



Netcom PaySystem a Division of United eSystems

Netcom Check Services \_InStor BillPay Application \_Agreement

(To Be Completed and Signed By the Merchant)

Submitted By: Agent Name

Agent #

1. BUSINESS PROFILE
Legal Name of Merchant (under which tax returns are filed) Email Address
Doing Business As (if different from legal name) # of Locations
Business Street Address (No P.O. Boxes) City State Zip Business Phone Number
Business Fax Number Customer Service Phone Number Web Site Address
Date Business Established Current Owner Since Ownership Structure (Corp, Partnership, LLC etc)
Federal Tax ID/ State Inc Info Bus. Lic. # & State #s Are You A Telemarketer (If YES circle below) 3rd Party Processor
Yes No Inbound Outbound Yes No

2. OWNERSHIP INFORMATION (Individuals listed must represent at least 50% of ownership unless company is publicly traded. Provide additional sheet if necessary)
Name Title and % of Ownership Starting Date Drivers License # State
Residence Address City State Zip
Rent/Own & How Long? Social Security Number Phone Number Date of Birth
Have you ever filed for protection under U.S. Bankruptcy Laws or are you subject to any current lawsuits or legal settlements? (If yes, please provide discharge information/explanation)
Name Title and % of Ownership Starting Date Drivers License # State
Residence Address City State Zip
Rent/Own & How Long? Social Security Number Phone Number Date of Birth
Have you ever filed for protection under U.S. Bankruptcy Laws or are you subject to any current lawsuits or legal settlements? (If yes, please provide discharge information/explanation)

3. BUSINESS OPERATION
Describe specific Products or Services offered by company and how ACH services will be used in connection with these Products or Services. Please provide complete details to include each web site address, each phone number for inbound call centers, and each phone number utilized for Merchant service/consumer complaints. If any Products or Services are sold telephonically, please provide a copy of the script for each Product or Service being offered. Attach additional sheet or other information if needed (e.g. marketing materials, business plan, etc.).
Depository Checking Information Please attach a voided check
ABA# Bank Account # Bank Name Contact/Phone #

3. BUSINESS OPERATON (CONTINUED)
How will the Products or services be advertised or promoted?
How does Customer purchase the Product or Service from you? (check all that apply)
Who provides customer support? Merchant Staff Third Party (explain)
Describe your refund policy:
Describe your policies and procedures for handling and or responding to customer complaints:



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### 4. AUTHORIZATIONS AND CUSTOMER AUTHENTICATION

Which SEC codes will be used?  PPD \_\_\_\_%  CCD \_\_\_\_%  POS \_\_\_\_%  ARC \_\_\_\_%  RCK \_\_\_\_%  WEB \_\_\_\_%  TEL. \_\_\_\_%

What percentage of the transactions originated will be used to debit customers' accounts? \_\_\_\_%

What is the dollar amount of monthly transactions originated which will be used to debit customers' accounts? \$\_\_\_\_\_

How are the authorizations received and how are customer identities authenticated? **FOR EACH SEC CODE USED, PLEASE ATTACH SAMPLE AUTHORIZATION AND SPECIFIC PROCEDURES FOLLOWED TO AUTHENTICATE THE OWNER OF THE ACCOUNT TO BE DEBITED.**

### 5. ACH TRANSACTION SPECIFICATIONS AND PROCESSING HISTORY InStor BillPay

# of ACH Trans/MO	AVG Monthly Sales \$s	AVG Transaction Size	# Returns /Mo	Current Vendor	# Transactions
Process each Day, Week ,Month	# Batches a Month	non-US Company Origination? Yes NO	Total Return \$s /Mo	Money Orders	
Current ACH Processor?	Have you ever been terminated from an ACH processor?		Signage Language		
			English	Spanish	Both No Signs (Circle)

### 6. TRADE REFERENCES

Business Name	Address	Phone Number	Account Number
Business Name	Address	Phone Number	Account Number
Business Name	Address	Phone Number	Account Number

### 7. SIGNATURE OF MERCHANT

THE UNDERSIGNED CERTIFY AND WARRANT THAT I/WE ARE AN AUTHORIZED REPRESENTATIVE OF MERCHANT, AND ALL INFORMATION PROVIDED IN THIS APPLICATION IS TRUE AND CORRECT. I/WE UNDERSTAND THAT UNITED ESYSTEMS, INC. AND/OR ITS AFFILIATES (UNITED CHECK SERVICES, LLC, and NETCOM DATA SOUTHERN CORP.), HEREINAFTER COLLECTIVELY REFERRED TO AS "COMPANY" WILL FURNISH THIS INFORMATION TO ITS PROCESSING INSTUTIONS AND RETAIN THIS APPLICATION WHETHER OR NOT IT IS APPROVED, AND I/WE AUTHORIZE COMPANY TO PERIODICALLY CHECK AND/OR UPDATE MY/OUR INDIVIDUAL CREDIT AND/OR OBTAIN OTHER INVESTIGATIVE REPORTS IT DEEMS NECESSARY AND TO ANSWER ALL QUESTIONS ABOUT ITS CREDIT/DEPOSIT EXPERIENCE WITH ME/US. WE AUTHORIZE COMPANY TO PERIODICALLY CHECK OUR COMPANY AND/OR OWNERS' INFORMATION. WE ALSO UNDERSTAND COMPANY MAY TERMINATE SERVICE AND HAS LEGAL RECOURSE AGAINST US FOR FALSE OR MISLEADING INFORMATION PROVIDED ABOVE.

"I HAVE READ, UNDERSTAND, AND AGREE, TO BE BOUND TO ALL OF THE PRECEDING AND FOREGOING TERMS AND CONDITIONS WITH THIS APPLICATION/ AGREEMENT AS EVIDENCED BY MY/OUR SIGNATURES BELOW."

Authorized Signature:	Title:	Date:	<b>For Company Use</b>
Authorized Signature:	Title:	Date:	Approved By: _____ Date: ___/___/___



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## TERMS AND CONDITIONS

This Agreement is made and entered into as of the date approved by an authorized representative of Company, as indicated above, by and between Company, having its principal place of business located at 15431 O'Neal Road, Gulfport, MS 39503 and \_\_\_\_\_ ("Merchant") having its principal place of business at \_\_\_\_\_, Company and Merchant are collectively referred to as "Parties".

WHEREAS, Company is in the business of providing services related to:

- Automated Clearing House ("ACH") debit and/or credit transactions ("ACH");
- Check transactions converted into electronic imaged documents known as Image Replacement Documents ("IRD's") pursuant to the Check Clearing for the 21<sup>st</sup> Century Act ("Check 21");
- Check Recovery Services for dishonored Check 21 and/or ACH transactions, either through its own processing systems or in conjunction with its check collection service vendors;
- Electronic account verification services ("AV") by accessing various automated teller machine networks within the United States;
- Age, Identification Verification from LexisNexis marketed by IDCheX a product of United eSystems.
- InStor BillPay a product owned by United eSystems with support from Vista Bank under the Empasys brand.

Which are collectively referred to as the "Services"; and

WHEREAS, for a fee, Company provides the Services to clients, and in conjunction with providing the Services, Company will provide Merchant with confidential information regarding how Company processes the Services, which will include not only processes and procedures, but also proprietary software and vendor contacts, and

WHEREAS, the Merchant desires to utilize such services, and in using these services is agreeable to being bound by those confidentiality provisions set forth herein.

NOW THEREFORE, for the good and valuable consideration, the sufficiency of which the parties acknowledge through their signatures hereunder, the Parties agree as follows:

### 1. Term

The initial term of this Agreement will be three (3) years and will be automatically renewable for additional periods of one (1) year unless Merchant provides written notification to Company no later than ninety (90) days prior to the initial or renewal expiration date that it no longer intends to continue under this Agreement. Merchant may cancel service with Company in writing within the first 45 days of this Agreement Term, and will not be further obligated under this Agreement for any additional charges, including maintenance charges, beyond the initial 45 day period. In any event, Merchant will be charged for services actually rendered during the initial 45 day period at the rates provided in the fee schedule. Either party may terminate this Agreement (a) in the event of a material breach by the other that continues for a period extending beyond ten (10) days of notice of such breach from the other party, (b) in the event the other party files a petition in bankruptcy or for similar relief, (c) in the event the other party has filed against it a petition in bankruptcy or for similar relief, or has a receiver appointed for it or its business, and such petition or receivership is not dismissed or terminated within thirty (30) days of filing, (d) if the other ceases to conduct business in the ordinary course or (e) in accordance with the provisions of Section 7.

### 2. Billing and Payment

- A. Merchant agrees to pay Company for the Services rendered under the terms and at the rates, fees and charges set forth in Attachment A attached hereto and incorporated herein or as the Parties may otherwise agree in writing.
- B. All fees shall be paid by Merchant via ACH debit in immediately available U.S. Funds, or withheld from Merchant settlements, so that payment is received by Company no later than one business day from the date such ACH debit, or normal settlement is originated by Company, hereinafter referred to as the "Due Date". The Merchant agrees to pay and authorizes Company to collect any fees described above, or any other amounts payable under this Agreement, via ACH debit against the Merchant's ACH Transfer Account provided below. Merchant further agrees that such authorization shall remain in effect throughout the term of this Agreement and for however long after termination of the Agreement as Company continues receiving payments on behalf of Merchant. Any fees or other amounts collected that are not properly disputed under Section 3 hereof and not paid by the Due Date shall bear late payment fees at a rate of 1-1/2% percent per month (or such lower amount as may be required by law) until paid. Further, Company may immediately suspend processing services if any amount not properly disputed under Section 3 hereof is not paid by its Due Date.

Merchant's ACH Transfer Account:

Bank Name: \_\_\_\_\_  
Bank ABA: \_\_\_\_\_  
Account Name: \_\_\_\_\_  
Account Number: \_\_\_\_\_



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- C. Merchant's contact information for purposes of notification under this Section 2 is:  
Contact Name: \_\_\_\_\_  
Cell Number: \_\_\_\_\_  
Alternate Contact numbers: \_\_\_\_\_  
\_\_\_\_\_  
Contact Email: \_\_\_\_\_  
Contact Phone: \_\_\_\_\_  
Contact Phone for Merchants: \_\_\_\_\_  
Contact Fax: \_\_\_\_\_  
Note: Merchant may change the contact information upon written notice to Company.

- D. Merchant grants Company the right to offset against Merchant Settlements any amounts due that Merchant has failed to pay to Company, or amounts past due for services rendered to Merchant by Company's vendors for which Company is liable, within the required period for payment and which have not been validly disputed. Disputed amounts shall be paid when the dispute has been resolved in accordance with the dispute resolution provisions contained in this Agreement.

### **3. Billing Disputes**

Merchant shall provide written notice to Company of any disputed amount no later than ten (10) days after the Due Date. The notice of the dispute must include sufficient detail regarding the dispute (including, without limitation, date, transaction/reference number, dispute period, amount in dispute, reason for dispute and supporting documentation). Company will use reasonable efforts to resolve and communicate its resolution of any dispute filed within thirty (30) days of the dispute notice. If the dispute is resolved in Company's favor, any amounts to be paid by Merchant shall be immediately due and payable. Notwithstanding anything herein to the contrary, Merchant shall not withhold any disputed amounts while its account with Company is delinquent.

### **4. Non-Compete**

In entering into this Agreement with Company, Merchant acknowledges that the processes, procedures, vendor lists, operational information and software provided by Company to Merchant that is necessary for Merchant to utilize the ACH and automatic debit system are the proprietary materials of Company both during the Agreement term and for a period of five (5) years thereafter.

Merchant further acknowledges that it has been apprised by Company of the substantial capital investment Company has made in developing both the software and processes and procedures required to operate the ACH and automatic debit system and Services (collectively, "Information"). As an inducement to cause Company to provide Merchant with this Information, in addition to the fees charged for the service, Merchant agrees that during the term of the Agreement or for a period of five (5) years from the conclusion of the Agreement it will not individually (or through a third person) in partnership with, through investment in a corporation, LLC, partnership, sole proprietorship or other business entity, through a subsidiary or affiliate, compete with or come into competition with Company or in any way profit from the unauthorized use of Company's proprietary materials for providing ACH, automatic debiting or services to the public in general and the service business sector specifically.

Since Company provides the Services on a nationwide basis, Merchant agrees that it is reasonable and it does not object to a nationwide limitation on its ability to compete in the ACH, automatic debiting and Service business. Merchant further agrees that if it were to challenge the geographic limitation in court and such challenge is successful, Merchant will agree to contractually change to the geographic limitation of this non-compete to the region or section of the country which represents the broadest geographic area allowable under the courts ruling and any such change will be viewed as a modification of this Agreement and will not cause this Agreement to be either terminable or considered a nullity.

In the event that Merchant violates any of the provisions of this non-compete, Merchant understands that monetary damages in and of itself would be insufficient to compensate Company. Therefore, in addition to seeking monetary damages, Company, upon discovery of an actual or attempted violation of this provision, will be authorized to seek and obtain an injunction preventing Merchant from violating this non-compete provision or utilizing, or in any way profiting from, the unauthorized use of Company's proprietary materials.

### **5. Confidentiality**

Each party agrees that all information furnished to it by the other Party, or to which it has access under this Agreement, shall be deemed the confidential and proprietary information or trade secrets (collectively referred to as "Proprietary Information") of the Disclosing Party and shall remain the sole and exclusive property of the Disclosing Party (the Party furnishing the Proprietary Information referred to as the "Disclosing Party" and the other Party referred to as the "Receiving Party). Each Party shall treat the Proprietary Information of the other and the contents of this Agreement in a confidential manner and, except to the extent necessary in connection with the performance of its obligations under this Agreement or as otherwise provided herein, neither Party may directly or indirectly disclose the same to anyone other than its employees on a need to know basis and who agree to be bound by the terms of this Section, without the written consent of the Disclosing Party.

The confidentiality obligations of this Section do not apply to any portion of the Proprietary Information which is (i) public knowledge or becomes public knowledge through no fault of the Receiving Party; (ii) in the lawful possession of Receiving Party prior to disclosure to it by the Disclosing Party (as confirmed by the Receiving Party's records); (iii) disclosed to the Receiving Party without restriction on disclosure by a person who has the lawful right to disclose the information; or (iv) disclosed pursuant to the lawful requirements or formal request of a governmental agency. If the Receiving Party is requested or legally compelled by a governmental agency to disclose any of the Proprietary Information of the Disclosing Party, the Receiving Party agrees that it will provide the



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Disclosing Party with prompt written notice of such requests so that the Disclosing Party has the opportunity to pursue its legal and equitable remedies regarding potential disclosure.

Each Party acknowledges that its breach or threatened breach of this Section may cause the Disclosing Party irreparable harm, which would not be adequately compensated by monetary damages. Accordingly, in the event of any such breach or threatened breach, the Receiving Party agrees that equitable relief, including temporary or permanent injunctions, is an available remedy in addition to any legal remedies to which the Non-Disclosing Party may be entitled.

Neither Party may use the name, logo, trade name, service marks, trade marks, or printed materials of the other Party, in any promotional or advertising material, statement, document, press release or broadcast without the prior express written consent of the other Party, which consent may be granted or withheld at the other Party's sole discretion.

Notwithstanding anything to the contrary set forth herein or in any other written Agreement to which the Parties hereto are parties, or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to any transaction arising hereunder shall not apply to the federal tax structure or federal tax treatment of any such transaction, and each Party hereto (and any employee, representative, or agent of a Party) may disclose to any and all persons, without limitation of any kind, the federal tax structure and federal tax treatment of that transaction. The preceding sentence is intended to cause each transaction arising hereunder to be treated as not having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Internal Revenue Code of 1986, as amended, and shall be construed in a manner consistent with such purpose. In addition, each Party hereto acknowledges that it has no proprietary or exclusive rights to the federal tax structure of any transaction arising under any agreement between the Parties or any federal tax matter or federal tax idea related to any such transaction.

### **6. Improper Use**

Company's obligation to provide the services specified herein is conditioned upon Merchant not allowing the Services to be used for any unlawful purpose or in violation of any governmental regulations or authorizations, including the NACHA Operating Rules and Guidelines. Company, by written notice, shall have the right to limit, terminate or suspend Services, without incurring any liability to Merchant, for improper use of the Services by Merchant or any activity by Merchant, as determined in the sole discretion of Company, that threatens public health, safety, or welfare, the integrity or reliability of the ACH network, Company facilities or services to Company's other Merchants. To the degree terminated, by limit or not, and to the degree services are suspended, either party may terminate this Agreement upon notice as provided for herein.

### **7. Force Majeure**

If either Party's performance of this Agreement or any other obligation hereunder (except for any payment obligation) is prevented, restricted or interfered with by causes beyond their reasonable control including but not limited to acts of God, fire, explosion, railroad disaster, vandalism, power failure, cable cut, storm, or other similar occurrence, any law, order, regulation, direction, action or request of the United States government, or state or local government, or of any department, agency, commission, court, bureau, corporation or other instrumentality of any one or more said governments, or civil or military authority, or by national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, actions or inactions of a third party provider or operator of facilities employed in the provision of the Services, suppliers' failures, shortages, breaches, or delays, then such Party shall be excused from such performance on a day-to-day basis to the extent of such prevention, restriction, or interference. Such Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are mitigated, removed or cease; provided, however, that if a party's inability to perform by reason of an event of force majeure continues for more than seven (7) calendar days, then the other party may terminate this Agreement, effective upon written notice to the Party affected by such force majeure event.

### **8. Limitations of Liability and Disclaimer of Warranties**

(a) **Disclaimer of Warranties** EXCEPT FOR THE SPECIFIC WARRANTIES STATED IN THIS AGREEMENT, COMPANY MAKES NO REPRESENTATION OR WARRANTY, EXPRESSED OR IMPLIED, CONCERNING THE SERVICES PROVIDED HEREUNDER OR DESCRIBED HEREIN. COMPANY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES; INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR TITLE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

(b) UNLESS AS MAY BE OTHERWISE EXCLUDED HEREUNDER, UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY OTHER PERSON, FIRM, ENTITY, OR THIRD PARTY IN ANY RESPECT, FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR ANY OTHER DAMAGES REGARDLESS OF THE CAUSE, WITH THE EXCLUSION OF CLAIMS OF FRAUD, OR FORSEEABILITY THERETO, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF BUSINESS, LOSS OF MERCHANTS OR GOODWILL OF ANY KIND OR NATURE WHATSOEVER, ARISING OUT OF ANY MISTAKE, ACCIDENT, ERROR, OMISSION, INTERRUPTION, OR DEFECT IN TRANSMISSION, OR DELAY OR ACTION OR INACTION OF ANY THIRD PARTY, OR ARISING OUT OF OR RELATING IN ANY FASHION TO THE SERVICES OR OBLIGATIONS OF EITHER PARTY UNDER THIS AGREEMENT INCLUDING WITHOUT LIMITATION, ANY FAILURE TO TIMELY OR ACCURATELY PROVIDE OR PAY FOR ANY PORTION OF THE SERVICE, UNDER ANY THEORY OF TORT, CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY HAS BEEN ADVISED, KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.



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(c) IF, AND TO THE EXTENT, THE FOREGOING DISCLAIMER IS DISALLOWED IN ANY JURISDICTION, THE MAXIMUM LIABILITY, IF ANY, OF EITHER PARTY FOR ALL DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR BREACH OF THIS AGREEMENT, (WITH THE EXCEPTION OF NON-PAYMENT OF INVOICES) NEGLIGENCE OR OTHER TORT WITH RESPECT TO THIS AGREEMENT, SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED ONE MILLION DOLLARS (\$1,000,000.00.)

### **9. Indemnification**

Each party shall indemnify ("Indemnifying Party") and hold the other Party, and its respective officers, directors, employees, and stockholders (the "Indemnified Party") harmless from and against, any and all claims, demands, suits, actions, causes, losses, damages, assessments or payments brought by third parties to the extent they arise from or in connection with the Indemnifying Party's or its contractors', consultants', agents' and suppliers': (a) fault or negligence; (b) performance of this Agreement; (c) failure to comply with applicable laws; or (d) breach of this Agreement. The Indemnified Party shall promptly notify the Indemnifying Party in writing of any known claims covered by this indemnity. Promptly after receipt of such notice, the Indemnifying Party shall assume the defense of such claim. If the Indemnified Party so elects, the Indemnified Party may also participate in the defense of such actions by employing counsel at its expense, without waiving the Indemnifying Party's obligations to indemnify or defend. Neither party shall settle or compromise any claim or consent to the entry of any judgment without the prior written consent of the other party and without an unconditional release of all liability by each claimant or plaintiff to the Indemnified Party.

### **10. Notices**

Notices under this Agreement shall be in writing and shall be given or made by telephonically confirmed facsimile transmissions, email, certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges prepaid. Notices shall be sent to the address listed below until such address is changed by written notice. Such notice shall be deemed to have been given or made when actually received or seventy-two (72) hours after being sent, whichever occurs first.

TO: Netcom Checks Services/United Check Services, LLC  
15431 O'Neal Road  
Gulfport, MS 39503

TO MERCHANT: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### **11. Resolution of Disputes**

The Parties desire to resolve disputes arising out of this Agreement without litigation. Except as otherwise specifically provided in or permitted by this Agreement, in the event of any dispute, difference of opinion or controversy arising in connection with this Agreement, the Parties shall use good faith efforts to arrive at an agreeable resolution through discussions escalating to at least the Vice President level within their respective organizations. If, after attempting to arrive at an agreeable resolution through good faith discussions, the Parties are unable to agree upon a resolution, then either Party may commence legal action to pursue its available remedies, in accordance with the terms and conditions herein set forth.

All disputes, controversies or differences which may arise between the parties hereto, out of, in relation to or in connection with this Agreement, or for the breach thereof, which cannot be resolved amicably by the parties shall be finally settled by arbitration in Jefferson Parish, LA, in accordance with the then existing commercial arbitration rules of the American Arbitration Association by a single arbitrator to be selected in accordance with said rules. The award rendered therein shall be final and binding upon the parties to such arbitration proceedings and shall be enforced in accordance with the provisions of the Federal Arbitration Act and the laws of the State of Louisiana in a court of competent jurisdiction.

### **12. Miscellaneous**

(a) Non-Waiver: Either Party's failure to enforce any of the provisions of this Agreement, or to exercise any right or option is not a waiver of any such provision, right or option, and shall not affect the validity of this Agreement.

(b) Relationship of the Parties: Neither Party shall have the authority to bind the other by contract or otherwise or make any representations or guarantees on behalf of the other. Both Parties acknowledge and agree that the relationship arising from this Agreement is one of independent contractor, and does not constitute an agency, joint venture, partnership, employee relationship or franchise.

(c) Enforcement: In the event suit is brought or an attorney is retained by either Party to enforce terms of this Agreement or to collect any monies due hereunder or to collect money damages for breach hereof, such prevailing Party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorney's fees, costs of investigation, and other related expenses incurred in connection therewith.

(d) Modification: No subsequent agreement shall change, modify or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by authorized representatives of both Parties.



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(e) **Assignment:** This Agreement shall be binding on Merchant and their respective Affiliates, successors, and assigns. Merchant shall not assign, sell or transfer this Agreement or the right to provide or receive the Services provided, hereunder, whether by operation of law or otherwise, without the prior written consent of Company which consent shall not be unreasonably withheld or delayed. Merchant acknowledges that in the event of a proposed assignment, Company shall be required to obtain third-party underwriting approval for the entity to whom Merchant proposes to make the assignment. Merchant specifically agrees that the underwriting approval process shall not be considered an unreasonable delay or attempt to withhold approval. Any attempted assignment in violation hereof shall be null and void.

(f) **Nondisclosure:** Unless specifically authorized by the other party, neither Party shall use, except as provided herein, nor disclose to any third party during the Term of this Agreement and for a period of three (3) years thereafter, any of the terms and conditions relating to this Agreement, including but not limited to the rates and charges set forth in this Agreement, unless such disclosure is lawfully required by any federal governmental agency, is otherwise required to be disclosed by law, or is necessary in any proceeding establishing the rights and obligations under this Agreement. Prior to any such required disclosure, the disclosing Party shall provide the other Party with adequate written notice so as to enable such Party to seek appropriate protection.

(g) **Compliance:** Both parties are responsible for and agree to comply with any and all legal and regulatory requirements with respect to their use of the Services, and agree to be contractually bound to comply with all NACHA operating rules and guidelines, the provisions of which are specifically included and incorporated within this Agreement by reference. This Agreement shall at all times be subject to the decisions, orders, statutes and rules of the federal and state regulatory authorities having jurisdiction of the services provided under this Agreement.

(h) **Governing Law:** This Agreement and all claims relating to the relationship between Company and Merchant, including all claims in tort, contract, and whether at law or in equity will be governed by, construed, enforced and interpreted in accordance with the laws of the state of Louisiana without regard to the choice of law principles thereof. The Parties agree that service of process, summons or notice or document by U.S. registered mail to such Party's respective address set forth herein, shall be effective service of process for any action, suit or proceeding in the domestic United States with respect to any matters to which it has submitted to jurisdiction as stated in this paragraph.

(i) **Severability:** Any provision of this Agreement prohibited by applicable law shall be ineffective without invalidating the remaining provisions of this Agreement, unless the general intent of this Agreement would be negated. If any provision of this Agreement or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby.

(j) **Headings:** The section headings are for convenience only and shall not be considered in its interpretations.

(k) **Interpretation:** Words having well-known technical or trade meanings shall be so construed, and all listings of items shall be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably applied in the interpretation of this Agreement.

(l) **Survival of Terms:** The terms and provisions contained in this Agreement that by their nature and content are intended to survive the performance thereof by the Parties hereto shall so survive the completion of the performance and termination of this Agreement, including without limitation, provisions for indemnification, nondisclosure, and the making of any and all payments due hereunder.

(m) **Entire Agreement:** This Agreement, including any accepted Service Orders issued pursuant to this Agreement, constitutes the complete and exclusive statement of agreements and understandings between the Parties, and supersedes all proposals and prior agreements (oral and written) between the Parties relating to Services provided hereunder. No representations or warranties, express or implied, have been made or relied upon in the making of this Agreement, other than those specifically contained in this Agreement.

(n) **Counterparts:** This Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

(o) **Pronouns:** Whenever used in this Agreement, the singular number shall include the plural and the plural the singular, and the use of any gender shall be applicable to all genders.

(p) **Further Acts:** Each party shall, without further consideration, upon the reasonable request of any other party, execute and deliver or cause to be executed and delivered to such other party such further instruments of transfer and conveyance and will take such other action as such other party may reasonably request more effectively to consummate the transactions contemplated by this Agreement.