

## ACH PROCESSING SERVICES AGREEMENT

This ACH Processing Services Agreement ("Agreement") is made and entered into by and between **Certified Payments No. 1, Ltd., by and through its General Partner, Certified Payments, Inc.**, a Texas Corporation, with offices located at 13740 Midway Rd., Suite 702, Dallas, TX 75244 ("**Certified**") and **Wise County Tax Assessor/Collector**, with offices at 404 W. Walnut, Decatur, TX 76234 ("**Agency**").

### RECITALS

**WHEREAS**, Agency desires to accept payments from its customers ("Customers") by electronic ACH ("ACH Entries") through a third party ACH Service Provider;

**WHEREAS**, Certified provides third party ACH Processing Services ("Services") on behalf of Agency pursuant to ACH Origination Service Agreements with Originating Depository Financial Institutions ("ODFI"), agreements with ACH Originators ("Originators") and other agreements with other parties that are a part of the ACH process (collectively "Participants").

**WHEREAS**, Agency desires to employ Certified to act on behalf of Agency in providing such services and Certified desires to provide such Services subject to the terms and conditions set forth in this agreement.

**NOW THEREFORE**, the Agency and Certified agree as follows:

1. **DEFINITIONS**: As used herein, the following terms have the meaning set forth below:

"**ACH**" (Automated Clearing House) is a clearing and settlement facility for the interchange of electronic debits and credits among financial institutions.

"**ACH Entries**" are the electronic transactions initiated and authorized by Agency's customers and processed by Certified.

"**ACH Network**" means the funds transfer system governed by the Rules of NACHA which provides for the interbank clearing of electronic entries for participating financial institutions.

"**ACH Origination Service Agreement**" shall mean the contractual agreement between Certified and an ODFI.

"**ACH Returns**" is the process of returning and settling funds that were dishonored by the RDFI and returned to the ODFI.

"**Agency Bank**" is the Depository Financial Institution where the Agency Bank account is maintained for Certified's access to settle financial payment transactions under this agreement.

"**Agency Bank Account**" is the Bank account Agency has established with Agency Bank for settlement of ACH credit and debit entries provided under the terms of this agreement. The Bank account will also be used for credits and debits incurred in connection with any reversed or returned electronic ACH entries.

"**Convenience Fee**" means the fee charged by Certified to Agency's customers for the convenience of using the ACH Processing Services in making the Agency's payment.

“Customer” means Agency’s customer who submits a payment through Certified for processing through the ACH Network.

“MXP” means Mid-America Payment Exchange.

“NACHA” means the National Automated Clearing House Association that establishes the standards, rules and procedures that enable depository financial institutions to exchange ACH payments on a national basis.

“NACHA Rules” means the then-current National Automated Clearing House Association (“NACHA”) ACH Operating Rules and Operating Guidelines published by NACHA.

“Net Total” is the net amount of ACH debits, credits and return Entries (in US Dollars) contained in the ACH Batch.

“ODFI” means the originating depository financial institution which accepts and processes debit and credit entries for distribution to an automated clearing house.

“Originator” means the person or organization that has authorized an ODFI to transmit a credit or debit entry to the account of a receiver with an RDFI or to the RDFI. In some cases, the ODFI may also be the originator.

“RDFI” (Receiving Depository Financial Institution) means a receiving depository financial institution intended to be the end recipient of either debit or credit entries to the account of a Recipient.

“Recipient” means any person or entity which has authorized Certified to originate electronic debit or credit entries to be posted to its account at a depository financial institution.

“Rules” means the combined MXP Rules, the NACHA Rules, the ODFI and Originator Rules as well as those rules of the Federal Reserve which apply to or govern the provision of the Services.

“Settlement Account” means a demand deposit account at the ODFI Bank, designated by Certified as the account to be used for, and in conjunction with Certified’s automated clearing house transactions.

## **2. CERTIFIED’S OBLIGATIONS**

- A. Certified will process Agency Payments from Agency’s Customers through web initiated ACH entries and when available, through telephone initiated transactions.
- B. In consideration of Certified’s provision of services hereunder, Certified may charge Agency’s Customers a Convenience Fee for each Agency payment processed. The Fee will be collected in addition to the corresponding Agency Payment. **Exhibit A** attached hereto details the Schedule of Fees that Certified may charge Agency’s Customers.
- C. Certified will originate and transmit two single-entry transactions, the Agency Payment and the corresponding Convenience Fee payment (“ACH Entries”) to ODFI for processing through the ACH system pursuant to the ACH Origination Service Agreement between Certified and ODFI.
- D. Certified will obtain express authorization from the Customer prior to initiating a debit to the Customer’s account. Customer’s express authorization allows Certified to instruct ODFI to initiate an electronic debit

entry for Certified against Customer. It also permits Certified to reinitiate an Entry where the original Entry is returned and to assess a collection fee against Customer.

- E. The express authorization will be identified as an ACH debit transaction and will identify both the payment amount to the agency and the convenience fee payment. The authorization clearly states the terms of the ACH debit and encourages the customer to print and retain a copy of the authorization. The Customer must authenticate the authorization by signing and accepting the terms of the ACH Debit Authorization Agreement. Certified will store a copy of the authorization and produce a copy upon request.
- F. Certified will provide each Customer with electronic confirmation of the Agency Payment and corresponding convenience fee.
- G. Certified will transmit ACH Entries by batch to the ODFI according to a pre-determined schedule agreed upon by Certified and the ODFI.
- H. Certified will generally transmit settlement to Agency's bank with 48 to 72 hours of the receipt of the ACH Entry. Certified will transmit a Net Total deposit to Agency's Bank account. Agency hereby authorizes Certified to initiate debit and credit entries to Agency's Bank Account. Certified shall retain all Convenience fees and any collection fees collected by it hereunder.
- I. Agency will immediately reimburse Certified in connection with any reversed or rejected electronic entries or for any shortfalls or amounts Certified is unable to collect from Agency's customers.
- J. Certified will provide Agency with ACH payment data and reports summarizing the use of the Services by Customers for a given reporting period. Agency will have the ability to import such payment data utilizing Microsoft Excel, Microsoft Access, a comma-delimited file ("CSV") or XML file.
- K. Certified will retain all logs and data for such period of time as required by applicable law and the rules and regulations of NACHA and Certified's ODFI.

### **3. AGENCY'S OBLIGATIONS**

- A. In addition to this Agreement, Agency agrees to enter into and any and all applicable agreements that are required to perform the services hereunder.
- B. Prior to Certified's commencement of services, Agency will complete in full and sign all necessary paperwork that Certified puts forth.
- C. In order to provide the Services hereunder, Certified is required to enter into agreements that include but are not limited to Third Party Processing Agreements with an ODFI as such term is defined and used under the rules promulgated by the National Automated Clearing House Association as modified from time to time.
- D. Agency acknowledges and agrees that Certified will collect ACH payments from Agency's customers and transmit such entries for processing into the ACH network. As such, Agency acknowledges that the ODFI is acting solely in the capacity as a processor for Certified and the ODFI has no duty or obligation to Agency to inquire, review or investigate the nature of the transactions that occur between Agency and Certified. Agency is not a third party beneficiary of any Third Party Processor Agreement between Certified and the

ODFI. Agency acknowledges that the ODFI has no fiduciary duties to Agency under this Agreement. Agency agrees to look solely to Certified for the performance of the processing services specified herein.

- E. Certified is required to fully adhere to the procedures and rules of NACHA and the ACH Origination Service Agreement; accordingly, Agency agrees to immediately comply with any requests by Certified regarding any Agency conduct that is outside said rules and regulations. Agency's failure to comply with any such request by Certified will be grounds for immediate termination of this Agreement.

#### 4. **ADDITIONAL MATTERS**

##### A. **Confidentiality**

Agency will not disclose to any third party or use for any purpose inconsistent with this Agreement, any confidential or proprietary, non-public information it obtains during the term of this Agreement regarding Certified's business, operations, financial condition, technology, systems, know-how, products, services, suppliers, customers, marketing data, plans and models and personnel. Certified will not disclose to any third party or use for any purpose inconsistent with this Agreement any confidential Customer information it receives in connection with its performance of the Services, except that Certified may use personal information provided by Customers to establish and maintain individual user accounts requested to be established by such Customers with Certified.

##### B. **Relationship of Parties**

The performance by Certified of its duties and obligations under this Agreement shall be that of an independent contractor and nothing contained in this Agreement shall be deemed to constitute a joint venture or partnership between Certified and Agency.

##### C. **Capacity to Contract**

Each party hereby certifies that the person executing this Agreement on its behalf is fully authorized with complete legal capacity and approval to do so.

##### D. **Intellectual Property**

In order that Agency may promote the Services and Certified's role in providing the Services, Certified grants to Agency a revocable, non-exclusive, royalty-free license to use Certified's logo and other service marks (the "Certified Marks") for such purpose only. Agency does not have any right, title, license or interest, express or implied, in and to any object code, software, hardware, trademark, service mark, trade name, trade dress, formula, system, know-how, telephone number, telephone line, domain name, URL, copyrighted image, text, script (including, without limitation, any script used by Certified on Certified's website) or other intellectual property right of Certified. All Marks, the System and all rights therein (other than rights expressly granted in this Agreement) and goodwill pertaining thereto belong exclusively to Certified.

##### E. **Force Majeure**

Certified will be excused from performing the Services as contemplated by this Agreement to the extent its performance is delayed, impaired or rendered impossible by acts of God or other events that are beyond Certified's reasonable control and that do not involve either fault or judgment of Certified.

**F. Remedies**

Agency's sole remedy in the event of Certified's failure to perform the Services as set forth herein shall be to terminate the arrangement contemplated by this Agreement.

**G. Notice**

Any notice to be given hereunder shall be in writing and may be affected by personal delivery, in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the following address:

**Agency:**           **Wise County Tax Assessor/Collector**  
Monte Shaw, Tax Assessor/Collector  
404 W. Walnut  
Decatur, TX 76234

**Certified:**           Certified Payments, Inc.  
Attn: Pamela Stewart, President  
13740 Midway Rd., Suite 702  
Dallas, TX 75244  
[pamela.stewart@certifiedpayments.net](mailto:pamela.stewart@certifiedpayments.net)

**H. Term of Arrangement**

This Agreement shall become effective once it has been signed by an authorized representative of both Certified and Agency. Unless otherwise terminated, the term of the arrangement shall continue from the date of this Agreement until thirty (30) days after such time as either Certified or Agency has notified the other party in writing of its decision to terminate.

**I. Termination**

Certified's performance of this Agreement is subject to the Automated Clearing House Origination Service Agreement, the Third Party Processor Agreement, the rules and regulations of NACHA, federal, state and local laws or regulations applicable to the Services. Receipt of a written directive from Certified's ODFI Bank to terminate shall be immediate upon such event.

**J. Governing Law**

In the event a dispute arises between any of the parties to this agreement, all parties hereby agree that such a dispute shall be governed by the laws of the State of Texas.

**K. Assignment**

This Agreement may not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld, however, the obligations of Certified under this Agreement may be provided or fulfilled by any parent, subsidiary, affiliate, successor corporation or subcontractor of Certified so long as Certified assumes full responsibility for such obligations.

**L. Entire Agreement; Modifications**

This Agreement, together with the Third Party Processor Agreement and exhibits and schedules attached hereto constitutes the entire agreement between Certified and Agency with respect to the subject matter hereof. There are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth herein and therein. This Agreement supersedes all prior negotiations, agreements, and undertakings between the parties with respect to such matter. This Agreement, including the exhibits and schedules hereto may be modified or amended only by an instrument in writing executed by the parties or their permitted assignees.

**M. Severability**

If any provision of this Agreement is held by court or arbitrator of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement on the 29<sup>th</sup> day of June, 2009.

**AGENCY'S ACCEPTANCE:**

**WISE COUNTY TAX ASSESSOR/COLLECTOR**

By:

Monte Shaw

Monte Shaw, Tax Assessor/Collector

6/30/2009

Date

COUNTY JUDGE  
Bill McElhoney  
Bill McElhoney  
06/29/09  
Date

**CERTIFIED PAYMENTS ACCEPTANCE:**

**CERTIFIED PAYMENTS NO. 1, LTD.**

**BY: CERTIFIED PAYMENTS, INC., GENERAL PARTNER**

By:

Pamela Stewart

Pamela Stewart, President

7-10-2009

Date

**EXHIBIT A**

This Exhibit A to the ACH Processing Services Agreement between Certified and Agency provides as follows:

**1. Schedule of Convenience Fees**

Certified and Agency agree to the following provisions:

- A. \$ 2.00 shall be the agreed upon Convenience Fee that the Agency agrees to allow Certified to charge to Customers for Agency payments when Customer initiates an ACH debit entry.

**AGENCY'S ACCEPTANCE:**

WISE COUNTY TAX ASSESSOR/COLLECTOR

By: *Monte Shaw*  
Monte Shaw, Tax Assessor/Collector

*6/30/2009*  
Date

*COUNTY JUDGE*  
*Bill McElhann*  
*Bill McElhann*  
*06/29/09*  
DATE

**CERTIFIED PAYMENT'S ACCEPTANCE:**

CERTIFIED PAYMENTS NO. 1, LTD.  
BY: CERTIFIED PAYMENTS, INC., GENERAL PARTNER

By: *Pamela Stewart*  
Pamela Stewart, President

*7-10-2009*  
Date