

MERCHANT PROCESSING TERMS & CONDITIONS

This FirstFund ACH Origination Agreement ("Agreement") is entered into by and between the MERCHANT ("MERCHANT") indicated on the FirstFund ACH Module Application and FIRST AMERICAN Payment Systems, L.P. ("FIRST AMERICAN") located at 100 Throckmorton Street, Suite 1800, Fort Worth, Texas 76102.

The MERCHANT has requested that FIRST AMERICAN permit the MERCHANT to initiate electronic signals for paperless entries through FIRST AMERICAN to accounts maintained at financial institutions, by means of the Automated Clearing House ("ACH"). FIRST AMERICAN has agreed to do so pursuant to the terms of this Agreement.

Now, therefore, the MERCHANT and FIRST AMERICAN agree as follows:

1. Rules: MERCHANT acknowledges and agrees that it will comply with, and all ACH items will comply with, the operating rules of the National Automated Clearing House Association ("NACHA") the Electronic Funds Transfer Act, Regulation E and all other applicable laws, rules and regulations (all such operating rules, laws and regulations, as amended from time to time, the "Rules").

2. Security Procedures for Transmission of Entries: MERCHANT will transmit all debit and credit entries to FIRST AMERICAN at the location, on or before the deadlines, described on Attachment 1 to the Agreement. MERCHANT will conform all entries to the format, content, and specifications contained in the Rules, in addition to the security procedures described in the Agreement. MERCHANT authorizes FIRST AMERICAN to transmit all entries received by FIRST AMERICAN in accordance with the terms of this Agreement and to credit or debit entries to the specified accounts.

3. FIRST AMERICAN Obligations: In accordance with the Rules, FIRST AMERICAN will process, transmit, and settle the entries received from MERCHANT which comply with the terms of the Agreement, including the security procedures.

4. Warranties: MERCHANT warrants, represents and agrees that MERCHANT is responsible for all warranties FIRST AMERICAN is deemed by the Rules to make with respect to entries originated by MERCHANT. Without limiting the foregoing, MERCHANT warrants and agrees that (a) each entry is accurate, is timely, has been authorized by the party whose account will be credited or debited or otherwise complies with the Rules; (b) each debit entry is for a sum which, on the settlement date with respect to it, will be owing to MERCHANT from the party whose account will be debited, is for a sum specified by such party to be paid to MERCHANT, or is a correction of previously transmitted erroneous credit entry; and (c) MERCHANT has complied with all prenotification requirements of the Rules. MERCHANT will retain the original or copy of the customer authorization record as required by the Rules for a period of not less than two (2) years after termination or revocation of such authorization and will, upon request of FIRST AMERICAN, furnish such original or copy to FIRST AMERICAN. MERCHANT shall indemnify FIRST AMERICAN against any claim, loss, liability, or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any warranty or any other provision of this Agreement, or any other agreement entered into in connection herewith.

5. Provisional Credit: MERCHANT acknowledges that the Rules make provisional any credit given for any entry until FIRST AMERICAN crediting the account specified in the entry receives final settlement. If FIRST AMERICAN does not receive final settlement, FIRST AMERICAN is entitled to a refund from the credited party and the initial receiver of the debit entry shall not be deemed to have completed the payment transaction.

6. Settlement: MERCHANT will maintain immediately available funds in an amount sufficient to cover all returns and credit entries initiated by it, as of the applicable settlement date, in a First American account eligible to receive ACH entries. MERCHANT authorizes FIRST AMERICAN to debit or credit its account in the amount of each entry. FIRST AMERICAN may require MERCHANT to prepay for credit entries and/or estimated debit entry returns.

7. Cancellation or Amendment: MERCHANT shall have no right to cancel or amend any entry/file after its receipt by FIRST AMERICAN.

8. Rejection of Entries and Improper Transactions: FIRST AMERICAN shall at its sole discretion, have the right to reject any entry which does not comply with the requirements of Section 1 (Rules) of this Agreement and may reject any entry if MERCHANT is not otherwise in compliance with the terms of the Agreement or if FIRST AMERICAN has reason to believe the entry will violate the terms of the Agreement. FIRST AMERICAN shall have no liability to MERCHANT by reason of the rejection of any entry or the fact that such notice is not given at an earlier time than that provided for herein. FIRST AMERICAN may hold funds, suspend processing or terminate MERCHANT with or without notice, or require MERCHANT to process a refund upon any determination by FIRST AMERICAN, in its sole discretion, of improper, fraudulent, suspicious or questionable transactions, including, but not limited to, any transactions that fail to meet the requirements of this Agreement or which vary from the information represented or disclosed in the Merchant and Product Information Sections of the FirstFund ACH Module Application & Agreement. FIRST AMERICAN may also at its sole discretion block, reject, or deny any transaction for any reason. No fees are refundable to MERCHANT with respect to improper, fraudulent, suspicious or questionable transactions including, but not limited to, when MERCHANT processes a refund, or during any period of suspension.

9. Returned Entries: FIRST AMERICAN shall have no obligation to retransmit a returned entry if FIRST AMERICAN complied with the terms of this Agreement with respect to the original entry. If a customer of the MERCHANT returns any transaction for any reason, then it is MERCHANT's responsibility to collect any funds that are owed. FIRST AMERICAN has no obligation to originate a transaction where authorization has been revoked.

10. Account Discrepancies: MERCHANT agrees to notify FIRST AMERICAN within a reasonable time not to exceed thirty (30) days after MERCHANT receives a payment of any discrepancy between MERCHANT's records and the amount posted to MERCHANT's bank account. Failure to notify FIRST AMERICAN of any discrepancy within such thirty (30) day period shall be deemed acceptance by MERCHANT of the entries on such statement.

11. Fees: MERCHANT agrees to pay FIRST AMERICAN for services provided under this Agreement in accordance with the schedule of charges detailed on the FirstFund ACH Module Application. FIRST AMERICAN may change its fees or add new fees from time to time upon notice to MERCHANT. All fees will be collected via ACH from MERCHANT's DDA account, following the end of a calendar month and a statement reflecting those fees will be provided. In the event the ACH for collection of fees owed to FIRST AMERICAN is rejected by MERCHANT's First American for any reason, MERCHANT agrees to pay FIRST AMERICAN a reject fee of no less than \$30.00. These fees shall be paid by MERCHANT to FIRST AMERICAN via ACH. National Automated Clearing House Association fines assessed as a result of MERCHANT failing to follow procedures will be passed through to MERCHANT.

12. Liability: The parties agree to the following:

a. FIRST AMERICAN shall be responsible only for performing the services expressly provided for in this Agreement in a reasonable manner. FIRST AMERICAN shall not be responsible for MERCHANT's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorization of any entry received from MERCHANT) or those of any other person, including without limitation, transmission or communications facilities, any Receiver or Receiving Depository Financial Institution (including without limitation the return of an entry by such Receiver or Receiving Depository Financial Institution), and no such person shall be deemed FIRST AMERICAN's agent.

b. MERCHANT agrees to indemnify FIRST AMERICAN against any loss, liability, or expense (including attorney's fees and expenses) resulting from or arising out of the services provided hereunder.

c. In no event shall FIRST AMERICAN be liable for any consequential, special, punitive or indirect loss or damage which MERCHANT may incur or suffer in connection with this Agreement, including without limitation loss or damage from subsequent wrongful dishonor resulting from FIRST AMERICAN's acts or omissions pursuant to this Agreement.

d. Without limiting the generality of the foregoing provisions, FIRST AMERICAN shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, the Rules, interruption of transmission or communication facilities, equipment failure, war, emergency conditions or other circumstances out of FIRST AMERICAN's or its designated bank's control. In addition, FIRST AMERICAN shall be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in exceeding any limitation upon intra-day net funds position established pursuant to present or future Federal Reserve guidelines or otherwise violating any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

e. Subject to the foregoing limitations, FIRST AMERICAN's or its designated First American's liability for loss shall be limited to monetary damages not to exceed the total amount paid by MERCHANT to FIRST AMERICAN for the affected ACH service, as performed by FIRST AMERICAN under this agreement for the preceding 30 calendar days.

13. Inconsistency of Name and Account Number: MERCHANT acknowledges that, if an entry describes the receiver inconsistently by name or account number, payment of the entry may be made on the basis of the account number even if it identifies a person different from the named receiver. The MERCHANT assumes responsibility for the accuracy of all account information, names and data.

14. Data Retention: MERCHANT shall retain data on file adequate to permit remarking of entries for five (5) business days following the date of their transmittal to FIRST AMERICAN as provided herein and shall provide such data to FIRST AMERICAN upon its request.

15. Termination: This Agreement shall continue in full force and effect for a term of one (1) year. Thereafter, the Agree-

ment will automatically renew for additional one-year periods unless terminated per this paragraph or other provisions of the Agreement. The term of the Agreement shall commence with FIRST AMERICAN acceptance hereof (as evidenced by the commencement of FIRST AMERICAN's performance hereunder), and shall continue until either (i) terminated by MERCHANT by giving and FIRST AMERICAN receiving at least thirty (30) days, but no more than ninety (90) days, written notice of non-renewal to FIRST AMERICAN with termination effective at the end of the applicable term or (ii) terminated by FIRST AMERICAN, with or without cause or reason, and with or without advance notice. Termination by FIRST AMERICAN for any other product or service provided by FIRST AMERICAN results in termination of this Agreement. In the event MERCHANT submits ACH payment files to FIRST AMERICAN after the date of termination, the ACH payment files may (at FIRST AMERICAN's option) be processed subject to the terms and conditions of this Agreement. If this Agreement is terminated by MERCHANT without proper notice, FIRST AMERICAN will be entitled to recover, and MERCHANT will pay on demand, any and all losses (including consequential damages and loss of profits, costs, expenses and liabilities) incurred by FIRST AMERICAN in connection with termination. MERCHANT agrees to pay FIRST AMERICAN deconversion fees established by FIRST AMERICAN, but in no event less than one hundred dollars (\$100.00) for each MERCHANT location. MERCHANT authorizes FIRST AMERICAN to debit any account for said deconversion fees, plus any and all losses (including consequential damages and loss of profits, costs, expenses, and liabilities) incurred by FIRST AMERICAN in connection with termination. FIRST AMERICAN may hold payment of any monies due MERCHANT to ensure that all obligations of MERCHANT are satisfied. MERCHANT remains liable for any and all unpaid amounts due under this obligation or related to this Agreement.

16. Reserve Account: FIRST AMERICAN may require MERCHANT or any guarantor to establish a reserve account against current and future indebtedness for any reason. Any reserve will be held by FIRST AMERICAN for a period of time as is consistent with FIRST AMERICAN's liability. FIRST AMERICAN may immediately estimate the amount of the potential losses, fees, and costs and require MERCHANT or any guarantor to establish a reserve account for the full amount of the estimate. Payment of the reserve estimate shall be immediate. Failure to fund the reserve may result in immediate termination of the Agreement. Any reserve deposits, fees, or net revenues under this Agreement may be offset, held or reserved by FIRST AMERICAN against any obligations or liability of the MERCHANT under this Agreement or any other agreement with FIRST AMERICAN.

17. Communications:

If to FIRST AMERICAN, all notices under this Agreement shall be delivered to:

FIRST AMERICAN Payment Systems, L.P.

100 Throckmorton Street, Suite 1800

Fort Worth, Texas 76102

Attention: General Counsel

If to MERCHANT, the proper notice shall be the address stated on the records of FIRST AMERICAN. Notice to MERCHANT may be by letter, facsimile, electronic communications and/or the Monthly Statement.

18. Non-Assignment: All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns; provided however, that MERCHANT shall not assign its rights or obligations hereunder, nor, shall the MERCHANT contract with any other entity to perform for MERCHANT or on its behalf any of MERCHANT's obligations hereunder without the prior written approval of FIRST AMERICAN.

19. Amendment: FIRST AMERICAN has the right to amend this Agreement, by notice to MERCHANT. Any amendments shall become effective no earlier than 10 days from date of notice. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right to enforce the same. No waiver by any party of any condition contained in this Agreement, or of the breach of any term, provision or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach, or as a waiver of any other condition or of the breach of any other term, provision or covenant.

20. Governing Law; Jurisdiction: This Agreement shall be governed by and construed in accordance with the internal laws of the State of Texas applicable to agreements made and to be performed entirely within such state, without regard to the conflicts of law principles of such state. The section headings contained herein are for purposes of convenience only, and shall not be deemed to constitute a part of this Agreement or to affect the meaning or interpretation of this Agreement in any way. This Agreement is entered into and enforceable in Tarrant County, Texas. Venue for any dispute under this Agreement shall be in Tarrant County, Texas, for any matter not controlled by paragraph 24 hereof. MERCHANT consents to the jurisdiction and venue of the Texas and Tarrant County Courts and hereby waives any defense to jurisdiction and venue, including but not limited to, any claim of forum nonconveniens or insufficient contacts with the State of Texas.

21. Survivability: All covenants other than those contained in Section 3 of the parties hereto shall survive the expiration or termination of this Agreement.

22. Names: The names of FIRST AMERICAN Payment Systems, FIRST AMERICAN FirstFund, SecurChex, Merimac, Merimac Capital, FirstPay.Net, and other names used by FIRST AMERICAN in connection with its business are trademarks of FIRST AMERICAN and the sole and exclusive property of FIRST AMERICAN and cannot be used by the MERCHANT or any person without the prior express written consent of FIRST AMERICAN, which consent can be revoked at any time.

23. Arbitration: Any dispute, controversy, or claim arising out of or relating to this Agreement, including any breach hereof, shall be resolved by arbitration in the City of Fort Worth, Tarrant County, Texas, pursuant to the Federal Arbitration Act and administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction.

24. Attorneys' Fees and Costs: MERCHANT shall be liable for and shall indemnify and reimburse FIRST AMERICAN for any and all attorneys' fees and other costs and expenses paid or incurred by FIRST AMERICAN in the enforcement hereof, including but not limited to, collecting any amounts or obligations due from MERCHANT. All outstanding amounts owed to FIRST AMERICAN will bear interest from the date the amounts were due until it is repaid at a per annum interest rate determined by FIRST AMERICAN, but not exceeding the lesser of 18% per annum or the maximum non-usurious rate of interest permitted under applicable Texas or federal law (whichever permits the higher rate).

25. Guarantor: Any Guarantor hereby guarantees performance of all obligations of MERCHANT and agrees that FIRST AMERICAN may require performance of any obligation of MERCHANT hereunder directly from Guarantor.

26. Taxes: MERCHANT shall pay and be responsible for all sales, use, value added, and other taxes and duties, of whatever nature levied or imposed as a result of this Agreement or in connection with any services hereunder.

27. Business Changes: MERCHANT shall provide at least thirty (30) days written notice for any of the following anticipated changes: MERCHANT's business type, including any change in goods or services sold, name, entity type, address, change in the Product Information section of the FirstFund ACH Application & Agreement, any ownership change, or transfer or sell of substantially all of the assets of MERCHANT. MERCHANT shall not change its usual trade or business, move its trade or business to a new location, or commence operating an unrelated trade or business on the same premises where MERCHANT operates this stated trade or business without obtaining FIRST AMERICAN's prior written consent to the change, move or addition. MERCHANT also agrees that prior to any changes, FIRST AMERICAN must first accept the change and confirm such acceptance in writing.

28. Waiver: The parties and any guarantor expressly waive the right and agree not to bring or participate in any class or collective action (or other representative action) or any joinder or consolidation of claims with respect to any dispute arising out of or relating to this Agreement. ALL PARTIES TO THIS AGREEMENT HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, SUIT, CLAIM, COUNTERCLAIM OR THIRD PARTY CLAIM BROUGHT BY THE PARTIES HERETO ON ANY MATTER ARISING OUT OF OR OTHERWISE RELATED TO OR CONNECTED WITH THIS AGREEMENT.

29. Counterparts: This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement.

30. Entire Agreement: This Agreement (including the Attachments) is the complete and exclusive statement of the agreement between FIRST AMERICAN and MERCHANT with respect to the subject matter hereof and supersedes any prior agreement(s) between FIRST AMERICAN and MERCHANT with respect to such subject matter. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation, or government policy to which FIRST AMERICAN is subject and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation, or policy, and FIRST AMERICAN shall incur no liability to MERCHANT as a result of such violation or amendment.

FirstFund Merchant Processing Terms & Conditions Attachment 1

Transmission Location and Formatting Instructions for Direct Send Merchants

All files will be formatted in a NACHA or other pre-approved format. Transmission specifications will be established by FIRST AMERICAN Payment Systems, L.P.

The COMPANY will transmit files to FIRST AMERICAN, 100 Throckmorton Street, Suite 1800, Fort Worth, Texas 76102, (817) 317-9100.

ACH Processing Deadlines

Transmission of a File: ACH Processing Deadlines Until 3:00 p.m. C.S.T. one (1) business day prior to effective date. File processing may be impacted by circumstances beyond FIRST AMERICAN's control, such as disruptions in network processing, processing delays by a third party intermediary, inclement weather, etc. FIRST AMERICAN reserves the right to adjust or change Deadline Time at its sole discretion. A business day is a day FIRST AMERICAN is open to the public for carrying on substantially all of its business (other than Saturday, Sunday, or listed holidays).

An *effective date* must be a business day or the record will be processed on the first business day following the effective date.

Holiday Schedule

(Non-processing Days)

New Year's Day

Martin Luther King, Jr. Day

President's Day

Memorial Day

Independence Day

Labor Day

Columbus Day

Veteran's Day

Thanksgiving Day

Day Following Thanksgiving Day

Christmas Day

FIRST AMERICAN Designated Christmas Holiday (if applicable)

Security Procedures

FIRST AMERICAN shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by the Authorized Representative, and any such communication shall be deemed to have been signed by such person.

The MERCHANT is solely responsible for the accurate creation, modification, and deletion of the account information maintained on the website and used for ACH money transfer. The MERCHANT agrees to comply with written procedures provided by FIRST AMERICAN for the creation, maintenance, and initiation of ACH money transfers.

The MERCHANT is solely responsible for access by its employees of the data files maintained on the website.

The MERCHANT is responsible for operator security procedures.