

Standard Terms and Conditions

Duties, Rules & Regulations

3.1 SPS agrees to provide the Service to Subscriber in accordance with (a) the terms and conditions of this Agreement, and (b) the Operating Rules of the National Automated Clearing House Association ("NACHA") as currently in effect, including without limitation, all schedules, exhibits and appendices as may be attached, as the same may hereafter be amended, modified, added to or substituted, or any successor rules or regulations adopted by NACHA governing the transmission of Entries through the ACH Network (the "NACHA Operating Rules") and any applicable U.S. federal and state laws and regulations (including but not limited to the Fair Credit Reporting Act "FCRA" and Regulation E when and where each apply, and (d) any laws, regulations or rules enacted after the Effective Date and applicable to the Service and (e) any laws, regulations or rules enacted for the capture and transmission of image replacement documents. Subscriber certifies that it (i) has a legitimate business need, in connection with a business transaction involving the customer, to access information provided by SPS that may include customer data compiled from third party data sources, (ii) Subscriber will comply with all laws including, without limitations applicable credit reporting laws and that the data as reported by Secure Payment Systems will be used only for permissible purposes as defined in the FCRA and any other credit reporting law, with the exception that the information will not be used for employment purposes, and (iii) that the information will not be used by Subscriber for any purpose other than one transaction between Subscriber and customer. Subscriber agrees to the Service as provided by SPS and shall perform its obligations hereunder in accordance with the terms and conditions contained herein. In connection with this application and approval thereof, by Subscriber Authorized Signer/Officer signature below, owners / partners authorize SPS or its agents to procure bank statements, investigative Customer reports and understand that such report may contain information about personal financial stability, background, character, and reputation. "**ODFI**" means the Originating Depository Financial Institution" through which SPS initiates Subscriber transactions. "**Third Party Processor**" or "TPP" shall mean a data processing service bureau having a contractual relationship with an ODFI and originating electronic Entries to such ODFI on behalf of SPS at SPS' request. Subscriber acknowledges that the ODFI and TPP, if any, is each a third-party beneficiary of this Agreement, and the ODFI and TPP have all the rights of SPS under this Agreement as if they were each a party hereto.

3.2 The sole liability of SPS to Subscriber for failing to provide accurate output shall be, without additional charge, to make such corrections as may be necessary to accurately reprocess the input. In the event of system downtime, Subscriber agrees to waive all monetary and / or liquidated damages. SPS shall have no liability under this section for circumstances contemplated in section 9 (ii) of the Services Agreement.

3.3 Notwithstanding any other provision of this Agreement, SPS reserves the unrestricted right to (without notice) refuse to (a) process any Entry (as defined above) submitted to SPS if in the sole discretion of SPS, it appears that the processing of such Entry presents an undue risk of loss or liability to SPS or (b) process any transaction that violates the Rules or is not within the scope of this Agreement.

3.4 Subscriber will regularly and promptly review any reports, Entries or other communications submitted to or available to it by SPS and will immediately notify SPS of any discrepancy between its records and those provided by SPS, the originating depository processor, or any bank that is a party to a specific Entry. If SPS is not notified of a discrepancy within two (2) business days of the Transaction Provider will be solely liable for any and all losses or other costs associated with any erroneous or unauthorized transfer and Provider shall hold SPS, its agents, and its affiliates harmless.

3.5 Subscriber shall be responsible for replying to and remedying reports of Rules violations that are issued with respect to Subscriber. In the event that any fine, penalty, or other charge is imposed due to Subscriber's violation of the Rules, Subscriber shall be responsible for the payment thereof and SPS may debit such amount(s) from Subscriber's designated account without further notice. Subscriber acknowledges that it bears the final responsibility for ensuring that its policies and procedures comply with the requirements of the NACHA Operating Rules and any applicable federal, state, or local laws, rules and regulations. Subscriber agrees and will ensure (a) that all transactions originated under this Agreement are lawful transactions of the United States and (b) that neither the sender nor receiver is prohibited or by the Office of Foreign Assets Control (OFAC) from benefiting and participating in such transactions.

4. Warranty Terms

(a) **EZPAY** - For a down payment and subsequent electronic debits/drafts in furtherance of a 3, 6, or 12 month EZPAY transaction warranty exclusions apply with respect to Transactions contemplated by this Agreement. Warranty does not apply where either or both of the paper check or subsequent electronic debits are drawn on a business account, money market account, cash management account, and credit card account, nor where the phone number of the Customer is either not entered into the transaction or not printed on the check, or where both the front and back side of the check are not imaged when so prompted by the pos device, or where the most current version of a pos terminal program permitting electronic conversion of business checks or non-convertible ACH items as certified by SPS is not properly downloaded into the pos terminal, or where such front and backside check images of a given transaction are not transmitted to SPS within 7 business days (even if such images were properly captured by the imaging device), where the check is not drawn on a United States domiciled financial institution, where the paper check is issued by a federal, state, county or local governmental authority, where the account holder is not present at either the time of authorization or upon final provision of the services provided in order to concurrently sign both the paper check and EZPAYSA, where the check is post-dated, where either the Subscriber and/or the Customer does not sign the EZPAYSA or properly and completely enter all required information onto the EZPAYSA, where Subscriber cannot produce the original or copy of the EZPAYSA in the event an imaged EZPAYSA cannot be recovered, where the check is not made payable directly to the Subscriber's business name, where the check is exchanged for cash or cash equivalents, where an approved electronic check transaction is subsequently voided, where the state issued identification presented does not belong to the check writer, where the check writer and individual signing the EZPAYSA are not one and the same, where the person whose name appears on the check is not also the signer of the check, where the check is preprinted or handwritten with a PO Box in lieu of a physical address, where the MICR line on the bottom of the check has been altered, where any change to the check has not been initialed by the check writer, where the check writer is not the individual to whom goods and services are provided unless such individual (hereinafter

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defined as "Patient") is receiving such service in a participating healthcare facility and is in the immediate family of the check writer (which shall mean the check writer shall have at least one of the following relationships with respect to the Patient receiving Subscriber's services where the check writer is an adult over the age of 21 acting on behalf of a Patient or otherwise has legal custody of a Patient who is either a minor child, parent, step-parent, or grandparent including a Patient spouse of such check writer where the check writer and spouse are neither legally separated nor divorced.), where the check is part of a batch that is not closed by Subscriber within seven (7) business days of the date and time of the approved voice authorization, where Subscriber has accepted the equivalent of a cash payment (e.g. cash, money order, cashier's check, or cleared paper check) on a previously dishonored electronic check, where Subscriber fails to reprocess an electronic check transaction following an SPS authorization operator approval, where the check is not issued in connection with the type of services provided by Subscriber in the normal course of business and as contemplated hereunder, where the check is given as a substitute for a check previously presented, whether or not previously authorized by SPS, or is presented as a replacement following a decline or referral or other message from SPS, where payment has been stopped or otherwise deemed unauthorized due to a dispute between the check writer and Subscriber over the goods/services provided, where the service was not provided, where the legal amount written in words and the dollar amount written in numbers on the check do not match, where the check is not commercially imprinted with the customer's full name, where the check is a counter check, site draft, or is otherwise deemed by SPS as a temporary check, where the check is not a 1st party check payable directly to Subscriber's business, or where Subscriber does not use a check imager and, upon notification by SPS of a dishonored electronic debit, fails to provide SPS with the actual paper check or facsimile thereof within three (3) business days of when so requested.

Warranty also does not apply where Subscriber performs an electronic check authorization and additionally deposits the Customer's paper check, where SPS has reason to believe that Subscriber or their employee(s) has acted fraudulently, where the EZPAY down payments and recurring debits are drawn on a Subscriber owner, officer, partner, employee, or immediate family relative of Subscriber, or where the Entry is not properly authorized according to the Federal Reserve, the ODFI, or NACHA Operating Rules. Warranty does not apply where Subscriber is requesting SPS to authorize a Transaction based upon the Customer initiating a transaction via telephone, mail order or Internet/WEB enabled portal.

The EZPAY Transaction must be called in to the SPS voice authorization center (using the specified SPS merchant number for each individual Subscriber reserved for EZPAY transactions) at one time as the total value of the Transaction. SPS shall own the entire interest in the Transaction and, as such, the sale may only be consummated by the manner described above and not be augmented by any other non-cash related payment method such as credit/debit card or other alternative lending or deferred payment option. Despite authorization received, only one EZPAY contract per family is permitted at any one time while any check, IRD, or electronic debits are outstanding for deposit, and for a sum not to exceed the Subscriber's limit specified herein. Items failing to clear that arise from subsequent EZPAY Transactions of the check writer or the check writer's spouse or dependent children while any of the check writer's EZPAY checks, check images, or electronic debits are not yet fully deposited and honored by the check writer's financial institution, even if such subsequent transactions of the check writer or check writer's spouse or dependent children are drawn on different checking accounts, shall be dishonored for warranty and charged back to Subscriber's depository account.

Subscriber agrees that where electronic authorization is required for subsequent electronic crediting and debiting of funds pursuant to the processing options, check images must be transmitted on a daily basis, EZPAYSA images must be transmitted on a daily basis, check batches must be closed on a daily basis, and check images must include the front and backside of the original physical instruments being presented. The absence of a daily batch closing, check image, or EZPAYSA image shall constitute a breach of the warranty terms and conditions for that given Transaction and a chargeback to Subscriber's bank account will follow and/or reimbursement subsequently denied. In no event will SPS honor a warranty where, in its sole discretion, SPS determines that the limit specified in the Subscriber's agreement has been circumvented by splitting a Transaction into separate parts so that each part is equal to or below the maximum Transaction limit specified herein or where the check writer is not present and in front of the Subscriber to sign both the check and EZPAYSA. SPS warrants the accuracy of the authorization approval given that all requirements set forth in the warranty requirements are met. If, after crediting Subscriber's depository account or manually causing payment of a warranty claim to Subscriber, SPS determines that satisfaction of the warranty has been voided by a breach of any warranty condition contained herein, Subscriber agrees that SPS shall charge back the entire amount credited to Subscriber and that SPS may immediately debit Subscriber's account for the voided warranty (a "chargeback"), or in the alternative at the sole discretion and approval of SPS, Subscriber may remit the amount due immediately upon request. Upon such chargeback, , Subscriber agrees that SPS shall thereafter have no further liability to Subscriber on such down payment check or subsequent electronic debits due on the remainder of such EZPAY transaction.

(b) **EZPAY with Pre-Authorization** - Subscriber acknowledges that the Company may be optionally providing a "EZPAY Pre-Authorization" enhancement to its' EZPAY Advantage Service where such enhancement permits the final invoice amount of a given transaction to be either greater than or less than the initial voice authorization. In such event, Subscriber agrees that (i) the duration of time for such electronic transaction entry based on a final invoice amount shall not be not greater than seven (7) calendar days from the date of voice authorization and, (ii) in no event shall the Company be obligated to provide electronic authorization where the final grand total is more than twenty-five percent (25%) greater than the corresponding voice authorization amount initially provided to the Company.

Subscriber further agrees that

- a) During the EZPAY voice authorization procedure when the final invoice amount is undetermined, Subscriber shall provide its' best estimate of the final charges inclusive of any ancillary processing fees, and
- b) It shall obtain from the Customer a down payment check that is signed, dated, payable to Subscriber, but which does not have a legal written amount or written numeric amount on such check and,
- c) Upon finalization of the invoice amount, but prior to release of the goods or services to the Customer, Subscriber shall fill in the final down payment check amount, complete the EZPAYSA that was previously signed by the Customer, have the Customer complete the legal and numeric amounts on the down payment check itself, and enter the Customer's personal information into the point of sale

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terminal and capture the checking account information into the scanner when prompted to receive the approval numbers electronically.

- d) It shall provide to Company either by fax or email within three (3) business days of Company's request, a copy of the original invoice estimate either signed by or orally agreed to by the Customer.
- e) In the event it fails to electronically enter such final invoice transactions in the time frame required as noted in Section 4(b) above, then Subscriber agrees that (1) despite having already received a voice authorization approval number from the Company, Subscriber acknowledges that such authorization is no longer valid and that Subscriber must re-process the voice authorization in order to proceed with the Transaction and obtain the Company's warranty.
- f) The Company is not liable for funding any portion of that initial and expired voice authorization, nor reimbursing Subscriber for a return item resulting from Subscriber's manual deposit of the down payment, or any other portion of the transaction in question, despite having previously provided a voice authorization approval number.
- g) In consideration of providing such enhancement Subscriber agrees SPS discount fees will be deducted from batch settlement based upon on the final electronic transaction amounts, or in the alternative, will be invoiced based upon the voice authorization amount in the event the electronic transactions are not entered within the 7 calendar day period specified in section 4(a) above.

(c) **Single Check Warranty** - For a single check as payment in full of a concurrent business transaction warranty exclusions apply with respect to Transactions contemplated by this Agreement. Warranty does not apply where the phone number of the Customer is either not entered into the transaction or not printed on the check, or where both the front and back side of the check are not imaged when so prompted by the point-of-sale device, or where the most current version of a point-of-sale terminal program permitting electronic conversion of business checks or non-convertible ACH items as certified by SPS is not properly downloaded into the point-of-sale terminal, or where such front and backside check images of a given transaction are not transmitted to SPS within 7 business days (even if such images were properly captured by the imaging device), where the check is not drawn on a United States domiciled financial institution, where the paper check is issued by a federal, state, county or local governmental authority, where the account holder is not present at either the time of authorization or upon final provision of the services provided in order to concurrently sign both the paper check and authorization receipt, where the check is post-dated, where Subscriber cannot produce the original or copy of the authorization receipt in the event the check image cannot be recovered, where the check is not made payable directly to the Subscriber's business name, where the check is exchanged for cash or cash equivalents, where an approved electronic check transaction is subsequently voided, where the state issued identification presented does not belong to the check writer, where the check writer and individual signing the authorization receipt are not the same person, where the person whose name appears on the check is not also the signer of the check, where the check is preprinted or handwritten with a PO Box in lieu of a physical address, where the MICR line on the bottom of the check has been altered, where any change to the check has not been initialed by the check writer, where the check writer is not the individual to whom goods and services are provided unless such individual (hereinafter defined as "Patient") is receiving such service in a participating healthcare facility and is in the immediate family of the check writer (which shall mean the check writer shall have at least one of the following relationships with respect to the Patient receiving Subscriber's services where the check writer is an adult over the age of 21 acting on behalf of a Patient or otherwise has legal custody of a Patient who is either a minor child, parent, step-parent, or grandparent including a Patient spouse of such check writer where the check writer and spouse are neither legally separated nor divorced.), where the check is part of a batch that is not closed by Subscriber within two (2) business days of the date and time of the approved voice authorization, where Subscriber has accepted the equivalent of a cash payment (e.g. cash, money order, cashier's check, or cleared paper check) on a previously dishonored electronic check, where Subscriber fails to reprocess an electronic check transaction following an SPS authorization operator approval, where the check is not issued in connection with the type of services provided by Subscriber in the normal course of business and as contemplated hereunder, where the check is given as a substitute for a check previously presented, whether or not previously authorized by SPS, or is presented as a replacement following a decline or referral or other message from SPS, where payment has been stopped or otherwise deemed unauthorized due to a dispute between the check writer and Subscriber over the goods/services provided, where the service was not provided, where the legal amount written in words and the dollar amount written in numbers on the check do not match, where the check is not commercially imprinted with the customer's full name, where the check is a counter check, site draft, or is otherwise deemed by SPS as a temporary check, where the check is not a 1st party check payable directly to Subscriber's business, or where Subscriber does not use a check imager and, upon notification by SPS of a dishonored electronic debit, fails to provide SPS with the actual paper check or facsimile thereof within three (3) business days of when so requested.

Warranty also does not apply where Subscriber does not use the merchant ID number specified for the transaction, where Subscriber performs an electronic check authorization and additionally deposits the Customer's paper check, where SPS has reason to believe that Subscriber or their employee(s) has acted fraudulently, where the transaction was drawn on an employee or immediate family member, or where the Entry is not properly authorized according to the Federal Reserve, the ODFI, or NACHA Operating Rules.

Warranty additionally does not apply where Subscriber is requesting SPS to authorize a Transaction based upon the Customer initiating a transaction via telephone, mail order or Internet/WEB enabled portal. SPS shall own the entire interest in the Transaction and, as such, the sale may only be consummated by the manner described above and not be augmented by any other non-cash related payment method such as credit/debit card or other alternative lending or deferred payment option. Subscriber agrees that where electronic authorization is required for subsequent electronic crediting and debiting of funds pursuant to the processing options, check images must be transmitted on a daily basis, check batches must be closed on a daily basis, and check images must include the front and backside of the original physical instruments being presented. The absence of a daily batch closing or check image shall constitute a breach of the warranty terms and conditions for that given Transaction and a chargeback to Subscriber's bank account will follow and/or reimbursement subsequently denied.

In no event will SPS honor a warranty where, in its sole discretion, SPS determines that the limit specified in the Subscriber's agreement has been circumvented by splitting a Transaction into separate parts so that each part is equal to or below the maximum Transaction limit specified herein or where the check writer is not present and in front of the Subscriber to sign both the check and authorization receipt. Provider agrees to indemnify and hold harmless SPS from a cause of action brought by a Customer arising out of Subscriber's actions of adding a processing fee

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to the Transaction total so as to recoup the SPS processing fees. SPS warrants the accuracy of the authorization approval given that all requirements set forth in the warranty requirements are met. If, after crediting Subscriber's depository account or manually causing payment of a warranty claim to Subscriber, SPS determines that satisfaction of the warranty has been voided by a breach of a warranty condition contained herein, Subscriber agrees that SPS shall charge back the entire Transaction to Subscriber and that SPS may debit Subscriber's account for the voided warranty (a "chargeback"), or in the alternative at the sole discretion and approval of SPS, Subscriber may remit the amount due immediately upon request. Upon such chargeback, SPS shall have no further liability to Subscriber on such down payment check or subsequent electronic debits due on the remainder of such transaction.

5. Processing Authority: SPS shall use best efforts to electronically credit Subscriber's designated depository account within three (3) business days following a successful batch closing request where such batch closing occurs prior to 5pm Eastern Standard Time. Such electronic credit shall consist of the net amount due Subscriber for the sum total of all approved batches due to be settled after deducting the percentage discount rate and transaction fees (excluding voice authorization fees if any that may be levied separately). Subscriber agrees and consents to the debiting of its designated depository account in the event a Customer check, check image, or electronic debit is returned unpaid by the Customer's financial institution for which a warranty exclusion is applicable. Subscriber agrees to keep a sufficient balance in its designated depository account in order that debits contemplated herein are not returned unpaid. Subscriber agrees that SPS may hold and/or offset batch settlement funding due the Subscriber in the event (a) amounts electronically debited by SPS to Subscriber for services performed by SPS on behalf of Subscriber fail to clear Subscriber's designated depository account, even if such withholding or offset is for amounts owed that is unrelated to Subscriber's Transactions or (b) SPS and / or its ACH origination processor, at their sole discretion, either together or individually, detect Transaction activity that may represent an undue risk of loss or liability to SPS, or such activity is not consistent with goods and services to be sold and/or average transaction amounts referenced on Subscriber's initial application for EZPAY Advantage services.

6. ChargeBack Rights: Subscriber agrees without further recourse that SPS may debit Subscriber's designated depository account, or any other account as Subscriber may designate in writing from time to time, in the event a paper check, electronic check, IRD, or electronic debit that has been paid or credited to Provider by SPS is subsequently dishonored for warranty due to a warranty exclusion as defined under Sections 4 or 5 contained herein.

7. Limited Warranty: SPS WARRANTS THAT SPS OWNS ALL INTELLECTUAL PROPERTY RIGHTS NECESSARY TO GRANT THIS LICENSE, AND SPS INDEMNIFIES SUBSCRIBER AGAINST ANY CLAIMS FROM THIRD PARTIES THAT SUBSCRIBER DOES NOT HAVE THE RIGHT TO USE SPS' SERVICE. SPS ALSO WARRANTS THAT ITS SOFTWARE, PRODUCTS AND SERVICES WILL PERFORM AS OUTLINED EXCLUDING EVENTS INTERRUPTING SUCH PERFORMANCE SUCH AS ACTS OF GOD, TELECOMMUNICATION OUTAGES, EARTHQUAKES, FLOODS, ET AL. SPS MAKES NO WARRANTY (OTHER THAN ABOVE), EXPRESSED OR IMPLIED, AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SPS SHALL HAVE NO LIABILITY WITH RESPECT TO SPS' OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR ANY DAMAGES OTHER THAN DIRECT DAMAGES TO SUBSCRIBER OR TO ANY THIRD PARTIES DEALING WITH PROVIDER EVEN IF SPS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8. Subscriber Warranties: Subscriber represents and warrants that, with respect to all Entries originated on its behalf as part of the Service, (a) each Receiver has authorized the debiting and/or crediting of its account and (b) each Entry is for an amount agreed upon by the Receiver, and each Entry is in all other respects properly authorized.

9. Indemnity / Limitation of Liability: Subscriber agrees to defend, indemnify and hold SPS and its agents and affiliates harmless from any claim by any third party for any damages, including but not limited to lost profits, direct, incidental, consequential, special, indirect or punitive damages arising out of or relating to (a) any breach of Section 8 above; (b) any incorrect bank account or other information provided to SPS by Subscriber hereunder; or Subscriber's use of the Service including but not limited to employee fraud and collusion. Subscriber agrees that SPS shall have no duty of indemnity or contribution for a third party claim arising from the use of the Service or the performance or non-performance of SPS of any Service hereunder. In no event shall SPS maximum liability for any claim or cause of action arising out of the SPS services brought by Subscriber exceed the amount of fees for services performed hereunder as earned by SPS during the preceding three (3) months preceding the filing of such claim or cause of action. In no event shall Subscriber bring a claim or cause of action against SPS more than twelve (12) months following Subscriber first learning of the action or inaction giving rise to such claim or cause of action. Subscriber agrees to indemnify and defend SPS and ODFI against any and all claims or actions against SPS, or ODFI due to any action or inaction of Subscriber. Despite potential representations of SPS independent sales agents to the contrary, Subscriber acknowledges that adding a fee to the cash sales price may, depending on the state, constitute the equivalent of a finance charge and that Subscriber is solely liable to ensure state and federal regulatory compliance including necessary licensing where required. Subscriber/Provider agrees to indemnify and hold harmless SPS from any cause of action brought by a Customer or state/federal regulatory authority against SPS arising out of Subscriber/Provider's actions of adding a processing fee to the Transaction. Subscriber/Provider additionally agrees to not directly or indirectly file a cause of action or cross complaint against SPS for any cause of action brought by a Customer or state/federal regulatory authority against Subscriber arising out of Subscriber/Provider's actions of adding a processing fee to the Transaction.

10. Independent Contractors: SPS and Subscriber are acting hereunder as independent contractors and under no circumstances shall any of the employees of one party be deemed the employees of the other for any purpose. This Agreement shall not be construed as authority for either party to act for the other party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other, except to the extent and for the purposes provided for herein.

11. Exclusivity: During the term of this Agreement, and any extension thereto, Subscriber agrees that SPS shall be the exclusive provider of the Service to Subscriber and that Subscriber will not directly or indirectly utilize any service offered by another provider that is similar or analogous to the Service offered by SPS hereunder.

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12. Legal Responsibilities: Each party, in recognition of the consideration each has received, shall indemnify, defend, and hold harmless the other party from and against any and all losses, claims, actions, damages, and costs, including reasonable attorneys' fees, asserted by a third party arising out of the indemnifying party's failure to comply with the terms herein. In the event of legal action concerning a transaction or event arising hereunder, Subscriber agrees to promptly notify SPS of such, cooperate in the making of any claims or defenses, and provide assistance in the resolution of said claim by making available at least one employee or representative who can testify regarding said claims or defenses. Except as expressly set forth herein, SPS makes no warranty, express or implied, and it is agreed that no implied at law warranty shall arise from this Agreement or from performance hereunder. Subscriber shall treat all information that comes to its attention in connection with the performance of this Agreement, including but not limited to, information concerning Customer personal data gathered during the course of a Transaction, as strictly confidential and certifies that it shall utilize confidential information only for the purpose of originating a business transaction as defined herein.

13. Damage Waiver. SPS will not be liable to Subscriber for any special, consequential, indirect or punitive damages, whether or not (1) any claim for these damages are based in tort or contract or (2) any party knew or should have known the likelihood of these damages in any situation. SPS makes no representations or warranties other than those expressly made in this Agreement.

14. Confidentiality/Restriction on Use of or Disclosure of Trade Secrets: Neither party will disclose to anyone, directly or indirectly, either during the term of this Agreement or at any time thereafter, any trade secrets, or confidential information of the other party or use such information other than in the course of services provided under this Agreement. All documents that SPS prepares, or any confidential information that might be given to Subscriber in the course of SPS' services under this Agreement, are SPS' exclusive property and shall remain in SPS' possession on SPS' premises. Under no circumstances shall any such information or documents be removed without SPS' prior written consent. SPS may advise potential users of the services that SPS has with Subscriber. Furthermore, Public Law 106-102 limits the disclosure by financial institutions and their affiliates of nonpublic personal information relating to Customers. SPS agrees that all information received by SPS from Subscriber in the course of SPS' performance hereunder relating to individual Customers or customers of a Subscriber is confidential and shall not be used or disclosed by SPS except to carry out the purpose for which it was disclosed, released, or transmitted to SPS in the ordinary course of business to carry out such purpose. Without limitation, SPS shall not copy such information or disseminate it to any other party other than SPS' employees actually and necessarily engaged in the performance of this Agreement without the express written consent of the Subscriber engaged hereunder. SPS agrees to maintain the confidentiality of all such information to the same extent that Subscriber is required to maintain it under Public Law 106-102 (15U.S.C. Â§ 6801, et seq.) and applicable regulations. This provision shall survive the termination of this Agreement.

15. Security Interest, Subrogation and Assignment of Checks: Subscriber grants to SPS a first priority interest in and lien upon all authorized checks to secure all obligations owed by Subscriber pursuant to the terms of this Agreement. SPS shall have all the rights of a secured party under applicable law immediately upon authorization of such checks. Subscriber is authorized to negotiate and be paid for checks it receives in the ordinary course of its business unless otherwise instructed in writing by SPS following an event of default. Subscriber's underlying warranty shall be deemed an immediate assignment and subrogation of all right, title, and interest in the corresponding check to SPS. Subscriber shall do whatever is necessary to secure SPS' right, title, and interest in warranty claims, shall cooperate with SPS in its confirmation of such right, title, and interest, shall do nothing to prejudice such right, title or interest, and shall do nothing to impair SPS' right to collect any check originated for payment and approved for warranty hereunder. In its capacity as assignee, and/or secured party, SPS is authorized to collect such checks in its own name and on its own account. Subscriber irrevocably authorizes and appoints SPS as its attorney-in-fact to: (a) prepare, execute and file UCC-1 financing statements, notices to financial institutions and other papers which SPS deems necessary to acknowledge, confirm, or perfect its rights and/or security interest in such authorized checks; and (b) sign any law enforcement reports, affidavit, or other paper which is necessary to prosecute individuals whose checks are submitted for warranty hereunder.

16. Other:

- (i) Subscriber agrees that SPS is entitled to collect dishonored item service fees from the check writer and retain any costs, fees or damages permitted by law in addition to the check amount. Subscriber agrees to post SPS provided notices in clearly visible areas that, in the opinion of SPS, may be required for the collection of any such amounts. Subscriber agrees and stipulates that it shall not also attempt to collect a collection service charge on any Warranty Transactions contemplated by this Agreement.
- (ii) If Subscriber is or becomes the subject of any insolvency, bankruptcy, receivership, dissolution, or reorganization, Subscriber consents to the immediate and absolute lifting of any stay as to the enforcement of remedies under this Agreement.
- (iii) Each party and each person signing on behalf of a party represents and warrants that they have the full legal capacity and authority to enter into and perform the obligations of this Agreement without any further approval. If there is a conflict between any part of this Agreement and any present or future law or regulation, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within compliance of the law or regulation.
- (iv) Subscriber may only assign this Agreement upon the prior written consent of SPS. SPS may freely assign this Agreement, its rights, benefits or duties hereunder. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of SPS and the heirs, executors, administrators, successors, and assigns of SPS.
- (v) Notices shall be delivered to the appropriate party at its address set forth in this Agreement and deemed received 72 hours after deposit in the first class United States mail, postage prepaid, or if given by other means, upon actual receipt.
- (vi) Subscriber agrees that for any claim, dispute, or cause of action brought by Subscriber against SPS that (a) jurisdiction and venue shall be exclusively in the State of Nevada in Clark County and (b) resolution will be via binding arbitration using a qualified representative of the American Arbitration Association. SPS reserves the right to file a cause of action against Subscriber in any

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venue/ jurisdiction SPS deems appropriate. This Agreement and the rights and obligations of the parties hereto shall be governed by and construed and enforced in accordance with the laws of the United States and the State of Nevada.

- (vii) Subscriber acknowledges that SPS makes no representations or warranties with respect to voice authorization duration and/or the number or percentage of Subscriber EZPAY applicants that shall be approved by SPS as that may differ materially from Subscriber to Subscriber based on Subscriber's volume, internal check acceptance policies, and individual characteristics of each check writer.
- In the absence of Subscriber's proper advance written notification of cancellation per the terms of the EZPAY Service Agreement, Subscriber agrees and acknowledges that SPS monthly minimum fees and other fixed fees will be ongoing, continuing, and accruing, even if such are unpaid by Subscriber's financial institution, and such fee's including return fee's incurred by SPS, if any, will be offset against Subscriber's reserve balance, if any, for as long as and until the effective date of proper advance written notice of cancellation. In the event Subscriber initiates a charge back against any SPS electronic debit for fees due and owing from Subscriber, Subscriber agrees and acknowledges that without further notice or disclosure such SPS fees, including future monthly fees accruing after such charge back thereafter, will be offset in its entirety against Subscriber's reserve balance up to the effective date of cancellation.