



# Point of Sale Conversion | Merchant Agreement

Bankcard Merchant # \_\_\_\_\_  
 ISO Name: \_\_\_\_\_ ISO ID# \_\_\_\_\_ Agent Name: \_\_\_\_\_

**Merchant Information**

Legal Name: \_\_\_\_\_ Tax ID# (required): \_\_\_\_\_  
 DBA Name: \_\_\_\_\_  
 DBA Address: \_\_\_\_\_ Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ City: \_\_\_\_\_  
 State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
 Business Phone #: \_\_\_\_\_ Business Fax #: \_\_\_\_\_  
 Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Type of Ownership:  Sole Proprietor  Partnership  Corporation  
 Type of Goods Sold: \_\_\_\_\_  
 Total Time in Business: \_\_\_\_\_ Time in Business at this Location: \_\_\_\_\_  
 Website Address: \_\_\_\_\_ E-mail address: \_\_\_\_\_

**Principal Information**

Name (please print): \_\_\_\_\_ Phone #: \_\_\_\_\_  
 Title: \_\_\_\_\_ % Equity Ownership: \_\_\_\_\_  
 Principal's Address: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
 City: \_\_\_\_\_ Social Security #: \_\_\_\_\_  
 State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Driver's License #: \_\_\_\_\_

**Check Info**

Average check amount?: _____	Average # of checks monthly?: _____	Maximum check amount requested?: _____	Estimate monthly check volume?: _____
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Schedule of Fees/Charges	Guarantee Conversion	Conversion	Quick Service Program (QSP)
	Verification, Conversion, Guarantee	Verification, Conversion (Non-Guarantee)	Verification, Conversion, Guarantee Checks under \$50.01 - No DL# required
Discount Rate:	_____ %	Discount Rate:	_____ %
Transaction Fee:	\$ _____	Transaction Fee:	\$ _____
Monthly Service Fee:	\$ _____	Monthly Service Fee:	\$ _____
Monthly Minimum Fee:	\$ _____	Monthly Minimum Fee:	\$ _____
Virtual Terminal Fee:	\$ _____	Virtual Terminal Fee:	\$ _____
<b>Refer to section 10.2 for full disclosure of fees.</b>			<input type="checkbox"/> QSP and Guarantee Conversion Combo Please complete pricing for both sections

**Equipment**

Terminal Type: \_\_\_\_\_  Virtual Terminal: \_\_\_\_\_  
 Check Reader/Imager: \_\_\_\_\_ Front end Processor: \_\_\_\_\_  
 Application # (For Talento only): \_\_\_\_\_ # of Terminals: \_\_\_\_\_

**Merchant Acceptance**

This agreement includes all of the terms and conditions contained on the front and attached recitals of this agreement. This agreement has been executed on behalf of and by the authorized management of each party as of the date below. Merchant authorizes SPS-EFT or any credit reporting agency by SPS-EFT or agent of SPS-EFT, to make whatever inquiries that SPS-EFT deems appropriate to investigate, verify or research references, statements or data obtained from merchant for the purpose of this application for accompanying pos terminal(s) or equipment financing.

**Personal Guarantee:** to induce and in consideration of SPS-EFT acceptance of the electronic check transfer portion of this agreement, the undersigned (herein referred to as "guarantor") unconditionally, personally, individually, jointly and severally guarantees performance of the merchant's obligations under this agreement and payment of all sums due thereunder and hereby continues to personally indemnify SPS-EFT for any and all funds due from merchants under the terms of this agreement.

**ACH debit/credit authorization:** merchant hereby authorizes bank in accordance with this check service agreement to initiate debit/credit entries to merchant's checking account, as indicated per the attached copy of a voided check from same. The authority is to remain in full force and effect until (a) bank has received written notification from merchant of its termination in such a manner as to afford bank reasonable opportunity to act on it, and (b) all obligations of merchant to bank/SPS-EFT that have arisen under this agreement have been paid in full.

**Notice**

All information contained on this application was completed by owners and/or officers of merchant and they warrant that all check information and sales volume indicated throughout this application are accurate and acknowledge that any variance to this information could result in delayed and/or withheld settlement of funds as well as the loss of all guarantee privileges of all checks. No blank spaces were left incomplete. N/A or NONE has been filled in any spaces where applicable. This agreement shall not be binding or take effect until merchant has been approved by a SPS-EFT officer and a merchant number has been issued with check limit and guarantee limit.

### Merchant must submit a voided check with this agreement.

MERCHANT AGREED AND ACCEPTED:  
I have read and agree to the terms of this agreement

CORPORATE RESOLUTION FOR CORPORATIONS AND LLC'S:  
I have read and agree to the terms of this agreement

\_\_\_\_\_  
Authorized Merchant Signature Date

\_\_\_\_\_  
Authorized Merchant Signature Date

Application Approved by: \_\_\_\_\_ Official SPS-EFT use only Title: \_\_\_\_\_ Date: \_\_\_\_\_

## POS Guarantee Conversion, POS Conversion, and QSP: Merchant Rights and Responsibilities

MERCHANT wishes to initiate debit and credit entries pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association (the "Rules"), and Sage Payment Solutions - EFT (SPS-EFT) is willing to act as the third party processor for MERCHANT, subject to the terms and conditions set forth in this Agreement with respect to such Entries.

Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules. The term "Entries" shall have the meaning provided in the Rules and shall also mean the data, which is transmitted by the MERCHANT to SPS-EFT to prepare such Entries for processing.

This agreement is only applicable to processing point of sale transactions utilizing the end-customer's Checking account data. Upon MERCHANT'S request and SPS-EFT'S approval, check guarantee services (hereinafter referred to as "SPS-EFT POS Guarantee Conversion" service) will also be provided pursuant to provisions below. If MERCHANT has not requested SPS-EFT POS Guarantee Conversion service, or if SPS-EFT has not accepted the MERCHANT application for SPS-EFT POS Guarantee Conversion service, SPS-EFT will not be liable in any way for any returned checks of MERCHANT or its customers, for any reason.

### AGREEMENT

1.1 **MERCHANT'S AUTHORITY.** MERCHANT specifically warrants to SPS-EFT that MERCHANT has taken all necessary legal action and has authority to enter into this Agreement with SPS-EFT. It further warrants that the person(s) signing for and on behalf of MERCHANT is specifically authorized and directed to do so by MERCHANT. MERCHANT acknowledges that this Agreement constitutes the legal, valid and binding obligation of MERCHANT, enforceable in accordance with its terms.

1.2 **POS GUARANTEE CONVERSION.** If MERCHANT has marked the SPS-EFT POS GUARANTEE CONVERSION box on the application form of this Agreement then MERCHANT wishes SPS-EFT also to provide check guarantee services to MERCHANT. If MERCHANT has not marked the appropriate box, MERCHANT has engaged SPS-EFT to provide for each check: verification, electronic funds transfer and certain collection services.

1.3 **CHECK COLLECTION.** MERCHANT authorizes SPS-EFT to represent all return items forwarded to SPS-EFT and to originate an electronic entry for the amount of any allowable recovery fee. MERCHANT agrees to complete a return item authorization form and forward it to MERCHANT'S bank. SPS-EFT shall have sixty (60) days from the date of receipt of a return check item to complete their electronic representation process. If this Agreement is terminated for any reason, SPS-EFT will retain the right to complete their electronic representation process for all return check items forwarded to SPS-EFT prior to said termination.

1.4 **MERCHANT'S PUBLIC DISCLOSURE RESPONSIBILITIES.** SPS-EFT shall provide signage to be displayed at the point of purchase (POP), which informs customers of the MERCHANT'S use of SPS-EFT Electronic Check Processing Service. MERCHANT agrees to display these materials in the best visible and unhindered location so as to inform the public that MERCHANT will honor electronic check processing service by SPS-EFT. From time to time, SPS-EFT may design educational and promotional materials and send such to MERCHANT for MERCHANT to distribute to customers. MERCHANT further agrees to immediately remove and properly dispose of SPS-EFT'S stale promotional materials and to display the most current materials upon receipt of such from SPS-EFT. MERCHANT will discontinue the use of all of SPS-EFT'S promotional materials and properly remove said materials upon receipt of written notification of suspension or termination of this Agreement. In the event of suspension, MERCHANT shall redisplay appropriate materials upon receipt of written verification of resumption of service by SPS-EFT.

2.1 **RESTRICTIONS ON USE OF PROMOTIONAL MATERIALS AND REPRESENTATIONS CONCERNING SPS-EFT'S SERVICES.** MERCHANT shall make no use of SPS-EFT'S promotional materials or marks, other than as set forth in paragraph 1.4 above, without SPS-EFT'S prior written consent. In no way shall the MERCHANT indicate that SPS-EFT'S services are an endorsement of the MERCHANT, its business or its business practices.

3.1 **REQUIREMENTS FOR PROCESSING ELECTRONIC CHECKS.** MERCHANT shall comply with the following conditions when processing electronic checks and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established by SPS-EFT from time to time. MERCHANT shall accept only the following checks as source documents to initiate ACH debit entries through SPS-EFT: (a) All demand deposit account checks must be drawn on or payable through a federally insured depository financial institution; be machine-readable MICR-encoded with the bank routing number, account number and check serial number printed on the check, and be for an amount less than or equal to the approved check limit assigned by SPS-EFT. (b) MERCHANT shall obtain proper identification, in the form of a valid drivers license, from the customer so as to verify that the customer is authorized to negotiate the check before submitting the check to SPS-EFT for authorization. (c) MERCHANT shall obtain a customer authorization in the form of a signed sales receipt for each check transaction submitted for electronic processing; (d) MERCHANT shall scan each check through its POP MICR reader/check scanner to initiate electronic processing. MERCHANT shall use an electronic printer connected to a POP MICR reader/check scanner to generate and print all electronic check sales receipts; (e) All items, goods and services purchased in a single transaction shall be included in the total amount on a single sales receipt; (f) At the time MERCHANT initiates authorization with SPS-EFT, MERCHANT warrants that the person presenting the check has been properly identified and is legally authorized to present the check for payment. Once SPS-EFT authorizes the transaction, MERCHANT shall ensure that the customer that presented the check signs the receipt and legibly prints his/her correct full name and telephone number by hand. To be valid, MERCHANT shall ensure the following: 1. That the sales receipt contains the following correct information: (a) the customer's bank account number and the check number from the MICR data; (b) MERCHANT'S correct name and business address; (c) the date of the transaction; (d) the total cash price of the sale (including all applicable state, federal or local surcharges and taxes) or the amount to be charged if a partial payment is made in cash or by credit card or the amount to be charged as the remaining balance owing after the deposit has been made. (e) After customer signs the receipt, MERCHANT shall deliver to the person presenting the check a true and completed copy of the sales receipt; (f) No check may be altered after SPS-EFT authorizes acceptance of the check. MERCHANT may not resubmit a check electronically or deposit it by any means, once SPS-EFT authorizes a transaction. 2. MERCHANT shall write the current phone number and driver's license number of the customer on the face of the check. Failure to comply with the above requirements will, in addition to other penalties (such as but not limited to loss of guarantee of ALL transactions), subject MERCHANT to chargebacks or withholding of funds and may be grounds for immediate suspension/termination of services and indemnification of SPS-EFT by MERCHANT pursuant to this Agreement. **YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT THE ELECTRONIC CHECK WRITER'S EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTICIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY A MAXIMUM OF A \$10,000 FINE, IMPRISONMENT FOR A TERM OF TEN YEARS, OR BOTH. IT IS SPECIFICALLY UNDERSTOOD BY YOU THAT ANY TRANSACTION EVENT INITIATED AS AN UNAUTHORIZED MANUAL ENTRY OR DEPOSIT BY YOU AFTER YOU HAVE RECEIVED APPROVAL FOR ELECTRONIC DEPOSIT OF CHECK (S) 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 SPS-EFT AND ALL OF ITS ASSIGNS AND ASSOCIATES HARMLESS AND REIMBURSE SPS-EFT FOR THE TRANSACTION (S) WITHIN 24 HOURS OF SAID OCCURRENCE. IF MERCHANT REFUSES OR IS UNABLE TO REIMBURSE SPS-EFT FOR ANY SUCH OCCURRENCE, IT IS EXPRESSLY STATED AND UNDERSTOOD THAT THE MERCHANT IS IN DIRECT VIOLATION OF THIS AGREEMENT AND FEDERAL LAW, AND SPS-EFT WILL PURSUE ALL LEGAL, CIVIL, AND COLLECTION REMEDIES AS ARE POSSIBLE UNDER LAW AS REMEDY.**

3.2 **CUSTOMER'S AUTHORIZATION INITIATES DEBIT ENTRY** MERCHANT acknowledges that the customer's authorization allows MERCHANT to instruct SPS-EFT to initiate an ELECTRONIC CHECK DEBIT ENTRY ("ENTRY") for MERCHANT against customer. It further permits SPS-EFT to reinstate an ENTRY where the original ENTRY is returned and to assess a collection fee against CUSTOMER. **Any collection fees received by SPS-EFT in collecting returned checks shall be the sole property of SPS-EFT.** SPS-EFT shall present the ENTRY no more than three times. SPS-EFT, for POS Conversion service shall be entitled to assess a transaction fee as set forth in the schedule against MERCHANT for each representation. If a check is returned unpaid after the third presentment, SPS-EFT shall be entitled to debit the MERCHANT'S account for the amount of the check (POS Conversion).

3.3 **RESTRICTIONS ON ACCEPTANCE OF CHECKS FOR ELECTRONIC PROCESSING.** From time to time, SPS-EFT shall establish necessary security and identification procedures for presentment of checks for electronic processing pursuant to the Rules and applicable law. MERCHANT agrees to comply with such procedures and to accept such "properly presented" checks for electronic processing. MERCHANT shall not accept or attempt to process checks in excess of the maximum limitations established by SPS-EFT. In no event, will SPS-EFT accept a check greater than \$2500 for processing without prior written authorization by SPS-EFT. SPS-EFT shall also establish the number of checks, which may be submitted on a daily basis by any customer for electronic processing. MERCHANT agrees to provide SPS-EFT with any and all information needed to establish such limitations. MERCHANT further agrees to inform SPS-EFT immediately of any changes in business activities, rules or regulations, which may affect these limitations. MERCHANT further agrees to abide by these limitations as a condition to SPS-EFT electronically processing any check. MERCHANT shall scan each check submitted for processing through no more than one POP MICR reader/check scanner. MERCHANT agrees that sales completed at one location cannot be processed through a MICR reader/check scanner at another location. In no event is MERCHANT allowed to process checks manually by keying in the MICR number.

3.4 **UNACCEPTABLE TRANSACTIONS.** In addition to the restrictions set out above and in any event, the following transactions are unacceptable for electronic processing, and MERCHANT agrees not to submit any of the following transactions to SPS-EFT for electronic processing: (a) MERCHANT shall not process any temporary checks or checks that do not have the customer's current name, address and phone number preprinted on its face, (b) MERCHANT shall not electronically process any checks drawn on any depository institution that is not federally insured or part of the ACH network, (c) MERCHANT shall not electronically process any checks drawn on the personal checking account of MERCHANT or any of its agents or employees, (d) MERCHANT shall not accept any third party items for electronic processing or checks made payable to "cash" or "bearer", (e) MERCHANT shall not accept a traveler's check, money order, payroll check, counter check or sight draft, (f) 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 a check or arising from a credit card, debit card or smart card dispute with the MERCHANT, (g) MERCHANT shall not submit a transaction for processing which represents an attempt to collect a chargeback, (h) MERCHANT shall not submit a check written for goods or services that are not concurrently provided to the customer, including any check given for a service contract, gift certificate, a layaway (except for the final payment) or for a similar transaction, or for goods or services provided to a third party, (i) MERCHANT shall not submit a check which contains erasures, or which is altered, unless the alteration is initiated by the customer at time of presentation, (j) MERCHANT shall not knowingly submit a check on an account which SPS-EFT 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. This will also remove SPS-EFT POS Guarantee Conversion coverage from ALL checks.

3.5 **SURCHARGES AND TAXES.** MERCHANT shall not impose any illegal surcharge on any electronically processed check transaction. MERCHANT shall collect all required taxes at time of sale. All required taxes must be included in the total transaction amount at the time such is submitted for authorization by SPS-EFT and must be reflected in the face amount of the check. In any event, MERCHANT shall not collect any required taxes separately in cash, or otherwise. MERCHANT is responsible for paying all taxes collected to the appropriate authorities in a timely manner.

3.6 **IRS REPORTING AND WITHHOLDINGS.** Section 6050W of the Internal Revenue Code ("Code") requires payment providers and third party payment networks, such as SPS-EFT, to report payment settlement amounts to the Internal Revenue Service ("IRS") for each Merchant processing through SPS-EFT. Merchant shall verify its identity by providing SPS-EFT with a Tax Identification Number ("TIN") such as a Social Security Number (SSN) or Employer Identification Number (EIN) for each Merchant Account. In the event Merchant fails to provide its TIN, SPS-EFT will place a restriction on Merchant's Account and may restrict the receipt of funds into Merchant's Account, or withhold a percentage of payments deposited into Merchant's Account in order to satisfy the backup withholding requirements of the IRS. SPS-EFT may charge up to \$25.00 annually for associated administrative costs.

4.1 **EQUIPMENT.** MERCHANT shall furnish each outlet, retail location, or business entity with a POP MICR reader/check scanner electronic printer. SPS-EFT shall assign each MERCHANT's POP MICR reader/check scanner an identification number. 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 POP MICR reader/check scanners. MERCHANT shall maintain all equipment related to electronic check processing in good working order at MERCHANT's expense. MERCHANT shall advise SPS-EFT immediately in the event of a breakdown of a POP MICR reader/check scanner, electronic printer, or check reader or of any other system failure. MERCHANT acknowledges that SPS-EFT is not responsible for any POP MICR reader/check scanner or related equipment problems unless required fees are current. MERCHANT acknowledges that SPS-EFT will replace any reader/check scanner within 24 hours of notification of any MERCHANT in good standing provided they are current with monthly fees including their \$5.00 monthly reader/check scanner replacement fee. Replacement of equipment will be subject to written notification from MERCHANT to SPS-EFT and SPS-EFT's approval of request. Moreover, SPS-EFT's approval of such equipment does not constitute nor express an implied warranty, representation or endorsement of such equipment.

4.2 **USE OF EQUIPMENT.** MERCHANT agrees to utilize only equipment approved by SPS-EFT for the electronic processing of checks and in a format and medium of transmission acceptable to SPS-EFT.

4.3 **VIRTUAL TERMINAL.** If MERCHANT has marked the Virtual Terminal option box on the application form of this Agreement then MERCHANT wishes to use the SPS-EFT Virtual Terminal in place of a traditional point of sale terminal. SPS-EFT's Virtual Terminal performs the basic functions of a traditional point of sale terminal, as it pertains to check processing, including verification services, check processing, and transaction voids. **NOTE:** ACH Conversion Services requires the use of a SPS-EFT compatible Check Imager or Check Reader connected to the PC; and the SPS-EFT Virtual Terminal must be run in an Active-X supported Web Browser (Internet Explorer Versions 7 – 9). MERCHANT may utilize a compatible 3.5 inch printer or standard PC printer to print receipts. Supported Operating Systems include WindowsXP®, Windows Vista, and Windows 7 (32 and 64-bit versions). **NOTE:** Not all supported scanners are compatible with 64-bit Operating systems (check compatibility when utilizing this environment). 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 SPS-EFT Virtual Terminal Software.

5.1 **DAILY SETTLEMENT OF TRANSACTIONS.** MERCHANT agrees to "batch out" each POP MICR reader/check scanner used on a daily basis. "Batch out" shall mean that MERCHANT totals and settles all of the transactions on each POP MICR reader/check scanner used by midnight (12:00 am) of the day SPS-EFT authorizes the sale and transmits the information contained in the batch out to SPS-EFT. In addition, any transactions contained in an untimely batch out may be refused or become subject to chargeback or held until after a sixty-day period for consumer chargebacks by SPS-EFT. If MERCHANT account is POS GUARANTEE CONVERSION then checks contained in an untimely batch out are not covered under the POS GUARANTEE CONVERSION program. If so requested by SPS-EFT, the signed Electronic Check Authorization receipt must be sent out and received at SPS-EFT's designated location within 48 hours from the request date. Failure to do so will remove SPS-EFT's obligations under the SPS-EFT POS Guarantee Conversion program for such checks at SPS-EFT's sole discretion. MERCHANT acknowledges that failure to batch out on a timely basis may be grounds for suspension or termination at SPS-EFT's sole discretion. **MERCHANT acknowledges that failure to batch out will delay funds being deposited and loss of guarantee coverage on those checks and SPS-EFT may apply a \$25.00 fee for each terminal daily on which MERCHANT fails to transmit a timely batch out.**

5.2 **NETTING OF TRANSACTIONS.** MERCHANT acknowledges that all transactions between SPS-EFT and MERCHANT under this Agreement, except assessment of fees, shall be treated as a single transaction for purposes of daily settlement between MERCHANT and SPS-EFT.

5.3 **PROVISIONAL SETTLEMENTS.** MERCHANT acknowledges that all settlements between SPS-EFT and MERCHANT are provisional and are subject to the customer's rights to dispute the charges against the customer's account. In submitting electronic checks to SPS-EFT, MERCHANT endorses and assigns to SPS-EFT all right, title and interest to such checks with rights of endorsement. MERCHANT acknowledges that SPS-EFT has the right to receive payment on all electronically processed checks acquired and MERCHANT will not attempt to collect on any such transactions. If any payment is tendered to MERCHANT, MERCHANT will notify SPS-EFT by telephone of the payment, endorse the check; sign it over to SPS-EFT and immediately mail the payment to SPS-EFT by certified mail. If customer pays cash, MERCHANT shall reimburse SPS-EFT by MERCHANT's check.

5.4 **PAYMENT.** 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 chargebacks, adjustments and final settlement including but not limited to those enumerated herein. All payments to MERCHANT for legitimate and authorized transactions shall be made by SPS-EFT through the ACH and shall normally be electronically transmitted directly to MERCHANT'S designated account. However, SPS-EFT 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 an ACH, payment to MERCHANT can be delayed. In such cases, MERCHANT agrees to work with SPS-EFT 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 five (5) days from the date of settlement due to problems beyond SPS-EFT'S control, SPS-EFT 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 therefrom any discount fee, transaction fee, credit, chargeback, 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 against MERCHANT'S designated Account at SPS-EFT'S sole discretion, without any further notice or demand.

5.5 **AUTHORIZATION TO ACCESS MERCHANT'S ACCOUNT.** MERCHANT hereby authorizes SPS-EFT to initiate debit and credit entries to MERCHANT'S designated account. 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 SPS-EFT in the exercise of its sole discretion in order to properly terminate business. Unless a reserve or delay is placed on the MERCHANT'S account, SPS-EFT will transmit settlement to MERCHANT'S bank by the fourth bank business day following the day MERCHANT batches out a MICR reader/check scanner's transactions. In cases where MERCHANT has been approved by SPS-EFT in advance to initiate credit entries, the debit to MERCHANT'S account will be initiated first and the credit to the customer may be held until MERCHANT'S debit clears, generally within 6 banking days or for a longer period as determined necessary by SPS-EFT to insure the funds have cleared MERCHANT'S account. SPS-EFT may hold back certain amounts where SPS-EFT is investigating a transaction for breach of warranty or transactional requirements by MERCHANT or for other reasons. SPS-EFT shall monitor MERCHANT'S transactional activity and MERCHANT agrees that SPS-EFT may delay funds for a reasonable period to investigate account activity. SPS-EFT will attempt to notify MERCHANT of any investigation, but SPS-EFT shall have no liability to MERCHANT or any other party, for any such actions taken by SPS-EFT. MERCHANT agrees that SPS-EFT may hold, setoff or retain funds to protect against amounts owed SPS-EFT or based on MERCHANT'S financial condition. SPS-EFT will not be liable for any dishonor of any item as a result of actions taken hereunder. Any account is subject to review, verification, audit and acceptance by SPS-EFT. SPS-EFT may return any item to MERCHANT for correction or proper processing.

5.6 **RETURNS AND CREDITS.** MERCHANT shall maintain a fair policy permitting refunds, exchanges, returns and adjustments. During the term of this Agreement, MERCHANT shall be responsible for making all cash or check refunds to customer after a transaction has been batched out for settlement. Unless MERCHANT has been approved by SPS-EFT in advance to initiate credit entries for a lesser amount than the original electronic check entry, MERCHANT must initiate a credit receipt for the same amount as the debit entry to effect voids, which occur the same day as the day of authorization and prior to batching out. MERCHANT must use the POP equipment or approved SPS-EFT software to transmit the credit. MERCHANT shall obtain proper written authorization from the Customer whose name is printed on the face of the check or the customer's authorized representative prior to crediting Customer's account. The customer or its authorized representative shall sign the completed credit receipt and a copy of the credit receipt shall be delivered to the customer at the time of each cancellation of a transaction. Each debit and credit entry shall constitute a separate transaction for which a processing fee will apply. If it becomes necessary for a reversal of a transaction to be initiated, MERCHANT shall request in writing to SPS-EFT to initiate such reversal. MERCHANT shall give SPS-EFT enough information to create such reversal. A fee of no more than twenty-five dollars for each transaction reversal may be charged by SPS-EFT.

6.1 **WARRANTIES BY MERCHANT.** MERCHANT warrants and agrees to fully comply with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to consumer protection. MERCHANT also warrants not to change the nature of its business as indicated on the Application attached hereto and submitted herewith or to modify the ownership of the business without the prior written consent of SPS-EFT. With each transaction presented to SPS-EFT by MERCHANT for authorization, MERCHANT specifically warrants and represents that: (a) each customer has authorized the debiting or crediting of its checking account, that each debit or credit is for an amount agreed to by the customer; (b) each debit or credit entry was authorized by the person named on the checking account or the authorized representative or agent of such person; (c) the sales receipt is valid in form and has been completed in accordance with all applicable laws and all of the provisions set forth in this Agreement; (d) the total amount of each sales receipt evidences all goods and services purchased in a single transaction (No splitting check transactions to multiple checks); (e) MERCHANT has delivered the goods or completed the services identified in the authorized sales receipt draft; (f) each sales draft represents a bona fide direct sales transaction between the MERCHANT and the person presenting the check in the MERCHANT'S ordinary course of business and that the amount of the sales draft evidences the customer's total indebtedness for the transaction involved; (g) the person presenting the check has no claim, defense, right of offset, or dispute against MERCHANT in connection with the purchase of the goods or services and MERCHANT will provide adequate services to the person presenting the check and will honor all warranties applicable thereto; (h) all of MERCHANT'S business locations engage in the business activity listed on the face of this Agreement; (i) MERCHANT warrants that ALL types of its business are clearly and precisely stated on this application; (j) the percentage of mail order sales listed by MERCHANT for each location is consistent with the information provided in the application; (k) MERCHANT, nor any of its employees have submitted checks drawn from their personal checking accounts on the MERCHANT'S MICR reader/check scanner; (l) MERCHANT uses only the name and address shown on the front of the Agreement on all its sales drafts; (m) MERCHANT has not submitted duplicates of any transaction; (n) MERCHANT warrants that check banking information on the printed receipt is correct; and (o) no transaction submitted for authorization to SPS-EFT is with or through an entity other than MERCHANT; MERCHANT further acknowledges that if for any reason funds are credited to MERCHANT in excess of the amount that MERCHANT is entitled to receive under this Agreement, MERCHANT shall return all such excess funds to SPS-EFT upon demand by SPS-EFT. Such excess funds may be collected by SPS-EFT by a debit to MERCHANT'S designated account initiated by SPS-EFT as provided in this Agreement. If for any reason such account does not have sufficient funds, then MERCHANT shall promptly remit the excess funds to SPS-EFT. Until the return of such funds to SPS-EFT, MERCHANT acknowledges that it shall hold all such funds in trust for the benefit of SPS-EFT.

7.1 **LIMITATION OF LIABILITY AND MERCHANT'S WAIVER OF DAMAGES.** SPS-EFT shall be responsible for performance of the ACH services as a third-party provider in accordance with the terms of this Agreement. SPS-EFT 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 entities such as SPS-EFT's communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of SPS-EFT. **IN NO EVENT SHALL SPS-EFT BE LIABLE TO MERCHANT FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES WHICH MERCHANT OR ITS CUSTOMERS, AFFILIATES, PARENT COMPANIES, ASSOCIATES, AGENTS, OFFICERS, DIRECTORS OR EMPLOYEES MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, INCLUDING LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM SPS-EFT'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.**

7.2 **FORCE MAJEURE.** SPS-EFT shall not be responsible for delays, nonperformance, damages, lost profits or other losses caused directly or indirectly by any Act of God, including, without limitation, fires, earthquakes, tornadoes, hurricanes, wars, 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 SPS-EFT.

8.1 **CONFIDENTIALITY OF CUSTOMER INFORMATION.** MERCHANT further 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 SPS-EFT, MERCHANT'S agents approved by SPS-EFT for the purpose of assisting MERCHANT in its business to SPS-EFT, 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.

9.1 **CHARGEBACKS AND RETURNS.** MERCHANT shall bear all risk of loss, without warranty or recourse to SPS-EFT for the amount of any transaction, or other amounts due SPS-EFT (including SPS-EFT's actual costs and expenses) due to or caused by chargebacks and returns of any kind, whether for customer chargebacks, insufficient funds returns, administrative returns, or any other type of returns, except as set forth in the SPS-EFT POS GUARANTEE CONVERSION provisions below (provided that MERCHANT has purchased and SPS-EFT agreed to provide POS GUARANTEE CONVERSION service). SPS-EFT shall have the right to debit MERCHANT'S incoming transactions, designated account or any other funds of MERCHANT in SPS-EFT'S direct or indirect control by reason of SPS-EFT'S security interest granted to SPS-EFT by MERCHANT hereunder, and to chargeback such transactions to MERCHANT including, but not limited to any of the following situations: (a) where goods have been returned or service canceled by the person submitting the check for electronic processing and that person has requested a credit draft and such credit draft was not processed by MERCHANT; (b) where the sales draft or purchaser breaches any representation, warranty or covenant or failed to meet the requirements of this Agreement, or applicable law, or has not been authorized in advance by the authorization center as required hereunder; (c) where the transaction is for a type of goods or services sold other than as disclosed in the MERCHANT application or approved in advance by SPS-EFT or the amount shown on the sales receipt differs from the copy given to the customer; (d) where a customer contends or disputes in writing to SPS-EFT, or the customer's financial institution named on the check that: (1) Goods or services were not received; or (2) Goods or services received do not conform to the description on the sales receipt; or (3) Goods or services were defective or the customer has a claim, dispute or defense to payment related to the transaction; or (4) The dispute reflects a claim or defense authorized by a relevant statute or regulation, (e) where a check authorization document was not received by SPS-EFT as required herein or is subject to indemnification charged back by the customer's financial institution; (f) where the transaction was generated through the use of an account that was not valid (As in, but not limited to, R03,R04 return codes) or effective (As in, but not limited to, R02 return code) on the transaction date or which was made on an altered or counterfeit check authorization document or of which MERCHANT had notice not to honor and failed to reject the transaction or if MERCHANT disregarded any denial of authorization; (g) where no signature of the transaction appears on the sales check authorization document or if MERCHANT failed to obtain specific authorization in advance from SPS-EFT to complete the transaction and/or a valid authorization number was not on the sales receipt and/or the customer has certified in writing to SPS-EFT or his financial institution that no authorized user made or authorized the transaction; (h) where security procedures were not followed; (i) where the customer's financial institution or SPS-EFT has information that MERCHANT fraud occurred at the time of the transaction(s), or the transaction is not a sale by MERCHANT whether or not such transaction(s) was authorized by the customer; (j) 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 is charged back; (k) a sales receipt was charged back and represented whether or not the customer knows or consents to this representation. If, with respect to any one of MERCHANT'S outlets, the amount of or number of any counterfeit or fraud incidents becomes excessive, in the sole determination of SPS-EFT; (l) MERCHANT does not provide copy of the signed authorization receipt as requested by SPS-EFT within forty-eight (48) hours from the time of such request. MERCHANT may be charged back for all transactions, this Agreement may be terminated immediately without notice, and MERCHANT'S funds, including but not limited to those in incoming transactions and in MERCHANT'S designated account, shall be held pursuant to the provisions herein. SPS-EFT shall retain any discount or fee related to a chargeback transaction. MERCHANT agrees that SPS-EFT will assess up to twenty-five dollars for each chargeback, or such increased or additional charges as may be established by SPS-EFT from time to time. **Additionally, SPS-EFT 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 returns, or any other kind of returned transaction. If MERCHANT has requested the SPS-EFT POS GUARANTEE CONVERSION service, and SPS-EFT has accepted the application for POS GUARANTEE CONVERSION service, certain transactions are guaranteed, as listed in the SPS-EFT POS GUARANTEE CONVERSION provisions below.**

9.2 **CHARGEBACK AND RETURNS RESERVE ACCOUNT.** Notwithstanding any other language to the contrary contained in this Agreement, SPS-EFT reserves the right to establish, without notice to MERCHANT, and MERCHANT agrees to fund a non-interest bearing Chargeback and Return Reserve Account, or demand other security and/or to raise any discount fee or transaction fee hereunder, upon SPS-EFT'S 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 administrative chargebacks/returns, or chargebacks or rejections by customers; (c) **Failure by MERCHANT to fully disclose the true nature of its business to SPS-EFT to permit a fully informed decision as to the suitability of MERCHANT for processing through SPS-EFT;** (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 SPS-EFT 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 SPS-EFT; (g) MERCHANT has chargebacks or returns of any kind which exceed 1% of the total number of transactions completed by MERCHANT in any thirty (30) calendar day period; (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 SPS-EFT, for all obligations on the part of MERCHANT to SPS-EFT under this Agreement, MERCHANT may request SPS-EFT to disburse to MERCHANT any funds remaining in the Chargeback and Return Reserve Account unless otherwise agreed to by SPS-EFT. 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 chargeback or return activity, whichever is later, unless SPS-EFT in its sole discretion has reason to believe that customer chargeback rights may be longer than such period of time or that loss is otherwise likely, in which event SPS-EFT will notify MERCHANT of such fact and SPS-EFT will set the date when funds shall be released. No monies held in the Chargeback and Return Reserve Account shall bear interest. Provisions applicable to the designated account are also applicable to this account.

9.3 **COLLECTIONS.** MERCHANT acknowledges and agrees that when collection services are required, SPS-EFT may utilize an appropriately licensed third party to perform such collection services. MERCHANT further authorizes SPS-EFT to continue collection efforts for MERCHANT. If collections are unsuccessful after sixty (60) days, SPS-EFT shall discontinue collections and be absolved of all responsibility.

10.1 **SPS-EFT POS GUARANTEE CONVERSION.** The SPS-EFT POS GUARANTEE CONVERSION provisions are operational only if MERCHANT has marked the SPS-EFT POS GUARANTEE CONVERSION box on the application form of the Agreement. If so marked, MERCHANT wishes SPS-EFT to provide a guarantee for reimbursement of losses sustained by MERCHANT in accepting checks for electronic processing. In addition to the provisions previously set forth and notwithstanding any provisions to the contrary, SPS-EFT has established a per account Guarantee Limit, as per the Schedule (located in the Application Approval Box), based on a percentage of the face amount of any and all checks (and a local access [Transaction fee] fee) as set forth in the pricing section of the agreement) presented at MERCHANT'S place of business or at other locations which are listed in any attachments to this Agreement, subject to the terms and conditions set forth in this Agreement. SPS-EFT shall reimburse MERCHANT per Schedule, up to the Guarantee Limit, as measured from the date of verification of non-payment, subject to MERCHANT'S compliance with all of the terms and conditions contained in this Agreement or any of SPS-EFT'S other published instructions. SPS-EFT shall have the right to adjust MERCHANT'S rate including SPS-EFT POS Guarantee Conversion rate based upon its sole determination. Each month MERCHANT shall have access to an itemized summary of electronic check deposits. SPS-EFT shall process up to the check limit established for MERCHANT, but will not be responsible for reimbursement of checks exceeding the MERCHANT'S approved guarantee limit. The following transaction types are not included in the SPS-EFT POS GUARANTEE CONVERSION service, and SPS-EFT assumes no liability for and will provide no reimbursement for transactions as follows: Incorrect MICR data reads, unable to locate account or invalid account number returns, customer chargebacks or customer revocations of any transaction. **POS Guarantee Conversion reimbursement shall only serve to cover MERCHANT losses due to, NSF returns, and Insufficient Funds returns up to the per account guarantee limit placed in the approval section of the contract.**

10.2 **MERCHANT SHALL PAY.** A Discount Fee, as per Schedule, based upon a percentage of the face amount of checks inquired to the database during the month. A network compliance fee up to \$4.00 per month. As per schedule: a Monthly Minimum fee and Service Fee to be paid each month (SPS-EFT reserves the right to increase the Service Fee by \$10 if processing volume results in a transaction return rate of 7% or higher), a transaction fee for each ACH deposit, and a transaction fee for each electronic inquiry to the database that does not result in an electronic transfer of funds and a "batch out" fee equal to the transaction fee, or 25 cents, whichever is greater. A fee of no more than twenty-five dollars may be charged per transaction return. A \$5.00 monthly fee to be paid each month as related to reader/scanner replacement and an annual subscription fee of \$59.95 that may be debited each year. If MERCHANT terminates this agreement, a one-time termination fee of one hundred ninety nine dollars (\$199.00) will be assessed and electronically debited from the MERCHANT'S account for administrative processing. MERCHANT must promptly notify SPS-EFT in writing of any dispute regarding fees under this Agreement. MERCHANT'S written notice must include: (i) MERCHANT name and account number; and (ii) the dollar amount and description of the disputed fees. Such written notice must be received by SPS-EFT no later than ninety (90) days after the disputed fees have been paid by MERCHANT or charged to MERCHANT'S account by SPS-EFT. MERCHANT'S failure to so notify SPS-EFT will waive and bar the dispute.

10.3 **CHECK PROCESSING.** MERCHANT shall submit all documentation related to the POS GUARANTEE CONVERSION guaranteed transactions to SPS-EFT within forty-eight hours of SPS-EFT'S request.

10.4 **ASSIGNMENT OF CHECKS.** As of the date of this Agreement and by subscribing to SPS-EFT POS GUARANTEE CONVERSION, MERCHANT shall be deemed to have assigned to SPS-EFT, without recourse, all of MERCHANT'S right, title and interest in any and all checks, including any rights to treble or punitive damages permitted under applicable law. MERCHANT shall execute and deliver endorsements, instruments, and papers and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend SPS-EFT'S rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with SPS-EFT in pursuing SPS-EFT'S rights, including suing or prosecution of the customer under all applicable laws.

10.5 **NOTIFICATION OF PAYMENTS RECEIVED.** MERCHANT shall notify SPS-EFT pursuant to the provision set forth in Section 5.3

11.1 **CHECKS FOR WHICH MERCHANT WILL NOT BE REIMBURSED UNDER SPS-EFT POS GUARANTEE CONVERSION.** In addition to the provisions set forth in this Agreement and notwithstanding any other provisions to the contrary, SPS-EFT shall have no obligation to reimburse MERCHANT for checks that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the check; (b) Fraudulent, whether MERCHANT, its employees or agents are involved, either as a principal or as an accessory, in the issuance; (c) Accepted by MERCHANT or its employees with advance knowledge of the likelihood of its being dishonored even though authorized by SPS-EFT; (d) Lost, stolen, altered or counterfeit, and SPS-EFT has reason to believe that MERCHANT failed to use reasonable care in verifying the customer's identity; (e) Given as a substitute for a previously accepted check, whether or not the previous check was authorized by Company or, any check upon which MERCHANT has accepted full or partial payment; (f) One of multiple checks presented to MERCHANT in a single transaction for electronic processing; (g) For goods, if the goods are subsequently returned by customer or repossessed by MERCHANT or lien holder, within 65 days of date of purchase; (h) Not honored by the customer's financial institution because of the failure of, the closing of, or government-imposed restrictions on withdrawals from the financial institution; (i) Checks for which MERCHANT returns cash back to the customer, unless MERCHANT is approved in writing by SPS-EFT for such cash back; (j) Checks for which SPS-EFT previously denied authorization; (k) Not in compliance with this agreement and not processed in accordance with the check processing provisions of this Agreement; (l) Incorrect MICR data scans or reads; (m) unable to locate account or invalid account number returns. In addition, before processing the check and as a condition to honoring the check, MERCHANT shall obtain sufficient personal information to locate the person presenting the check, including but not limited to a current home or business telephone number including area code, a current home address consisting of a street or rural route address, not a post office box, and the

customer's valid, unexpired driver's license number or non-driver identification number together with the state of issuance. MERCHANT shall ensure that this identifying information is legibly printed on the check; (n) Checks must have a current phone number of customer imprinted or written on them; (o) Checks must have driver's license written on them.

12.1 **COMPLIANCE AND DISCLOSURE OF INFORMATION.** MERCHANT shall provide such information and certifications as SPS-EFT may reasonably require from time to time to determine MERCHANT'S compliance with the terms and conditions of this Agreement and applicable law. MERCHANT further agrees to produce and make available for inspection by SPS-EFT or its officers, agents, attorneys, accountants, or representatives, such books and records of MERCHANT as SPS-EFT may deem reasonably necessary to be adequately informed of the business and financial condition of MERCHANT, or the ability of MERCHANT to observe or perform its obligations to SPS-EFT pursuant to this Agreement. MERCHANT further agrees to provide to SPS-EFT from time to time such information including, but not limited to, credit reports, personal and/or business financial statements, income tax returns, or other such information as SPS-EFT may request. MERCHANT grants to SPS-EFT continuing authority to conduct credit checks and background investigations and inquiries concerning MERCHANT and MERCHANT'S owner(s) including, but not limited to, character and business references and the financial condition of MERCHANT and MERCHANT'S owner(s). MERCHANT expressly authorizes SPS-EFT or its agents, attorneys, accountants, and representatives to provide and receive such information from any and all third parties directly, without further consent or authorization on the part of MERCHANT. SPS-EFT may share with others its credit, sales and other information. MERCHANT will not transfer, sell, or merge or liquidate its business or assets or otherwise transfer control of its business, change its ownership in any amount or respect, engage in any joint venture partnership or similar business arrangement, change its basic nature or method of business, types of products sold or engage in sales by phone or mail order without providing notice to SPS-EFT and provide SPS-EFT with the opportunity to terminate this Agreement.

12.2 **COMPLIANCE WITH THE RULES AND APPLICABLE LAW.** The Merchant's rights and obligations with respect to any Entry are governed by the NACHA Rules ("the Rules"), this Agreement and applicable law. The Merchant agrees to comply with and be bound by "the Rules". The Merchant agrees to comply with applicable state and federal law or regulation and Merchant warrants that it will not transmit any Entry that violates the laws of the United States, including, without limitation, regulations of the Office of Foreign Asset Control (OFAC).

13.1 **DATA RETENTION.** MERCHANT shall retain all records related to authorization, including all sales and credit receipts for a period of no less than two years following the date of the transaction. According to SPS-EFT'S current policy for SPS-EFT, MERCHANT shall stamp or mark "ACH processed" and hand the check back to the check writer. **If check is handed back to check writer then MERCHANT acknowledges that SPS-EFT will not be able to provide any check collection services beyond the third electronic presentment of the check. Failure to provide the signed authorization receipt to SPS-EFT will result in cessation of collection efforts, and SPS-EFT will be entitled to immediately debit MERCHANT'S account for any previously processed and returned transactions.**

14.1 **ADDITIONAL MERCHANT REPRESENTATIONS.** MERCHANT agrees to permit SPS-EFT to audit MERCHANT upon reasonable notice. MERCHANT agrees that any outstanding amount(s) owed to SPS-EFT shall be subject to a 1.5% finance charge monthly. Any outstanding sums will be sent to an outside collection agency and charged the maximum amount of civil, legal, and collection fees/charges as is allowed by law.

15.1 **ADDITIONAL SPS-EFT RESPONSIBILITIES.** SPS-EFT will accept entries via check reader hardware on a 24-hour per day basis. SPS-EFT is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. SPS-EFT will use information provided by MERCHANT to originate its entries in the ACH. MERCHANT understands and agrees that SPS-EFT may reject MERCHANT'S entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause SPS-EFT to potentially violate any federal, state or local law, rule statute, or regulation, including without limitation any Federal Reserve or other regulatory risk control program. At MERCHANT'S written request, SPS-EFT will make reasonable efforts to reverse or delete an entry, but will under no circumstance be liable for the failure to comply with such request.

16.1 **INDEMNIFICATION.** MERCHANT agrees to indemnify SPS-EFT for any cost, expense, and damage, lost profit and/or attorneys' fees caused by any breach of its obligations or representations in this Agreement.

17.1 **NON-WAIVER.** Neither the failure nor any delay on the part of SPS-EFT 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.

18.1 **ASSIGNMENT.** MERCHANT may not assign or transfer any rights under this Agreement unless and until it receives the prior written approval of SPS-EFT. SPS-EFT may freely assign this Agreement, its rights, benefits and duties hereunder.

18.2 **TERMINATION.** This Agreement shall continue indefinitely unless and until terminated by either party. MERCHANT must provide sixty (60) days written notice to SPS-EFT of termination and monthly minimum and subscription fees will continue in effect for this time. If either party terminates this agreement a one-time fee of one hundred ninety nine dollars (\$199.00) will be assessed and electronically debited from MERCHANTS account. SPS-EFT shall have the right to suspend or terminate this Agreement immediately and without notice to MERCHANT.

19.1 **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, such counterparts to constitute but one and the same instrument.

20.1 **SCHEDULE OF FEES.** Attached to this Agreement and incorporated herein by reference is a Schedule of Fees, which contains the Discount Fee, Transaction Fees, Minimum Monthly Discount Fee, Subscription Fee, Batch Out Fee, Termination Fee and other terms and conditions in effect on the commencement date of this Agreement. SPS-EFT reserves the right at all times to unilaterally change all or part thereof, or any other terms of this Agreement upon written notice to MERCHANT.

20.2 **APPLICATION FEE.** Any application fee paid to SPS-EFT is non-refundable whether or not MERCHANT and this Agreement are accepted by SPS-EFT.

21.1 **ENTIRE AGREEMENT.** This Agreement, including the attached Schedules, together with the Account Agreement, is the complete and exclusive statement of the agreement between SPS-EFT and the MERCHANT with respect to the subject matter hereof and supersedes any prior agreement(s) between SPS-EFT and the MERCHANT with respect to the subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event the performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which SPS-EFT, the Originating Depository Financial Institution (ODFI) or MERCHANT is subject, and which governs or affects transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy and SPS-EFT, the ODFI and MERCHANT shall incur no liability as a result of such changes except as provided in the following paragraph.

22.1 **AMENDMENTS.** As stated in paragraph 21.1, SPS-EFT, the ODFI or MERCHANT may amend operations or processing procedures in order to conform to and comply with any changes in the Rules or applicable Federal or State Regulations. The changes would be, without limitation, those relating to any cut-off time and the close of any business day. Such amendments to operations or procedures shall become effective upon receipt of written notice to the other party, as provided for herein, or upon such date as may be provided in the Rules or applicable law or regulation referenced in the written notice, whichever is earlier in time. Use of the ACH services after any such changes shall constitute acceptance of the changes by the parties. No other amendments or modifications to this Agreement will be effective unless such changes are reduced to writing and are signed by the duly authorized party or parties to this Agreement and such Amendments are incorporated into and made a part of this document.

23.1 **BINDING AGREEMENT; BENEFIT** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. This Agreement is not for the benefit of any other person or entity and no other person or entity shall have any right against SPS-EFT.

24.1 **ATTORNEYS' FEES.** In the event that it becomes necessary for SPS-EFT to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, or collect a debt from MERCHANT SPS-EFT shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from MERCHANT.

25.1 **CHOICE OF LAW, VENUE & JURISDICTION.** Notwithstanding any language to the contrary, all issues related to the electronic processing of checks under the terms of this Agreement shall be determined in accordance with the NACHA Rules. In the event of a conflict between the Rules and applicable local, state or federal law, the Rules shall prevail unless otherwise prohibited by law. To the extent that an issue arises which is not covered by the Rules, this Agreement shall be governed by and construed in accordance with Florida law and it is expressly agreed that venue and jurisdiction for all such matters shall lie in Okaloosa County, Florida. MERCHANT acknowledges that this Agreement was formed in Florida, upon its acceptance by SPS-EFT.

26.1 **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 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.

27.1 **HEADINGS.** The headings in this Agreement are used for referenced purposes only. They shall not be deemed as part of this Agreement and shall not affect its interpretation.

28.1 **EFFECTIVE DATE.** This Agreement shall be effective only upon acceptance by SPS-EFT.

29.1 **IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed by their duly authorized officers.