee Schedule serves as the entire "Agreement" between Teledraft, Bank and the Merchant named herein. Merchant acknowledges that this document has been provided to the applying entity and Merchant agrees to be bound by all governing terms and conditions contained herein, effective as of date of signature. It is understood that no strikeouts, interlineations, additions or modification to this preprinted Merchant Application for ACH Origination and ACH Processing Agreement may be made and that this "Agreement" may be transmitted to or from Teledraft and/or retained electronically by Teledraft, which will constitute an original. Merchant acknowledges that they will not receive a countersigned agreement from TELEDRAFT unless such is requested by the merchant in writing.
- 2.) The information provided herein is provided for the sole purpose of establishing ACH origination privileges and utilized confidentially and exclusively by Teledraft and its sponsoring financial institutions in order to determine eligibility. Merchant agrees that all the information provided herein is truthful and accurate.
- 3.) Corporate and personal credit and criminal background inquiries on both the legal entity contracting for payment services with Teledraft and the designated Principals of that entity are required for all private corporations and certain not for profit organizations (501 C-3 Tax Entities). The objective of these inquiries is to confirm that the entity and principals meet Teledraft's qualifications to originate Automated Clearing House (ACH) debit and credit transactions and to comply with Teledraft's and its affiliated bank's OFAC (Office of Foreign Asset Control) and KYC (Know Your Customer) requirements. All inquiries and information is for the sole purpose of determining merchant qualifications, to comply with Federal Regulations and act in concert with payments and financial services industry "best practices". The acquisition of all such information shall be in strict compliance with the Fair Credit Reporting Act (FRCA) and Bank Secrecy Act (BSA).

By signing this "Agreement", the principal(s) of the applying entity and as an authorized officer of such, hereby authorizes Teledraft to conduct the credit and background inquiries for the above stated purposes.

- 4.) Merchant authorizes Teledraft Inc. to collect fees and charges via an electronic ACH (Automated Clearing House) debit from the bank account(s) indicated herein on a periodic basis as they become due and payable, and signer(s) attests to be a duly authorized signatory on the bank account indicated for such transactions.
- 5.) Signer(s) asserts that he or she is a duly authorized officer or representative of Merchant.

### MERCHANT:

Principal #1 Signature: \_\_\_\_\_

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

Principal #2 Signature: \_\_\_\_\_

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

### FOR TELEDRAFT USE ONLY

#### BANK:

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

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

#### TELEDRAFT:

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

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

## Personal Guarantee

I/ We hereby guarantee to Teledraft, Inc., its successors and assigns, the full, prompt, and complete performance of Merchant and all of Merchant's obligations under the Merchant Application for ACH Origination and Teledraft ACH Processing Agreement ("Agreement"), including but not limited to all monetary obligations arising out of Merchant's performance or non-performance under the "Agreement", whether arising before or after termination of the "Agreement". This guaranty shall not be discharged or otherwise affected by any waiver, indulgence, compromise, settlement, extension of credit, or variation of terms of the "Agreement", unless specifically discharged or amended. I/We understand that my/our obligations are independent of Merchant obligations. I/We understand that I/we have no right to enforce a remedy which Teledraft, Inc. now has, or may later have, against Merchant or to participate in security now or later held by Teledraft, Inc. I/We hereby waive any notice of acceptance of this guaranty, notice of nonpayment or nonperformance of any provision of the "Agreement" by Merchant, and all other history, business relationships, and employment information. I/We have read, understand, and agree to be bound by the Terms and Conditions provided to the Merchant and those terms and conditions contained in the Merchant Application for ACH Origination and Teledraft ACH Processing Agreement ("Agreement").

\_\_\_\_\_  
Signature of Guarantor, an individual

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Guarantor, an individual

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

## Authorization of ACH Payments

Regulations governing origination of an ACH debit payment require that the Originator (You the Merchant) have and retain evidence that the Payer duly authorized the payment. This proof of authorization can be in the form of a.) A written purchase, service, membership or subscription agreement signed by the Payer, b.) A Voice recording verifying a verbal authorization, c.) An email confirmation sent to the Payer prior to the effective date of the debit, d.) A digital copy of the Payer and Payment details supplied over the internet by the Payer indicating authorization when the transaction is initiated online.

In the event of a claim by a Payer that they did not authorize an ACH debit originated by you TELEDRAFT may require that we retrieve from you one of the above Proof of Authorizations. YOU MUST BE ABLE TO PROVIDE THIS UPON REQUEST BY TELEDRAFT within 7 business days. Failure to provide a Proof of Authorization may result in termination of your ACH Merchant Account and is considered to be a material breach of the ACH Processing Agreement.

I/We agree to insure that valid Proof of Authorizations are acquired from Payers prior to the initiation of an ACH item and that I/We shall not intentionally or knowingly originate an ACH debit item utilizing the TELEDRAFT System wherein authorization from the Payer was not provided. Furthermore, I/We agree to maintain any and all Proof of Authorizations for a period of 2 (Two) years from the date of the transaction and provide such to TELEDRAFT upon demand.

\_\_\_\_\_  
Principal One Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Principal Two Printed Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# ACH Processing Agreement

This ACH Processing Agreement is part of the application and is effective upon acceptance by TELEDRAFT and upon the "Merchant" sending the first transaction(s) (the "Effective Date". This ACH Processing Agreement is between TELEDRAFT, Inc., a Delaware Corporation (hereinafter "TELEDRAFT") and Merchant with regard to Merchant's use of the TELEDRAFT, Inc. Payment Services.

## Definitions.

"TELEDRAFT Payment Services or TPS" means the activities, processes and services provided in support of the processing of electronic payments in the form of ACH transactions (Payments initiated through the Automated Clearing House of the Federal Reserve) utilizing the Internet-based payment system developed and licensed by TELEDRAFT that Merchant shall utilize to enable Merchant to facilitate the receipt or transfer of funds.

"Business Day" means Monday through Friday except National and Banking holidays.

"ACH" means the Automated Clearing House of the Federal Reserve

"Unauthorized ACH Return" means Any ACH item which is returned designated with the following return codes: R5, R6, R7, R10, R29, R51 wherein the receiver (Payer) claims that such payment was not authorized by them or that they have revoked any prior authorization.

"ACH Warranty" means the warranty which TELEDRAFT and its originating Banks make to the Receiving Banks that an ACH Payment is legitimate, duly authorized and not of a fraudulent or inappropriate nature.

"Goods" means goods and/or services for which payment is being received by Merchant utilizing the TPS Services.

"Integrated Product" means a Merchant offering (such as on a Merchant Web Site) that has been integrated with the Software and any derivative works, for the sole and limited purpose of incorporating the TPS as an available feature of the Merchant offering.

"Merchant Administrator" is the person or persons designated by Merchant who will have access to, and full rights to change Merchant account information. The Merchant Administrator may change from time to time upon prior written notice to TELEDRAFT.

"Merchant System" means any World Wide Web page(s) or site(s) (whether located on Merchant's or a third party's servers) operated or maintained by or on behalf of Merchant or any Web Services or Software Application from which Merchant may initiate payments through the TPS.

"TELEDRAFT Interfaces" or "Software" means the protocols, software components and other interfaces and software that permit data transfers between TELEDRAFT and Merchant for the purpose of fulfilling the product, technical and functional specifications of the Integrated Product.

"TPS Payment" means any payment to Merchant or any transfer of funds initiated by Merchant made through the TPS. TPS Payments shall be denominated in U.S. dollars.

"TPS Transaction" means any TPS Sale, Credit, Funds Transfer, Payment or Returned Item (as defined herein.)

## 1. Merchant Account and Underwriting Procedures

Merchant has or will establish a commercial checking account (Merchant Bank Account) with a depository financial institution which can accept ACH debit or credit transactions and will maintain such account for settlement and billing purposes associated with the

processing of payments under this ACH Processing Agreement. Merchant shall retain adequate balances in this Bank Account for the purpose of paying ACH returns, reversals, and other fees as they become due and payable to TELEDRAFT. Merchant shall reimburse TELEDRAFT for any costs or expenses incurred as a result of insufficient balances in the Merchant Bank Account or any service fees assessed herein to Merchant by TELEDRAFT as a penalty for a failed billing, collection or settlement attempt. Merchant acknowledges that the actions of the Merchant Administrator will be deemed actions by Merchant hereunder, and Merchant accepts full responsibility and liability for such acts and/or omissions of said Merchant Administrator. TELEDRAFT reserves the right to put various Merchant transaction settlement limits in place if it determines (in TELEDRAFT's sole discretion) that such limits are necessary.

Merchant understands that a consumer report of each of the officers, directors, partners, proprietors, and/or owners may be requested from a Consumer Reporting Agency. A Consumer Report is a routine report on credit worthiness, frequently used by creditors. If Merchant is approved for any payment processing service, subsequent Consumer Reports may be required or used in connection with the maintenance, updating, renewal or extension of such services. Merchant agrees that all business reference, including banks, may release any and all credit and financial information to TELEDRAFT. Merchant acknowledges and agrees that the information provided pursuant to this ACH Processing Agreement and other relevant credit data, is being supplied to TELEDRAFT and may be used as set forth herein. If Merchant's application for ACH Processing Services is denied, Merchant has the right to a written statement of the specific reason for the denial. To obtain the statement, Merchant shall contact the credit initiation department at TELEDRAFT, 4625 S. Wendler Dr. Ste. 204 Tempe, AZ 85282 602 454-9575 within sixty (60) days from the date of notification of TELEDRAFT's decision to decline Merchant Application. TELEDRAFT will send a written statement of reason for the denial within thirty (30) days of receiving a request.

## 2. Fees and Payments

Should any fees for TPS services or the amount of any returned ACH items be due to TELEDRAFT, Merchant agrees to pay to TELEDRAFT these fees and costs immediately upon demand.

A charge of 1½% per month or the highest amount permitted by law, whichever is lower, shall be added to the outstanding balance of any account that is thirty (30) days or more delinquent. TELEDRAFT reserves the right to suspend its service and obligations to Merchant during any period in which Merchant's account is delinquent. In the event Merchant actions are determined to expose TELEDRAFT to reputational, regulatory or financial risk, TELEDRAFT may suspend or hold any funds to be paid to Merchant for any period of time if deemed necessary by TELEDRAFT in its sole discretion, and TELEDRAFT may offset any indebtedness of Merchant to TELEDRAFT against any such funds, reimburse receiving banks for any violation of the ACH Warranty, or issue refunds to Payers where appropriate. It is acknowledged that any payment to Merchant hereunder is provisional and may be revoked upon receipt of an Unauthorized ACH Return or any other ACH Return or if there is reasonable suspicion on TELEDRAFT's behalf that a TPS sale is not duly authorized by the Payer or is the result of fraudulent or illegal activities or inappropriate actions of Merchant which could expose TELEDRAFT to subsequent liabilities and risks either regulatory, financial or reputational.

Merchant is solely responsible and liable for any and all applicable federal, state and/or local sales, use, excise or similar taxes in connection with the sale or distribution of Goods or provision of services to customers through the TPS and any services provided by

TELEDRAFT hereunder (other than taxes on TELEDRAFT's income).

### 3. Settlement

For TPS Payments processed by TELEDRAFT, TELEDRAFT or its Agent will, on behalf of Merchant, initiate ACH entries to Merchant's designated Bank Account and initiate debit or credit entries from customer's accounts as authorized by each customer and as directed by Merchant by and through its Merchant Administrator and the TPS system. For any amounts due under this ACH Processing Agreement, Merchant authorizes TELEDRAFT to initiate credit entries, debit entries and adjustments to the Merchant Account by ACH or other funds transfer, and authorizes TELEDRAFT to credit or deposit funds to the Merchant Bank Account in accordance with such credit entries and to debit, withdraw and transfer funds from the Merchant Account to TELEDRAFT in accordance with such debit entries and adjustments. This authority shall remain in effect and contained herein, and cannot be terminated by Merchant by its submission to TELEDRAFT of written notice of Merchant's cancellation or termination of such authorization. TELEDRAFT shall not be liable to Merchant for any delays in receipt or transmittal of funds or errors in credit or debit entries caused by third parties, including without limitation the Automated Clearing House, any depository financial institution, or any agent of Merchant.

Merchant agrees to provide TELEDRAFT with the information it requests regarding each of Merchant's TPS Payments. In the event the information that Merchant provides to TELEDRAFT is incomplete and/or incorrect, TELEDRAFT may, in its sole discretion, request additional information from Merchant regarding the TPS Transaction; however at no time is TELEDRAFT under any obligation to seek such additional information and shall not be liable for failing to make such inquiries. Any and all information solicited, received, or otherwise collected from Merchants' customers by Merchant and forwarded to TELEDRAFT, its agents and/or designees under this ACH Processing Agreement is and shall remain the sole property of TELEDRAFT.

### 4. Returned Items and Unauthorized Returns

TELEDRAFT may immediately charge back to Merchant or extract from Merchant Bank Account the face amount of any TPS Payment returned by a receiving bank for any reason to include those ACH reason codes which designate a payment as not being approved or authorized by the Payer (an "Unauthorized Return"). TELEDRAFT shall have the right at any time to charge Merchant for such amounts or to deduct such amounts from any funds payable to Merchant, or any account of Merchant (including, without limitation, the Merchant Bank Account), without notice in any situation relating to such TPS Sale, including, but not limited to, circumstances where (i) Goods or services are not delivered or performed or are alleged not to have been delivered or performed for or to the customer or the recipient designated by the customer; (ii) Goods are returned to Merchant; (iii) Merchant has engaged in, or TELEDRAFT reasonably believes that Merchant has engaged in, an any type of dishonesty, fraud or misrepresentation, (iv) any TPS Sale is returned unpaid to TELEDRAFT by the customer's financial institution for insufficient funds, invalid account status, or for any other reason; (v) any TPS Transaction alleged to have been authorized improperly, or the customer's account is alleged to have been used without the specific authority of such customer, or an authorized user thereof; (vi) a Merchant's customer disputes participating in the transaction, disputes any aspect of the transaction including the sale, quality, or delivery of the Goods, or disputes the performance or quality of services covered by any such TPS Payment and accepted or not accepted by such customer; or (viii) such TPS payment fails to comply with the terms and conditions of this ACH Processing Agreement or fails to comply with state or federal law or the

requirements, rules and regulations of the FTC or NACHA (The National Automated Clearing House Association). In the event TELEDRAFT receives an excessive number of complaints and/or requests for reversal of TPS Payments by Merchant's customers and/or Unauthorized Returns (the excessiveness of which shall be determined solely by TELEDRAFT), TELEDRAFT may suspend or terminate the TPS to Merchant immediately without prior written notice and may, in its sole discretion, retain any and all money it holds on Merchant's account and may debit any of Merchant's Accounts to cover any contemplated shortfall.

### 5. Billing Inquiries and Customer Disputes

Merchant and TELEDRAFT recognize that customers may direct to Merchant or TELEDRAFT inquiries and/or complaints concerning, purchases, unauthorized purchases, deliveries, returns, adjustments, charges, credits, payments, alleged fraud and other matters, some or all of which cannot be properly answered without the full and prompt cooperation of the other party. Merchant agrees to cooperate and to maintain in its own operations high standards of quality and courtesy and full compliance with law and good business practice. Merchant will provide TELEDRAFT, upon request, a copy of its customer dispute, refund and cancellation policies prior to the Effective Date. Merchant shall not change its dispute, refund or cancellation policies without TELEDRAFT's prior written approval.

With respect to any disputes or inquiries concerning the quality of merchandise or service forwarded to Merchant by TELEDRAFT, Merchant shall reply in a timely manner to such disputes or inquiries directly to the customer with a copy to TELEDRAFT within a reasonable period after the date on which TELEDRAFT sends the dispute to the Merchant. If Merchant fails to comply with its dispute, refund or cancellation policies, Merchant will be subject to a reversal of that transaction.

Merchant agrees to cooperate in good faith in any inquiry into any allegations concerning any TPS transactions or other Merchant activities. Merchant further agrees that TELEDRAFT may take any actions it deems necessary, in its sole discretion, to insure that Merchant and its employees, agents and/or designees are complying with this ACH Processing Agreement and all laws, rules and regulations governing the use of the ACH System. Such actions include, but are not limited to, reviewing written authorizations from Payers, reviewing web enabled authorizations or listening to recordings of verbal authorizations and verifications of transactions, being made by Merchant. Furthermore, TELEDRAFT may, upon ten (10) days written advance notice, conduct an onsite audit of Merchant's processes and procedures relative to the acceptance and origination of ACH transactions. If an audit determines that Merchant's processes and procedures are not in accordance with the NACHA rules or other governing regulations, TELEDRAFT, may immediately terminate ACH processing privileges and this agreement.

### 6. Representations and Warranties

Merchant represents and warrants that all Goods or services sold or distributed to customer shall conform to Merchant's own representations and warranties regarding such Goods.

Merchant represents and warrants that it shall not violate any federal, state or local governmental laws, rules and/or regulations related to selling or offering the Goods, including any laws, rules and/or regulations regarding selling over the telephone.

Merchant represents and warrants to TELEDRAFT and Bank that each telephone sale is a legitimate transaction in compliance with all applicable laws and regulations.

Merchant represents and warrants that it or any of its officers, directors, partners, proprietors, owners or principals have not been or are currently not under investigation by any governmental agency. In the event that Merchant becomes aware that it is under investigation, either through direct or indirect means, it will immediately inform TELEDRAFT in writing of the nature of such information.

Merchant represents and warrants that all statements made by Merchant to TELEDRAFT and Bank, including without limitation statements contained in applications, are true and correct. Merchant will immediately notify TELEDRAFT of any changes to any fact previously stated to TELEDRAFT.

#### **7. Laws, Rules and Regulations (Adherence to Laws)**

TELEDRAFT and Merchant will comply with all existing and future rules and regulations (which are incorporated herein by reference) issued by TELEDRAFT for processing of TPS Transactions. TELEDRAFT and Merchant will comply with all applicable state and federal laws, rules and regulations affecting the use of ACH transactions, and Verification Services including without limitation, rules and procedural guidelines established by the Federal Trade Commission (FTC) and other entities or laws which apply to or have regulatory authority or jurisdiction over merchants activities to include but not limited to , the National Automated Clearing House Association (NACHA), the US Federal Reserve, the GLB Act, and the Fair Credit Reporting Act and Notwithstanding the foregoing, Merchant agrees to terminate any preauthorized and/or recurring payment in the event a customer notifies Merchant of such customer's recession of such authorization at least three (3) Business Days prior to the scheduled transfer. Merchant will comply with any and all operating instructions and any amendments thereto that may be provided by TELEDRAFT during the term of this ACH Processing Agreement. Merchant acknowledges and agrees that TELEDRAFT is under no obligation to initiate or carry out any transaction where to do so could violate any local, state, national, or international law or regulation. Without the prior written consent of TELEDRAFT, Merchant will not allow customers to engage in gambling through the TPS on or through the Merchant Web Site, nor will Merchant add a surcharge or other extra fee of any kind to the sales amount when a customer is paying via the TPS. Merchant will not establish any minimum sales amount below which Merchant will not accept payment via the TPS.

Merchant acknowledges and agrees that, even if its business is domiciled in a country outside of the United States, it will adhere to U.S. laws, rules and regulations and be subject to its jurisdiction.

#### **8. Assistance in Litigation and Response to Court Orders and Subpoenas**

If any Merchant's act or omission causes TELEDRAFT to respond to a court order, subpoena or otherwise in litigation, Merchant shall, in addition to its duty to indemnify as set forth in Section 14 below, furnish any such information and assistance to TELEDRAFT as required. In the event that Merchant's conduct in any way results in a court order subpoena or any other process that requires TELEDRAFT to respond, Merchant shall be invoiced and shall pay for all costs and fees related to such response. These fees include, but are not limited to, attorney's fees, accounting fees, hourly costs of TELEDRAFT employees involved, any travel fees, postage and/or courier fees and any other cost or fee incurred. TELEDRAFT shall forward an invoice to Merchant and shall deduct such costs and fees from any Merchant Bank Account. If there are insufficient funds to cover such costs and fees, TELEDRAFT shall be entitled, at their sole option, to deduct such fees from any other Merchant account, to

offset from any pending or future transactions or to invoice Merchant.

#### **9. Term and Termination**

*Term.* This ACH Processing Agreement shall have an initial term of three (3) years and, unless thirty (30) days prior written notice is provided by either party, shall be automatically extended for successive one (1) year terms on the same terms and conditions expressed herein, or as amended by the parties in writing signed by the parties. If Merchant is not in breach of this agreement, Merchant is entitled to terminate this ACH Processing Agreement without penalty at any time during its initial three (3) year term or during any automatically extended successive one (1) year term by providing 30 day advance written notice to TELEDRAFT. TELEDRAFT shall be entitled to terminate this ACH Processing Agreement at any time without cause upon thirty (30) days prior written notice. In the event of a breach of this ACH Processing Agreement, TELEDRAFT may terminate this ACH Processing Agreement immediately without prior notice. Furthermore, TELEDRAFT may terminate this ACH Processing Agreement at any time without notice if Merchant has become inactive, demonstrates improper conduct, is engaged in, or TELEDRAFT reasonably believes that Merchant has engaged in, any type of dishonesty, fraud or misrepresentation in connection with making or processing of TPS Transactions.

*Termination: Survival.* Without limiting TELEDRAFT's right to suspend or terminate this ACH Processing Agreement as set forth herein, if either party defaults in the performance of any of its obligations hereunder, and if any such default is not corrected within thirty (30) days after it receives notice in writing, the non-defaulting party may terminate this ACH Processing Agreement upon ten (10) days prior written notice. However, this ACH Processing Agreement may immediately be terminated by TELEDRAFT (i) upon the institution by Merchant of insolvency, receivership bankruptcy proceedings or any other proceeding for the settlement of its debts that are not dismissed or otherwise resolved in its favor within sixty (60) days thereafter; (ii) upon Merchant's making a general assignment for the benefit of creditors; or (iii) upon Merchant's dissolution or ceasing to conduct business in the ordinary course. In the event of termination or cancellation of this ACH Processing Agreement, sections that by their nature should survive, shall survive and shall continue to apply in accordance with their terms. The termination of this ACH Processing Agreement shall not affect the rights and obligations of the parties with respect to transactions and occurrences that took place prior to the date of termination, except as otherwise provided herein.

#### **10. Intellectual Property**

*Confidentiality of Proprietary Information.* Each party agrees that the terms and conditions of this ACH Processing Agreement will be treated as confidential information. Merchant further understands that certain information vital to the success of TELEDRAFT is considered highly confidential and proprietary in nature, and is not to be shared, disseminated, disclosed, divulged, sold or otherwise made available to any person, firm corporation or entity either during or after this ACH Processing Agreement. Proprietary, confidential information and trade secrets include, but are not limited to, client lists, client information of any kind, price lists, training manuals, lead lists, memorandums, written documentation related to office policies or procedures, information relating in any fashion to any other TELEDRAFT client, methods, processes, compositions, pricing data, sources of supply, financial data, and marketing, production or merchandising systems or places (collectively "Confidential Information"). Merchant understands the sensitive nature of this Confidential Information and expressly agrees that for each breach or threat of breach of his or her promise to keep such Confidential Information confidential, TELEDRAFT shall be entitled to an injunction, without need to post bond, restraining Merchant from

disclosing Confidential Information, or from rendering any service to any person or entity to whom said Confidential Information has been or is threatened to be disclosed. The right to secure an injunction is not exclusive and TELEDRAFT shall be entitled to pursue any other remedies it has against Merchant for a breach or threatened breach of this provision, including but not limited to the recovery of damages from Merchant for lost business and lost opportunity.

*Licenses.* Subject to the terms and conditions herein, TELEDRAFT hereby grants, and Merchant hereby accepts, a non-exclusive, non-transferable license, without right to sublicense, to use the software for the sole and limited purpose of creating and operating the Integrated Product as set forth herein (hereinafter "Software"). TELEDRAFT retains the right to materially redesign, modify, update or upgrade the organization, navigation, structure, branding, features, functionality and look and feel of the TPS at any time without prior notice.

*Ownership in Modifications and Derivative Works.* TELEDRAFT shall own all right, title, and interest in any modifications, derivatives, improvements, enhancements or extensions of or to the Software, including any related intellectual property rights throughout the world, regardless of which party creates such derivative work. Merchant hereby irrevocably transfers, conveys and assigns to TELEDRAFT in perpetuity all right, title, and interest in such derivative works of the Software, including without limitation, all copyrights, including the right to make derivative works and collective works with respect thereto; it being understood, however, that Merchant has, and transfers, no rights with respect to the Merchant Goods (exclusive of the Software and derivative works of the Software). TELEDRAFT will have the exclusive right to apply for or register copyrights and such other proprietary protections as it wishes with respect to the derivative works of the Software. Merchant agrees to execute such documents, render such assistance, and take such other action as TELEDRAFT may reasonably request, at TELEDRAFT's expense, to apply for, register, perfect, confirm, and protect TELEDRAFT's rights in the derivative works of the Software including (without limitation) an assignment of copyright and/or release of any other intellectual property rights associated with the Software or Integrated Product. Without limiting the foregoing, TELEDRAFT will have the exclusive right to commercialize, prepare and sell products based upon, sublicense, prepare derivative works from, or otherwise use or exploit the derivative works of the Software. Merchant hereby waives any and all moral rights, including any right to identification of authorship or limitation on subsequent modification that Merchant (or its employees, agents or consultants) has or may have in any derivative works of the Software. Merchant will not remove, modify, or obscure any copyright or other proprietary notices on the TELEDRAFT materials.

*Trademarks.* Merchant may only use TELEDRAFT's trademarks, trade names, services marks and/or logos (collectively "Trademarks") with TELEDRAFT's prior written approval for each specific use of its Trademark. Nothing herein will grant to Merchant any right, title or interest in Trademarks of TELEDRAFT or any good will arising from use of the TELEDRAFT Trademarks. Merchant agrees not to challenge the validity of or attempts to register any Trademark of the other party, nor will it adopt any derivative or confusingly similar trademarks, brands or marks or create any combination marks with any TELEDRAFT Trademark. If given written approval, Merchant will use the Trademarks only in accordance with TELEDRAFT's trademark usage policies as such may be in effect from time to time and only in accordance with the provision of the terms of this ACH Processing Agreement. If at any time TELEDRAFT believes that the use of its Trademarks by Merchant fails to otherwise comply with the trademark usage guidelines, such party shall so notify the other party in writing. Upon receipt of such notification, Merchant shall immediately initiate steps to conform to the trademark usage

guidelines and shall affect such conformance or cure within fifteen (15) days.

## 11. No Warranty

Merchant acknowledges and agrees that neither TELEDRAFT n has control over the conditions under which Merchant uses the payment processing system, and does not and cannot warrant the results obtained by such use. **TELEDRAFT DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE PROCESSING AND/OR TELEDRAFT'S 'S SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES AGAINST INFRINGEMENT OF THIRD-PARTY RIGHTS OR THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. TELEDRAFT DOES NOT WARRANT THAT OPERATION OF THE PAYMENT PROCESSING SERVICE WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. MERCHANT ACKNOWLEDGES THAT THE PAYMENT PROCESSING SYSTEM IS PROVIDED FOR USE BY MERCHANT "AS IS." MERCHANT FURTHER ACKNOWLEDGES THAT TELEDRAFT BEARS NO RESPONSIBILITY FOR THE MERCHANT WEB SITE(S). MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION FOR PAYMENT IS NEITHER A WARRANTY THAT THE PERSON PRESENTING THE AUTHORIZATION IS THE RIGHTFUL ACCOUNT HOLDER NOR A PROMISE OR GUARANTEE BY TELEDRAFT THAT IT WILL PAY OR ARRANGE FOR PAYMENT TO MERCHANT FOR THE AUTHORIZED TRANSACTION. MERCHANT ACKNOWLEDGES THAT AN AUTHORIZATION DOES NOT PREVENT A SUBSEQUENT REVERSAL OF A PREVIOUSLY AUTHORIZED TRANSACTION PURSUANT TO THIS ACH PROCESSING AGREEMENT.**

## 12. Limitation of Liability

**IN NO EVENT SHALL TELEDRAFT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS ACH PROCESSING AGREEMENT FROM ANY CAUSE, EXCEED THE TOTAL MERCHANT FEES PAID BY MERCHANT TO TELEDRAFT UNDER THIS ACH PROCESSING AGREEMENT FOR THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE DISPUTE AND/OR CAUSE OF ACTION AROSE. IN ADDITION, IN NO EVENT SHALL TELEDRAFT, BANK OR THEIR RESPECTIVE AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF REVENUES OR LOSS OF PROFITS), EVEN IF TELEDRAFT, BANK, THEIR RESPECTIVE AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, UNDER ANY CONTRACTUAL, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY WAY TO THE TRANSACTION, SERVICES AND/OR PRODUCTS, OR ANY OTHER SUBJECT MATTER OF THIS ACH PROCESSING AGREEMENT. MERCHANT SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING SERVICES OR PRODUCTS TO MERCHANT OR ITS CUSTOMERS OR ANY OTHER PERFORMANCE UNDER THIS ACH PROCESSING AGREEMENT. It is agreed that in no event will TELEDRAFT be liable for any claim, loss, billing error, damage, or expense caused by**

TELEDRAFT's performance or failure to perform hereunder that is not reported in writing by Merchant to TELEDRAFT within thirty (30) days of such failure to perform or, in the event of a billing error, within sixty (60) days of the date of the invoice or applicable statement. However, under no circumstances will TELEDRAFT be liable to Merchant for delays in data transmission.

### 13. Indemnity

Merchant agrees to indemnify, defend and hold TELEDRAFT and their respective officers, directors, agents and employees, harmless from and against any liability, claims, demands, costs, loss, damages and/or reasonable attorney's fees incurred or suffered by TELEDRAFT as a result of or arising from Merchant's conduct of its business, any transactions processed under this ACH Processing Agreement, Merchant's breach of any obligations or provisions under this ACH Processing Agreement or Merchant's violation of applicable law, regulation or rule. In the event that TELEDRAFT receives any claim or demand or becomes subject to any suit, proceeding or other action under which a claim of indemnification may be made by TELEDRAFT under this ACH Processing Agreement, TELEDRAFT shall (a) promptly notify Merchant in writing of the claim or legal action; (b) reasonably cooperate with Merchant in the making of any of Merchant's claims or defenses if such cooperation does not conflict with TELEDRAFT's position; and (c) provide information, assist in the resolution of the claim and make available at least one employee or agent who can testify regarding said claims or defenses if such information, and assistance does not conflict with TELEDRAFT's position. Any and all costs for responding to court orders of any type including subpoenas for transactions generated by Merchant or from doing business with Merchant shall be due and payable to TELEDRAFT upon demand. Such costs include but are not limited to attorney's fees, administrative costs and costs for employee time relative to such response. The Merchant shall, upon written notice from TELEDRAFT immediately undertake payment to counsel selected by TELEDRAFT for the defense of any such claim or action. If Merchant wishes to settle any such claim involving TELEDRAFT, Merchant shall obtain TELEDRAFT's prior written approval of such settlement.

### 14. General Provisions

TELEDRAFT reserves the right to amend at any time and from time to time any term or condition of this ACH Processing Agreement including, without limitation, transaction fees by providing Merchant written notice, and such amendments shall be effective thirty (30) days following said notice. If TELEDRAFT so amends this ACH Processing Agreement, Merchant shall have the right to terminate this ACH Processing Agreement if Merchant provides written notice to TELEDRAFT within said thirty (30) day period. TELEDRAFT may use designees to assist in the performance of TELEDRAFT's obligations hereunder and, notwithstanding any other provision of this ACH Processing Agreement, TELEDRAFT may delegate any of its obligations hereunder to such designees. Merchant may not assign or delegate any rights or obligations under this ACH Processing Agreement without TELEDRAFT's prior written approval. Nonperformance by either party will be excused, except Merchant's obligation to pay under this ACH Processing Agreement, to the extent that performance is rendered impossible by any force majeure event and not caused by the gross negligence or willful misconduct of the non-performing party. The relationship of the parties established by this ACH Processing Agreement is that of independent contractors. The relationship of the parties established by this ACH Processing Agreement is that of independent contractors. This ACH Processing Agreement will be governed by and construed under the laws of the State of Arizona without reference to conflict of law principles. The parties agree that

jurisdiction shall exclusively be in either the Superior Court of the State of Arizona or the Federal Court in the State of Arizona and that venue shall be in Maricopa County. This ACH Processing Agreement, together with all exhibits and attachments hereto, sets forth the entire Agreement and understanding of the parties relating to the subject matter herein (other than agreements relating to confidentiality) and merges all prior discussions between them. Except as otherwise specifically provided in this ACH Processing Agreement, no modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by both parties, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default. If any provision in this Agreement is found invalid by a court of competent jurisdiction, such provision will be construed, if feasible, so as to render the provision enforceable, and if no feasible interpretation would save such provision, it will be severed from the remainder of this Agreement.

#### Notice Address for TELEDRAFT:

TELEDRAFT, Inc  
Attn: Al Slaten  
4625 So. Wendler Dr. Suite 204  
Tempe, AZ 85282  
Phone: 602 454-9575  
Fax: 602 454-9576

#### Notice Address for Merchant: As indicated on Application.

**It is Merchant's obligation to advise TELEDRAFT of any change of address for any such notice necessary pursuant to this ACH Processing Agreement.**