



## Introduction

The ACH Services Terms and Conditions is a legal agreement (this "Agreement") between you ("Merchant," "Originator," "user," "you" or "your") and Fortis Payment Systems, LLC ("Fortis"), Inc. ("Fortis", "we," "our" or "us") governing your use of a Fortis Payment Systems, LLC ("Fortis") Account as defined below. Merchant agrees to use the services pursuant to the terms of this Agreement and the National Automated Clearing House Association ("NACHA") (the "Rules"). Fortis is willing to provide the services subject to the terms and conditions set forth in this Agreement. The Merchant's rights and obligations with respect to any Entry are governed by the Rules, this Agreement and applicable law. The Rules may be purchased online at [www.nacha.org](http://www.nacha.org) under the publications tab. Merchant acknowledges it has a copy or has access to a copy of the Rules. Merchant agrees to comply with and be subject to the Rules in existence at the date of this Agreement, and any amendments made to the Rules.

This Agreement is applicable to processing ACH transactions, which may be Prearranged Payment and Deposit (PPD) transactions, Internet- Initiated Entry (WEB), Cash Concentration and Disbursement (CCD), or Telephone- Initiated Entry (TEL) all utilizing the end-customer's checking account information ("ACH Services"). If the ACH transactions are web-initiated, Merchant is required to provide its own shopping cart or use Fortis' or a third-party's software or shopping cart, which will integrate with Fortis' systems. In all cases where Fortis hosts software for Merchant, the various terms and conditions referenced below regarding disclosure, transaction and processing requirements and all other requirements imposed by either regulatory agencies, law enforcement, Fortis, or otherwise, shall have full force and effect.

In exchange for Fortis, ("Guaranteed Party") acceptance of, as applicable, the Agreement, the undersigned ("Guarantor") individually, unconditionally, and irrevocably guarantees the full payment and performance of Merchant's obligations under this Agreement, as they now exist or as modified from time to time, whether before or after termination or expiration of this Agreement and whether the undersigned has received notice of any amendment of this Agreement. The undersigned waives notice of default by Merchant and agrees to indemnify the Guaranteed Party for any and all amounts due from Merchant under this Agreement. The Guaranteed Party shall not be required to first proceed against Merchant to enforce any remedy before proceeding against the Guarantor. This is a continuing personal guaranty and shall not be discharged or affected for any reason. Guarantor understands that this is a personal guaranty of payment and not of collection and that the Guaranteed Party is relying upon this personal guaranty in entering into the foregoing agreements, as applicable and the Agreement.

By Clicking "I Agree", you agree to be bound by all terms and conditions of this Agreement, including, without limitation, all documents, policies, and procedures incorporated herein by reference.

This Agreement governs your relationship with us and becomes effective when you click "I Agree" ("Effective Date"). To use the ACH Services, you must agree to all the terms of this Agreement. Merchant may begin to sell its products and services using the ACH Services after approval of the account ("Account").

## 1. Fortis' Role and Responsibilities

Fortis provides ACH Services to Merchant. Merchant must utilize a Fortis-approved shopping cart, software, and/or approved method of electronic file transmission to use the ACH Services.

Fortis will accept Entries via Merchant's payment gateway. Fortis is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. Fortis will use information provided by Merchant to originate its entries in the ACH file that is sent to the originating bank (ODFI). Merchant understands and agrees that Fortis may reject Merchant's entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause Fortis to potentially violate any federal, state, or local law, rule statute, or regulation, including without limitation the Rules, any Federal Reserve, or another regulatory risk control program. At Merchant's written request, Fortis will make reasonable efforts to reverse or delete an entry but will under no circumstance be liable for the failure to comply with the request.



IMPORTANT: THIS PROGRAM OFFERS NO GUARANTEE FOR ENTRIES THAT ARE RETURNED UNPAID AND MERCHANT SHALL BE LIABLE FOR 100% OF ALL LOSSES ARISING FROM RETURNED ENTRIES.

## **2. Merchant's Account & Verification**

Fortis allows businesses, and non-profit organizations to register for Fortis if they are located in the United States or Canada. A Merchant must be either a United States citizen, a legal permanent resident of the United States, a United States business or nonprofit organization having a physical presence in the United States, authorized to conduct business by the state in which it operates or authorized to conduct business in Canada. Each Account must be linked to a verified U.S. or Canadian bank account. A Merchant who opens an Account must be eighteen (18) years of age or older. You may open an Account for a business or nonprofit organization only if it is legitimate and you have the authority to enter into this Agreement on its behalf. Your acceptance of this Agreement constitutes acceptance by the business or nonprofit organization. Merchant acknowledges that this Agreement constitutes the legal, valid, and binding obligation of Merchant, enforceable in accordance with its terms.

A Merchant must apply with Fortis. If applying online, you are responsible for maintaining the secrecy and security of your Account access credentials and for any use of or action taken under them. Fortis obtains additional Merchant information, such as street address, telephone number, tax identification number (such as Social Security Number), and date of birth to verify your identity. If applicable, you authorize Fortis to obtain consumer reports and background checks from a credit reporting agency and/or a third-party that conducts identity and background checks, regarding Merchant and the owners of the business as per FINCEN- Beneficial Ownership Rule 31 CFR § 1010.230. You agree to provide supplemental documentation upon request (including but not limited to Articles of Incorporation, Articles of Organization, passport, driver's license, or a business license). You authorize Fortis, directly or through third parties, to make inquiries or verify that this information is accurate (for example, through social media or third-party databases).

## **3. Underwriting**

Fortis will review the information that you submit in connection with your request to sign up for the ACH Services. You must provide accurate and complete information. These are not all the reasons an account may be declined. Your account could be declined for compliance reasons, as well. Fortis may close your account at any time, with or without cause and with or without notice.

You agree that Fortis may share information about you and your Fortis Account with its bank and/or bank affiliates. After you submit your application, Fortis or its bank may conclude that you will not be permitted to use the ACH Services. You also agree that Fortis is permitted to share information about you and your application (including whether you are approved or declined), and your Fortis Account with your bank or other financial institution. This includes sharing information (a) about your transactions for regulatory or compliance purpose; (b) for use in connection with the management and maintenance of the Service; (c) to create and update their customer records about you and to assist them in better serving you; and (d) to conduct Fortis' risk management process.

In addition, we may share some or all of the information about you and your transactions with our banks, the ACH networks, and our other partners (and their respective affiliates, agents, subcontractors, and employees), who may use this information to perform their obligations under their agreements with Fortis, to operate and promote their respective businesses, to perform analytics and create reports, to prevent fraud, and for any other lawful purpose.

## **4. Merchant's Responsibilities & Representations**

Merchant agrees to process all ACH transactions related to its business exclusively through Fortis and give

Fortis the right of first refusal on any future ACH or electronic check processing contracts with Merchant. Merchant agrees to inform Customers that Merchant will honor electronic ACH processing services provided by Fortis. Merchant shall make no use of Fortis' software or educational/promotional materials, other than as expressly set forth in this Agreement. In no way shall the Merchant indicate that Fortis' services are an endorsement of the Merchant, its business, or its business practices. Fortis reserves the right to audit you to ensure compliance with the Rules and the Agreement.

Merchant represents and warrants that it will (i) comply with all federal, state, and local laws, rules and regulations, and the Rules as amended from time to time, including those with respect to consumer protection, data security, and processing of ACH transactions; (ii) the description of type and nature of Merchant's business in the Application is complete and accurate and will remain so during the term of this Agreement; (iii) the Application has been signed by a principal of Merchant and that if there is a change in control of Merchant that Merchant will not submit entries under this Agreement without Fortis' prior written consent; (iv) in the event of a security breach of Merchant's records or payment gateway, Merchant will notify Fortis immediately of such a breach and shall provide as much information as may be required to allow Fortis to act accordingly to protect Fortis' legal rights and responsibilities and those of consumers affected by the breach. Merchant also represents and warrants that with each transaction presented to Fortis by Merchant for authorization: (a) each Customer has authorized the debiting/crediting of their checking account or, that each debit or credit is for an amount agreed to by the Customer; (b) the proof of purchase is valid and has been completed in accordance with all applicable laws and all of the provisions set forth in this Agreement; (c) the total amount of each proof of purchase evidences all goods and services purchased in a single transaction; (d) Merchant has or will deliver the goods or completed the services identified in the sale; (e) each sale is a bona fide sales transaction; (f) Merchant has not submitted ACH transactions drawn from its checking/savings accounts on the Merchant's payment gateway; (g) Merchant has used only the name and address contained in the Application on all its sales drafts; (h) Merchant has not submitted duplicates of any transactions; and (i) the banking information submitted to Fortis for processing has not been altered by Merchant. Fortis reserves the right to perform internal reviews including, but not limited to (a) Know Your Customer (KYC) reviews; and (b) Know your Customer's Customer (KYCC) review.

## **5. ACH Obligations Using Fortis' Virtual Terminal/Gateway**

### ***Processing Requirements***

Merchant shall comply with the following conditions when processing ACH transactions using Fortis' virtual terminal and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established by Fortis from time to time. When initiating ACH debit and credit entries through Fortis the Merchant shall adhere to the following requirements:

(a) All demand deposit account ACH debits or credits must be drawn on or payable through a federally insured depository financial institution; be based on checking accounts where checks were issued with machine-readable bank routing number, account number and check serial number printed on the check and be for an amount less than the check limit assigned by Fortis.

(b) Customer shall authorize by a signed written agreement containing the ACH Debit/Credit amount and day of month to be debited/credited from Customer's account and provide sufficient Customer information to allow Merchant to contact Customer, if necessary.

(c) All items, goods and services purchased in a single transaction shall be included in the total amount on a sales form.

(d) Once Fortis authorizes the transaction, Merchant shall ensure that the proof of purchase contains the following correct information: the Customer's bank routing and account number from the MICR data; Merchant's correct name and business address; the date of the transaction; the total cash price of the sale (including all applicable state, federal or local surcharges and taxes). After Customer electronically accepts

the receipt, Merchant shall deliver to the person presenting the ACH Debit a true and completed copy of the proof of purchase with the goods and services purchased.

(e) No ACH Debit/Credit may be altered after Fortis authorizes acceptance of the ACH Debit/Credit. Merchant may not resubmit an electronic check or ACH Debit electronically or deposit it by any means once Fortis authorizes a transaction. Merchant may not resubmit a credit by any means once Fortis authorizes the deposit. Merchant may not resubmit a debit using the same authorization. It must be a new transaction with a new authorization. Failure to comply with the above requirements will subject Merchant to disputes or withholding of funds and may be grounds for immediate termination of services and indemnification of Fortis by Merchant pursuant to this Agreement.

### **Authorizations**

In the case of Debit Entries to a Customer Account, the authorization must be in writing and signed or similarly authenticated by the Customer. The similarly authenticated standard permits signed, written authorizations to be provided electronically, and the authorization process must evidence both the Customer's identity and his assent to the authorization. Merchant must provide each Customer with an electronic or hard copy of the Customer's authorization for all Debit Entries to be initiated to a Customer Account. Merchants can submit transactions through Fortis' virtual terminal, Fortis' hosted payment page, a third-party software provider that is integrated to the Fortis API or by directly integrating to the Fortis API.

(a) PPD Entry. A Prearranged Payment and Deposit (PPD) entry may be used for either recurring or non-recurring transactions to a Customer's account, when the Originator has provided the Customer with a written authorization (Schedule A) that is readily identifiable as an ACH debit authorization and contains clear and readily understandable terms, which the Customer has signed or similarly authenticated. Merchant must provide the Customer a copy of the authorization for all debit entries. Merchant must retain the original or a reproducible copy of the Customer's authorization for two years from the termination or revocation of the authorization. If the Customer has authorized a PPD Entry from their account, the authorization must provide that Customer may revoke the authorization by notifying Merchant in the manner specified in the authorization. **Fortis may request a copy of the authorization at any time up to two years after termination of the Merchant account.**

(b) WEB Entry. Merchant initiating debit entries (both recurring and Single-Entry) to a Customer account pursuant to an authorization that is obtained from the Customer via the Internet are required to utilize the WEB (Internet-Initiated Entry) Standard Entry Class Code. A WEB entry may be transmitted by Merchant pursuant to an authorization that is obtained from the Customer via the Internet to affect a transfer of funds from a Customer Account of the Customer. The authorization must be displayed in a readable manner on a computer screen or other visual display, and it should prompt the Customer to print a hard copy of the authorization. Further, the authorization must readily identify the following (a) the transaction as an ACH debit authorization; (b) terms of the transaction; and (c) a method to revoke authorization by notifying Merchant in the manner prescribed. Merchant represents and warrants that it shall ensure that the financial information received is protected by security practices and procedures that include the following:

1. The authorization must be displayed in a readable manner on a computer screen or other visual display, and it should prompt the Customer to print a hard copy of the authorization. Further, the authorization must readily identify (i) the transaction as an ACH debit authorization; (ii) terms of the transaction; and (iii) a method to revoke authorization by notifying Merchant in the manner prescribed.
2. For each WEB Entry, Merchant is required to employ commercially reasonable methods of authentication to verify the identity of the Customer.
3. For each Web Entry, Merchant is required to use commercially reasonable procedures to verify that routing numbers are valid.

4. Merchant must establish a secure Internet session with each Customer utilizing a commercially reasonable security technology.

5. The WEB Standard Entry Class Code applies to both recurring and single entries. For Recurring Entries, the Payment Type Code must contain the value "R", and for Single Entries, the Payment Type Code must contain the value "S".

6. Merchants must retain records of a Customer's authorization for a period of two years after the termination or revocation of the authorization, including a record of the authorization and authentication. **Fortis may request a copy of the authorization at any time up to two years after termination of the Merchant account.**

7. Merchant may not resubmit the transaction electronically or deposit the original source document by any means, once Fortis authorizes a transaction.

**Effective March 19, 2021, ACH originators of WEB debit entries will be required to add account validation as part of a "commercially reasonable fraudulent transaction detection system" to the first use of an account number or changes to the account number if it is a recurring payment. At minimum, the Originator (Merchant) must validate that the account is open and able to accept ACH entries.**

Failure to comply with the above requirements will, in addition to other penalties, subject Merchant to disputes or withholding of funds and may be grounds for immediate termination of services.

(c) CCD Entry. A Cash Concentration and Disbursement (CCD) transaction type is used for permitting electronic debits between businesses. The Originator must provide the Business to Business (B2B) with a written authorization (Schedule A) that is readily identifiable as an ACH debit authorization and contains clear and readily understandable terms, which the Customer has signed or similarly authenticated. Merchant must provide the Customer a copy of the authorization for all debit entries. Merchant must retain the original or a reproducible copy of the Customer's authorization for two years from the termination or revocation of the authorization. If the Customer has authorized a CCD Entry from their account, the authorization must provide that Customer may revoke the authorization by notifying Merchant in the manner specified in the authorization. **Fortis may request a copy of the authorization at any time up to two years after termination of the Merchant account.**

(d) TEL Entry. Originators of Single-Entry debits to Customer accounts may obtain an oral authorization for such an entry from the Customer via the telephone. These Single-Entry debit-only transactions, which must utilize the TEL Standard Entry Class Code, may only be originated when either (i) there is an existing relationship between Merchant and the Customer; or (ii) there is no existing relationship between Merchant and the Customer, but the Customer has initiated the telephone call. A TEL entry may not be used by a Merchant when there is no existing relationship between Merchant and the Customer, and Merchant has initiated the telephone call. Merchant and the Customer are considered to have an existing relationship when either (1) there is a written agreement in place between Merchant and the Customer for the provision of goods or services (e.g., the Customer has an insurance policy with Merchant); or (2) the Customer has purchased goods or services from Merchant within the past two years. A TEL entry may be transmitted by Merchant pursuant to an oral authorization that is obtained from the Customer via the telephone to affect the transfer of funds from a Customer Account of the Customer. In the case of single TEL entries, the Customer's authorization must be readily identifiable as an authorization and must clearly state its terms. The following minimum information must be included as part of the authorization:

1. The date on or after which the ACH Debit to the Customer's account will occur.
2. The amount of the transaction.
3. Customer's name.
4. A telephone number for Customer inquiries that is answered during normal business hours.
5. The method by which the Customer may revoke the authorization.

6. The date of the Customer's oral authorization.
7. A statement by Merchant that the authorization obtained from the Customer is for a Single-Entry ACH Debit.

In the case of Recurring TEL Entries, the Customer's authorization must be readily identifiable as an authorization and must clearly state its terms. The following minimum information must be included as part of the authorization:

1. The amount of the transaction.
2. The timing (including the start date), number, and/or frequency of the transactions.
3. Customer's name.
4. A telephone number for Customer inquiries that is answered during normal business hours.
5. The method by which the Customer may revoke the authorization.
6. The date of the Customer's oral authorization.

For an oral authorization or either Single or Recurring TEL Entries obtained over the telephone to be in accordance with the requirements of the Rules, (i) Merchant must state clearly during the telephone conversation that the Customer is authorizing an ACH debit entry to his/her account, (ii) Merchant must express the terms of the authorization in a clear manner, and (iii) the Customer must unambiguously express consent. Silence is not express consent. Either a copy or the original audio recording of the authorization or the written notice of authorization must be retained for two (2) years from the date of the authorization.

**Fortis may request a copy of the authorization at any time up to two years after termination of the Merchant account.**

## 6. Software

Merchant may utilize a shopping cart and Fortis will provide an API to its gateway for processing all electronic check transactions. Merchant is responsible for all telecommunication fees and charges, including but not limited to telephone fees, associated with and related to the use of the payment gateway and/or any related software costs/expenses. Merchant shall maintain all hardware/software necessary for electronic check processing, including necessary file servers, payment gateway, and computer telecommunications equipment in good working order at Merchant's sole expense. You shall advise Fortis immediately in the event of a security breach or breakdown of related equipment, electronic check software problems, and/or any other system failure. You acknowledge that Fortis is not responsible for any related Internet or computer and telecommunications equipment used by the Merchant. Merchant also acknowledges that Fortis solely functions as the ACH third party sender and assumes no liability in the performance of Merchant's shopping cart. In this regard, Fortis shall not be responsible for any unauthorized tampering or altering to software specifically installed by on the part of the Merchant or Merchant's agent. Fortis' approval of equipment and/or software, including without limitation payment gateway software, does not constitute an express or implied warranty, representation or endorsement of such equipment and Merchant accepts responsibility for selection and compliance with the Rules of such equipment and/or software. In the event of a security breach of Merchant's records, Merchant is required to notify Fortis immediately of such a breach, but no later than twenty-four (24) hours after such security breach and to provide as much information as may be required to allow Fortis to act accordingly to protect Fortis' legal rights and responsibilities. Merchant further agrees to immediately remove and properly dispose of Fortis' previous version releases of any related software and to utilize the most current software version releases upon receipt of such from Fortis. In the event of termination, Merchant shall immediately and unconditionally remove all software related to the ACH Services at Merchant's expense.

## 7. Data Retention

Merchant shall retain all records related to authorization, including all sales and credit receipts and authorizations for a period of no less than two years following the date of termination or revocation of the authorization.

## 8. ACH Debit Restrictions

From time to time, Fortis shall establish necessary security and identification procedures for presentment of electronic checks or debits for electronic processing pursuant to the Rules and applicable law. Merchant agrees to comply with such procedures and to accept such "properly presented" ACH debits for electronic processing. For an ACH debit transaction to be valid, Customer must initiate the transaction and complete the ACH Authorization Agreement.

MERCHANT ACKNOWLEDGES AND UNDERSTANDS THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT ACCOUNT HOLDER'S EXPRESSED AUTHORITY. MERCHANT HEREBY ACKNOWLEDGES RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY LAW. IT IS SPECIFICALLY UNDERSTOOD BY MERCHANT THAT ANY TRANSACTION EVENT INITIATED AS AN UNAUTHORIZED MANUAL ENTRY OR DEPOSIT BY MERCHANT AFTER MERCHANT HAS RECEIVED APPROVAL FOR ELECTRONIC DEPOSIT OF ACH TRANSACTIONS OR IS INTENDED FOR ELECTRONIC DEPOSIT SHALL BE INTERPRETED AS AN UNLAWFUL DEBIT TRANSACTION PURSUANT TO THIS NOTICE. IN THE EVENT OF SUCH A VIOLATION, MERCHANT AGREES AND WARRANTS TO HOLD FORTIS AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE FORTIS FOR THE TRANSACTIONS WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE FORTIS FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND FORTIS MAY PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.

## 9. Unacceptable Transactions/Prohibited Activities

Merchant agrees not to submit any of the following transactions to Fortis for electronic processing; (a) Merchant shall not electronically process any ACH item drawn on any depository institution that is not federally insured or part of the ACH network; (b) Merchant shall not accept any third party ACH made payable where the purpose is for the Customer to receive cash or cash back; (c) Merchant shall not submit for processing any transaction representing the financing of an existing obligation whether previously owed to Merchant, arising from the dishonor of an ACH debit, electronic check or arising from a credit card, debit card or smart card dispute with the Merchant; (d) Merchant shall not submit an ACH item written for goods or services that are not concurrently provided to the Customer or for goods or services provided to a third party; (e) Merchant shall not submit an ACH item which is altered by the Merchant in any way; (f) Merchant shall not knowingly submit an ACH item on an account on which Fortis previously denied authorization. Merchant's submission of any of the above transactions for electronic processing may subject the Merchant to immediate suspension or termination and all funds of Merchant, including those in Merchant's account, may be placed on hold.

By applying as a Fortis Merchant, you confirm that you will not accept ACH payments or use the Service in any of the following categories/businesses, or engage in any of the following activities (as may be updated by Bank and/or Fortis in their sole discretion from time to time):

### **Prohibited:**

- Adult Services, Escort Services, Illegal or Pornographic Online Content
- Any merchant about whom MB has knowledge that the business functions performed by the merchant are deemed illegal by, or are in direct conflict with U.S. federal, state, or local laws.
- Any merchant about whom MB has knowledge that the merchant has not obtained the licensing or registration required by jurisdiction(s) in which it operates
- Any merchant location outside the United States, Puerto Rico, Canada, Virgin Islands, American Samoa, or Guam (Subject to Sponsor Bank License)
- Any merchant selling goods or services that represent a violation of any law, statute, or regulation

- Any merchant selling products that infringes on the intellectual property rights of others, including counterfeit goods or any product or service that infringes on the copyright, trademark, or trade secrets of any third party
- Any product, service or activity that may be considered by FCRM (MB) to be of the type that presents a deceptive, unfair, predatory, or reputational risk
- Charities without evidence of 501(c) (3) or equivalent status; or foreign owned charities
- Credit Repair, Debt Collection, Elimination or Reduction Services
- Crowdfunding
- Distressed Property Sales and Marketing
- Door to Door Sales
- Entities w/ International Payment Needs (i.e. IAT needs at MB Financial)
- Foreign Exchange Trading
- High Interest Rate non-bank consumer lending including, but not limited to, Payday Lending, Car Title Loans and Loan Modifications.
- Marijuana Dispensaries and related products or services
- Money Transmitters
- Pawn Shops and/or Gold Dealers
- Penny Auctions
- Shell Companies
- Virtual currency (that can be monetized, resold, converted, traded into physical/digital goods & services outside the virtual world)

If Fortis determines that you have received funds resulting from fraud or a prohibited activity, those funds may be held, voided, or returned. In addition, if we reasonably suspect that your Account has been used for an unauthorized, illegal, or criminal purpose, you give us express authorization to share information about you, your Account, your access to the ACH Services, and any of your transactions with law enforcement.

## **10. ACH Settlement Terms**

### ***Submission Timeframe***

Merchant shall transmit all the transactions to Fortis no later than 8:00 pm CST of the day of Fortis authorizing the sale. In addition, any transactions contained in an untimely transmission may be refused or become subject to an ACH return or held by Fortis until after a sixty-day period in case the consumer disputes the ACH item. If so, requested by Fortis, all documentation related to the Customer's Internet ACH Authorization, including but not limited to Customer's telephone number and billing and shipping address, must be sent to and received by Fortis within two (2) days from the request date. Fortis reserves the right to hold additional funds as necessary to reduce any risk associated with daily processing of electronic checks. Fortis may, in its sole discretion, place a hold on funds due to Merchant to ensure against potential losses. Fortis will then provide a net deposit to Merchant after a period acceptable to Fortis.

### ***Net Settlement***

Merchant understands that all transactions between Fortis and Merchant under this Agreement, except assessment of fees, shall be treated as a single transaction for purposes of daily settlement between Merchant and Fortis. Settlement shall consist of a 2 – 5 business day net settlement period, barring any potential hold on funds. ACH will be deducted from net settlement or may be debited from Merchant's account if no pending credits are available to offset the ACH return.

### ***Provisional Payment***



Merchant acknowledges that all settlements between Fortis and Merchant are provisional and are subject to the Customer's rights to dispute the charges against the Customer's account. Merchant acknowledges that this Agreement provides for the provisional settlement of Merchant's transactions, subject to certain terms and conditions, fees, credit transactions, contingent claims for ACH returns, adjustments and final settlement including but not limited to these examples herein. All payments to Merchant for legitimate and authorized transactions shall be made by Fortis through the ACH network and shall normally be electronically transmitted directly to Merchant's designated account. However, Fortis cannot guarantee the timeliness with which any payment may be credited by Merchant's bank. Merchant understands that due to the nature of the ACH and the electronic networks involved and the fact that not all banks belong to the ACH network, payment to Merchant can be delayed. In such cases, Merchant agrees to work with Fortis to help resolve any problems in crediting Merchant's designated account. In the event that a payment is rejected by Merchant's bank or fails to arrive within seven (7) banking days from the date of settlement due to problems beyond Fortis' control, Fortis may periodically wire transfer all funds due Merchant until the problem is corrected, at Merchant's expense. All payments to Merchant shall be made after first deducting any discount fee, transaction fee, credit, ACH return, reserve or other fee or charge for which Merchant is responsible pursuant to this Agreement. Said charges and fees shall be deducted from incoming transactions or may be debited from Merchant's designated Accounts at Fortis' sole discretion, without any further notice or demand.

### **11. Deposit of Funds**

Merchant authorizes Fortis to initiate debit and credit entries to Merchant's designated accounts. Merchant's authorization shall continue in effect for at least 180 days after termination of this Agreement, or for a longer period as determined necessary by Fortis in the exercise of its sole discretion in order to properly close the business.

Fortis may hold funds when Fortis is investigating a transaction for risk, compliance, or other reasons. Fortis shall monitor Merchant's transactional activity and Merchant agrees that Fortis may delay funds to investigate account activity. Funds may be held as long as the investigation lasts. Fortis will attempt to notify Merchant of any investigation, but Fortis shall have no liability to Merchant or any other party, for any such actions taken by Fortis. Merchant agrees that Fortis may hold, suspend, or retain funds to protect against amounts owed to Fortis based on Merchant's transaction history and/or Merchants' financial condition. Fortis will not be liable for any dishonor of any item as a result of any of these actions taken. All accounts are subject to review, verification, audit, and acceptance by Fortis. Fortis may return any item to Merchant for correction or proper processing.

### **12. Customer Service**

Merchant is solely responsible for all Customer service issues relating to its goods or services, including pricing, order fulfillment, order cancellation by Merchant or the Customer, returns, refunds and adjustments, rebates, functionality and warranty, technical support and feedback concerning experiences with your personnel, policies or processes. In performing Customer service, Merchant shall always present itself as a separate entity from Fortis. Merchant will cooperate with Fortis to ensure that Customers have access to clear Customer service information, including an active Customer service email address and telephone number.

### **13. Returns and Disputes**

Merchant shall bear all risk of loss, without warranty or recourse to Fortis for the amount of any transaction, or other amounts due Fortis (including Fortis' actual costs and expenses) due to returns of any kind, whether for Customer disputes, insufficient funds returns, administrative or corporate returns, or any other type of returns (Refer to Schedule C for a complete list of Return Reason Codes). Fortis can provide Merchant with ACH Return and Notification of Change alerts to assist with managing ACH returns from their customer's bank. Merchant's may be automatically subscribed to the service and will have the ability to opt-out of the service by contacting [ach@fortispay.com](mailto:ach@fortispay.com). Fortis shall have the right to debit Merchant's incoming

transactions and/or designated account and to charge such transactions to Merchant including, but not limited to any of the following situations:

1. Goods have been returned or service canceled by the person submitting the electronic check for electronic processing and that person has requested a credit draft and such credit draft was not processed by Merchant.
2. The sales draft or purchaser breaches any representation or warranty or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance as required.
3. The transaction is for a type of goods or services sold other than as disclosed in the Merchant application or approved in advance by Fortis or the amount shown on the sales receipt differs from the copy given to the Customer.
4. The Customer disputes the transaction(s) in writing to Fortis or to their financial institution named on the check.
5. A check authorization is subject to indemnification charged back by the Customer's financial institution.
6. The transaction was generated through the use of an account that was not valid or not open on the transaction date or which was made on an altered, fraudulent, or counterfeit check or of which Merchant had notice not to honor and failed to reject the transaction or if Merchant disregarded any denial of authorization.
7. The check resulted in a R29 return (Unauthorized ACH Entry to Corporate Account).
8. Customer did not authorize via electronic signature or secure username and password or if Merchant failed to obtain specific authorization in advance from Fortis to complete the transaction and/or the Customer has certified in writing to Fortis or his/her financial institution that no authorized user made or authorized the transaction.
9. The security procedures were not followed.
10. The Customer's financial institution or Fortis has information that Merchant fraud occurred at the time of the transactions, or the transaction is not a sale by Merchant whether or not such transactions were authorized by the Customer.
11. In any other situation where the check authorization was executed, or a credit was given to Merchant in circumstances constituting a breach of any representation or warranty of Merchant or in violation of applicable law or where Merchant has not provided documents or resolved a Customer dispute whether or not a transaction was returned.
12. A sales authorization was declined and represented whether or not the Customer knows or consents to this representation.

If the number of any counterfeit or fraud incidents become excessive, in the sole determination of Fortis; Merchant will be debited for all transactions. This Agreement may be terminated immediately without notice, and Merchant's funds, including but not limited to those incoming transactions and in Merchant's designated account, shall be held pursuant to the provisions herein. Fortis shall retain all fees related to an ACH returned transaction. Merchant agrees that Fortis may assess a fee for each returned item regarding return entries. Additionally, Fortis shall have the same rights to debit Merchant's account for transactions returned or not honored for any reason, including but not limited to insufficient funds, administrative or corporate returns, or any other kind of returned transaction.

#### **14. Reserve Account**

Fortis reserves the right to establish, without notice to Merchant, and Merchant agrees to fund a non-interest bearing Reserve Account, or demand other security and/or to raise any discount fee, monthly/periodic fee, or transaction fee hereunder, upon Fortis' reasonable determination of the occurrence of any of the following: (a) Merchant engages in any processing of charges which create an overcharge to the Customer by duplication of charges; (b) failure by Merchant to fully disclose the true nature or percentage of its actual or expected losses due to insufficient funds transactions, fraud, theft or deceit on the part of its Customers, or due to returned ACH transactions, or rejections by Customers; (c) failure by Merchant to fully disclose the

true nature of its business to Fortis to permit a fully informed decision as to the suitability of Merchant for processing through Fortis; (d) failure by Merchant to fully disclose the true ownership of Merchant's business entity or evidence of fraud; (e) processing by Merchant of unauthorized charges or any other action which violates applicable risk management standards of Fortis or is likely to cause loss; (f) any misrepresentation made by Merchant in completion of the Merchant Application or breach of any other covenant, warranty, or representation contained in this Agreement or applicable law including a change of type of business without prior written approval by Fortis; (g) Merchant has excessive ACH returns of any kind; (h) excessive number of requests from Customers or issuing banks for retrieval of documentation; (i) Merchant's financial stability is in question or Merchant ceases doing business; or (j) upon notice of or termination of this Agreement. After payment or adequate provision for payment is made by Fortis, for all obligations on the part of Merchant to Fortis under this Agreement, Merchant may request Fortis to disburse to Merchant any funds remaining in the Reserve Account unless otherwise agreed to by Fortis. Such funds will not be disbursed to Merchant until the end of one hundred eighty (180) days after termination of this Agreement or ninety (90) days from the date of the last return activity, whichever is later, unless Fortis in its sole discretion has reason to believe that Customer return rights may be longer than such period of time or that loss is otherwise likely, in which Fortis will notify Merchant when the funds will be released. No monies held in the Reserve Account shall bear interest.

## 15. Term & Termination

This Agreement shall be effective upon acceptance by Fortis. It shall continue indefinitely unless and until terminated by either party. Fortis shall have the right to terminate the Agreement for cause including, but not limited to cause for (a) violation of applicable laws, rules, regulations or other regulatory requirements or the Rules; or (b) fraudulent or otherwise illegal activity; or (c) excessive returns.

If Merchant terminates the account, they are responsible for all fees assessed in the month of termination. If either party terminates this Agreement during the first two years (24 months), a termination fee may be assessed and electronically debited from Merchants account. Fortis shall have the right to suspend or terminate this Agreement immediately and without notice to Merchant with or without cause.

## 16. Severability

If any provision of the Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, by court decision, statute, or rule (or arbitration) such holding shall not affect any other provisions of this Agreement. All other provisions or parts thereof shall remain in full force and effect and this Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provision hereof.

## 17. Fee Schedule

Within the ACH Merchant Processing Agreement and incorporated herein by reference is the list of fees that you may be charged on the commencement date of this Agreement: Discount Rate, Transaction Fee, Return Item Fee, Notification of Change Fee, Large Ticket over \$2500 Surcharge, Batch Fee, One-time Set-up Fee, Monthly Service Fee, Bank Change fee, Customer Account Verification Fee, and an Early Termination Fee. The term of this Agreement is indefinite until the Merchant or Fortis terminates the Agreement. If the Merchant or Fortis terminates the agreement prior to the initial two years (24 months) of this Agreement, an early termination fee may be assessed. If any fee amount is returned by the bank for any reason, an ACH Reject fee may be assessed to you. Subject to the terms of this Agreement, Fortis reserves the right to change its Fees. By continuing to use the Service, Merchant consents to the change in Fees. To withdraw your consent, you must close your Account.

## 18. Taxes

Section 6050W of the Internal Revenue Code ("Code") requires Fortis to report payment settlement amounts to the Internal Revenue Service ("IRS") for each Merchant processing. Fortis will report to the IRS on Form



1099-K as required by law, your name, address, Tax Identification Number (such as Employment Identification Number or Social Security Number), the total dollar amount of the ACH payments you receive in a calendar year, and the total dollar amount of the ACH payments you receive for each month in a calendar year.

Merchant shall provide Fortis with a Tax Identification Number ("TIN") such as a Social Security Number (SSN) or Employer Identification Number ("EIN") for each of their accounts. In the event Merchant fails to provide its TIN, Fortis may assess a fee to the Merchant, hold Merchant's funds, up to termination of the Merchant account.

Merchant is responsible for determining any and all taxes assessed, incurred, or required to be collected, paid, or withheld, in connection with the Account. Merchant is solely responsible for collecting, withholding, reporting, and correctly remitting any taxes to the appropriate tax authority. Fortis is not obligated to, and will not, determine whether taxes apply, or calculate, collect, report, or remit any taxes to any tax authority arising from your use of the ACH services.

## **19. E-Sign Disclosure and Consent**

### ***Electronic Delivery***

By accepting this Agreement, you agree and consent to receive electronically all communications, agreements, documents, notices, alerts, and disclosures (collectively, "Communications") that we provide in connection with your Account, this Agreement and your use of the Service by posting it on our website, uploading it to your specific Fortis Portal, text messaging or emailing it to the address listed in your Account. You also agree that electronic disclosures and notices have the same meaning and effect as if we had provided you with paper copies, whether or not you choose to view or print or download the disclosure or other notification. Such disclosures and notices are considered received by you within 24 hours of the time posted to our website, or within 24 hours of the time emailed to you unless we receive notice that the email was not delivered. Communications include but not limited to:

1. agreements and policies, such as this Agreement and our Privacy Policy, including updates
2. annual disclosures
3. transaction receipts and confirmations
4. statements and history
5. federal and state tax statements
6. ACH and Notification of Change alerts

If you want a paper copy, you can print a copy or download the information for your records.

You further agree that your electronic signature has the same effect as your manual, physical signature. Your electronic signature (via "click-through" or other method) has the same effect as if you signed them in ink.

### ***Updating Your Contact Information***

It is your responsibility to keep your primary email address, physical address, and phone number up to date. You understand and agree that if Fortis sends you an electronic Communication, but you do not receive it because your primary email address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive electronic Communications, Fortis will be deemed to have provided the Communication to you. Please note that if you use a spam filter that blocks or re-routes emails from senders not listed in your email contacts list, you must add Fortis to your email contacts list so that you will be able to receive the Communications we send to you. You can update your primary email address or street address at any time by calling Fortis Customer Service at 855-465-9999.

## 20. Data Security

Merchant warrants and agrees that it shall not sell, purchase, provide, or exchange checking account information in the form of sales drafts, mailing lists, tapes, or any other media obtained by reason of a transaction or otherwise, to any third party other than to Fortis, Merchant's agents approved by Fortis for the purpose of assisting Merchant in its business to Fortis, the financial institution named on the check, or pursuant to lawful government demand without the account holder's explicit written consent. All media containing checking account numbers must be stored in an area limited to selected personnel until discarding and must be destroyed prior to or in connection with discarding in a manner that will render the data unreadable. Merchant will not disclose and will keep confidential the terms and conditions of this Agreement.

## 21. Information Sharing

You agree that Fortis is permitted to share information about you and your application (including whether you are approved or declined), and your Account with your bank or other financial institution. This includes sharing information (a) about your transactions for regulatory or compliance purposes; (b) for use in connection with the management and maintenance of the Service; (c) to create and update their Customer records about you and to assist them in better serving you; and (d) to conduct Fortis' risk process. Fortis has an internal risk team that performs daily monitoring functions. In addition, we may share some or all of the information about you and your transactions with our Banks and our other partners (and their respective affiliates, agents, subcontractors, and employees), who may use this information to perform their obligations under their agreements with Fortis, to operate and promote their respective Associations, to perform analytics and create reports, to prevent fraud, and for any other lawful purpose.

## 22. Indemnification

You will indemnify, defend and hold us and our banks and partners harmless (and our and their respective employees, directors, agents, affiliates and representatives) from and against any and all claims, costs, losses, damages, judgments, tax assessments, penalties, interest, and expenses (including without limitation reasonable attorneys' fees) arising out of any claim, action, audit, investigation, inquiry, or other proceeding instituted by a third party person or entity that arises out of or relates to: (a) any actual or alleged breach of your representations, warranties, or obligations set forth in this Agreement, including without limitation any violation of our policies; (b) your wrongful or improper use of the Service; (c) any transaction submitted by you through the Service including without limitation the accuracy of any product information that you provide or any claim or dispute arising out of products or services offered or sold by you; (d) your violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (e) your violation of the Rules, any law, rule or regulation of the United States or any other country; (f) any other party's access and/or use of the Service with your unique username, password, or other appropriate security code.

If any of the Entries that are on Fortis' system belonging to Merchant are subpoenaed in a civil matter, Fortis shall use reasonable efforts to notify Merchant before producing such records in accordance with the subpoena unless deemed confidential by law. This section shall survive termination of this Agreement. Fortis shall be responsible for performance of the ACH services as a third-party sender in accordance with the terms of this Agreement. Fortis functions solely as the third-party sender and assumes no liability in the performance of the payment gateway or other related hardware/software. Fortis shall not be responsible for any other person's or entity's errors, acts, omissions, failures to act, negligence or intentional conduct, including without limitation to entities such as Fortis' communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of Fortis. Fortis may, at its option provide certain pre-verification services prior to processing an Entry subject to a fee; such services are at Fortis' discretion and shall in no way create a guarantee from Fortis or obligation on Fortis' part to verify the consumer identity and validity of a submitted entry.

### **23. Warranty Disclaimer**

THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICE IS AT YOUR OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICE IS PROVIDED WITHOUT WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM FORTIS OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED HEREIN. WITHOUT LIMITING THE FOREGOING, FORTIS, ITS BANKS, ITS PROVIDERS, ITS LICENSORS AND THE BANK (AND THEIR RESPECTIVE SUBSIDIARIES, AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) DO NOT WARRANT THAT THE CONTENT IS ACCURATE, RELIABLE, OR CORRECT; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS; THAT THE SERVICE WILL BE AVAILABLE AT ANY PARTICULAR TIME OR LOCATION, UNINTERRUPTED OR SECURE; THAT ANY DEFECTS OR ERRORS WILL BE CORRECTED; OR THAT THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. FORTIS DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE SERVICE OR ANY HYPERLINKED WEBSITE OR SERVICE, OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND FORTIS WILL NOT BE A PARTY TO OR IN ANY WAY MONITOR ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES.

ALL THIRD-PARTY HARDWARE AND OTHER PRODUCTS INCLUDED OR SOLD WITH THE SERVICE ARE PROVIDED SOLELY ACCORDING TO THE WARRANTY AND OTHER TERMS SPECIFIED BY THE MANUFACTURER, WHO IS SOLELY RESPONSIBLE FOR SERVICE AND SUPPORT FOR ITS PRODUCT. FOR SERVICE, SUPPORT, OR WARRANTY ASSISTANCE, YOU SHOULD CONTACT THE MANUFACTURER OR DISTRIBUTOR DIRECTLY. FORTIS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH THIRD-PARTY PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

### **24. Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL FORTIS, ITS BANKS, SUPPLIERS, LICENSORS, ASSOCIATIONS, OR OTHER FINANCIAL INSTITUTIONS (OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS AND EMPLOYEES) BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT RESULT FROM THE USE OF, INABILITY TO USE, OR UNAVAILABILITY OF THE ACH SERVICE. UNDER NO CIRCUMSTANCES WILL FORTIS BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR FORTIS ACCOUNT OR THE INFORMATION CONTAINED THEREIN. IN NO EVENT WILL FORTIS BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR OTHER DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THIRD PARTY PRODUCTS OR ANY AMOUNT IN EXCESS OF THE AMOUNT PAID BY MERCHANT FOR THE PRODUCT THAT GIVES RISE TO ANY CLAIM.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, FORTIS, ITS BANKS, THE ACH ASSOCIATIONS, AND OTHER FINANCIAL INSTITUTIONS (AND THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) ASSUME NO LIABILITY OR RESPONSIBILITY FOR ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT; (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM MERCHANT'S ACCESS TO OR USE OF THE SERVICE; (III) ANY UNAUTHORIZED ACCESS TO OR USE OF FORTIS' SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN; (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SERVICE, OR ANY DELAY IN PERFORMING FORTIS' OBLIGATIONS UNDER THIS AGREEMENT, REGARDLESS OF WHETHER THE FAILURE OR DELAY IS CAUSED BY AN EVENT OR CONDITION BEYOND ITS CONTROL; (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE THAT MAY BE TRANSMITTED TO OR THROUGH THE SERVICE BY ANY THIRD PARTY; (VI) ANY ERRORS OR OMISSIONS IN ANY CONTENT OR FOR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; AND/OR (VII) USER CONTENT OR THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY THIRD PARTY. IN NO EVENT SHALL FORTIS, ITS BANKS, AGENTS,

SUPPLIERS, LICENSORS, ASSOCIATIONS, OR OTHER FINANCIAL INSTITUTIONS (OR THEIR RESPECTIVE AFFILIATES, AGENTS, DIRECTORS, AND EMPLOYEES) BE LIABLE TO MERCHANT FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AMOUNT OF FEES EARNED BY FORTIS IN CONNECTION WITH MERCHANT'S USE OF THE ACH SERVICES DURING THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR LIABILITY.

THIS LIMITATION OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF FORTIS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

THE ACH SERVICES ARE CONTROLLED AND OPERATED FROM FACILITIES IN THE UNITED STATES. FORTIS MAKES NO REPRESENTATIONS THAT THE SERVICE IS APPROPRIATE OR AVAILABLE FOR USE IN OTHER LOCATIONS. THOSE WHO ACCESS OR USE THE SERVICE FROM OTHER JURISDICTIONS DO SO AT THEIR OWN VOLITION AND ARE ENTIRELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE UNITED STATES AND LOCAL LAWS AND REGULATIONS, INCLUDING BUT NOT LIMITED TO EXPORT AND IMPORT REGULATIONS. YOU MAY NOT USE THE SERVICE IF YOU ARE A RESIDENT OF A COUNTRY EMBARGOED BY THE UNITED STATES, OR ARE A FOREIGN PERSON OR ENTITY BLOCKED OR DENIED BY THE UNITED STATES GOVERNMENT. UNLESS OTHERWISE EXPLICITLY STATED, ALL MATERIALS FOUND ON THE SERVICE ARE SOLELY DIRECTED TO INDIVIDUALS, COMPANIES, OR OTHER ENTITIES LOCATED IN THE UNITED STATES.

## **25. Assignment Rights**

Merchant may not assign or transfer any rights under this Agreement unless and until it receives the prior written approval of Fortis. Fortis may freely assign this Agreement, its rights, benefits, and duties within this document to any third party.

## **26. Legal Costs**

In the event that it becomes necessary for Fortis to employ an attorney to enforce, interpret, mediate, or arbitrate this Agreement, or collect a debit from Merchant, Fortis shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from Merchant.

## **27. Force Majeure**

Fortis shall not be responsible for delays, non-performance, damages, lost profits, or other losses caused directly or indirectly by any Act of God, including without limitation fires, earthquakes, tornadoes, hurricanes, wars, pandemic, labor disputes, communication failures, legal constraints, power outages, data transmission loss or failure, incorrect data transmission or any other event outside the direct control of Fortis.

## **28. Governance**

This Agreement and any Dispute will be governed by Texas law and/or applicable federal law (including the Federal Arbitration Act) as applied to agreements entered into and to be performed entirely within Texas, without regard to its choice of law or conflicts of law principles that would require application of law of a different jurisdiction. Merchant shall comply with the Rules, Regulation E of the Federal Reserve Board, and the Electronic Fund Transfer Act.

## **29. Non-Waiver**

Neither the failure nor any delay on the part of Fortis to exercise any right, remedy, power or privilege hereunder shall operate as a waiver thereof or give rise to an estoppel nor be construed as an agreement to modify the terms of this Agreement, nor shall any single or partial exercise of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege

with respect to any other occurrence. No waiver by a party hereunder shall be effective unless it is in writing and signed by the party making such waiver, and then such waiver shall apply only to the extent specifically stated in such writing.

### **30. Amendments & Other Provisions**

Fortis has the right to change or add to the terms of this Agreement at any time, and to change, delete, discontinue, or impose conditions on any feature or aspect of the software or ACH Services with notice that we in our sole discretion deem to be reasonable in the circumstances, including notice on our Website or any other website maintained or owned by us and identified to you. Any use of our software or ACH Services after our publication of any such changes shall constitute your acceptance of this Agreement as modified. No modification or amendment to this Agreement shall be binding upon Fortis unless in a written instrument signed by a duly authorized representative of Fortis.

Except as expressly provided in this Agreement, these terms are a complete statement of the agreement between you and Fortis, and they describe the entire liability of Fortis and its vendors and suppliers (including banks and its affiliates) and your exclusive remedy with respect to your access and use of the ACH Services. In the event of a conflict between this Agreement and any other Fortis agreement or policy, this Agreement shall prevail on the subject matter of this Agreement. If any provision of this Agreement is invalid or unenforceable under applicable law, then it shall be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law, and the remaining provisions will continue in full force and effect. Headings and summaries are included for convenience only and shall not be considered in interpreting this Agreement. The Agreement does not limit any rights that Fortis may have under trade secret, copyright, patent, or other laws. Fortis' failure to assert any right or provision under this Agreement shall not constitute a waiver of such right or provision. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term.

Any provision that is reasonably necessary to accomplish or enforce the purpose of this Agreement shall survive and remain in effect in accordance with its terms upon the termination of this Agreement.





Schedule A

Sample ACH Debit Authorization Agreement

AUTHORIZATION AGREEMENT FOR DIRECT PAYMENTS (ACH DEBITS)

Company Name \_\_\_\_\_

I (we) hereby authorize \_\_\_\_\_, hereinafter called COMPANY, to initiate debit entries to my (our)  Checking Account indicated below at the depository financial institution named below, hereinafter called DEPOSITORY, and to debit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Customer Bank Account Information

Name on Bank Account \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Routing Number (ABA) \_\_\_\_\_ Account Number (DDA) \_\_\_\_\_

This authorization is to remain in full force and effect until COMPANY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

Name(s) \_\_\_\_\_

Date \_\_\_\_\_ Signature \_\_\_\_\_

NOTE: ALL WRITTEN DEBIT AUTHORIZATIONS MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION. Example of revocation language: I agree this authorization will remain in full force and effect until I (we) notify (Insert Merchant Name) in writing or via the email address located on the transaction summary page provided. I (we) understand that Single debit entries must be revoked in a manner that timely and in a manner that enables us to act upon it. Five (5) business days are required prior to the scheduled debit date to either discontinue service or change depository financial institutions and or account numbers.



Schedule B

Sample ACH Credit Authorization Agreement

AUTHORIZATION AGREEMENT FOR DIRECT DEPOSITS (ACH CREDITS)

Company Name

I (we) hereby authorize \_\_\_\_\_, hereinafter called COMPANY, to initiate credit entries to my (our)  Checking Account indicated below at the depository Financial Institution name named below, hereinafter called DEPOSITORY, and to credit the same to such account. I (we) acknowledge that the origination of ACH transactions to my (our) account must comply with the provisions of U.S. law.

Depository

Name on Bank Account \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Routing Number (ABA) \_\_\_\_\_ Account Number (DDA) \_\_\_\_\_

This authorization is to remain in full force and effect until COMPANY has received written notification from me (or either of us) of its termination in such time and in such manner as to afford COMPANY and DEPOSITORY a reasonable opportunity to act on it.

Name #1 \_\_\_\_\_ Name #2 (If Applicable) \_\_\_\_\_

Signature #1 \_\_\_\_\_ Signature #2 (If Applicable) \_\_\_\_\_

Date Signed \_\_\_\_\_ Date Signed \_\_\_\_\_

NOTE: ALL WRITTEN CREDIT AUTHORIZATIONS MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION. Example of revocation language: I agree this authorization will remain in full force and effect until I (we) notify (Insert Merchant Name) in writing or via the email address located on the transaction summary page provided. I (we) understand that Single debit entries must be revoked in a manner that timely and in a manner that enables us to act upon it. Five (5) business days are required prior to the scheduled debit date to either discontinue service or change depository financial institutions and or account numbers.

Schedule C

NACHA Return Reason Codes

Code	Title	Description
R01	Insufficient Funds	The available and/or cash reserve balance is not sufficient to cover the dollar value of the debit Entry.
R02	Account Closed	A previously active account has been closed by action of the customer or the RDFI
R03	No Account/ Unable to Locate Account	The account number structure is valid and it passes the Check digit validation, but the account number does not correspond to the individual identified in the Entry, or the account number designated is not an existing account.
R04	Invalid Account Number Structure	The account number structure is not valid.
R05	Unauthorized Debit to Consumer Account Using Corporate SEC Code	CCD or CTX debit Entry was transmitted to a Consumer Account of the Receiver and was not authorized by the Receiver.
R06	Returned per ODFI's Request	The ODFI has requested that the RDFI return an Erroneous Entry.
R07	Authorization Revoked by Customer	The RDFI's customer (the Receiver) revoked the authorization previously provided to the Originator for this debit Entry.
R08	Payment Stopped	The Receiver has placed a stop payment order on this debit Entry.
R09	Uncollected Funds	A sufficient ledger balance exists to satisfy the dollar value of the transaction, but the available balance is below the dollar value of the debit Entry.
R10	Customer Advises Not Authorized, Improper, Ineligible, or Part of an incomplete transaction.	The RDFI has been notified by the Receiver that the Entry is unauthorized, improper, ineligible, or part of an incomplete transaction.
R11	Check Truncation Entry Return	Used when returning a Check Truncation Entry
R12	Account Sold to Another DFI	A financial institution received an Entry to an account that was sold to another financial institution.
R13	Invalid ACH Routing Number	Entry contains a Receiving DFI identification or Gateway Identification that is not a valid ACH routing number.
R14	Representative Payee Deceased or Unable to Continue in that Capacity	The representative payee is either deceased or unable to continue in that capacity. The beneficiary is NOT deceased.
R15	Beneficiary or Account Holder (Other Than a Representative Payee) Deceased	(1) The beneficiary is deceased, or (2) The account holder is deceased.
R16	1) Access to the account is restricted due to specific action taken by the RDFI or by legal action; or (2) OFAC has instructed the RDFI or Gateway to return the Entry.	1) Access to the account is restricted due to specific action taken by the RDFI or by legal action; or (2) OFAC has instructed the RDFI or Gateway to return the Entry.
R17	File Record Edit Criteria	Field(s) cannot be processed by RDFI.
R18	Improper Effective Entry Date	(1) The Effective Entry Date for a credit Entry is more than two Banking Days after the Banking Day of processing as established by the Originating ACH Operator; or (2) the Effective Entry Date for a debit Entry is more than one Banking Day after the processing date.

NACHA Return Reason Codes

Code	Title	Description
R19	Amount Field Error	(1) Amount field is non-numeric. (2) Amount filed is not zero in a Prenotification, DNE, ENR, Notification of Change, refused Notification of Change, or zero-dollar CCD, CTX, or IAT Entry. (3) Amount filed is zero in an Entry other than a Prenotification, DNE, ENR, Notification of Change, Return, dishonored Return, or a zero-dollar CCD, CTX, or IAT Entry. (4) Amount field is greater than \$25,000 for ARC, BOC, and POP entries.
R20	Non-Transaction Account	ACH Entry to a Non-Transaction Account
R21	Invalid Company Identification	The identification number used in the Company Identification Field is not valid.
R22	Invalid Individual ID Number	The Receiver has indicated to the RDFI that the number with which the Originator was identified is not correct.
R23	Credit Entry Refused by Receiver	Any credit Entry that is refused by the Receiver may be returned by the RDFI.
R24	Duplicate Entry	The RDFI has received what appears to be a duplicate Entry; i.e. the trace number, date, dollar amount and/or other data matches another transaction.
R25	Addenda Error	Addenda Record Indicator value is incorrect. Addenda Type Code is invalid, out of sequence, or missing, Number of Addenda Records exceeds allowable maximum, Addenda Sequence Number is invalid.
R26	Mandatory Field Error	Erroneous data or missing data in a mandatory field.
R27	Trace Number Error	(1) Original Entry Trace Number is not present in the Addenda Record on a Return or Notification of Change Entry; or (2) Trace Number of an Addenda Record is not the same as the Trace Number of the preceding Entry Detail Record.
R28	Routing Number Check Digit Error	The check digit for a routing number is not valid.
R29	Corporate Customer Advises Not Authorized	The RDFI has been notified by the Receiver (non-consumer) that a specific Entry has not been authorized by the Receiver.
R30	RDFI Not Participant in Check Truncation Program	The RDFI does not participate in a Check Truncation Program.
R31	Permissible Return Entry (CCD and CTX only)	The RDFI may return a CCD or CTX Entry that the ODFI agrees to accept.
R32	RDFI Non-Settlement	The RDFI is not able to settle the Entry.
R33	Return of XCK Entry	This Return Reason Code may only be used to return XCK Entries and is at the RDFI's sole discretion.
R34	Limited Participation DFI	The RDFI's participation has been limited by a federal or state supervisor.
R35	Return of Improper Debit Entry	Debit entries (with the exception of Reversing Entries) are not permitted for CIE Entries or to loan accounts.
R36	Return of Improper Credit Entry	ACH credit entries (with the exception of Reversing Entries) are not permitted for use with ARC, BOC, POP, RCK, TEL, and XCK.
R37	Source Document Presented for Payment	The source document to which an ARC, BOC, or POP Entry relates has been presented for payment.
R38	Stop Payment on Source Document	The RDFI determines a stop payment order has been placed on the source document to which the ARC or BOC Entry relates.
R39	Improper Source Document/ Source Document Presented for Payment	The RDFI determines that (1) the source document used for an ARC, BOC, or POP Entry to its Receiver's account is improper, or (2) an ARC, BOC, or POP Entry and the source document to which the Entry relates have both been presented for payment and posted to the Receiver's account.
R50	State Law Affecting RCK Acceptance	The RDFI is located in a state that has not adopted Revised Article 4 of the Uniform Commercial Code (1990 Official Text) and has not revised its customer agreements to allow for Electronic presentment. OR The RDFI is located within a state that requires all canceled Checks to a specific type of account to be returned to the Receiver within the periodic statement.
R51	Item related to RCK Entry is Ineligible or RCK Entry is Improper	An RCK Entry is considered to be ineligible or improper.
R52	Stop Payment on Item Related to RCK Entry	A stop payment order has been placed on the item to which the RCK Entry relates.
R53	Item and RCK Entry Presented for Payment	In addition to an RCK Entry, the item to which the RCK Entry relates has also been presented for payment.

NACHA Return Reason Codes

Code	Title	Description
R61	Misrouted Return	The financial institution preparing the Return Entry (The RDFI of the original Entry) has placed the incorrect Routing Number in the Receiving DFI Identification field.
R62	Return of Erroneous or Reversing Debit	The Originator's/ODFI's use of the reversal process has resulted in, or failed to correct, an unintended credit to the Receiver.
R67	Duplicate Return	The ODFI has received more than one Return for the same Entry.
R68	Untimely Return	The Return Entry has not been sent within the timeframe established by these Rules.
R69	Field Error(s)	One or more of the field requirements are incorrect. 01– Return Contains Incorrect DFI Account Number 02– Return Contains Incorrect Original Entry Trace Number 03– Return Contains Incorrect Dollar Amount 04– Return Contains Incorrect Individual Identification Number/ Identification Number 05– Return Contains Incorrect Transaction Code 06– Return Contains Incorrect Company Identification Number 07– Return Contains an Invalid Effective Entry Date
R70	Permissible Return Entry Not Accepted/ Return Not Requested by ODFI	The ODFI has received a Return Entry identified by the RDFI as being returned with the permission of, or at the request of, the ODFI, but the ODFI has not agreed to accept the Entry or has not requested the return of the Entry.
R80	IAT Entry Coding Error	The IAT Entry is being returned due to one or more of the following conditions: Invalid DFI/Bank Branch Country Code; Invalid DFI/Bank Identification Number Qualifier; Invalid Foreign Exchange Indicator; Invalid ISO Originating Currency Code; Invalid ISO Destination Currency Code; Invalid ISO Destination Country Code; Invalid Transaction Type Code.
R81	Non-Participant in IAT Program	The IAT Entry is being returned because the Gateway does not have an agreement with either the ODFI or the Gateway's customer to transmit IAT Entries.
R82	Invalid Foreign Receiving DFI Identification	The reference used to identify the Foreign Receiving DFI of an Outbound IAT Entry is invalid.
R83	Foreign Receiving DFI Unable to Settle	The IAT Entry is being returned due to settlement problems in the foreign payment system.
R84	Entry Not Processed by Gateway	For Outbound IAT Entries, the Entry has not been processed and is being returned at the Gateway's discretion because either (1) the processing of such Entry may expose the Gateway to excessive risk or (2) the foreign payment system does not support the functions needed to process the transaction.
R85	Incorrectly Coded Outbound International Payment	The RDFI/Gateway has identified the Entry as an Outbound international payment and is returning the Entry because it bears an SEC Code that lacks information required by the Gateway for OFAC compliance.