

# ACH PROCESSING SERVICES AGREEMENT

## *ECheck Processing*

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 3410 Midcourt Rd., Suite 136, Carrollton, TX 75006 ("**Certified**") and **Williamson County, Texas**, a political subdivision of the State of Texas, 710 Main Street, Suite 101, Georgetown, Texas 78626 ("**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") 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 contract with Certified to provide such Services and Certified desires to contract with Agency 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, and identified as **Exhibit B** attached hereto. 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 within 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.
- L. In order to provide the Services under this Agreement, Certified will provide, at Certified sole expense, all necessary services in order to successfully interface with all Agency software, as listed below:
  - Oracle;
  - Odyssey;
  - Class;
  - Orion;
  - Quick Books;
  - Pet Point; and
  - Edoc Technology

### **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. 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.

- C. 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.
- D. 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. AGENCY'S RIGHT TO AUDIT**

Certified agrees that Agency or its duly authorized representatives shall, until the expiration of three (3) years after termination or expiration of this Agreement, have access to and the right to examine and photocopy any and all books, documents, papers and records of Certified, which are directly pertinent to the services to be performed or goods to be delivered hereunder to or on behalf of the Agency for the purposes of making audits, examinations, excerpts and transcriptions. Certified agrees that Agency shall have access during normal working hours to all necessary facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. Agency shall give Certified reasonable advance notice of intended audits.

#### **5. INDEMNITY**

TO THE FULLEST EXTENT PERMITTED BY LAW, CERTIFIED SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS AGENCY, AND AGENCY'S EMPLOYEES, AGENTS, REPRESENTATIVES, PARTNERS, OFFICERS, AND DIRECTORS (COLLECTIVELY, THE "INDEMNITEES") FROM AND AGAINST CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, ARISING OUT OF OR ALLEGED TO BE RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT OR THE SERVICES DESCRIBED HEREIN, TO THE EXTENT CAUSED BY THE NEGLIGENCE, ACTS, ERRORS, OR OMISSIONS OF CERTIFIED OR ITS SUBCONTRACTORS, ANYONE EMPLOYED BY THEM OR ANYONE FOR WHOSE ACTS THEY MAY BE LIABLE, REGARDLESS OF WHETHER OR NOT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS CAUSED IN WHOLE OR IN PART BY A PARTY INDEMNIFIED HEREUNDER.

#### **6. ADDITIONAL MATTERS**

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

Neither party will 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 the other party'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.



**J. Agency's Right to Terminate**

Agency may terminate this Agreement for convenience and without cause or further liability, upon thirty (30) calendar day's written notice to Certified. In the event Agency exercises its right to terminate without cause, it is understood and agreed that only the amounts due to Certified for goods, commodities and/or services provided and expenses incurred to and including the date of termination, will be due and payable. No penalty will be assessed for Agency's termination for convenience.

**K. Venue and Governing Law**

Each party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.

**L. Compliance with Laws**

Each party to this Agreement shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, salary and wage statutes and regulations, licensing laws and regulations.

**M. No Waiver of Immunities**

Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to Agency, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Agency does not waive, modify, or alter to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

**N. Texas Public Information Act**

To the extent, if any, that any provision in this Agreement is in conflict with Tex. Gov't Code 552.001 et seq., as amended (the "Public Information Act"), the same shall be of no force or effect. Furthermore, it is expressly understood and agreed that Agency, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act to any items or data furnished to Agency as to whether or not the same are available to the public. It is further understood that Agency's officers and employees shall have the right to rely on the advice, decisions and opinions of the Attorney General, and that Agency, its officers and employees shall have no liability or obligation to any party hereto for the disclosure to the public, or to any person or persons, of any items or data furnished to Agency by a party hereto, in reliance of any advice, decision or opinion of the Attorney General of the State of Texas.

**O. Non-Exclusive Agreement**

This Agreement is not exclusive. Accordingly, either party shall have the right to enter into one or more agreements relating to the same or similar matters as are covered by this certain Agreement, and execution by either party of such agreements shall not constitute a breach of this Agreement.

**P. 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. This Agreement shall be binding upon and inure to the benefit of parties hereto and their permitted successors and assigns.

**Q. Severability**

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

**R. Entire Agreement; Modifications**

This Agreement, together with the specifications of RFP#13RFP00112, 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 specifications of RFP#13RFP00112 and the exhibits and schedules hereto may be modified or amended only by an instrument in writing executed by the parties or their permitted assignees.

**IN WITNESS WHEREOF**, the parties have executed and delivered this Agreement to be effective as of the date of the last party's execution hereof..

**AGENCY'S ACCEPTANCE:**  
**WILLIAMSON COUNTY**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Dan A. Gattis, County Judge

**CERTIFIED PAYMENT'S ACCEPTANCE:**

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

By: *Pamela Stewart* Date *11-20-2013*  
Pamela Stewart, President

**EXHIBIT B**  
**AGENCY BANK ACCOUNT**  
*Confidential*

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

**AGENCY/BUREAU NAME:** \_\_\_\_\_ **BUREAU CODE:** \_\_\_\_\_

**Banking Information - ACH/ECheck**

*The undersigned authority authorizes Certified Payments to deposit ACH credits and withdraw ACH debits to and from the Agency Bank account listed below. The undersigned authority has supplied and hereby confirms the bank account information provided.*

_____ <i>Bank Name</i>	_____ <i>Bank Contact Name</i>	_____ <i>Contact Telephone/Fax/Email</i>
_____ <i>Street Address</i>	_____ <i>City, State</i>	_____ <i>Zip Code</i>
_____ <i>Bank Routing Number</i>	_____ <i>Bank Account/DDA Number</i>	
_____ <i>Name on Agency Bank Account</i>		

\*PLEASE PROVIDE A COPY OF A VOID CHECK ON THE ABOVE-REFERENCED BANK ACCOUNT\*

**AGENCY'S ACCEPTANCE:**  
**WILLIAMSON COUNTY**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Dan A. Gattis, County Judge

**CERTIFIED PAYMENT'S ACCEPTANCE:**

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

By:  11-20-2013  
Pamela Stewart, President