

# ZIMPLE, INC. TERMS OF USE

We are very pleased that you have taken the time to review Zimple, Inc.'s, ZimpleMoney's and ZimpleAuto's ("Zimple") Terms of Use document. We think it is important for you to understand financial transactions and how to protect yourself and your relationship with Zimple.

These Terms of Use are downloadable so you can read them at your leisure or print them out to review more thoroughly. The Terms of Use will be updated and changed periodically to reflect new services Zimple may offer. The most current Terms of Use will always be available on our website.

If you have any questions, please call Member Service at (949) 209-9844 ext. 500; E-MAIL us at [members@zimplemoney.com](mailto:members@zimplemoney.com); or WRITE to us at Zimple, Inc. Attn: Terms of Use, P.O. Box 11500, Bainbridge Island, WA 98110-5500 USA.

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# Terms of Use

The Terms of Use and the Zimple, Inc. Privacy Policy, Electronic Funds Transfer (EFT) Disclosure, and the Error Resolution Policy Third Party Representative Policy (collectively, the “Incorporated Documents”) constitute the entire agreement between Zimple, Inc., including Zimple, ZimpleAuto and future Zimple assets (“Zimple”) and its clients, and supersede any oral or prior written agreements or representations. By using Zimple’s services, you accept and agree to be bound by this Agreement.

## I. DEFINITIONS

The following capitalized terms shall have the following meanings when used in this Agreement:

“Agreement” and “this Agreement” means these Terms of Use and all Incorporated Documents, which may change from time to time.

“Bank” means any of the bank or banks that holds a bank account “for the Benefit of Zimple’s Customers”: [See ELECTRONIC FUNDS TRANSFER (EFT) DISCLOSURE for Bank and Payment Processing Disclosures].

“Client, Customer, Business or User are used interchangeably” and mean any party, parties, or representative, who is actively using Zimple’s Services.

“Communications” means any notices, e-mails, letters or any electronic or written contact with Member regarding Member’s account and/or their respective use of Zimple’s Services, as discussed herein.

“Documents” mean any documents, including but not limited to loan, leases, settlement, promissory notes, mortgages, trust deeds, and security agreements, in electronic or paper format that have been executed by the Members.

“Effective Date” is the date when any Client registers, or accepts the Agreement as a member of Zimple.

“EFT” means electronic funds transfers as defined and regulated under the Electronic Fund Transfer Act, 15 U.S.C. §1693 et seq. and 12 C.F.R. Part 205 (“Regulation E”).

“Member” means any person or other entity registered with Zimple. The term “Member” is synonymous with the terms Client, Customer, Business, Merchant or User.

“Member’s Agreement” means any underlying agreement hosted by Zimple on behalf of its members: loan, lease, settlement, or other agreements using Zimple’s Services and website.

“Representative” means any person or other entity authorized by a Member or by a court or administrative body of competent jurisdiction to represent the interests of a party or parties in the positions of a Member, whether such authorization is granted at or after creation of the Member’s Agreement. The term “Representative,” shall be deemed synonymous with the terms “Member” as may be applicable. (See Third Party Representative Policy.)

“Services” means Zimple’s database, hosting, note management, payment processing and, document storage, and any related products and services offered by Zimple, or any other services offered by Zimple not specified in this Agreement.

“Signature”, “Sign” and “Signing” are all intended to mean both traditional execution of paper documents as well as electronic signature of documents as defined under the Electronic Signatures in Global and National Commerce Act (“E-SIGN”), 15 USC §7001, et seq., See E-SIGN and Uniform Electronic Transactions Act (“UETA”) Disclosure and Policy.

“Zimple” means Zimple, Inc. a duly formed and authorized Delaware corporation having its principal offices at 403 Madison Ave. N Suite 240, Bainbridge Island Washington, 98110 (MAILING: P.O. Box 11500, Bainbridge Island WA 98110-5500 USA); and any subsidiary or successor companies, affiliates, officers, employees, agents and the name under which Zimple, Inc. conducts business, including on its websites at [www.zimplemoney.com](http://www.zimplemoney.com), [www.zimpleauto.com](http://www.zimpleauto.com) or [www.zimple.us](http://www.zimple.us).

## **II. Zimple’s Services and Policies**

### **A. Administration of Agreements**

Zimple provides financial service software platform, delivered through the Internet, to track, keep-records, and retain documents for private party financial transactions. The Zimple platform may be used to administer loans, leases, settlements and other financial agreements. Zimple acts as an intermediary for payments between Members, including but not limited to the following: use of EFT to pay, collect and transfer funds between Clients’ accounts, sending payment reminders, processing of paper check payments, providing data for year-end reporting, providing a breakdown of all payments received and how they were applied and other services that may be offered in the future.

If you pay by check, please be aware that you hereby authorize Zimple to use electronic check conversion whereby your check is used as a source of information to initiate a one-time EFT from your account. Zimple reserves the right to increase fees to Clients using paper checks.

Zimple also reserves the right to report payment history to national credit bureaus for accounts that are serviced by Zimple. Zimple does not currently report to credit bureaus. Once credit reporting service begins, Clients may not opt out of credit reporting.

### **B. Refund Policy**

Zimple offers a 100% refund of your purchase, minus any third-party fees incurred. This refund is valid at any time prior to activation of Zimple’s Services. For more information, please see [www.zimplemoney.com](http://www.zimplemoney.com) or call Member Services at (949) 209-9844 x500. For Termination of Use see Section V below.

### **C. Delivery Method and Timing of Delivered Services**

Zimple services are available immediately following a valid credit card payment authorization. If you set up a contract using the Zimple system, your credit card charge occurs immediately after all parties accept the contract. If any party declines to participate in a contract, there is no charge.

### **D. Privacy of Non-Public Personal Information**

The confidentiality of the personal information of our Clients is a top priority for Zimple. Our Privacy Policy discusses how Zimple handles this information and how it is protected.

### **E. Pricing Policy**

Zimple reserves the right to change the pricing of its products and services without notice.

### **III. Changes to this Agreement**

Zimple may amend and/or revise this Agreement at any time. Client will be notified at least seven (7) days in advance of the effective date of any changes. Continued use of the Services will constitute acceptance of the amended and/or revised terms. Changes shall be deemed acceptable to all Members unless a Member elects to terminate this Agreement as provided herein.

### **IV. Patriot Act Verification**

Although Zimple is not a financial institution, Zimple is required to comply with Federal law that requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

Customer: When a customer (all contracts with individuals as participants) sets up an account using Zimple's automated payment and collection back office, we will ask for the following information which allows Zimple to verify the identity of the parties of the contract:

- 1) Name (First, MI, Last)
- 2) Maiden Name (if applicable)
- 3) Home Address
- 4) Date of Birth
- 5) Social Security Number
- 6) Primary and Secondary Telephone Numbers
- 7) E-mail address
- 8) Driver's license number
- 9) State of issuance
- 10) Year of issuance
- 11) Nickname
- 12) Bank Name
- 13) Bank Routing Number
- 14) Bank Account Number
- 15) Valid credit card or debit card
- 16) Other items may be required to verify identity

Business: When a business sets up an account using Zimple's automated payment and collection back office, we will ask for the following information which allows Zimple to verify the identity of the parties of the contract:

- 1) Same Customer requirements referenced above if parties include a customer.
- 2) Legal Business Name
- 3) Description of Business
- 4) Description of purpose of payments
- 5) DBA (if applicable)
- 6) Address
- 7) Customer Service Phone Number
- 8) Website URL
- 9) Entity Type (Corp / LLC / Sub Ch-S / Sole Proprietor )
- 10) Copy of Article of Incorporation, Originating certificate or License
- 11) Employer Identification Number (EIN)
- 12) Estimated Average Payment Amount
- 13) Estimated Maximum Payment Amount

- 14) Estimated Monthly Payment Total
- 15) Primary Entity Contact Person
- 16) Primary Contact Phone Number
- 17) Primary Contact Email
- 18) Principal Owner's Name
- 19) Owner's Home Address
- 20) Owner's SSN
- 21) Owner's Date of Birth
- 22) Driver's License Number
- 23) Driver's License State of Issue
- 24) Driver's License Date of Issuance
- 25) Nicknames
- 26) Valid Credit Card
- 27) Bank Name
- 28) Bank Routing Number
- 29) Bank Account Number

We may also ask for other information and documents to help us verify the identity of a consumer or business. If you have any questions, please contact us at (949) 209-9844 or email us at [members@zimplemoney.com](mailto:members@zimplemoney.com)

## V. Termination of Use

### A. Termination by Members

**1) Payment Processing Services.** The authorized Member administering the Member's Agreement may terminate this Agreement without the written consent of the other parties. The Member must provide forty-five (45) days prior notice to Zimple of Member's intent to terminate payment processing. All parties to the Member's Agreement will be notified of the intent to terminate processing service.

**2) Termination of Services by All Members.** Zimple's Services may be terminated at any time only upon receipt of written consent from all Members participating in a Member's Agreement ("Termination Notice"). The Termination Notice must be received by Zimple at least thirty (30) days prior to the effective date of the termination. Upon termination of this Agreement, any monies in process with Zimple, once cleared through the Bank's bank account (please see Electronic Funds Transfer (EFT) disclosure provided below for more details) will be immediately paid to the appropriate Members as provided in this Agreement, less any unpaid applicable fees due to Zimple from the Members. The obligations of the Members to this Agreement shall survive even after termination. Zimple will not be liable in law or equity for a breach of any agreement between the Members relating to Zimple's services.

**3) Termination of Payment Processing and Contract by payer:** Zimple is not obligated to process a payment if a Payer contacts Zimple by any means and requests a contract be cancelled or payment stopped. Payer shall provide Zimple at least 5 business days' notice.

**4) Lost Access to Records.** Zimple is not obligated to maintain any records or access to records if services are terminated, including but not limited to messages, ledgers, payment histories and document files.

**5 Notice.** The Termination Notice may be emailed to Zimple at [members@zimplemoney.com](mailto:members@zimplemoney.com) or by sending a letter to Zimple, Inc., P.O. Box 11500 Bainbridge Island WA 98110-5500.

## **B. Termination by Zimple**

Zimple, in its sole discretion, reserves the right to terminate this Agreement, access to any or all portions of its website or access to the Services without notice for any reason and at any time. If the Refund Period, as described in the “Refund Policy” section above, has expired, Zimple may retain all fees collected prior to termination, regardless of the grounds for termination.

The Members will remain liable for all outstanding obligations to Zimple under this Agreement even after any such termination. An individual whose account is (or accounts are) terminated may be denied further access to the secure portions of Zimple’s websites and future use of the Services.

**ZIMPLE ASSUMES NO LIABILITY FOR ANY CLAIMS ASSERTED AGAINST OR BETWEEN ANY PARTY OR REPRESENTATIVE RESULTING FROM ZIMPLE’S TERMINATION OF ACCESS TO ZIMPLE’S WEBSITES AND/OR SERVICES.**

## **C. Prohibited Conduct**

The following is a list of prohibited conduct under this Agreement. Members hereby agree not to engage in any such conduct during their use of Zimple’s websites or Services. Any party found engaging in such conduct will, at the sole discretion of Zimple, be terminated:

- Multiple registrations by an individual without prior consent by Zimple, whether such registration was completed fraudulently, falsely or unlawfully, or by legitimate and lawful means (such as the use of alternate but valid names, different contact information, separate bank-account numbers, and other pertinent data);
- Fraud, intentional or negligent misrepresentation, or any unlawful act relating to the use of Zimple’s websites or Services;
- Intentionally providing Zimple with false or incorrect contact information; and
- Tampering, hacking, modifying or otherwise corrupting the security or functionality of the Services or Zimple’s websites;

If Zimple, in its sole discretion, determines that a violation of local, state or federal law has occurred, in addition to terminating access to the Services and Zimple’s websites, offending parties will be subject to damages and other penalties, including civil liability and criminal prosecution where available for any such conduct. Zimple will contact appropriate administrative and law-enforcement authorities in all such instances and will cooperate fully with any investigation.

## **VI. Electronic Communications**

Clients choosing to access Zimple’s Services via the Internet hereby consent to receive by electronic means this Agreement and any and all disclosures and/or notices required to be given by applicable law or regulation. The Members also consent to allow Zimple to respond to any inquiries by e-mail regardless of the format of the original inquiry. This consent may be withdrawn at any time. After withdrawal of consent, all subsequent Communications will be sent by regular mail to the last known address on file with Zimple.

## **VII. Credit Reporting**

At this time, Zimple is not providing credit reporting to third party credit reporting bureaus.

## VIII. Disclaimers

**Legal Representation.** All Members agree and acknowledge that Zimple is not a law firm nor is it authorized to practice law in any jurisdiction. Zimple does not give legal advice in any form or practice law in any way, and Zimple makes no assurances or warranties, express, implied, or statutory that any Member's Agreements or terms of a Member's Agreement are legally enforceable in a specific jurisdiction by any competent court or administrative body.

**Priority of Liens.** Zimple will not guarantee or warrant the priority or position of any lien on real or personal property.

**UCC Financing Statements.** Zimple does not research the status of title nor the presence of prior existing liens for any personal property used to secure a private transaction.

**Documents.** Zimple does not draft, review, approve or otherwise provide any documents. Zimple is not responsible for the legal validity of any documents used in documenting an agreement between parties. Members hereby agree that executed documents and any modifications are intended for the specific transaction between the Members.

**Compliance with state and federal laws.** Members are solely responsible for assuring that requirements under any state or federal laws that may apply to the loan or other agreement have been met, including the preparation and delivery of any disclosures, notices or other documents required by state or federal law.

**Validity of Terms.** Members are solely responsible for establishing the terms of their personal agreements; and for determining whether such agreements are in compliance with any applicable local, state or federal laws, including but not limited to laws relating to usury and income tax liability. Zimple makes no representation regarding the legal validity or enforceability of the terms of any such agreements and further assumes no responsibility under this Agreement for enforcing or interpreting the terms of Members' personal agreements.

Any dispute between or among the Members and their respective successors in interest regarding sums due and paid, or for the compliance with other terms under Members' personal agreements and similar matters is not the responsibility of Zimple. The Members and their respective successors in interest jointly and severally shall indemnify and hold Zimple harmless from any liability, claim, demand, loss or expense by any party against Zimple as a result of or arising out of its performance of the Services described in Section II, above.

**Limitation of Liability. IN NO EVENT SHALL ZIMPLE BE LIABLE FOR (I) DAMAGES CAUSED OTHER THAN BY INTENTIONAL MISCONDUCT OR (II) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, DISCLOSURE OF CONFIDENTIAL INFORMATION, OR LOSS OF PRIVACY), ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF OR INABILITY TO USE THE SERVICES, THE ZIMPLE WEBSITES OR ANY OF THE ASSOCIATED SERVICES, EVEN IF ZIMPLE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**Malfunction of Computer Equipment and Software.** Zimple shall not be responsible for any failure in the Services due to malfunction or loss of equipment, software or Internet service providers used by Members or Clients, and from the malfunction or failure of equipment, software or services used by Zimple which are beyond the reasonable control of Zimple.

**Use of Third Parties by Zimple.** Zimple reserves the right to use other companies to perform services for Zimple (“Third Party Service Providers”).

## IX. Miscellaneous Provisions

**Lawful Purpose.** You agree to use the Zimple Software solely for lawful purposes.

**Counterparts.** This Agreement may be executed in counterparts and each counterpart shall have full force and effect against the party that executes the counterpart.

**Choice of Law and Choice of Forum.** This Agreement is governed by the laws of the State of Delaware without reference to that state’s conflicts of laws rules. Wherever applicable and after exhaustion of administrative remedies specifically designated in this Agreement, judicial actions taken relative to this Agreement shall be brought in a court of competent jurisdiction, either state or federal, within the State of Delaware.

**Assignment.** Unless otherwise expressly provided in this Agreement, Members may not transfer any rights or obligations under this Agreement without the prior consent of Zimple. In order for Zimple to continue Services in the event of such transfer, it may be necessary for Zimple to verify the transfer and its validity, the identity of the transferee, including relevant contact information, bank-account information and other data necessary to permit Zimple’s satisfactory performance of the Services. Where such performance cannot reasonably be ensured, Zimple reserves the right to maintain this Agreement with the transferor only or to terminate this Agreement. Zimple reserves the right to transfer any right or obligation under this Agreement without Members consent.

**Severability.** In the event any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

**Indemnification.** Zimple’s obligations are expressly limited to those stated in this Agreement. Zimple will be responsible only for the exercise of ordinary care in carrying out its obligations under this Agreement and shall be released from all further liability. Member agrees to indemnify and hold Zimple harmless from and against, and to pay on demand, all costs, damages, losses, judgments, attorney’s fees, expenses, obligations and liabilities of every kind and nature suffered or incurred by it or its agents relative to or arising out of this Agreement, except any liability resulting from failure of Zimple to exercise ordinary care in carrying out its obligations under this Agreement.

**Account Information.** In addition to the terms listed above, Members further agree that Zimple may access and disclose information about their accounts when Zimple deems such action necessary or appropriate to comply with the law or legal processes, judicial or administrative, to protect Zimple’s systems and other Clients’ interests, or to ensure the integrity and operation of Zimple’s business and systems. Unless otherwise prohibited by law, such disclosure may include, without limitation, user profile information (e.g., name, e-mail address), transaction information, Internet Protocol (IP) address and traffic information, and usage history. Such disclosures will be made in compliance with Zimple’s Privacy Policy, as is incorporated herein.



**Taxes.** Members are responsible for determining what, if any, taxes apply, including sales taxes, to the disbursements, payments and services as a result of using Zimple's Services and for collecting, reporting and remitting the correct tax to the appropriate tax authority or authorities. Members acknowledge that state and federal tax ramifications and liabilities for either or both parties may ensue from engaging in a Member's Agreement; and Members should consult qualified professional advisors regarding potential taxation liabilities. Zimple does not provide tax advice, is not obligated to determine whether taxes apply to a specific loan transaction or any underlying agreement, and is not responsible for collecting, reporting, or remitting any taxes arising from any transaction between Members.

**Member Insolvency.** Members understand and acknowledge that insolvency, whether part of or outside formal bankruptcy proceedings, may impact the efficacy and terms of the Member's Agreement. Members understand and acknowledge that funds transferred by or to an insolvent party may, in some circumstances, be reached and retrieved from the recipient or recipient's successor in interest by action of a bankruptcy court or a trustee in bankruptcy, whether such bankruptcy is voluntary or involuntary, and whether or not such funds were: initially transferred in good faith and for value; a "preference" or "priority" as defined under the United States Bankruptcy Code, 11 U.S.C. §101 et seq.; part of a fraudulent transaction or other transaction subject to reversal in bankruptcy proceedings; or whether the transfers of funds were or are otherwise reversible. Zimple assumes no responsibility for the continued performance of either party in the use of Zimple's services in the event of either party's insolvency, bankruptcy or other circumstances making performance under the Member's personal agreement and this Agreement impossible or impracticable.

**Account Use.** By accepting this Agreement and using the Services, Member respectively represents and warrants that such Member has all the necessary legal authority and capacity to do so. In the event that a Member is a corporation, partnership, limited liability company or other business entity, acceptance of this Agreement warrants that the individual signing on behalf of the business entity is a duly authorized agent of the business entity and that they have the authority to bind the business entity in legal agreements and contracts. The parties will not jointly or individually use the Services or the Zimple websites for any unlawful, illicit, fraudulent or improper activity. Zimple reserves the right to restrict or deny access to or interoperability with the secure, account-specific portions of the Zimple websites and/or to delay or halt its duties under this Agreement, without notice, where substantive allegations or reasonable grounds exist to suspect that a Member has been, are, or will be engaging in fraudulent, unlawful or other improper activity. Members agree and acknowledge they will cooperate fully with Zimple to investigate any suspected unlawful, fraudulent or improper activity.

**Time and Date.** Zimple records and measures the moment transactions are conducted using the Zimple website by reference to the Pacific Time Zone of the USA. Where a user initiates a transaction on a weekend day, national or local holiday or other non-business day, it is the policy of Zimple to consider the transaction date to be that day.

**Marks.** "Zimple," "ZimpleMoney" and "ZimpleAuto" are trademarks of Zimple, Inc. All related logos, products and services described in this Agreement or the Zimple websites are either service marks, trademarks, registered service marks and trademarks of Zimple, or its licensors, and may not be copied, imitated or used, in whole or in part, without the prior written permission of Zimple. In addition, all page headers, custom graphics, button icons, and scripts are service marks, trademarks, copyrighted materials and/or trade dress of Zimple and may not be copied, imitated, or used, in whole or in part, without the express prior written permission of Zimple

**Arbitration.** Zimple reserves all rights in remedies at law or in equity for any claim it may have against Members of either real or prospective infringement on intellectual property rights. Any other controversy or claim arising out of or relating to this Agreement or the provision of Services, excepting those relating transactions covered by Regulation E (12 CFR 205, et seq.) or those initiated in and remaining subject to the

jurisdiction of a Delaware court hearing small-claims matters, shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party, except for the complainant's counterparty under the Member's personal agreement where such counterparty chooses to consolidate his, her, their or its claim or controversy with those of the consenting complainant. Where practicable, the arbitration shall be conducted in Dover, Delaware and judgment on the arbitration award may be entered in any court having competent jurisdiction. Any party to this Agreement may seek any interim or preliminary relief from a court of competent jurisdiction in Dover, Delaware necessary to protect that party's respective rights, remedies or property pending the completion of arbitration. Members agree and acknowledge that arbitration may replace their individual or collective recourse to courts of law and/or administrative bodies, and that the decision of the arbitrator or arbitrating body may be final and binding upon all parties.

**No Third-Party Beneficiaries.** Unless otherwise expressly provided herein or by operation of law, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity, other than Member and Zimple, any rights, remedies or other benefits under or by reason of this Agreement.

**Waiver.** Failure by any party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that provision or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing, whether on paper or via appropriate electronic means as provided for in this Agreement and as permitted under the E-Sign Act and other applicable laws. Where appropriate, such waiver, amendment or other modification shall evidence the mutual agreement of all relevant parties. A party's waiver on one occasion shall not be construed as a bar or waiver of any rights or remedies for subsequent events.

**Entire Agreement.** This Agreement sets forth the entire Agreement between you and Zimple and it supersedes all prior communications, understandings and agreements.

# ZIMPLE, INC. PRIVACY POLICY

Zimple, Inc. is committed to protecting the confidentiality and integrity of our customers' information. When we collect information, we protect and preserve its integrity. Whenever we make use of our customers' information, we utilize it with discretion and solely for lawful purposes.

Keeping our commitment to protect your private information is an important obligation to us. Zimple is a business built upon trust. We earn your confidence when we hold true to our commitments by keeping your private data safe, secure, and confidential. We recognize that you have entrusted us with sensitive personal and financial data and special care in protecting it.

The current standards for businesses that collect personally identifiable information fall into four main categories:

- (a) Notice: disclosure of the company's privacy policies;
- (b) Choice: options and a voice about how one's personal information is stored and used;
- (c) Access: your individual right to review, correct and contest data; and
- (d) Security: commitment to and assurances by the business that reasonable steps are taken to safeguard the information people have disclosed.

## **Notice.**

We will provide you with a copy of our current Privacy Policy annually and if we revise our policy, we will provide you with an updated policy before any such disclosure is made. We will always keep the most current Zimple's Privacy Policy available on our web-site, [www.zimplemoney.com](http://www.zimplemoney.com). If you want further information at any time, you can also contact us at [members@zimplemoney.com](mailto:members@zimplemoney.com) or by submitting an inquiry on our website.

## **Choice.**

If you want to make a change in how your information is employed and retained by Zimple, let us know. Log on to our secure website or contact us at [members@zimplemoney.com](mailto:members@zimplemoney.com), and we'll make the changes you request.

## **Access.**

Can't remember what information you've provided to us? Want to supplement, update, or clarify your data? If so, send an inquiry to [members@zimplemoney.com](mailto:members@zimplemoney.com) or log on to our secure website, which is the best and safest way to alert us of any potential discrepancy.

## **Security.**

Periodically revisit our privacy pages. Keep informed about how Zimple stays current with the latest technological advances designed to preserve confidential information. Zimple conducts business in accordance with the laws and regulations relating to our services, including the Gramm-Leach-Bliley Act ("GLB"). Under Title V of the GLB, an individual's nonpublic personal information ("NPPI") is afforded certain legal protections.

## **Who is protected?**

Applicable laws draw a distinction between a "consumer" and a "customer." The rules emphasize individuals' privacy, rather than information pertaining to businesses or other entities. Generally, if you are an individual visiting our website then your privacy is protected under the status of a consumer. A specific type of consumer is a "customer." A customer is a person with who has a relationship with us (i.e. a Member).

If you register as a Member of Zimple, you are, by definition, a customer. If you request information from us or use our website to create a loan proposal for a friend or family member to review, then you may be entitled to protections as a “customer” even though you’re not yet obligated to create the proposed loan or in any way committed to a further relationship with Zimple.

Zimple will treat the information volunteered to us with utmost discretion. Our active customers, for example, can expect secure information storage and even annual notices regarding Zimple’s Privacy Policy and the status of their information. As for those people who aren’t full-fledged Zimple customers, we will not share collected information except as permitted by law. Even after a relationship with Zimple ends, Zimple’s duties and commitment to its Clients continue.

Zimple will continue to treat your information as though you actively remain our customer. Zimple will abide by applicable record retention and privacy rules even after the loan has been repaid or otherwise has come to a close.

At all times, Zimple will furnish pertinent information where compelled or in order to comply with relevant law, in response to a subpoena, court order and other judicial processes, or as required by competent regulatory authorities.

### **What principles guide Zimple’s Privacy Policy?**

Given the sensitive nature of your identity, contact details and financial data, Zimple appreciates how important it is to protect the information. We can also understand if you wonder why we request the information we do.

Our Privacy Policy is informed by the following principles:

- Zimple respects customers’ reasonable expectations to safeguard their personal information.
- Collection, retention, usage and dissemination of customer information is limited to legitimate business purposes of Zimple and its affiliates, and when lawfully permitted or necessary to comply with legal requirements or to complete a transaction requested by a consumer.
- Notice, choice, access and security are the four underlying precepts of our information collection process.
- Zimple limits internal access to information to personnel having legitimate business reasons.
- Technological innovations and improving standards for protecting privacy are foremost among Zimple’s objectives. If we believe new products, procedures or services will enhance customer information security; we will adopt appropriate security measures.
- Zimple will disclose customers’ information to unaffiliated third parties only for appropriate business purposes, when we have consent of the individual customer, or are obliged by competent authorities.
- To guard against “downstream” or third-party disclosure of your NPPI, entities such as your financial institution and our business partners may be required by Zimple to satisfactorily demonstrate compliance with applicable laws and regulations as well as compatibility with the Zimple Privacy Policy. If we learn or believe that a third party poses a risk to your NPPI, we may contact you (and, if appropriate, regulators and law-enforcement officials) to express that concern.

## **How broadly does privacy protection extend?**

Zimple collects certain sensitive information to help us serve your financial needs, provide customer service, offer new products and services, and fulfill contractual, legal and regulatory requirements. The type of information that we collect varies according to the products or services that you request, and may include: (i) Information included on your application and related forms (such as name, address, phone number, social security number, credit card and bank account information); (ii) Information about your relationships with us (such as products or services purchased and payment history); and (iii) Information from other non-Zimple sources (such as consumer credit reports).

We are committed to protecting our customer's NPPI. Zimple takes a number of steps to comply with applicable laws regarding NPPI's safeguarding. Protecting NPPI is a mutual responsibility. You should protect your Zimple account number, password and login information. Zimple cannot guarantee the security and integrity of e-mails. They are subject to interception as they travel over the Internet. Zimple recommends you help ensure your own privacy by submitting confidential information over the secure online environment of our website established whenever you log in to Zimple.

Zimple suggests customers and website visitors periodically review this Privacy Policy for revisions. While we do exchange certain information with our customers' financial institutions (for example, Zimple needs the routing number for direct deposit into a Lender's bank account), we do so with express permission or as necessary to process the transactions our customers request. In short, information is properly shared between two financial institutions on behalf of the individual (a person already trusting Zimple and the bank enough to be a customer of both institutions).

### **Loan for a Medical Emergency.**

Health information merits heightened privacy protection, even more than financial data. If your loan is intended to help manage unexpected medical costs, and you've advised that fact to us, Zimple will never divulge this matter in any manner which can be connected to you personally, unless we are required to do so by law.

### **Zimple Permission Marketing Policy.**

Zimple delivers promotional and transactional emails to prospects and customers. Additionally, in order to provide you with innovative products and services that we believe may be of interest to you, we may from time to time share NPPI and other information we collect with affiliates of Zimple. If you would prefer that we not share information about you with our affiliates or send you promotional email, you may email us at [members@zimplemoney.com](mailto:members@zimplemoney.com) or telephone Zimple Member Services at 949-209-9844, to let us know your preference. If you tell us not to share information about you with our affiliates, we will honor your instructions. Please note that if you choose not to hear from us, you will not receive offers about products and services offered by Zimple and our affiliates that may be of value to you. If you decide that you no longer wish to subscribe to Zimple broadcast emails, please follow the instructions that are located at the bottom of those e-mail messages in order to unsubscribe (opt-out).

### **Updates to Privacy Policy.**

The version of the Zimple Privacy Policy posted online and related web pages supersedes all previously posted or issued versions of same as of the date specified. Zimple reserves the right to change this Privacy Policy at any time. Visitors to and users of the Zimple website are invited to return to the Privacy Policy and related pages periodically to check for revisions. Customers and others having pertinent relationships with Zimple may also be notified of changes to this policy by additional means including, but not limited to, e-mails, letters and telephone calls. We will provide customers with a copy of our current Privacy Policy annually and if we revise our policy to allow for disclosure to additional parties, we will provide our customers with an updated policy before any such disclosure is made.

## **ELECTRONIC FUNDS TRANSFER (EFT) DISCLOSURE**

For purposes of this section, Zimple shall be the Value Added Reseller (VAR), a software development company which has developed a hosted internet based payments collection and financial contract management system (System).

Teledraft, Inc., ("TDI"), a Delaware Corporation is a Merchant Acquirer and ACH Processor that provides electronic payment services in support of VAR's business model and system and provide ACH Payment Acceptance Service and or Bank Card Accounts to VAR's Customers ("Users") using the VAR's System in order to facilitate the electronic payment process.

Teledraft is the "Third Party Originator" and a Bank will process instructions received from VAR's Customers using the VAR's System to transmit instructions to Teledraft and then to the Bank. VAR is authorized to follow the Terms of Use and the instructions of its Customers.

Bank is the Originating Depository Financial Institution (ODFI) and will hold Customer cash for the benefit of VAR's customers. The VAR shall, at the direction of VAR's Customer's instructions as entered in the VAR's System or/and Terms of Use, direct TDI to deliver payment and/or disbursement instructions to the ODFI to be executed in accordance with those instructions.

Settlement Funds Disclosure: All funds representing settlements of ACH debit payments initiated via the VAR System settle to a TELEDRAFT Third Party Processor Clearing and Settlement Account at First Premier Bank in South Dakota. Funds representing ACH credit deposits to users for payments collected via ACH debit are settled directly to the user's designated bank account by First Premier Bank from that settlement and clearing account. At no time do funds representing payments and belonging to lenders settle to a VAR owned or controlled bank account. Teledraft may, based solely on its own decision, change its bank and will advise VAR and VAR's Customers at least 30 day prior to any change.

VAR's business Customers shall execute a separate agreement directly with TDI to process ACH automated payment transactions using VAR's System.

VAR's non-business Customers acknowledges the VAR's processes and relationship with TDI and Bank.

VAR and TDI have agreed for TDI to provide electronic fund transfers (EFTs), via the Automated Clearing House ("ACH") system, for VAR Customers ("ACH Services"). Such transfers may include debits and credits, including recurrent and preauthorized periodic transactions, to specified bank accounts consistent with the Electronic Fund Transfer Act, 15 U.S.C. §1693 et seq. (EFTA), Regulation E, the Electronic Signatures in Global and National Commerce Act of 2000, 15. U.S.C. §7001 et seq. (E-Sign), the terms of the Terms of Use and this Agreement. ACH services consist of sending and/or receiving ACH transactions; originating entries; reversals; amending entries; and performing all other acts incident to the origination or electronic funds transfers on behalf of Zimple's Members. Pursuant to the VAR Terms of Use, information and instructions shall be provided to TDI by Zimple's Members through Zimple's online software and any agreement between TDI and VAR's Customers.

Upon receiving such instructions from VAR's Customer , TDI will initiate a debit and/or credit transactions as instructed by VAR Customer to an account designated by TDI (the "Settlement Account"), in accordance with Member's instructions and/or the Terms of Use, and as such will be communicated to the Bank by TDI. .

The Account will be held in trust for the customers of TDI and VAR at the Bank for the benefit of VAR's and TDI's s Customers. All bank statements, notices and other communications in respect of the Account or the

transactions hereunder shall be directed by Bank to TDI and TDI will provide Bank with administrative instructions pertaining to the Account.

VAR WILL NOT TAKE ANY POSSESSION OF THE ACCOUNT AND WILL NOT HAVE ANY CONTROL OF THE ACCOUNT OTHER THAN AS PROVIDED HEREUNDER. VAR WILL HAVE CONTROL OVER THE COMMUNICATIONS BETWEEN VAR AND VAR'S CUSTOMER RELATIVE TO THE TRANSFER OF FUNDS INTO AND OUT OF THE SETTLEMENT ACCOUNT.

Members have the exclusive authority to instruct TDI to initiate ACH debits and credits from the Settlement Account, solely through VAR's System and in accordance with VAR's Terms of Use.

Member agrees to designate TDI as the Third Party Originator pursuant to the "Designation of Third Party Originator" agreement provided below:

### **Designation of Third Party Originator**

Pursuant to VAR's Terms of Use (Agreement), upon accepting the Terms of Use, the Member agrees to and acknowledges the following:

- 1) Funds representing duly authorized ACH payment debit withdrawals from Members initiating a loan payment, utilizing VAR System shall settle to the TDI ACH Settlement and Clearing Account provided by First Premier Bank, or other bank solely selected by TDI, under a NACHA audited and compliant Originating Depository Financial Institution and Third Party Sender contract executed between the originating Bank and TDI. Funds representing loan payments shall then be settled to the designated Payee by TDI from the Clearing and Settlement Account via a duly authorized ACH Credit to the Payee's bank account.
- 2) VAR does not own the Account.
- 3) VAR will not take any possession of the Account.
- 4) VAR will not have any control of the Account, except as provided in this Agreement and the Terms of Use.
- 5) VAR has control over the communications relative to the transfer of funds into and out of the Account.
- 6) Member has the exclusive authority to instruct TDI to initiate ACH debits and credits from the account, solely through VAR's System and in accordance with VAR's Terms of Use and or TDI's ACH Processing Agreement.
- 7) The Member's relationship is with VAR and TDI.
- 8) Funds may be held for up to five (5) business days.
- 9) The Account aggregates all TDI customers and Members' settlement fund transfers.
- 10) The Terms of Use are provided for the Member on the VAR website and acknowledged each time a Member enters a new contract.
- 11) Terms of Use may, from time to time, be modified, amended or changed.
- 12) TDI shall act as the Bank's agent in originating entries, reversals, amending entries and performing all other acts necessary or incident to the origination of electronic funds transfers on behalf of the Member via instructions delivered to it by VAR or VAR's system.

- 13) Member indemnifies and holds harmless the VAR, TDI and Bank for executing Member's instructions provided to TDI and the Bank, using VAR's System or by other means.
- 14) Member indemnifies and holds harmless TDI, Bank and VAR for any and all actions authorized by the Terms of Use or other agreements acknowledged by the Member.

## **Electronic Fund Transfers**

Members acknowledge the following:

- 1) Scheduled EFTs are limited to no more than two (2) per month, absent extenuating circumstances or Zimple's consent;
- 2) There is a five [5] business day clearing period for all EFTs;
- 3) The dollar amount of individual EFTs is limited to no more than established monthly payment or an amount equal to a pay-off amount;
- 4) That there is the possibility of liability to Members for any unauthorized EFT;
- 5) Members have a duty to promptly report such unauthorized transfers to VAR and, where applicable, to the party's financial institution;
- 6) Members have a right to stop payment or disbursement of a preauthorized EFT by notifying VAR at least five [5] business days prior to the initiation of a scheduled transfer and VAR's established procedures to initiate such stoppages;
- 7) The right to receive documentation of EFTs electronically, or in paper format where the party explicitly requests;
- 8) VAR shall not be responsible for late or missed payments, payments made to unintended recipients due to the provision of incorrect information by Members or for payments made in incorrect amounts owing to error or omission by either party to a Member's Agreement;
- 9) Members shall immediately notify VAR of any changes to their bank account information. VAR shall make commercially reasonable efforts to ensure payments are made accurately, but VAR will not be responsible for any costs or liabilities incurred by Member resulting from inaccurate or outdated bank account information;
- 10) The necessity of occasional adjustment entries in the Member's accounts, including a reversal of a debit or credit, as a result of inaccurate or mistaken transfer; and
- 11) VAR's, TDI's, and Banks potential liability pursuant to the EFTA and other applicable laws and regulations. From time to time, it may be necessary for VAR to verify the Members' bank account information. Members each grant VAR the right to validate the authenticity of their respective bank accounts and shall provide written authorization on behalf of VAR if required by their respective lending institution.

Members shall not request that the VAR, TDI, or Bank effect fund transfers exceeding that party's transfer limitations or the available balance of the nominated checking account (including any overdraft allowances by the party's bank). If there are insufficient funds in a Member's account to cover a requested transaction, or if Member's bank rejects a payment for any other reason, the Member's bank may charge the paying Member an Insufficient Funds Fee ("NSF fee"). If an item is rejected for any reason it will not be automatically re-



presented until the next due date. Any re-presentation must be done manually by the Member Payer or Member Beneficiary if the Beneficiary is authorized or be VAR with commercially acceptable authorization.

All Member's party to a contract will receive prompt notification of insufficient funds via VAR's System and that the payment due is in arrears. The Member accounts can be suspended, disabled and closed by VAR if payments are returned and or fees are not paid.

Members acknowledge that VAR, TDI and the Bank are not responsible for any problems or delays in the ACH, EFT or banking systems or for other problems or delays associated with such systems beyond its control. While the Bank shall attempt to expedite EFT transactions on behalf of Members, it will not be responsible for any costs or liabilities incurred by the Members owing to delays beyond the time periods ordinarily required for funds clearance or to otherwise complete an ACH or EFT transaction.

In the event the Bank makes an EFT from paying Member's account and is subsequently unable to collect those funds for any reason (including, without limitation, insufficient funds or fraud), the payment will be reversed and the Bank will withdraw such funds from the recipient Member's account. All Members party to a Member's agreement/contract expressly authorize such reversal consistent with the EFTA and customary and prevailing ACH rules. The Bank, TDI and VAR further reserve the right to use any and all other legal rights and remedies to recover amounts not collected via reversal of the payment as well as to recover other fees paid or losses incurred by the Bank, TDI, or VAR resulting from the reversed transaction.

The VAR, TDI and Bank will report instances of fraud, misrepresentation or other unlawful activity to appropriate administrative, judicial and law-enforcement agencies.

## ERROR RESOLUTION POLICY

Zimple provides this error-resolution notice in compliance with the Federal Reserve's Regulation E, which governs electronic fund transfers (EFTs). You may recognize EFTs by other names, notably ACH, direct deposits and direct debits. Since you have selected EFTs in conjunction with your Loan transaction, the Federal Reserve requires that you be given initial and annual notices of your rights regarding error-resolution procedures involving your account and any EFTs relating to it which you believe may have been made incorrectly or contain an error. Please bear in mind that customer service is a top priority for us. Timeframes noted below are therefore the maximum periods allowed: Zimple's objective of course remains to respond as promptly and accurately as possible to your inquiries.

Please retain this notice for your records and future reference. Further information regarding EFT error resolution is also available in the Zimple Terms of Use, to which you have previously indicated your consent. To review, print or electronically save the Terms of Use, visit [www.zimplemoney.com](http://www.zimplemoney.com) or [www.zimpleauto.com](http://www.zimpleauto.com).

### IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS:

LOG IN to Zimple's secure website at: [www.zimplemoney.com](http://www.zimplemoney.com) or E-MAIL us at [members@zimplemoney.com](mailto:members@zimplemoney.com) or CALL 1.949.209.9844 x500; or WRITE Zimple, Inc, at: P.O. Box 11500, Bainbridge Island WA 98110-5500.

You should contact Zimple as soon as you can if you think there is a problem with your account, that your confirmatory e-mail or bank statement is wrong, that an EFT was made incorrectly or in error, or if you simply need more information about an EFT or other transfer noted on a confirmatory e-mail or statement. We must hear from you no later than sixty (60) days after we sent the FIRST confirmation in which the potential problem or error appeared.

If you contact us regarding an error, please be sure to do the following:

- 1) Tell us your full name and Zimple account number;
- 2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information; and
- 3) Tell us the exact dollar amount of the suspected error.

Please do NOT include sensitive information such as complete bank-account numbers if you wish to contact us via e-mail. Zimple recommends confidential communications sent electronically instead be made by logging in to your account on our secure website.

If you contact us orally, we may require that you also send Zimple your complaint or question in writing (including via e-mail or on our secure website) within ten (10) business days. We will determine whether an error occurred within ten (10) business days after we receive contact from you, and will correct any error promptly. If we need more time, however, we may take up to forty five (45) days to investigate your complaint or question. If we decide to pursue such an investigation, we may credit your account within ten (10) business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. Such credits will be discretionary and made in good faith, taking into account the rights, obligations and expectations of both you and your counterparty under the terms of your personal agreement. If we ask you to put your complaint or question in writing and we do not receive it within ten (10) business days, we may not credit your account.

For errors involving new accounts or foreign-initiated transactions, we may take up to ninety (90) days to investigate your complaint or question. For new accounts, we may take up to twenty (20) business days to credit your account for the amount you think is in error. We will tell you the results within three (3) business days after completing our investigation. If we decide that there was no error, we will send you a written explanation (including via e-mail or as a message in your online account on our secure website). You may request copies or summations of documents and information used in our investigation. However, you are advised that given Zimple's largely automated business methods and processes, our investigation may be conducted primarily or entirely by electronic means. Consequently, documentation provided to you may be in similar format or replicated from Zimple's electronic investigation.

# ERROR RESOLUTION POLICY AND THIRD PARTY REPRESENTATIVE POLICY

Members may designate individuals to act on their behalf in association with using Zimple Services (hereinafter “Representative”).

**Definition of Representative.** “Representative” means that person, real or legal, duly and demonstrably authorized by a Member or by a court or administrative body of competent jurisdiction to represent the interests of a Member, whether such authorization is granted at or after creation of the Loan Documents. The term “Representative,” as used herein, shall supplement, substitute or be deemed synonymous for the term “Member” as may be applicable and as used in the Terms of Use, such as where an existent Representative stands in the place of the respective party or parties.

**Confirmation of Representative’s Authority.** Before a Member may utilize a Representative to act on his or her behalf, Representative and the party such Representative seeks to represent must complete all portions of the attached Representative Confirmation form and return it to Zimple.

**Duties and Responsibilities of Representatives.** By serving as a Representative, a party agrees to and acknowledges the assumption of responsibility for representing the individual and/or collective interests of the authorizing party or parties, as the case may be, regarding the Loan Documents, whether by act or omission, as well as in all communications with Zimple. Representative shall adequately and accurately convey any pertinent information regarding the personal agreement’s administration to the relevant authorizing party or parties not already communicated by Zimple. In addition to communications with Representative, Zimple reserves the right to communicate with a Member including, but not limited to, substantially identical communications made to any or all of them and independent communications to one party or some parties only.

**Communications with Representatives.** A Representative will be recognized by Zimple as having authority to receive communications and to represent any and all authorizing parties unless and until Zimple is expressly notified of revocation of such authority by Member or by competent governmental officials, as may be applicable. Such authorization does not, however, preclude Member from representing or communicating on his or her behalf. Absent express notification to Zimple revoking Representative’s authority, as described below, where applicable and feasible, Representative’s instructions shall govern in the event of conflicting directions by any or all authorizing parties to Zimple. Zimple further reserves the right to refrain from any action where the parties’ instructions are or appear to be contradictory and Zimple shall not be liable for any losses suffered by any party as a result of using a Representative. Further, Member and Representative shall hold Zimple harmless from any and all claims arising from any disputes between any Member or Representative resulting from the use of a Representative to represent a Member’s interests.

**Termination of Use of Representative.** Any party that authorizes a Representative to act on their behalf may terminate said authorization by contacting Zimple either by email at [members@zimplemoney.com](mailto:members@zimplemoney.com) or in writing at Zimple, Inc., Attn: Member Service, P.O. Box 11500, Bainbridge Island, WA 98110-5500.

YOU EXPRESSLY ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT AND INCORPORATED DOCUMENTS AND FURTHER UNDERSTAND THE RIGHTS, OBLIGATIONS, TERMS AND CONDITIONS SET FORTH HEREIN. BY CLICKING ON THE ACCEPT BUTTON AND/OR USING THE ZIMPLE SERVICES, YOU EXPRESSLY CONSENT TO BE BOUND BY ITS TERMS AND CONISITIONS AND GRANT TO ZIMPLE THE RIGHTS SET FORTH HEREIN.

# 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.)

## 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.

## 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).

#### **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.

#### **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.

#### **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.

#### **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.

#### **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.

#### **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.

#### **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.

#### **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.

#### **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.**

#### **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.

#### **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.

#### **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.**

## ACH ACKNOWLEDGEMENT

User wishes to originate ACH (Automated Clearing House) debit and/or credit items as a form of payment for financial agreements, loans, installment credit, goods or services and to facilitate funds transfer utilizing the Zimple and TELEDRAFT System. User has received and read the current version (dated 01\_24\_2011) of the separate TELEDRAFT "ACH Processing Agreement" applicable to ACH processing and the Zimple Terms of Use. Updates to the current version of the TELEDRAFT "ACH Processing Agreement" shall be made available on the Zimple web-site. Users shall acknowledge the current Zimple and TELEDRAFT agreements at each use of the Zimple system.

By signing below User agrees to be bound by the terms and conditions of the TELEDRAFT ACH Processing Agreement, the Zimple Terms of Use and accepts the Fee Schedule associated Zimple, Inc. for services. Zimple's system shall provide debit/credit instructions to TELEDRAFT. User authorizes Zimple to provide debit and credit instructions to TELEDRAFT to debit and or credit the bank account indicated herein with respect to the receipt of settled funds, returned items established by Users agreements with TELEDRAFT, Zimple and Zimple's Terms of Use.

The ACH Processing Agreement and this Addendum will be effective upon Zimple and TELEDRAFT acceptance and upon the User submission of first transaction for use of the Zimple, Inc. software system and TELEDRAFT, Inc. Payment Services through Zimple's Web Site, as defined in the TELEDRAFT ACH Processing Agreement.

The information I have provided in this User application will be provided to Zimple and TELEDRAFT for the sole purpose of establishing ACH origination privileges and utilized confidentially and exclusively by Zimple, TELEDRAFT and its sponsoring financial institutions in order to determine eligibility. I also acknowledge that a personal consumer credit inquiry may be required and I hereby consent and provide my permission for this inquiry.

I represent that all the information provided herein is truthful and accurate to the best of my knowledge.

By signing below, I authorize the release of this information to Zimple and TELEDRAFT.

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**Company Name (Print)**

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**Authorized Signer (Print)**

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**Authorized Signer Signature** **Date**