Checks-By-Web | 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: _____ Alternate Contact Person:_____

Type of Ownership: ☐ Sole Proprietor   ☐ Partnership   ☐ Corporation

Type of Goods Sold: _____

Total Time in Business: _____Yr(s) _____ Mo(s)   Time in Business at this Location: _____Yr(s) _____ Mo(s)

Principal Information

Name (please print): _____ Phone #: (_____) _____-_____

Title: _____ % Equity Ownership: _____

Principal's Address: _____ Date of Birth (mm/dd/yyyy):_____

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?: _____ |

Schedule of Fees/Charges

Existing Customers (Bill Pay, etc.)		eCommerce	
Discount Rate:	%	Discount Rate:	%
Transaction Fee:	$	Transaction Fee:	$
Monthly Service Fee:	$	Monthly Service Fee:	$
Monthly Minimum Fee:	$	Monthly Minimum Fee:	$
Batch Fee:	$	Batch Fee:	$
Return Fee:	$	Return Fee:	$
Reversal Fee:	$	Reversal Fee:	$
Set-Up Fee:	$	Set-Up Fee:	$

Required Information
- Checks-By-Web Merchant Agreement
- Checks-By-Web Merchant Information Form
- Voided Check w/Imprinted Business Name
- Business License/Tax License
- Previous year's financials or 3 most recent bank statements
- Articles of Incorporation
- IRS document verifying TIN# (SS-4) or most recent tax return signed by preparer
- Merchant's Refund/Warranty Policy
- Website address with valid Security Certificate

.50% premium for all items $2,500 and above.   Refer to section 10.1 for full disclosure of fees.

Website Info

Website Address: _____

E-mail address: _____

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.

Personal Guarantee: To induce and in consideration of SPS-EFT acceptance of the Checks-By-Web Processing Service 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 MERCHANT under the terms of this Agreement.

ACH Debit/Credit Authorization: MERCHANT hereby authorizes SPS-EFT in accordance with this Check Processing 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) One hundred and twenty (120) days after SPS-EFT has received written notification from MERCHANT of its termination in such a manner as to afford SPS-EFT 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 AGREED AND ACCEPTED:
I have read and agree to the terms of this Agreement.

CORPORATE RESOLUTION FOR CORPORATIONS AND LLC'S:
The officer(s) identified have the authority to execute the Check Services Agreement with SPS-EFT on behalf of the corporation or LLC

_____ _____
Authorized Merchant Signature   Date

_____ _____
Authorized Officer's Signature/Title   Date

Staple Check Here

Voided check from checking account and a copy of Business License must accompany this agreement.

Official SPS-EFT use only

Application Approved by: _____ Title: _____ Date:_____

©2010 2.27.14 v7   Not valid unless approved and signed by authorized officer of SPS-EFT

Merchant Information Form | Check Services

Merchant

Business Name: _____ Date: _____

Phone # as it will appear on customer bank statements: _____

Company name as it will appear on customer bank statements:_____ (16 character limit)

Authorization Method

1. Which authorization procedure does Merchant utilize to confirm customer's consent to an ACH debit?
   - ☐ **A. Signed Written Authorization from customer (Does not apply to Checks-By-Web)**
     - ☐ Processor provided Auth Form   ☐ Merchant created Auth Form
   - ☐ **B. Web Authorization (Checks-By-Web only)**
     - ☐ Customer provides electronic signature   ☐ Customer logs in using a username and password
   - ☐ **C. Recorded Verbal Authorization (Checks-By-Phone only)**
     - ☐ Processor provided script   ☐ Merchant created script

   If utilizing **C. Recorded Verbal Authorization**, check ONE of the following:
   - ☐ **Hosted secure verbal recording servcies offered by processor at a competitive rate.**
     (Please complete accompanying Recording Service Addendum.)
   - ☐ **Merchant has existing recording service to capture verbal customer authorizations.**
     How are recording accessed?
     - ☐ Via website URL: _____ Login/Username: _____ Password: _____
     - ☐ Via telephone # : _____ Password: _____

Transaction Handling

2. Frequency of transaction submission: ☐ Daily ☐ Weekly ☐ Other
3. Transactions will be submitted via:
   - ☐ **A. Internet Gateway**: Merchant will create code to interface with the processor API to transmit transaction data.
   - ☐ **B. Virtual Terminal:** To key in transaction data, Merchant will use:
     - ☐ Processor-provided website.   ☐ Other Virtual Terminal: _____
   - ☐ **C. Certified web service Gateway:** Merchant will use a certified web Gateway. (See Certified web service gateway list)
     Gateway: _____
   - ☐ **D. File Transmission:** Merchant will create text file and transmit to processor via FTP. **Not available for Guarantee service.**
     Acceptable file formats include: comma delimited, tab delimited, or NACHA standard file.
4. On NSF returns, processor automatically resubmits transaction: ☐ Yes   ☐ No (Option available for non-guarantee only)

Contact

Please provide Merchant's **Technical Contact's** information so we may contact them to provide gateway or file specs, coordinate a test file, etc.

Name: _____ Email Address: _____ Phone: _____

Product Info

5. Describe the product(s) or service(s) being sold: _____
6. How are products delivered? _____
7. Describe Merchant's return/refund policy? _____
8. Describe advertising/sales/marketing procedures:
   - ☐ Inbound Customer Calls   ☐ Outbound Customer Calls   ☐ TV   ☐ Direct Mail
   - ☐ Print Advertisements   ☐ Internet Advertisements   ☐ Web Site   ☐ Other: _____

Website

9. Merchant's web site meets minimum encryption or secure session requirements? (Minimum 128-bit RC4 encryption) ☐ Yes ☐ No
10. Website URL: _____

Additional Persons Authorized to Receive Online Transaction Initiation and/or Reporting Access

Please provide first and last names and clearly indicate whether each person listed should be given access to transaction initiation only, transaction reporting only, or both. Attach a separate page if necessary:

1. Name: _____ Access type: _____   2. Name: _____ Access type: _____

Notices

- Authorizations must be kept on file for no less than 2 years.
- Existing relationship between Merchant and customer is required to process checks initiated by phone authorization or Bill Pay.
- A relationship exists if the customer has purchased goods/services from the Merchant within the last 2 years OR there is a written agreement in place between the Merchant and the customer for the provision of goods or services. Example: The customer has an insurance policy with the Merchant.
- Service does not include verification if submitting transactions via File Transmission. Verification included with guarantee services or when otherwise selected on merchant agreement.
- Some banks will not honor an ACH transaction from a 'corporate account'.
- Provided that processor continues to receive transactions from Merchant, funds will be released in: 5-7 business days for ACH Debit, 5 business days for Checks-By-Phone, 3 business days for Bill Pay, and 7 business days for eCommerce

Name (Please print): _____ Date: _____

Signature: _____

Sign here

These are the Checks-By-Web Terms and Conditions of MERCHANT Application referred to in the Checks-By-Web Service application ("Application") by and between Sage Payment Solutions - EFT. ("SPS-EFT") and the applicant ("MERCHANT") who has submitted the executed Application.

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 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 web-initiated transactions which are "Web" Entries as defined by the Rules ("Checks-By-Web Service") utilizing the end-customer's Checking account data. MERCHANT is required to provide its own Internet payment gateway or utilize a third party Internet payment gateway which must be approved by SPS-EFT in advance. Any SPS-EFT products and associated software specifically designed for such transactions will be utilized by MERCHANT when required by SPS-EFT, and such software will either be hosted and maintained by SPS-EFT, or alternatively, provided directly to MERCHANT for installation on MERCHANT equipment. In all cases where SPS-EFT hosts software for MERCHANT, the various terms and conditions referenced below regarding disclosure, transaction and processing requirements and all other requirements imposed by either regulatory agency, law, SPS-EFT, or otherwise shall have full force and effect.

AGREEMENT

1.1 MERCHANT'S AUTHORITY. MERCHANT acknowledges that this Agreement constitutes the legal, valid and binding obligation of MERCHANT and is enforceable in accordance with its terms.

1.2 EXCLUSIVE THIRD PARTY PROCESSOR RELATIONSHIP WITH SPS-EFT. During the term of this Agreement, MERCHANT agrees to process all electronic ACH transactions related to its business exclusively through SPS-EFT and give SPS-EFT right of first refusal on any future electronic ACH processing contracts with MERCHANT.

1.3 CHECKS-BY-WEB PROGRAM. THIS PROGRAM OFFERS NO GUARANTEE FOR ENTRIES THAT ARE RETURNED UNPAID AND MERCHANT SHALL BE LIABLE FOR 100% OF ALL LOSSES ARISING FROM RETURNED ENTRIES. MERCHANT must utilize a SPS-EFT-approved payment gateway, software, and approved method of electronic file transmission to use the Checks-By-Web program. MERCHANT must submit a file for testing purposes prior to using the Checks-By-Web Service if MERCHANT utilizes electronic file transmission. MERCHANTS who utilize electronic file transmission will not receive the benefit of any pre-verification services to determine if the CUSTOMER's account or driver's license is flagged by the national negative database for unpaid items, which may result in higher returns or chargebacks to MERCHANT's account. Refer to Software Requirements section.

1.4 ACH COLLECTION. MERCHANT authorizes SPS-EFT to re-present all return items forwarded to SPS-EFT and to originate an electronic Entry for the amount of any allowable recovery fee. SPS-EFT shall have sixty (60) days from the date of receipt of return ACH transaction item to complete its re-presentment process. If this Agreement is terminated for any reason, SPS-EFT will retain the right to complete the electronic re-presentment process for all return ACH Transaction items forwarded to SPS-EFT prior to termination.

2.1 MERCHANT's PUBLIC DISCLOSURE RESPONSIBILITIES. MERCHANT agrees to inform customers that MERCHANT will honor electronic ACH processing services provided by SPS-EFT. From time to time, SPS-EFT may design educational and promotional materials into any related software and send such to MERCHANT for MERCHANT to disseminate to customers. MERCHANT will discontinue the use of all of SPS-EFT's promotional materials and properly remove such materials upon receipt of written notification of suspension or termination of this Agreement.

2.2 RESTRICTIONS ON USE OF PROMOTIONAL MATERIALS AND REPRESENTATIONS CONCERNING SPS-EFT's SERVICES. MERCHANT shall make no use of SPS-EFT's software or promotional materials, other than as expressly set forth in this Agreement. 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 DATA RETENTION; VERIFICATION AND SECURITY REQUIREMENTS. Merchant agrees to complete all transactions in accordance with the provisions of this Agreement, the Rules and such rules of operation as may be established by SPS-EFT from time to time. Merchant shall retain data on file adequate to permit remaking of Entries for seven (7) banking days following the date of their transmittal by SPS-EFT as provided herein, and shall provide such data to SPS-EFT upon its request. Merchant represents and warrants that it shall ensure that the financial information it receives is protected by security practices and procedures that include (i) physical security to protect against theft, tampering or damage, (ii) personnel and access controls to protect against unauthorized access and use, (iii) network security to ensure secure capture, storage and distribution, (iv) at least 128-bit RC4 encryption technology, (v) commercially reasonable fraud detection systems, (vi) procedures to verify routing numbers and authenticate consumer identity, and procedures to establish credit-worthiness and exposure limits for its customers, and (vii) MERCHANT's payment gateway must clearly notify the customer that they are initiating an ACH debit authorization and MERCHANT's authorized payment gateway shall obtain a customer authorization in the form of an electronically signed ACH authorization or similarly authenticated (unique security code or PIN) in accordance with the Rules that clearly demonstrates the customer's assent to authorization for each transaction submitted for electronic processing. **Merchants are required to retain the original authorization or copy of the original authorization in its original form that can be reproduced upon request. NACHA does not accept proof of an authorization as being a listing of the information captured at time of authorization.** The following minimum information must be included in the authorization record: consumer IP address of origination, consumer name , consumer address, transaction amount, transaction effective date, consumer e-mail address (optional; industry recommended best practice), website where payment was accepted , signifying whether authorization is for a single or recurring/multiple debits, and debit schedule if recurring/multiple, consumer banking information, statement of how the consumer's identity was authenticated.   Additionally, Merchant's website must provide the consumer with a phone number for inquiries or authorization revocation. Merchant agrees that it shall conduct or have conducted annual audits to ensure that the financial information it obtains from its customers is protected by security practices and procedures that include, at a minimum level, the practices set forth in (i) through (iii), hereinabove. MERCHANT or MERCHANT'S 3rd party software provider shall cooperate with SPS-EFT to test MERCHANT's Internet payment gateway and for any ongoing support issues. In all cases, CUSTOMER will provide check information via Internet and MERCHANT's payment gateway. Merchant must obtain the customer's authorization in accordance with the Rules that clearly demonstrates the customer's assent to authorization prior to initiating the ACH debit. In addition, if customer is providing recurring payment authorization, customer must be notified with the method to revoke its authorization. All items, goods and services purchased in a single transaction shall be included in the total amount on a single ACH authorization receipt and all entries must contain the correct customer bank routing, account, and check numbers, MERCHANT's correct name and telephone number; the date of the transaction, 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, Customer's personal information including but not limited to CUSTOMER's full name, address, telephone number, driver's license state and number, and a disclosure statement that CUSTOMER understands he/she is authorizing MERCHANT to process an ACH debit entry to the CUSTOMER's account and that if the ACH debit entry is returned unpaid, a fee of $25.00 or as allowable by law may be charged to CUSTOMER's account. After customer authenticates the entry, MERCHANT's payment gateway must prompt the consumer to print the authorization and to retain a copy and no transaction may be altered after SPS-EFT authorizes acceptance of the ACH transaction. MERCHANT may not resubmit the transaction electronically or deposit the original source document by any means, once SPS-EFT authorizes a transaction. Failure to comply with the above requirements will, in addition to other penalties, subject MERCHANT to chargebacks or withholding of funds and may be grounds for immediate suspension/termination of services. MERCHANT ACKNOWLEDGES AND UNDERSTANDS THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT ACCOUNT HOLDER'S EXPRESSED AUTHORITY. MERCHANT HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY A MAXIMUM OF A $10,000 FINE, IMPRISONMENT FOR A TERM OF TEN YEARS, OR BOTH. IT IS SPECIFICALLY UNDERSTOOD BY MERCHANT THAT ANY TRANSACTION EVENT INITIATED AS AN UNAUTHORIZED MANUAL ENTRY OR DEPOSIT BY MERCHANT AFTER MERCHANT HAS RECEIVED APPROVAL FOR ELECTRONIC DEPOSIT OF ACH TRANSACTION (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 ACH TRANSACTION DEBIT ENTRY ("ENTRY") for MERCHANT against customer. It further permits SPS-EFT to reinitiate an ENTRY where the original ENTRY is returned and to assess a collection fee against CUSTOMER. All such collection fees shall be the sole property of SPS-EFT. SPS-EFT shall be entitled to multiple re-presentments and to assess a transaction fee as set forth on the Application against MERCHANT for each re-presentment. If an electronic check is returned unpaid after each re-presentment, SPS-EFT shall be entitled to debit the MERCHANT'S account for the amount of the electronic check.

3.3 RESTRICTIONS ON ACCEPTANCE OF ELECTRONIC 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. SPS-EFT may establish minimum and maximum amount limitations on electronic checks presented for electronic processing by MERCHANT And MERCHANT shall not accept or attempt to process electronic checks in excess of the maximum limitations established by SPS-EFT. In no event will SPS-EFT accept or will MERCHANT attempt

to process an electronic Checks-By-Web greater than: (i) $2,500 for MERCHANTS that have been identified as "Existing Relationship" (i.e. Bill Payment) Clients on the Application and (ii) $500 for all other MERCHANTS unless otherwise approved in writing by SPS-EFT. SPS-EFT shall also establish the number of electronic checks that 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 for SPS-EFT to electronically process any checks.

3.4 UNACCEPTABLE TRANSACTIONS. In addition to the restrictions set out above and in any event, the following transactions are unacceptable for electronic processing. MERCHANT agrees not to submit any of the following transactions to SPS-EFT for electronic processing; (a) MERCHANT shall not electronically process any electronic checks drawn on any depository institution that is not federally insured or part of the ACH network, (b) MERCHANT shall not electronically process any electronic checks drawn on the business or personal checking account of MERCHANT or any of its agents or employees, (c) MERCHANT shall not submit an electronic check for goods or services that are not provided to the customer, (d) MERCHANT shall not submit an electronic check which is altered by the MERCHANT in any way. 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 or charged back to MERCHANT.

3.5 SURCHARGES AND TAXES. MERCHANT shall not impose any illegal surcharge on any processed electronic checks. MERCHANT shall collect all required taxes and/or shipping charges at time of sale. All required taxes and/or shipping charges must be included in the total transaction amount at the time such transaction is submitted for authorization to SPS-EFT. 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 as required by state or Federal law.

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.

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

4.2 USE OF EQUIPMENT. MERCHANT agrees to utilize only software, equipment, and a payment gateway approved by SPS-EFT for the electronic processing of Checks-By-Web transactions and in a format and medium of transmission acceptable to SPS-EFT.

5.1 DAILY SETTLEMENT OF TRANSACTIONS. "Batch out" shall mean that MERCHANT transmits all of the transactions to SPS-EFT by midnight (12:00 am) on the day SPS-EFT authorizes the sale. 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 so requested by SPS-EFT, all documentation related to the customer's Internet ACH Authorization, including but not limited to customer's telephone number and billing and shipping address, must be faxed and received by SPS-EFT within 48 hours from the request date. MERCHANT acknowledges that failure to batch out on a timely basis may be grounds for suspension or termination at SPS-EFT's sole discretion. SPS-EFT reserves the right to hold additional monies as necessary to reduce any risk associated with daily processing of electronic checks. SPS-EFT may, in its sole discretion and to insure against, place a hold on funds due to MERCHANT in settlement of transactions in order to insure against potential losses. SPS-EFT will then provide a net deposit to MERCHANT after a period of time acceptable to SPS-EFT (usually 90 days from transaction processing date). In addition, MERCHANT understands that a failure to batch out will delay funds being deposited into MERCHANTS' account. MERCHANT also acknowledges that SPS-EFT may apply a $25.00 fee for each SPS-EFT-assigned terminal ID number 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. Settlement shall consist of a 7-business-day net settlement period. Chargebacks will be deducted from net settlement or may be debited from MERCHANT's account if no pending credits are available to offset the chargeback.

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.

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 network 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 the ACH network, 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 seven (7) banking 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 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 from MERCHANT'S designated Account(s) 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(s). MERCHANT's authorization shall continue in effect for at least 120 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. SPS-EFT will generally transmit settlement to MERCHANT's bank within 6 business days. However, settlement shall consist of a 7 banking day net settlement unless approved in advance by SPS-EFT in writing. No MERCHANT or customer is authorized to initiate a customer credit Entry, except where the Entry is the result of a reversal of a previous WEB debit Entry. SPS-EFT may holdback certain amounts where SPS-EFT is investigating a transaction for breach of warranty 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 to SPS-EFT based on MERCHANT's transaction history and/or MERCHANTS' financial condition. SPS-EFT will not be liable for any dishonor of any item as a result of actions taken hereunder. All accounts are 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 refunds to customer after a transaction has been released for settlement. 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 for 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 REPRESENTATIONS AND WARRANTIES BY MERCHANT. MERCHANT represents and warrants the following: (i) MERCHANT complies and will comply during the term of this Agreement with all federal, state, and local laws, rules and regulations, as amended from time to time, including those with respect to consumer protection, data security, and processing of ACH transactions; (ii) the description of type and nature of MERCHANT's business in the Application is complete and accurate and will remain so during the term of this Agreement; (iii) the Application has been signed by a principle of MERCHANT and that if there is a change in control of MERCHANT that MERCHANT will not submit Entries under this Agreement without SPS-

EFT's prior written consent; (iv) in the event of a security breach of MERCHANT's records or payment gateway, MERCHANT will notify SPS-EFT immediately of such a breach and to provide as much information as may be required to allow SPS-EFT to act accordingly to protect SPS-EFT's legal rights and responsibilities and those of consumers affected by the breach; (v) all of MERCHANT'S business locations engage in the business activity listed on the face of this Agreement and no other business; (vi) MERCHANT has taken all necessary legal action and has authority to enter into this Agreement with SPS-EFT; and(vii) the person(s) signing for and on behalf of MERCHANT is specifically authorized and directed to do so by MERCHANT. MERCHANT also represents and warrants that with each transaction presented to SPS-EFT by MERCHANT for authorization: (a) each customer has authorized the debiting of its checking account, that each debit is for an amount agreed to by the customer; (b) each debit Entry was authorized by the person named on the checking account; (c) the proof of purchase 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 proof of purchase evidences all goods and services purchased in a single transaction (e) MERCHANT has or will deliver the goods or completed the services identified in the sale; (f) each sales draft represents a bona fide direct sales transaction between the MERCHANT and the person presenting the electronic 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 electronic 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 electronic check and will honor all warranties applicable thereto; (h) MERCHANT has not submitted Electronic checks drawn from its personal or business checking accounts on the MERCHANT's electronic check payment gateway; (i) MERCHANT has used only the name and address contained in the Application on all its sales drafts; (j) MERCHANT has not submitted duplicates of any transaction; (k) the banking information submitted to SPS-EFT for processing has not been altered by MERCHANT.

7.1   LIMITATION OF LIABILITY AND MERCHANT'S WAIVER OF DAMAGES. SPS-EFT'S ENTIRE LIABILITY, IF ANY, UNDER THIS AGREEMENT WHETHER TO MERCHANT OR TO ANY OTHER PARTY, WHATEVER THE BASIS OF THE LIABILITY, SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY MERCHANT TO SPS-EFT UNDER THIS AGREEMENT DURING THE 6 MONTHS PRECEDING THE DATE OF ANY CLAIM. IN NO EVENT WILL SPS-EFT, NOR ITS OFFICERS, AGENTS, DIRECTORS, PARENT COMPANY, AFFILIATES, OR EMPLOYEES BE LIABLE TO MERCHANT FOR ANY INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATIOIN LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR OF ELECTRONIC CHECKS. SPS-EFT makes no other warranty, express or implied, regarding any services it performs in accordance with this Agreement, and nothing contained in the Agreement will constitute such a warranty. SPS-EFT DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. If any of the Entries that are on SPS-EFT's system belonging to MERCHANT are subpoenaed in a civil matter, SPS-EFT shall use reasonable efforts to notify MERCHANT before producing such records in accordance with the subpoena. This section shall survive termination of this Agreement. SPS-EFT shall be responsible for performance of the ACH services as a third-party electronic check processor in accordance with the terms of this Agreement. SPS-EFT functions solely as the processor and assumes no liability in the performance of MERCHANT's payment gateway or other related hardware/software. 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 to 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. SPS-EFT may, at its option provide certain pre-verification services prior to processing an Entry; such services are at SPS-EFT's discretion and shall in no way create a guarantee from SPS-EFT or obligation on SPS-EFT's part to verify the consumer identity and validity of a submitted Entry.

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 AGREEMENT AND 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 returns of any kind, whether for customer chargebacks, insufficient funds returns, administrative or corporate returns, or any other type of returns. 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 electronic 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 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 or not open on the transaction date or which was made on an altered, fraudulent, or counterfeit check or of which MERCHANT had notice not to honor and failed to reject the transaction or if MERCHANT disregarded any denial of authorization; (g) where the check results in a R29 return (Unauthorized ACH Entry to Corporate Account (h) where customer did not authorize via electronic signature or secure username and password or if MERCHANT failed to obtain specific authorization in advance from SPS-EFT to complete the transaction and/or the customer has certified in writing to SPS-EFT or his financial institution that no authorized user made or authorized the transaction; (i) where security procedures were not followed; (j) 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; (k) 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; (l) a sales authorization was charged back and represented whether or not the customer knows or consents to this representment. 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; MERCHANT will 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 all fees 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 or corporate returns, or any other kind of returned transaction.

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, monthly/periodic 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 returned 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 dollars processed by MERCHANT; (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.

10.1   MERCHANT SHALL PAY. As per Schedule of Fees, MERCHANT shall pay a Discount Fee based upon a percentage of the face amount of transactions inquired to the database during the month;

A return fee of no more than $25.00 per returned transaction; A Minimum Monthly Fee (MM) to be paid each month; a Monthly Service (MS) 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; a Transaction Fee for each electronic inquiry to the database that does not result in a electronic transfer of funds; a "batch-out" fee of twenty five cents or equal to the transaction fee, whichever is greater ("batch-out " as described above in section 5.1); A one time set up fee for SPS-EFT to certify the MERCHANT's payment gateway as per the schedule of fees on the Application; A Network Compliance Fee up to $4.00 per month; An annual subscription fee up to $59.95. 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 MERCHANT's account for administrative processing. MERCHANT must examine all statements relating to this Agreement, and promptly notify SPS-EFT in writing of any dispute regarding fees owed to SPS-EFT. 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 MERCHANT received from SPS-EFT the periodic statement of fees that includes the disputed fees. MERCHANT'S failure to notify SPS-EFT of a dispute regarding any component of the statement and fees owed will waive and bar the dispute.

10.2 <u>AUTHORIZATION RETRIEVAL REQUESTS.</u> Whereby a financial institution, regulatory or law enforcement agency, or similar authority has demanded from SPS-EFT proof of valid consumer authorization, in accordance with NACHA Rules, MERCHANT shall provide said proof of authorization to SPS-EFT within (2) business days. In the event that MERCHANT cannot provide the appropriate consumer authorization, and SPS-EFT suffers a penalty enforced by NACHA, SPS-EFT shall have the right to offset such penalty and charge MERCHANT a minimum of ($100 up to a maximum of $10,000) per incident.

11.1 <u>ELECTRONIC CHECK PROCESSING.</u> SPS-EFT shall not be responsible for the settlement of any Checks-By-Web for which SPS-EFT has not received transactions Entries from MERCHANT for processing within twenty-four hours of the initial transaction date of the transaction. MERCHANT shall be required to submit all documentation related to the transactions to SPS-EFT at SPS-EFT's request. MERCHANT shall make its books and records available to SPS-EFT in order to verify compliance with this agreement and in order to verify any information in an Entry.

11.2 <u>ASSIGNMENT OF ELECTRONIC CHECKS.</u> As of the date of this Agreement and by subscribing to SPS-EFT service, MERCHANT shall be deemed to have assigned to SPS-EFT, all of MERCHANT's right, title and interest in any and all electronic checks return fees, 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.

12.1 <u>ELECTRONIC CHECKS FOR WHICH MERCHANT WILL NOT BE FUNDED FOR UNDER CHECKS-BY-WEB.</u> 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 ACH transactions that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the original source document or electronic 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 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 SPS-EFT previously denied authorization; (j) Not in compliance with this Agreement and not processed in accordance with the ACH transaction processing provisions of this Agreement; (k) Incorrect Routing and Account Number data Entry; (l) Unable to locate account or invalid account number returns or unauthorized corporate account returns.

12.2 <u>COMPLIANCE AND DISCLOSURE OF INFORMATION.</u> 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 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 without providing notice to SPS-EFT and provide SPS-EFT with the opportunity to terminate this Agreement.

13.1 <u>DATA RETENTION.</u> MERCHANT shall retain all records related to authorization, including all sales and credit receipts and authorizations for a period of no less than two years following the date of the transaction. 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 collections fees / charges as is allowed by law.

15.1 <u>ADDITIONAL SPS-EFT RESPONSIBILITIES.</u> SPS-EFT will accept Entries via MERCHANT's payment gateway 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 <u>INDEMNIFICATION.</u> MERCHANT hereby agrees to indemnify and hold SPS-EFT and its officers, directors, employees and agents harmless from any claim relating to or arising out of: (i) MERCHANT's breach of the representations and warranties of this Agreement; (ii) a dispute between MERCHANT and a consumer regarding the action or inaction of MERCHANT; (ii) any dispute between MERCHANT and a MERCHANT Customer with respect to the alleged or actual failure by MERCHANT to process a transaction as requested by such customer or to MERCHANT's failure to provide data security, and (iii) MERCHANT's failure to comply with any of the provisions of this Agreement and applicable laws, Rules and/or regulations. MERCHANT further agrees to indemnify and hold SPS-EFT harmless from all claims, liability and expenses arising or resulting from any dispute or claim made against SPS-EFT by any third party arising out of MERCHANT's breach of this Agreement or the Rule. Further, MERCHANT shall reimburse SPS-EFT for all expenses and costs, including attorney's fees, with regard to the forgoing. MERCHANT warrants that it will notify SPS-EFT immediately of any breach of this Agreement.

17.1 <u>NON-WAIVER.</u> 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.

17.2 <u>ASSIGNMENT.</u> 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.

17.3 <u>TERMINATION.</u> 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.

17.4 <u>SCHEDULE OF FEES.</u> 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, 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.

17.5 <u>COUNTERPARTS.</u> 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.

17.6 <u>ENTIRE AGREEMENT.</u> This 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 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.

17.7 <u>AMENDMENTS.</u> This Agreement is subject to amendment to conform to the Rules. Further, SPS-EFT may, from time to time, amend any provision of this Agreement, including, without limitation, those relating to the fees and charges payable by MERCHANT by mailing written notice to MERCHANT of the amendment, and the amendment shall become effective unless SPS-EFT receives MERCHANT's notice of termination of this Agreement within 7 days. Amendments due to changes in the Rules or any law or judicial decision may become effective on such shorter

period of time as SPS-EFT may specify if necessary to comply with the applicable Rule, law or decision. 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.

17.8   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.

17.9   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 debit from MERCHANT, SPS-EFT shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from MERCHANT.

17.10   GOVERNING LAW, VENUE, & JURISDICTION. MERCHANT shall comply with the Rules, Regulation E of the Federal Reserve Board, and the Electronic Fund Transfer Act. . The Agreement shall be governed by the law of the state of Florida except those rules relating to conflicts of laws. MERCHANT acknowledges that this Agreement was formed in Florida upon its acceptance by SPS-EFT. All parties hereby submit to the exclusive jurisdiction and venue of the State of Florida, County of Okaloosa or Federal District Court for the Northern District of Florida for the purposes of any legal action arising in connection with this Agreement.

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

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

17.13   SECURITY INTEREST. (a) This Agreement is a security agreement under the Uniform Commercial Code. MERCHANT grants to SPS-EFT a security interest in and lien upon: (i) the account designated by MERCHANT for settlement and all funds at any time in such account, whatever the source of such funds, (ii) the Chargeback and Return Reserve Account (as defined above) and all funds at any time in the Chargeback and Return Reserve Account, whatever the source of such funds, (iii) all MERCHANT's rights relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement; and (iv) all MERCHANT deposit accounts now owned or hereafter acquired and the proceeds of all of the foregoing (collectively, the "Secured Assets"). Upon request of SPS-EFT, MERCHANT will execute one or more financing statements or other documents to evidence this security interest. MERCHANT authorizes SPS-EFT and appoints SPS-EFT its attorney in fact to sign its name to any financing statement used for the perfection of any security interest or lien granted in this Agreement. These security interests and liens will secure all of MERCHANT's obligations under this Agreement and any other agreements between MERCHANT and SPS-EFT including, but not limited to, MERCHANT's obligation to pay any amounts due to SPS-EFT. With respect to such security interests and liens, SPS-EFT will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. SPS-EFT may exercise its rights under this Agreement to collect any amounts due to SPS-EFT including, without limitation, rights of set-off and recoupment.

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