



CHECKGATEWAY, LLC

### Automated Clearing House Processing Agreement

<b>Checkgateway Use Only some</b>		
Merchant Id:	Entered By:	Date:

<b>MERCHANT INFORMATION:</b>			
Federal Tax Id Number:		State Tax Id Number:	
Business Name:		DBA:	
Address:	City:	State:	Zip:
Telephone:		Fax:	
Primary Email:		Website Address:	

<b>PRINCIPAL / INDIVIDUAL 1</b>				
Name:	Title:	% Ownership:	DL#:	State:
Address:	City:	State:	Zip:	
Residence Phone:	Social Security #:	Date of Birth:		

<b>PRINCIPAL / INDIVIDUAL 2</b>				
Name:	Title:	% Ownership:	DL#:	State:
Address:	City:	State:	Zip:	
Residence Phone:	Social Security #:	Date of Birth:		

<b>FEES</b>			
Per Transaction/ Per Exception:	Per Return:	Discount Rate:	Authentication Fee:
Monthly Maintenance Fee:	Per Chargeback:	Application Fee:	Statement Fee:
Auto Representation Fee:	Collections Service Fee:	E-Mail Confirmation Charge:	Other:

<b>RETURN THRESHOLDS</b>		
Zero Amount Returns	%	Notification of Change, Rejected Prenote Items
Standard Returns	%	All Positive Value Items, Excluding High Risk
High Risk Returns	1 %	Customer Advises Not Authorized, Authorization Revoked, Stop Payment, Returned Per ODFI's Request
<b>Total</b>	<b>%</b>	

<b>REQUESTED TRANSACTION VOLUME</b>		
Maximum Single Transaction Amount:	Maximum Daily Dollar Amount:	Maximum Daily Number of Transactions:
\$	\$	

<b>TRADE REFERENCES</b>			
Company Name:	Contact Person:	Telephone:	Business Type:
Company Name:	Contact Person:	Telephone:	Business Type:

<b>BANK REFERENCES</b>			
Bank Name:	Contact Person:	Telephone:	Account Number:

<b>Counterparts</b>	This Agreement may be executed in any number of counterparts with the same effect as if the parties had all signed the same document. All counterparts shall be construed together and shall constitute one agreement.
<b>Binding Contract</b>	This Agreement, which includes Schedule A, ACH Agreement Terms and Conditions, shall be binding on both parties only upon execution by an authorized representative of Checkgateway, LLC
<b>Personal Guarantee</b>	To endure and in consideration of Checkgateway's acceptance of the merchant application, the undersigned unconditionally guarantees performance of the merchant's obligation under this merchant agreement and payment of all sums due thereafter and, in the event of a default, hereby waives notice of default and agrees to indemnify Checkgateway for any and all funds due from merchant pursuant to terms of this agreement.

<b>Checkgateway, LLC</b>	Merchant Name:
Authorized Signature:	Authorized Signature:
Name (Print or Type):	Name (Print or Type):
Title:	Title:
Date:	Date:

## SCHEDULE – A: ACH AGREEMENT TERMS AND CONDITIONS

### **AUTHORIZATION**

As a duly authorized representative for the Company named above, I authorize the account above to be debited and or credited by CHECKGATEWAY according to the ACH Agreement Terms and Conditions (“Agreement”). I further authorize CHECKGATEWAY to process electronic funds transfers as a Third Party Processor through the account listed above. This authorization is also applicable for any new account information provided by me at a future date. I agree to be bound by the ACH Agreement Terms and Conditions as stated elsewhere in this Agreement. I agree to provide new account information to CHECKGATEWAY at least 10 days prior to closing or changing the above account.

### **CANCELLATION**

Either party may cancel this Agreement with 30 days written notice to the other party. CHECKGATEWAY may also immediately cancel this Agreement if CHECKGATEWAY reasonably believes that Client is violating or has previously violated any applicable federal, state or local laws or regulations governing ACH transactions (collectively, “Regulations”), or the Operating Rules (“Rules”) of the National Automated Clearing House Association (“NACHA”).

### **CONSUMER CREDIT INQUIRIES**

A credit report may be made in connection with this application. Applicant(s) authorize CHECKGATEWAY, or any credit bureau or any credit reporting agency employed by CHECKGATEWAY or any agents of CHECKGATEWAY to investigate the references provided or any other statements or data obtained from the Company, or any of the above principals, for the purpose of this application. Client also authorizes CHECKGATEWAY to obtain additional credit reports regarding Client on an annual basis, unless CHECKGATEWAY, in its sole and absolute discretion, determines that it is necessary for CHECKGATEWAY to periodically obtain Client’s credit report on a more than annual basis, in which case Client authorizes CHECKGATEWAY to obtain such additional credit reports. Notwithstanding anything in this paragraph, Client authorizes CHECKGATEWAY to obtain a credit report regarding Client if Client requests increased processing amounts or parameters, or if the Client originates sporadic transactional volume.

### **ACH PROCESSING**

CHECKGATEWAY and Client have contracted for CHECKGATEWAY to provide Automated Clearing House (“ACH”) services as a Third Party Processor of ACH transactions. These transactions will be placed through a financial institution used by CHECKGATEWAY who will be acting as the Originating Depository Financial Institution (“ODFI”). Client shall act as the Originator. CHECKGATEWAY will debit funds (“Debit Entry”) for the purpose of collecting Automatic Payments from the accounts of the Client’s customers (“Receivers”) and/or credit funds (“Credit Entry”) for the purpose of paying the Client’s accounts receivable in accordance with the terms of this Agreement, NACHA Rules, and applicable Regulations governing ACH transactions. The terms and conditions of this Agreement do not limit Client’s obligation to comply with the NACHA Rules and Regulations. “Entry or “Entries” shall mean either a Credit Entry or a Debit Entry.

### **CLIENT RESPONSIBILITIES**

**AUTHORIZATION.** Client agrees to obtain authorization from Receivers pursuant to the requirements of the Regulations and NACHA Rules prior to debiting and or crediting Receivers’ accounts. Client will maintain copies of the authorizations for a period of two years from the date the record was created as required by the Telemarketing Sales Rule (“TSR”), 16 C.F.R. 310.5.

**AUTHENTICATION.** Client agrees that CHECKGATEWAY may adjust processing fees and/or add authentication services without notice if Client exceeds allowed return thresholds outlined in the “RETURN THRESHOLDS” section of this agreement.

**REPRESENTATIONS REGARDING AUTHORIZATION.** Client represents and warrants with respect to all Entries originated by Client and processed by CHECKGATEWAY for the Client that (1) each Receiver has authorized the debiting and or crediting of its account, (2) each Entry is for an amount agreed to by the Receiver, and (3) each Entry is in all other respects properly authorized. Client agrees to indemnify CHECKGATEWAY for any losses, liabilities, costs or expenses suffered or incurred (including attorneys’ fees and costs) relating to, arising out of or involving any breach of these representations and warranties. These representations and warranties by Client shall survive termination of the Agreement.

**IDENTIFYING NUMBERS.** Client understands that CHECKGATEWAY may rely solely on identifying numbers provided by the Client to determine the bank and account of a Receiver even if the numbers identify a bank or account holder different from the one identified by the Client by name. Client will indemnify CHECKGATEWAY for any losses, liabilities, costs or expenses suffered or incurred as a result of an incorrect account or other identification.

**REGULATORY COMPLIANCE.** Client bears the final responsibility to insure that the Client’s policies and procedures meet the requirements of the NACHA Rules and all applicable Regulations. Client is encouraged to consult counsel regarding compliance with the NACHA Rules and Regulations whenever there is any doubt about compliance. Client represents and warrants that all Entries originated by Client and processed by CHECKGATEWAY for the Client comply with all applicable NACHA Rules and Regulations, including without limitation the following Regulations: 1) FTC Act (15 U.S.C. §§ 41, *et seq.*); 2) TSR (16 C.F.R. 310, *et seq.*); 3) Electronic Fund Transfer Act (15 U.S.C. §§ 1601, *et seq.*) and Regulation E (12 C.F.R. 205, *et seq.*), if applicable; 4) Uniform Commercial Code Article 4-A, if applicable; 5) Federal Reserve Board Regulation J, if applicable; 6) the rules and sanctions laws of the Office of Foreign Assets and Control (“OFAC”); 7) Unlawful Internet Gambling Enforcement Act (31 U.S.C. §§ 5361, *et seq.*) and accompanying regulations (12 C.F.R. 233; 31 C.F.R. 132); and 8) all applicable state laws and regulations. Client further represents and warrants that it shall not originate any Entries that constitute (i) improper telemarketing in violation of the TSR or other applicable Regulations or NACHA Rules; (ii) sales or marketing of advance-fee credit cards in violation of the TSR or other applicable Regulations or NACHA Rules; (iii) restricted Internet gambling transactions; and/or (iv) unlawful Internet tobacco sales. These representations and warranties by Client shall survive termination of this Agreement. Client will indemnify CHECKGATEWAY for any losses, liabilities, costs, fines or expenses suffered or incurred (including attorneys’ fees and costs) relating to, arising out of or involving any breach of these representations and warranties or failure to comply with any applicable NACHA Rules or Regulations. CHECKGATEWAY may immediately cancel this Agreement if CHECKGATEWAY reasonably believes that Client is violating or has previously violated any applicable Regulation or NACHA Rule or is in breach of these representations and warranties.

**RECORDKEEPING REQUIREMENTS.** Client shall keep, for a period of 2 years from the date the record is produced, all records relating to its telemarketing activities that are required to be retained under the TSR, 16 C.F.R. 310.5, including, but not limited to, all verifiable consumer authorizations. Client agrees to provide copies of such documents or records to CHECKGATEWAY immediately upon written request from CHECKGATEWAY.

**NOTICE OF ERRONEOUS UNAUTHORIZED TRANSFERS.** Client agrees to promptly and regularly review all entries and other communication received from CHECKGATEWAY and to immediately notify CHECKGATEWAY if there are any discrepancies between Client’s records and those provided by CHECKGATEWAY, the ODFI or Client’s bank, or with respect to any transfer not authorized by Client. If Client fails to notify CHECKGATEWAY within 7 days of the date CHECKGATEWAY mails or otherwise provides a statement of account or other report of activity to Client, then the Client will be solely responsible for all losses or other costs associated with any erroneous or unauthorized transfer.

**INDEMNITY.** Client agrees to indemnify, hold harmless and defend CHECKGATEWAY from and against any and all losses, liabilities, costs or expenses suffered or incurred relating to, arising out of or involving any breach of the representations and warranties set forth in this Agreement, or the failure of Client to comply with the terms of the Agreement, the NACHA Rules, or any and all other applicable laws or Regulations.

### **CHECKGATEWAY RESPONSIBILITIES**

**ACCEPTING TRANSACTIONS.** CHECKGATEWAY will only be responsible for processing Entries that have arrived at its premises in proper format and on a timely basis. CHECKGATEWAY will advise Client of any applicable cut-off time. Client does not have the right to cancel or amend any entry after submission to the ACH.

**ORIGINATING TRANSACTIONS.** CHECKGATEWAY will use the information provided by the Client to originate Entries to the ACH. Client acknowledges its understanding that CHECKGATEWAY may reject Entries for any reason permitted or required by the NACHA Rules or applicable Regulations. Client also understands that entries or files may be rejected which exceed the threshold parameters identified and set for the Client. Client also understands that an Entry may be rejected if the Entry would cause CHECKGATEWAY to violate any Federal Reserve or other regulatory risk control program or any other applicable NACHA Rule or Regulation. At Client's request, CHECKGATEWAY will make reasonable efforts to reverse, modify, or delete an Entry, but will have no responsibility for the failure to comply with that request. All such requests must be made in writing and faxed, delivered, or mailed to CHECKGATEWAY.

**RETURNED ENTRIES AND NOCS.** CHECKGATEWAY will apply returned Entries to Client's account when they are received. CHECKGATEWAY will create and make available to the Client a report containing detailed information about returned Entries. If the Client requests that the returned Entries be provided electronically, CHECKGATEWAY may do so according to the NACHA Rules and Regulations regarding those transactions. The Client is solely responsible for all returned Entries.

**SETTLEMENTS AND FINALITY.** Client's account will settle 5 business days following the effective date of Entries originated. If any Entry is returned beyond this settlement, CHECKGATEWAY will at CHECKGATEWAY's sole and absolute discretion, either apply the debit to the current day's settlement, or debit the Client's account for the amount of the returned Entry plus associated fees. If sufficient funds to cover returned Entries is not available in the Client's account, the Client shall immediately remit payment to CHECKGATEWAY to fully cover the amount of all returned Entries.

**LIMITS OF LIABILITY.** CHECKGATEWAY will be responsible for the performance of ACH services as a Third Party Processor in accordance with the terms of this Agreement and the NACHA Rules and applicable Regulations. CHECKGATEWAY will not accept responsibility for errors, acts, or failure to act by others, including but not limited to, banks, communication providers, common carriers, or clearing houses through which Entries may be passed and or originated. CHECKGATEWAY is not responsible for any loss, liability or delay caused by fires, earthquakes, war, civil disturbances, power surges or failures, acts of governments, labor disputes, failures in communication networks, intervening criminal or tortious acts of third parties who are not within CHECKGATEWAY'S control or employ, legal constraints or other events beyond the control of CHECKGATEWAY.

### **ADDITIONAL TERMS AND CONDITIONS**

**FEES AND PAYMENT.** CHECKGATEWAY will notify Client in writing of fees due for services rendered. Any changes to the existing fee structure as stated in this Agreement must be made in writing to the Client with 30 days notice. Client has the right to cancel the Agreement in writing at that time. Client also agrees to provide CHECKGATEWAY the information necessary to ACH debit Client's account(s) for fees due, including for payment of returned Entries. If Client returns a transaction initiated by CHECKGATEWAY and this transaction is in accordance with this agreement Client will be charged a \$500.00 return fee per occurrence. Client will be provided 72 hours to provide remittance and remedy the returned debit prior to the fee being charged by CHECKGATEWAY. CHECKGATEWAY at its own discretion may suspend settlements until remedied and/or deduct fees from any settlements, reserve funds or funds on deposit.

**VOLUME ANALYSIS.** CHECKGATEWAY will routinely analyze Client origination and return activity. In the event the Client exceeds its established threshold parameters or ceases to do business with CHECKGATEWAY, CHECKGATEWAY shall have the right at any time to place all of the provisional or final credit provided to Client for each Debit Entry originated by it in an account held by CHECKGATEWAY for a period of two years from the last Debit Entry. CHECKGATEWAY shall have the right to offset against amounts owed to Client for all returned Entries, fees, damages, or other costs that may arise out of ACH processing for the Client. Additionally, if the Client's average volume drops by more than 75% or the Client processes less than 75% of the projected volume set forth in the Requested Transaction Volume section on page 1 of this agreement CHECKGATEWAY may increase Client fees without notice to Client.

**LIQUIDATED DAMAGES.** Notwithstanding any other provision of this Agreement, in the event that Client violates any applicable Regulation or NACHA Rule, or is in breach of the representations and warranties made in this Agreement regarding Client's compliance with all applicable Regulations and NACHA Rules, Client shall pay to CHECKGATEWAY as liquidated damages an amount equal to 30% of the provisional or final credit for each Debit Entry that may otherwise be provided to Client at the conclusion of the two-year VOLUME ANALYSIS period. The parties agree that CHECKGATEWAY'S damages for Client's violation of any applicable Regulation or NACHA Rule, or breach of Client's representations and warranties regarding Client's compliance with all applicable Regulations and NACHA Rules, would be uncertain and difficult to ascertain and that the liquidated damages described in this paragraph are reasonably related to CHECKGATEWAY'S actual damages and are a reasonable estimate of the damages which CHECKGATEWAY would in fact suffer in the event of Client's failure to comply with all applicable Regulations and NACHA Rules, or Client's breach of its representations and warranties regarding its compliance with applicable Regulations and NACHA Rules.

**CONFIDENTIALITY.** Each party represents, warrants and mutually agrees that all information concerning the other party which comes into its possession during the term of this Agreement shall be maintained as confidential and shall not be used or divulged to any other party except as necessary to permit the activities contemplated under this Agreement or as required by law.

**GOVERNING LAW.** This Agreement and all claims related to or arising under this Agreement are governed by, and shall be construed under, the laws of the State of Arizona without regard for the principles and conflicts of law.

**ARBITRATION.** Any and all disputes between the parties shall be resolved solely by binding arbitration pursuant to the terms of this paragraph. The arbitration shall be adjudicated by a panel of three arbitrators in accordance with the Rules of the American Arbitration Association ("AAA"). The arbitration shall be held in Phoenix, Arizona. The arbitrators shall be selected as follows: One arbitrator shall be selected by CHECKGATEWAY, one arbitrator shall be selected by Client, and the third arbitrator shall be selected by the other two arbitrators. All arbitrators shall be selected from a list prepared by AAA (subject to AAA's conflicts of interest rules), unless otherwise agreed by the parties. Each party agrees that it shall pay (a) its own expenses of arbitration; (b) one-half of the costs of commencing an arbitration with the AAA; and (c) one-half of the remainder of any costs of the AAA, including the costs of the arbitrators, subject to a subsequent award of such costs by the arbitrators. The decision or award of the arbitrators shall be final and binding upon the parties. The arbitrators shall have the authority to award any type of legal or equitable relief available in a court of competent jurisdiction, including, but not limited to, the costs of arbitration and attorneys' fees, to the extent such damages are available under law. Provided, however, nothing in this Paragraph shall limit a court from granting a temporary restraining order or preliminary injunction in order to preserve the status quo of the parties pending arbitration. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. No party shall have the right to file an appeal of the arbitrators' award. The prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs.

**AGREEMENT MODIFICATION.** Notice will be made in writing before this Agreement can be modified. Use of services after any such modification will evidence acceptance of the modification(s).

**TERM AND TERMINATION.** This Agreement is effective from the date hereof and shall continue for a term of two (2) years. Thereafter, this Agreement shall be automatically renewed for consecutive one (1) year periods unless either party gives the other written notice of non-renewal at least 30 days prior to the expiration date of the current term. This Agreement may be terminated by CHECKGATEWAY at any time with 30 days written notice or as otherwise provided by the terms of this Agreement. Immediately upon termination of the Agreement, whether by expiration or otherwise, CHECKGATEWAY'S obligation to provide services under the Agreement shall cease, and any unpaid amounts due and owing by Client shall become immediately due and payable. Payment for any services rendered or any other obligation or liability owing at the time of termination shall not be affected by termination of this Agreement. If Client terminates the Agreement without the prior written approval of CHECKGATEWAY before the two-year term or current renewal term has expired, Client shall be required to immediately pay to CHECKGATEWAY all monthly fees remaining for the current term as well as an early termination fee of \$500.00. If CHECKGATEWAY terminates this agreement for cause a \$1000.00 termination fee will be applied to Clients account.

**DAMAGE WAIVER.** CHECKGATEWAY will not be liable to the Client for any special, consequential, indirect or punitive damages whether or not (1) any claim for these damages is based on tort or contract law or, (2) either party knew or should have known the likelihood of these damages in any situation. CHECKGATEWAY makes no representations or warranties other than those expressly made in this Agreement.

**RESERVE BALANCE.** For Clients where Reserve Escrow Accounts are required, Client acknowledges that an amount equal to 100% percent of highest monthly origination total amount will be held in escrow by CHECKGATEWAY. This amount will remain in escrow for a period of 2 years following the last debit transaction initiated by Client. Client acknowledges that this escrow account will be used to fund any and all returned items. CHECKGATEWAY shall have the right to offset against amounts owed to Client for all returned Entries, fees, damages, or other costs that may arise out of ACH processing for the Client. Client acknowledges that no amount of this escrow account can or will be refunded until such time that this agreement is terminated. For purposes of funding the escrow account, CHECKGATEWAY agrees to deduct an amount equal to no more than 5% percent of each debit origination until such time that the entire 20% percent reserve escrow amount is reached.

**FUNDING POLICY.** Client acknowledges that funding for each origination will be delayed for 5 business days, and the amount disbursed will be the origination amount less returned items, processing fees, any reserve amount as required. Client must maintain at least 5 business days worth of unfunded transactions with CHECKGATEWAY. Unfunded amount may not be less than 12.5 percent of the highest consecutive 30 business day average.

**CUSTOMER SERVICE.** Client agrees to maintain, support and staff a customer service line with a U.S. domiciled telephone number during normal U.S. business hours. If Client fails to maintain a working customer service telephone line then CHECKGATEWAY will, at its sole discretion process customer services calls on behalf of the Client at a charge of \$5.00 per inbound/outbound call and \$5.00 per refund processed.

**ENTIRE AGREEMENT.** This Agreement makes up the entire Agreement between the parties concerning ACH services. If any provision of this Agreement is deemed unenforceable, the remaining provisions shall still be enforceable. There are no third party beneficiaries of this Agreement.

**SEVERABILITY.** In the event any provision of this Agreement is held invalid, illegal or unenforceable by a court of competent jurisdiction, only that provision shall be severed from this Agreement and the remaining provisions shall continue in force, provided that each Party preserves the substantial benefits of the bargain contemplated in this Agreement.

**EXECUTION IN COUNTERPARTS; COPIES.** This Agreement, including all Exhibits and Addendums thereto (which are incorporated as part hereof) may be executed in the original or by facsimile or e-mail in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and photocopies of this Agreement shall be considered originals for all purposes, including, but not limited to, any court or arbitration proceedings.

Checkgateway, LLC	Merchant Name:
Authorized Signature:	Authorized Signature:
Name (Print or Type):	Name (Print or Type):
Title:	Title:
Date:	Date:

**SCHEDULE – B: BUSINESS QUESTIONNAIRE**

Year Business Established:		Corporation _____ LLC _____ Partnership _____ Sole Proprietor _____ Other _____	
State Incorporated In:	Year Incorporated:	Business License No.:	Issued By:
Customer Service Telephone:		Hours Available:	
Physical Street Address: (If different than above)		City:	State: Zip:

Describe specific product or services the company offers for which the ACH services will be used:  
 Attach copies of all sales scripts, marketing materials distributed to consumers, web pages, product samples, where applicable, and any other sales and marketing materials directed to consumers.

How is authorization obtained? **(Total must equal 100%)**

\_\_\_\_\_ % eSignature                      \_\_\_\_\_ % Written Signature

\_\_\_\_\_ % Voice Recording                      \_\_\_\_\_ % Faxed Signature

\_\_\_\_\_ % Paper checks Converted in Back Office (Physical Location / BOC)

\_\_\_\_\_ % Paper checks Converted From Accounts Receivable Lockbox (Mail / ARC)

What percentage of payments are from: Businesses: \_\_\_\_\_% Consumers: \_\_\_\_\_%

Is there a refund policy? Yes \_\_\_\_\_ No \_\_\_\_\_ If yes, please describe refund policy:

Have you received complaints from the Better Business Bureau, Attorney General or similar organization? Yes \_\_\_\_\_ No \_\_\_\_\_ **If yes, please attach a full explanation, including copies of complaints and dates and disposition of all complaints:**

Have you accepted ACH payments before? Yes \_\_\_\_\_ No \_\_\_\_\_

Name of previous processor:

For Internet merchants, please list all url's for which the ACH services will be used. Include passwords for any "membership" type websites.

Please include the following with your application. If any items are not included, provide a written explanation.

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

Articles of incorporation, LLC or relevant business documents.

Most recent 3 months of credit card and/or ACH processing statements. If ACH transactions, include return rates and applicable return codes for all returned Entries within most recent 3 months

Any relevant marketing materials and scripts, as described above

**Attach voided check of primary bank account here: (Must have business name pre-printed)**

Checkgateway, LLC

Merchant Name:

Authorized Signature:

Authorized Signature:

Name (Print or Type):

Name (Print or Type):

Title:

Title: