

## **ACH Instructions To Agents**

- 1. The attached authorization form cannot be processed without a voided check from customer's bank account. Deposit tickets and counter checks cannot be accepted.**
- 2. New Business – Agent must collect the down payment and send to BIIA, it will not be taken as a One-Time Payment. ACH form and Voided Check must be sent with bind documents 5 business days prior to the effective date with the down payment. (5 business days is required by the ACH Processing Company.)**
- 3. Renewal Business – (Not currently on ACH Billing)- ACH Form and Voided Check must be sent to us 5 business days prior to the effective date of the renewal. Email the documents to [endorse@biiainsurance.com](mailto:endorse@biiainsurance.com).**
- 4. We cannot ACH invoice if we do not receive your documents 5 business days prior to the (requested) effective date of the policy. If received after the 5 day lead time we will return the ACH form and the voided check. The insured's billing plan will be changed to 25% down, 3 quarterly installments. The agent must collect the remaining balance due on the down payment and submit to BIIA .**

**NOTE: The New Business policy will not go into effect until down payment at the full 25% is received. The requested effective date may be jeopardized.**

To find out the Payment Amount and what the Payment start date is on the ACH call 757-420-3022.



## ACH Debit: Merchant Rights and Responsibilities

- A. 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.
- B. 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.
- C. This agreement is only applicable to processing Virtual Terminal or ACH file based transactions utilizing the end-customer's Checking account data. SPS-EFT's product and associated software specifically designed for such transactions will be utilized by merchant, and such software will either be hosted and maintained by SPS-EFT on SPS-EFT equipment, or alternatively, provided directly to Merchant for installation on Merchant equipment. In all cases where SPS-EFT hosts the 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, however, in instances where the SPS-EFT hosted software already complies with Merchant requirements, the Merchant shall be relieved of certain of these responsibilities. Merchant agrees not to change, modify, or alter such software or product in any way. Upon MERCHANT'S request and SPS-EFT'S approval, ACH Debit guarantee services (hereinafter referred to as "Guarantee" service) will also be provided pursuant to provisions below. If MERCHANT has not requested Guarantee service, or if SPS-EFT has not accepted the MERCHANT application for Guarantee service, SPS-EFT will not be liable in any way for any returned ACH Debits 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 EXCLUSIVE THIRD PARTY PROCESSOR RELATIONSHIP WITH SPS-EFT. MERCHANT agrees to process all ACH Debit transactions related to its business exclusively through SPS-EFT and give SPS-EFT right of first refusal on any future ACH Debit or electronic check processing contracts with MERCHANT.

1.3 ACH DEBIT GUARANTEE SERVICE. If MERCHANT has marked the "Guarantee" box on the application form of this Agreement then MERCHANT wishes SPS-EFT also to provide ACH Debit Guarantee services to MERCHANT. Guarantee is only available for Single ACH Debit services. If MERCHANT has not marked the appropriate box, MERCHANT has engaged SPS-EFT to provide for each ACH Debit: verification, electronic funds transfer and certain collection services. Merchant must utilize the Virtual Terminal to qualify for Guarantee service.

2.1 MERCHANT'S PUBLIC DISCLOSURE RESPONSIBILITIES. MERCHANT agrees to inform the public that MERCHANT will honor ACH Debit processing services provided by SPS-EFT. From time to time, SPS-EFT may design educational and promotional materials into the software and send such to MERCHANT for MERCHANT to disseminate to customers. MERCHANT further agrees to immediately remove and properly dispose of SPS-EFT'S previous version releases of software and to utilize the most current software version releases 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 re-utilize appropriate software upon receipt of written verification of resumption of service by SPS-EFT. In the event of termination, MERCHANT immediately shall properly discard all software related to SPS-EFT services at MERCHANT'S expense.

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, other than as set forth in paragraph 2.1 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.

2.3 CONFIDENTIALITY. Each party acknowledges that all other materials and information disclosed to the other party ("Recipient") in connection with the performance of this Agreement, including any trade secret, process, technique, algorithm, computer program (source and object code), design, drawing, formula, business plan or test data relating to any research project, work in process, future development, engineering, marketing, servicing, financing, strategic partnership or personnel matter consist of confidential and proprietary data. Each Recipient will hold those materials and that information in strict confidence, and will restrict its use of those materials and that information to the purposes anticipated in this Agreement. If the law or legal process requires Recipient to disclose confidential and proprietary data, Recipient will notify the disclosing party of the request. Thereafter the disclosing party may seek a protective order or waive the confidentiality requirements of this Agreement, provided that Recipient may only disclose the minimum amount of information necessary to comply with the requirement. Recipient will not be obligated to hold confidential any information from the disclosing party which (a) is or becomes publicly known through no act or omission of the Recipient, (b) is received from any person or entity who, to the best of Recipient's knowledge, or Recipient's reason to know, has no duty of confidentiality to the disclosing party, (c) was already known to Recipient prior to the disclosure, and that knowledge was evidenced in writing prior to the date of the other party's disclosure, or (d) is developed by the Recipient without using any of the disclosing party's information.

3.1 REQUIREMENTS FOR PROCESSING ACH DEBITS. MERCHANT shall comply with the following conditions when processing ACH Debits 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 ACH Debits as source documents to initiate ACH debit entries through SPS-EFT: (a) All demand deposit account ACH Debits must be drawn on or payable through a federally insured depository financial institution; be based on checking accounts where checks were issued with machine-readable with the bank routing number, account number and check serial number printed on the check, and be for an amount less than the check limit assigned by SPS-EFT. (b) Customer shall authorize by signature written agreement containing ACH Debit amount and day of month to be debited from customer's account. (c) All items, goods and services purchased in a single transaction shall be included in the total amount on a form of proof of purchase; (d) To be eligible for guarantee coverage, if guarantee service was selected by MERCHANT and approved by SPS-EFT, MERCHANT shall have customer provided on the signed written payment agreement sufficient information to verify and locate customer, including address, telephone number, driver's license number, and last four digits of customer's social security number or year of birth. (e) Once SPS-EFT authorizes the transaction, MERCHANT shall ensure that the proof of purchase contains the following correct information: (a) the customer's bank routing and account 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. (e) After customer electronically accepts the receipt, MERCHANT shall deliver to the person presenting the ACH Debit a true and completed copy of the proof of purchase with the goods and services purchased; (f) MERCHANT'S failure to input the correct routing number or account number into the Virtual Terminal will result in MERCHANT'S loss of guarantee for the ACH Debit. (g) No ACH Debit may be altered after SPS-EFT authorizes acceptance of the ACH Debit. MERCHANT may not resubmit an electronic check or ACH Debit electronically or deposit it by any means once SPS-EFT authorizes a transaction. Failure to comply with the above requirements will, in addition to other penalties (such as but not limited to loss of guarantee on all ACH Debits), subject MERCHANT to chargebacks 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 CUSTOMERS EXPRESSED AUTHORITY. YOU HEREBY ACKNOWLEDGE RECEIPT OF PROPER NOTICE THAT THE USE OF ANY COUNTERFEIT, FICTITIOUS, LOST, STOLEN, OR FRAUDULENTLY OBTAINED DEBIT INSTRUMENT OR DEVICE TO UNLAWFULLY INITIATE A DEBIT TRANSACTION IS PUNISHABLE BY A MAXIMUM OF \$10,000.00 FINE, IMPRISONMENT FOR A TERM OF TEN YEARS, OR BOTH.**

3.2 CUSTOMER'S AUTHORIZATION INITIATES DEBIT ENTRY. MERCHANT acknowledges that the customer's authorization allows MERCHANT to instruct SPS-EFT to initiate an ACH 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 in the schedule against MERCHANT for each re-presentment. If an ACH Debit is returned unpaid after each re-presentment, SPS-EFT shall be entitled to debit the MERCHANT'S account for the amount of the ACH Debit.

3.3 RESTRICTIONS ON ACCEPTANCE OF ACH DEBITS FOR ELECTRONIC PROCESSING. From time to time, SPS-EFT shall establish necessary security and identification procedures for presentation of checks or debits for electronic processing pursuant to the Rules and applicable law. MERCHANT agrees to comply with such procedures and to accept such "properly presented" checks or debits for electronic processing. SPS-EFT shall establish minimum and maximum amount limitations on ACH Debits presented for electronic processing by MERCHANT. MERCHANT shall not accept or attempt to process ACH Debits below the minimum or in excess of the maximum limitations established by SPS-EFT. In no event will SPS-EFT accept an ACH Debit greater than \$5000 for processing without prior written authorization by SPS-EFT. SPS-EFT shall also establish the number of ACH Debits 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 to SPS-EFT electronically processing any ACH Debit. For an ACH Debit transaction to be valid, customer must initiate the transaction and complete the ACH Debit Payment Agreement.

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 ACH Debit drawn on any depository institution that is not federally insured or part of the ACH network, (b) MERCHANT shall not electronically process any ACH Debit drawn on the personal checking account of MERCHANT or any of its agents or employees, (c) MERCHANT shall not accept any third party items for electronic processing or ACH Debit made payable where the purpose is for the customer to receive cash or cash back, (d) MERCHANT shall not submit for processing any transaction representing the financing of an existing obligation whether previously owed to MERCHANT, arising from the dishonor of an ACH Debit, electronic check or arising from a credit card, debit card or smart card dispute with the MERCHANT, (e) MERCHANT shall not submit a transaction for processing which represents an attempt to collect a chargeback, (f) MERCHANT shall not submit an ACH Debit written for goods or services that are not concurrently provided to the customer, including any ACH Debit given for gift certificate, a layaway (except for the final payment) or for a similar transaction, or for goods or services provided to a third party, (g) MERCHANT shall not submit an ACH Debit which is altered by the Merchant in any way (h) MERCHANT shall not knowingly submit an ACH Debit on an account on 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.

3.5 SURCHARGES AND TAXES. MERCHANT shall not impose any illegal surcharge on any processed ACH Debit 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 ACH Debit. 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.

4.1 **SOFTWARE.** MERCHANT shall utilize ACH Debit software provided by SPS-EFT for processing all ACH Debit 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 software. (b) MERCHANT shall maintain all equipment necessarily related to ACH Debit processing, including necessary file servers, computer and telecommunications equipment in good working order at MERCHANT's sole expense. (c) MERCHANT shall advise SPS-EFT immediately in the event of breakdown of related equipment, ACH Debit software problems or of any other system failure. (d) MERCHANT acknowledges that SPS-EFT is not responsible for any related computer and telecommunications equipment used by the Merchant. In this regard, SPS-EFT shall not be responsible for any unauthorized tampering or altering to equipment and software specifically installed by SPS-EFT on the part the Merchant or Merchant's agent. Additionally, SPS-EFT's approval of such equipment does not constitute an express or 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 ACH Debits and in a format and medium of transmission acceptable to SPS-EFT.

4.3 **VIRTUAL TERMINAL.** The SPS-EFT Virtual Terminal requires Internet Explorer 7.0 or higher. Supported Operating Systems include WindowsXP® or higher (32 and 64-bit versions). 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 that a batchfile shall consist of all transactions submitted by 12:00 P.M. (CST) each calendar day. MERCHANT acknowledges that a request to not process a batchfile could result in a \$50.00 fee per day that those transactions are not processed for ACH submittal by SPS-EFT. Merchant acknowledges that it is customary for SPS-EFT to hold in reserve from Merchant an amount equal to three times the daily average of returns. SPS-EFT reserves the right to hold additional monies as necessary to reduce any risk associated with daily processing of ACH Debits. SPS-EFT also reserves the right to move monies into an account of its choosing to hold it against returns to those monies and providing to the merchant a net deposit after a period of time acceptable to SPS-EFT. MERCHANT acknowledges that failure to submit batchfiles for processing will delay funds being deposited. If so requested by SPS-EFT, the signed Recurring or One-Time Debit Payment Plan Authorization Form 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 Guarantee program for such ACH Debits at SPS-EFT's sole discretion.

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 **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 the 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 to seven 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.

5.4 **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 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 5 to 7 banking days. 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 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 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.

5.5 **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 ACH Debit refunds to customer after a transaction has been released for settlement. Unless MERCHANT has been approved by SPS-EFT in advance to initiate credit entries for a lesser amount than the original ACH Debit 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 closing. MERCHANT must use the ACH Debit Software to transmit the credit. MERCHANT shall obtain proper authorization from the Customer whose name is used in the transaction or the customer's authorized representative prior to crediting Customer's account. The customer or its authorized representative shall approve 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 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 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 delivered the goods or completed the services identified in the authorized proof of purchase draft; (f) each sales draft represents a bona fide direct sales transaction between the MERCHANT and the person presenting the ACH Debit 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 ACH Debit 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 ACH Debit 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, nor any of its employees have submitted ACH Debits drawn from their personal ACH Debiting accounts on the MERCHANT'S ACH Debit software; (j) MERCHANT uses only the name and address shown on the front of the Agreement on all its sales drafts; (k) MERCHANT has not submitted duplicates of any transaction; (l) MERCHANT warrants that ACH Debit banking information on the printed receipt is correct; and (m) no transaction submitted for authorization to SPS-EFT is with or through an entity other than MERCHANT.

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 OF ACH DEBITS 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 a ny 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 **CHARGEBACKS AND RETURNS.** MERCHANT shall bear all risk of loss, without warranty or recourse to SPS-EFT for the amount of any transaction, applicable fees, 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, administrative or corporate returns, or any other type of returns, except as set forth in the ACH Debit Guarantee provisions below (provided that MERCHANT has purchased and SPS-EFT agreed to provide Guarantee services). 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 ACH Debit for electronic processing and that person has requested a credit draft and such credit draft was not processed by MERCHANT; (b) 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 proof of purchase differs from the copy given to the customer; (c) where a customer contends or disputes in writing to SPS-EFT, or the customer's financial institution named on the ACH Debit that: (1) Goods or services were not received; or (2) Goods or services received do not conform to the description on the proof of purchase; 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, (d) where a proof of purchase or credit receipt was not received by SPS-EFT as required hereunder or is subject to indemnification charged back by the customer's financial institution; (e) where the transaction was generated through the use of an account that was not valid or effective on the transaction date or which was made on an altered or counterfeit ACH Debit or of which MERCHANT had notice not to honor and failed to reject the transaction or if MERCHANT disregarded any denial of authorization; (f) where no signature or electronic acceptance of the transaction appears on the proof of purchase (or the proof of purchase does not contain the information from the ACH

Debit) 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 proof of purchase and/or the customer has certified in writing to SPS-EFT or his financial institution that no authorized user made or authorized the transaction; (g) where security procedures were not followed; (h) 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; (i) in any other situation where the proof of purchase 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, and (j) a proof of purchase 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, 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 or corporate returns, or any other kind of returned transaction. If MERCHANT has requested the ACH DEBIT GUARANTEE service, and SPS-EFT has accepted the application for GUARANTEE service, certain transactions are guaranteed, as listed in the ACH DEBIT GUARANTEE provisions below.**

8.2 **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 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 intended telephone and/or mail order business; (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 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 Reserve Account unless otherwise agreed to by SPS-EFT. Such funds will not be disbursed to MERCHANT until the end of one hundred twenty (120) days after termination of this Agreement or ninety (90) days from the date of the last chargeback 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 Reserve Account shall bear interest. Provisions applicable to the designated account are also applicable to this account.

8.3 **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 perform collection services for MERCHANT.

9.1 **ACH DEBIT GUARANTEE.** The ACH Debit Guarantee provisions are operational only if MERCHANT has marked the ACH Debit Guarantee box on the application form of the agreement. MERCHANT must utilize the SPS-EFT Virtual Terminal to qualify for Guarantee coverage. Guarantee coverage is only available for Single ACH Debit services and are not offered for Recurring ACH Debit services. If so marked, MERCHANT wishes SPS-EFT to provide a guarantee for reimbursement of losses sustained by MERCHANT in accepting Single ACH Debits 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, 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 ACH Debit Guarantee rate based upon its sole determination. Each month MERCHANT shall have access to an itemized summary of ACH Debit 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 transactions types are not included in the ACH Debit Guarantee service, and SPS-EFT assumes no liability for and will provide no reimbursement for transactions as follows: Incorrect MICR data entry, unable to locate account or invalid account number returns, (R29) Unauthorized Corporate returns, customer chargebacks or customer revocations of any transaction. Merchant agrees to provide any additional information to SPS-EFT on occasion as needed to assist in collection efforts. **ACH Debit Guarantee reimbursement shall only serve to cover MERCHANT losses due to Insufficient Funds returns up to the per account guarantee limit placed in the approval section of the contract.**

9.2 **MERCHANT SHALL PAY.** A Discount Fee, as per schedule, based upon a percentage of the face amount of ACH Debits during the month, a transaction fee for network access, a Monthly Minimum fee (MM) to be paid each month, as per schedule; a per transaction fee for each ACH deposit, a per transaction fee for each electronic inquiry to the database that does not result in an 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 in section 5.1), a Monthly Service Fee as per Schedule (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 return fee as per schedule; a Network Compliance fee up to \$4.00 per month. Additionally, a fee up to twenty-five dollars may be assessed for each reversal requested by MERCHANT at SPS-EFT'S sole discretion, and 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 shall pay all associated fees for a minimum term of one (1) year. 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.

9.3 **ACH DEBIT PROCESSING.** SPS-EFT shall not be responsible for the payment of any ACH Debits of MERCHANT that SPS-EFT has not received for processing from MERCHANT within twenty-four hours of the initial transaction date of said ACH Debit(s). 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.

9.4 **ASSIGNMENT OF ACH DEBITS.** 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 ACH Debits 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 jurisdiction 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.

10.1 **ACH DEBITS FOR WHICH MERCHANT WILL NOT BE FUNDED ON UNDER ACH DEBIT GUARANTEE.** 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 Debits that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the ACH Debit; (b) Fraudulent, whether MERCHANT, its employees or agents are involved, either as 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 ACH Debit or ACH Debit, whether or not the previous Electronic check or ACH Debit was authorized by Company or, any ACH Debit upon which Merchant has accepted full or partial payment; (f) One of multiple electronic checks or ACH Debits 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) ACH Debits for which Merchant returns cash back to the customer, unless Merchant is approved in writing by SPS-EFT for such cash-back transactions; (j) ACH Debits for which SPS-EFT previously denied authorization; (k) ACH Debits not in compliance with this agreement and not processed in accordance with the ACH Debit processing provisions of this Agreement. (l) Incorrect Routing and Account Number data entry; (m) unable to locate account or invalid account number returns or unauthorized corporate account returns. In addition, before processing the ACH Debit and as a condition to honoring the ACH Debit, MERCHANT shall obtain sufficient personal information to locate the person presenting the ACH Debit 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, and the last four digits of customer's social security number or year of birth in YYYY format. MERCHANT shall ensure that this identifying information is legibly printed on the ACH Debit Payment Agreement form; (n) ACH Debit Payment Agreement form must contain a current phone number of customer; (o) ACH Debit Payment Agreement form must contain the customer's drivers license number; (p) SPS-EFT must receive the completed ACH Debit Payment Agreement form within 48 hours of SPS-EFT'S request; (o) MERCHANT'S failure to input into the Virtual Terminal the correct routing number and/or account number will result in MERCHANT'S loss of guarantee.

11.1 **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 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 ACH Debits 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.

11.2 **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).

12.1 **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 policies, MERCHANT shall retain for a period of 2 years all ACH Debits received from customers.

14.1 **ADDITIONAL MERCHANT REPRESENTATIONS.** MERCHANT agrees to permit SPS-EFT to audit MERCHANT'S transaction data 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. MERCHANT will not disclose and will keep confidential the terms and conditions of this Agreement.

15.1 **ADDITIONAL SPS-EFT RESPONSIBILITIES.** SPS-EFT will accept entries via ACH Debit software 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, damage, lost profit and/or attorney's 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

18.2 **TERMINATION.** This Agreement shall continue indefinitely unless and until terminated by any party. MERCHANT may terminate this Agreement after one (1) year and thereafter upon sixty (60) days written notice to SPS-EFT. There will be a termination charge (\$199.00) for terminating services. Monthly minimum and subscription fees will continue in effect for this time. 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, 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 this Agreement is 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.

22.2 **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 NACHA 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, SPS-EFT shall be entitled to recover its reasonable attorneys' fees, costs, and disbursements related to such dispute from MERCHANT

25.1 **GOVERNING LAW, VENUE, & JURISDICTION.** Notwithstanding any language to the contrary, all issues related to the electronic processing of ACH Debits under the terms of this Agreement shall be determined in accordance with the NACHA Rules, laws of the United States of America and the State of Florida as it applies to contracts. 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. 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 such obligations.

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 (or otherwise would go in if you wanted to include 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.

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.