



## TERMS AND CONDITIONS

**1. Term, Termination and Amendment:** This Agreement is effective upon its acceptance by SPS in San Diego, California, and shall remain in effect for an initial period of 3 months and thereafter shall automatically renew for successive 3 month terms unless terminated as provided for herein. Either party may terminate this Agreement as of the end of the then-current period by giving written notice at least 30 days prior to the end of that period. These terms and conditions, plus any addenda, including rates and fees, may be amended from time to time by SPS by providing Subscriber written notice. Except as set forth in paragraph 2, such amendments shall be effective 30 days from mailing. Subscriber may terminate this Agreement as of the effective date of any change in rates or fees upon written notice to SPS. Except as specifically provided for herein, this Agreement may not be modified or amended except by written mutual agreement.

**2. Fees, Rates, and Warranty Changes:** Subscriber shall pay SPS within 10 days of receipt of monthly invoices at the fees and rates set herein, as they may be amended from time to time, plus all applicable taxes. The Electronic Inquiry Fee applies to all inquiries, inclusive of batch closings, transmitted electronically to SPS. The Warranty fee applies to the face amount of all checks transmitted telephonically, electronically, or in writing to SPS up to the warranty maximum. If the charges for Subscriber's inquiries are less than the monthly minimum fee, then the minimum shall apply. The operator-assisted fee applies to all authorization inquiries involving an SPS operator. Subscriber agrees that an annual subscription fee of \$29.95 per location shall be applied to Subscriber's invoice every December 1. SPS reserves the right to change at its discretion, by giving notice to Subscriber, the fees and rates set forth herein as they may be amended from time to time.

**3. Payment:** All fees are due and payable upon receipt. An invoice whose full payment is not posted prior to the 1<sup>st</sup> of the next month will incur a late fee of 1 1/2% (or the legal limit) of the unpaid balance and be added to the subsequent invoice. Without prejudice to its rights in paragraph 1, SPS reserves the right to suspend its performance to Subscriber, including payment of all checks submitted for warranty reimbursement, during any period in which Subscriber's account is delinquent. Continuation of service during any period of delinquency shall not constitute a waiver of SPS's rights of suspension and termination. Any delinquent fees or other amounts not paid when due may be debited against amounts owed Subscriber by SPS under this or any other agreement between Subscriber and SPS. Subscriber agrees to pay SPS a \$25.00 processing fee for any check or ACH debit due SPS by Subscriber which is not paid by Subscriber's financial institution upon presentation. Subscriber acknowledges that SPS remits warranty payments each Friday of the month for all dishonored checks which are received by SPS at least 28 days prior thereto and which meet the warranty terms and conditions as noted herein.

**4. Equipment:** Title to SPS rental / loaned equipment is retained by SPS. Upon termination, Subscriber shall at Subscriber's expense return all equipment to SPS in good repair, except for ordinary wear and tear resulting from proper use. Upon receiving replacement equipment from SPS, Subscriber agrees to either return defective equipment to SPS within 5 business days. A one-time fee of \$25.00 per instance per device will be charged for reloading terminal software when Subscriber changes their credit/debit or alternative application program provider. Subscriber agrees to pay a fee of \$275 per piece of SPS equipment that is lost, stolen, misplaced, damaged beyond normal wear and tear, or not returned if replaced. Subscriber shall only allow SPS representatives to adjust, program, or repair equipment provided by SPS. Subscriber agrees to bear the entire risk of loss, theft, or damage of or to SPS equipment.

**5. 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 submission of a warranty claim 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's 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's right to collect those checks submitted for warranty payment. In its capacity as assignee, subrogee, 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.

**6. Limited Warranty:** SPS warrants the accuracy of the authorization approval given that all requirements set forth in the warranty requirements are met. SPS agrees to purchase from Subscriber one check per business transaction for which the SPS approval proved inaccurate except that SPS's liability is limited by the warranty maximum, the warranty requirements, and the face amount of the check. "Business transaction" as used herein shall (a) not include traveler's checks, money orders, payroll checks, or checks written for cash or for payment on an account or check already due Subscriber, (b) only include a transaction for goods or services concurrently requested by and provided to check writer provided such are subsequently not returned to Subscriber, and (c) require use of the Subscriber identification number issued by SPS for the service requested. Subscriber's sole remedy for an inaccurate warranty shall be the right to require SPS to purchase such dishonored check subject to the conditions of this paragraph. If, after 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 reassign the check to Subscriber and that SPS may debit Subscriber's account for the voided warranty, or in the alternative, Subscriber will remit the amount due upon request. Upon such reassignment, SPS shall have no further liability to Subscriber on such check.

(i) The check must be a first party instrument drawn on a United States or Canada financial institution and must be payable to Subscriber. The ABA transit #, account #, check #, and customer name must be commercially imprinted by the check manufacturer. If the physical address / phone number are not commercially imprinted then they must be

written on the check. If the area code / phone number is electronically transmitted during an authorization, then it need not be present on the check.

(ii) The amount authorized and shown in words and figures on the check must agree and, if a personal check, the check writer's signature must correspond to the imprinted name.

(iii) Excluding checks presented at motor vehicle dealers where the check writer signs a repair order, parts receipt, or sale contract, warranty does not apply to checks on which payment has been stopped due to a dispute between the check writer and Subscriber over goods and/or services provided. Warranty does not apply if Subscriber indicates herein all checks will be authorized and SPS determines in its sole discretion based on its own analysis such is not occurring, when Subscriber concurrently uses more than one check authorization/warranty service, when Subscriber has called for approval on more than one check per business transaction, where the check was previously denied authorization based upon different information, or where the check was given as a substitute for a check previously presented, whether or not previously authorized by SPS, or is presented as a replacement check following a decline, referral or other message from SPS, even if for a different transaction amount, or to verification inquiries.

(iv) The check cannot contain erasures/alterations (unless initiated by the checkwriter during the transaction) nor can the check be presented or accepted as a consequence of fraudulent / negligent activity of Subscriber or its agents. Warranty payment may be withheld where the validity of the debt is being determined by legal proceeding.

(v) The check must have been deposited in Subscriber's financial institution within 3 days of the authorization date and received by SPS within 30 days of the check date. The date of the check must coincide to the date of the authorization inquiry made to SPS and the date the transaction occurred.

(vi) Warranty does not apply where: the MICR line was inaccurately transmitted, the check was deposited prior to the authorization date, the check was not issued in connection with a business transaction described herein; the check was not written by the individual to whom goods and/or services were provided; the goods or services were not provided; Subscriber did not comply with the terms and conditions of this Agreement, including but not limited to the warranty requirements described herein; Subscriber, or its agents, employees and owners, accepted the check with reason to believe that the check was likely to be dishonored or that the identification used was forged, stolen, or otherwise did not belong to the check writer; or that the transaction for which the check was tendered is illegal, void, invalid, or that a court of law determines that the check is in whole or in part not due and payable by the check writer unless such determination results from a bankruptcy proceeding.

**7. Collection and Service Charge Fees:** Subscriber agrees that SPS is entitled to collect from the check writer and retain any costs, fees or damages permitted by law in addition to the check amount. Subscriber agrees to post notices in clearly visible areas that, in the opinion of SPS, may be required for the collection of any such amounts.

**8. 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 agrees that a decision to reject any check, driver's license or other form of identification or payment shall be made solely Subscriber's own responsibility. Notwithstanding anything to the contrary herein, in no event shall SPS's liability under this Agreement exceed the total amount of fees paid to SPS by Subscriber pursuant to this Agreement during the preceding 3 month period. 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 check writers and checks, as strictly confidential and certifies that it shall utilize confidential information only for the purpose of originating a business transaction as defined herein.

### **9. Other:**

(i) This Agreement constitutes the entire understanding of the parties. All prior agreements and understandings are canceled in their entirety. All representations, warranties, indemnities, and covenants made herein shall survive termination of this Agreement and shall remain enforceable after termination.

(ii) Neither party shall be liable for loss or damage due to causes beyond its control, including earthquake, war, fire, flood, power failure, phone outage, or acts of God.

(iii) 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.

(iv) 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 a 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.

(v) 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 Subscriber.

(vi) 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.

(vii) 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 venue/ jurisdiction SPS deems appropriate.