

Accounts Receivable Conversion Services



**MERCHANT
POINT**

MERCHANT # _____ ISO Name: _____ ISO # 5763 Agent Name: _____

ARC SERVICE AGREEMENT

Legal Name: _____ Tax ID Number: (required) _____
 DBA Name: _____ Phone: _____ Fax: _____
 DBA Address: _____ City: _____ State: _____ Zip Code: _____
 Mailing Address: _____ City: _____ State: _____ Zip Code: _____
 Contact: _____
 Type of Ownership: Sole Proprietor Partnership Corporation Type of Goods Sold: _____
 Total Years in Business: Year(s) _____ Months: _____ Time in Business at this Location: Year(s) _____ Months: _____

PRINCIPAL INFORMATION

Name (Print): _____ Title: _____ % Equity Ownership: _____ Date of Birth: _____
 Social Security # _____ Drivers License # _____ Phone # () _____
 Principal Address: _____ City: _____ State: _____ Zip: _____

PROCESSING INFORMATION

Average Transaction amount? \$ _____ Average # Transactions Monthly: _____ Largest transaction amount merchant requests? \$ _____ Estimate monthly Transaction volume? \$ _____

SCHEDULE OF CHARGES/FEEES

Transaction Fee: _____ % Discount Rate: \$ _____ **Equipment:** RDM: _____ Vision 80: _____
 Monthly Minimum: \$ _____ Batch Fee: \$ _____ (Less than 150 per day) Vision 120: _____
 Monthly Service Fee: \$ _____ Return Fee: \$ _____ Reversal Fee: \$ _____ Other: _____
 Vision 170: _____

MERCHANT ACCEPTANCE

This Agreement includes all of the terms and conditions contained on the front and ATTACHED RECITALS of this Agreement. This Agreement has been executed on behalf of and by the authorized management of each party as of the date below. Merchant authorizes GETI or any credit reporting agency by GETI or agent of GETI, to make whatever inquiries that GETI deems appropriate to investigate, verify or research references, statements or data obtained from Merchant for the purpose of this application for equipment financing. The term of this agreement is for a minimum of one (1) year.

Personal Guarantee: To induce and in consideration of GETI acceptance of the ARC Service agreement, the undersigned (herein referred to as "Guarantor") unconditionally, personally, individually, jointly and severally guarantees performance of the Merchant's obligations under this Agreement and payment of all sums due thereunder and hereby continues to personally indemnify GETI for any and all funds due from Merchants under the terms of this Agreement.

ACH Debit/Credit Authorization: Merchant hereby authorizes GETI in accordance with this Agreement to initiate debit/credit entries to Merchant's checking account, as indicated per the attached copy of a voided check from same. The authority is to remain in full force and effect until (a) Sixty (60) days after GETI has received written notification from MERCHANT of its termination in such a manner as to afford GETI reasonable opportunity to act on it, and (b) all obligations of Merchant to BANK/GETI that have arisen under this agreement have been paid in full.

IMPORTANT NOTICE

ALL INFORMATION CONTAINED ON THIS APPLICATION WAS COMPLETED BY OWNERS AND/OR OFFICERS OF MERCHANT AND THEY WARRANT THAT ALL CHECK INFORMATION AND SALES VOLUME INDICATED THROUGHOUT THIS APPLICATION ARE ACURATE AND ACKNOWLEDGE THAT ANY VARIANCE TO THIS INFORMATION COULD RESULT IN DELAYED AND/OR WITHHELD SETTLEMENT OF FUNDS. NO BLANK SPACES WERE LEFT INCOMPLETE. N/A OR NONE HAS BEEN FILLED IN ANY SPACES WHERE APPLICABLE. THIS AGREEMENT SHALL NOT BE BINDING OR TAKE EFFECT UNTIL MERCHANT HAS BEEN APPROVED BY A GETI OFFICER AND A MERCHANT NUMBER HAS BEEN ISSUED WITH CHECK LIMIT.

MERCHANT AGREED AND ACCEPTED:

I have read and agree to the terms of this agreement

CORPORATE RESOLUTION FOR CORPORATIONS AND LLC's "ONLY"

The officer(s) identified have the authority to execute the Check Service Agreement with GETI on behalf of the corporation or LLC

X _____
 Authorized Merchant Signature Date

X _____
 Authorized Officers' Signature/Title Date

INTERNET INFORMATION

Website Address: _____

Email Address: _____

SITE VERIFICATION

I hereby verify that I have physically inspected the business premises of the merchant at this address and the information stated above has been verified and is represented to be true and correct under the penalty of perjury.

Inspected By: (Print Name) _____ Inspector's Signature: _____ Date: _____

**VOIDED CHECK FROM CHECKING ACCOUNT MUST BE ATTACHED WITH PRE-PRINTED BUSINESS NAME
 (DO NOT USE A DEPOSIT TICKET) (BANK MUST HAVE ACH CAPABILITY)**

Staple Check Here

GETI USE ONLY

Application Approved By: _____ Authorized Signature: _____ Title: _____ Date: _____

RECITALS

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 Global eTelecom, INC. (GETI) 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 GETI to prepare such Entries for processing.

C. This agreement is only applicable to processing ARC based transactions utilizing the end-customer's checking account data. GETI'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 GETI or provided directly to Merchant for installation on Merchant's own equipment or MERCHANT may opt to use existing hardware and software. In all cases where GETI 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, GETI, or otherwise shall have full force and effect. Merchant agrees not to change, modify, or alter such software or product in any way. For purposes of this Agreement ARC will have the same meaning and refer specifically to GETI electronic check processing services.

AGREEMENT

1.1 **MERCHANT'S AUTHORITY.** MERCHANT specifically warrants to GETI that MERCHANT has taken all necessary legal action and has authority to enter into this Agreement with GETI. 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 GETI.** MERCHANT agrees to process all electronic check transactions related to its business exclusively through GETI and give GETI right of first refusal on any future electronic check processing contracts with MERCHANT.

2.1 **MERCHANT'S PUBLIC DISCLOSURE RESPONSIBILITIES.** MERCHANT agrees to inform the public that MERCHANT will honor electronic check processing services provided by GETI. From time to time, GETI may design educational and promotional materials and send such to MERCHANT for MERCHANT to disseminate to customers. If applicable, MERCHANT further agrees to immediately remove and properly dispose of GETI's previous version releases of software and to utilize the most current software version releases upon receipt of such from GETI. MERCHANT will discontinue the use of all of GETI'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 GETI. In the event of termination, MERCHANT immediately shall properly discard all software related to GETI services at MERCHANT's expense.

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

3.1 **REQUIREMENTS FOR PROCESSING ELECTRONIC CHECKS.** MERCHANT shall comply with the following conditions when processing electronic checks and agrees to complete all transactions in accordance with the provisions of this Agreement and such rules of operation as may be established by GETI from time to time. MERCHANT shall accept only the following electronic checks as source documents to initiate ACH debit entries through GETI: (a) All demand deposit account electronic checks must be drawn on or payable through a federally insured depository financial institution; be machine-readable with the bank routing number, account number and electronic check serial number printed on the electronic check, and be for an amount less than \$5000.

(b) MERCHANT agrees to provide notification to its customers in clear and simple language that submission of check constitutes authorization for each check transaction submitted for electronic processing. MERCHANT shall ensure the following correct information: (a) the customer's bank account number and the electronic check number from the MICR data; (b) the date of the transaction; (c) the total cash price of the sale (including all applicable state, federal or local surcharges and taxes. (d) No electronic check may be altered. Failure to comply with the above requirements will, in addition to other penalties subject MERCHANT to chargebacks and may be grounds for immediate suspension/termination of services and indemnification of GETI by MERCHANT pursuant to this Agreement. **YOU UNDERSTAND THAT IT IS A FEDERAL VIOLATION TO PROCESS DEBIT REQUESTS AGAINST A CONSUMER BANK ACCOUNT WITHOUT PROVIDING CUSTOMER WITH PRIOR WRITTEN NOTIFICATION. 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 GETI to initiate an ELECTRONIC CHECK DEBIT ENTRY ("ENTRY") for MERCHANT against customer. GETI shall be entitled to multiple re-presentments and to assess a transaction fee as set forth in the schedule for each re-presentation. If an electronic check is returned unpaid after each re-presentation, GETI shall be entitled to debit the MERCHANT'S account for the amount of the electronic check.

3.3 **RESTRICTIONS ON ACCEPTANCE OF ELECTRONIC CHECKS FOR ELECTRONIC PROCESSING.** From time to time, GETI shall establish necessary security and identification procedures for presentation of electronic checks for electronic processing pursuant to the Rules and applicable law. MERCHANT agrees to comply with such procedures and to accept such "properly presented" electronic checks for electronic processing. GETI shall establish minimum and maximum amount limitations on electronic checks presented for electronic processing by MERCHANT. MERCHANT shall not accept or attempt to process electronic checks below the minimum or in excess of the maximum limitations established by GETI. In no event will GETI accept an electronic check greater than \$5000 for processing. GETI shall also establish the number of electronic checks that may be submitted on a daily basis by any customer for electronic processing. MERCHANT agrees to provide GETI with any and all information needed to establish such limitations. MERCHANT further agrees to inform GETI 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 GETI electronically processing any electronic check.

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 GETI for electronic processing: (a) MERCHANT shall not electronically process any electronic checks drawn on any depository institution that is not federally insured or part of the ACH network, (b) MERCHANT shall not electronically process any electronic checks drawn on the personal checking account of MERCHANT or any of its agents or employees unless prior authorization given by GETI, (c) MERCHANT shall not accept any third party items for electronic processing or electronic checks made payable to "cash" or "bearer", (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 a 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 accept corporate checks, (g) MERCHANT shall not submit an electronic check which is altered by the Merchant in any way. MERCHANT'S submission of any of the above transactions for electronic processing may subject the MERCHANT to immediate suspension or termination and all funds of MERCHANT, including those in MERCHANT'S account, may be placed on hold.

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

4.1 **SOFTWARE.** MERCHANT shall utilize electronic check software approved by GETI for processing all electronic check transactions: (a) MERCHANT is responsible for all telecommunication fees and charges, including but not limited to telephone fees, associated with and related to the use of the software; (b) MERCHANT shall maintain all equipment necessarily related to electronic check processing, including necessary file servers, check transport systems, computers and telecommunications equipment in good working order at MERCHANT'S sole expense; (c) MERCHANT shall advise GETI immediately in the event of breakdown of related equipment, electronic check software problems or of any other system failure; and (d) MERCHANT acknowledges that GETI is not responsible for any related check transport systems, computers and telecommunications equipment used by the Merchant. In this regard, GETI shall not be responsible for any unauthorized tampering or altering to equipment and software specifically installed by GETI on the part the Merchant or Merchant's agent. Additionally, GETI's approval of such equipment does not constitute an express or implied warranty, representation or endorsement of such equipment.

4.2 **SUBLICENSE AGREEMENT.** GETI grants to MERCHANT during the terms of this Agreement, a non-exclusive, non-transferable license to use e=MARC² provided to MERCHANT by GETI. (a) Title to e=MARC², including but not limited to system programs, options, documentation, data, and information and any copies thereof, whether whole or in part, whether made by GETI or MERCHANT or anyone else, are the sole and exclusive property of GETI. (b) MERCHANT cannot, at any time, transfer, sublease, assign, sublicense, offer for use or sale, dispose of, encumber or deliver e=MARC² or license to another without prior written consent by GETI. (c) It is expressly understood that e=MARC² contained confidential and proprietary information and the data copyrighted by GETI, herein known as CONFIDENTIAL INFORMATION, and that any disclosure or unauthorized use thereof will cause irreparable harm and loss to GETI. (d) MERCHANT agrees to use all reasonable means to protect all CONFIDENTIAL INFORMATION, including without limitation, copyrighted, confidential, and proprietary information and data contained on e=MARC², in a commercially reasonable manner and in the same manner as it would protect its own confidential proprietary materials, including, without limitation, system programs, documentation, modifications, updates, and conversions, i.e., in strict confidence. (e) MERCHANT agrees to take all reasonable steps to ensure that unauthorized persons shall have no access to e=MARC² and that all authorized persons, having access to e=MARC² shall refrain from any unauthorized use, disclosure, proliferation, duplication, reverse engineering, or any improper use of copyrighted or proprietary information of GETI.

4.3 **USE OF EQUIPMENT.** MERCHANT agrees to utilize only equipment approved by GETI for the electronic processing of Electronic checks and in a format and medium of transmission acceptable to GETI.

5.1 **DAILY SETTLEMENT OF TRANSACTIONS.** MERCHANT agrees that a batchfile shall consist of all transactions submitted by 3:00 P.M. (EST) each calendar day. MERCHANT acknowledges that a request to not process a batchfile could result in a \$25.00 (twenty-five dollars) fee per day that those transactions are not processed for ACH submital by GETI. Merchant acknowledges that it is customary for GETI to hold in reserve from Merchant an amount equal to three times the daily average of returns. GETI reserves the right to hold additional monies as necessary to reduce any risk associated with daily processing of electronic checks. GETI 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 GETI. MERCHANT acknowledges that failure to submit batchfiles for processing will delay funds being deposited.

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

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 GETI through the ACH and shall normally be electronically transmitted directly to MERCHANT'S designated account. However, GETI 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 GETI to help resolve any problems in crediting MERCHANT'S designated account. In the event that a payment is rejected by MERCHANT'S bank or fails to arrive within five (5) days from the date of settlement due to problems beyond GETI'S control, GETI 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 GETI'S sole discretion, without any further notice or demand.

5.4 **AUTHORIZATION TO ACCESS MERCHANT'S ACCOUNT.** MERCHANT hereby authorizes GETI to initiate debit and credit entries to MERCHANT'S designated account. MERCHANT'S authorization shall continue in effect for at least 180 (one hundred eighty) days after termination of this Agreement, or for a longer period as determined necessary by GETI in the exercise of its sole discretion in order to properly terminate business. GETI will generally transmit settlement to MERCHANT'S bank within 48 to 72 hours of the agreed upon settlement date. GETI may holdback certain amounts where GETI is investigating a transaction for breach of warranty by MERCHANT or for other reasons. GETI shall monitor MERCHANT'S transactional activity and MERCHANT agrees that GETI may delay funds for a reasonable period to investigate account activity. GETI will attempt to notify MERCHANT of any investigation but GETI shall have no liability to MERCHANT or any other party, for any such actions taken by GETI. MERCHANT agrees that GETI may hold, setoff or retain funds to protect against amounts owed GETI or based on MERCHANT'S financial condition. GETI 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 GETI. GETI 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 electronic check refunds to customer after a transaction has been released for settlement. 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 electronic check 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. 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 GETI to initiate such reversal. MERCHANT shall give GETI enough information to create such reversal. A fee of no more than twenty-five dollars for each transaction reversal may be charged by GETI.

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 GETI. With each transaction presented to GETI by 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 and that notification means authorization; (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 payment of goods or services 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 all goods and services purchased in a single transaction (e) MERCHANT has delivered the goods or completed the services; (f) each check submitted represents a bona fide direct sales transaction between the MERCHANT and the person presenting the electronic check in the MERCHANT'S ordinary course of business and that the amount of the check evidences the customer's total indebtedness for the transaction involved; (g) the person presenting the electronic check has no claim, defense, right of offset, or dispute against MERCHANT in connection with the purchase of the goods or services and MERCHANT will provide adequate services to the person presenting the electronic check and will honor all warranties applicable thereto; (h) MERCHANT has not charged any separate or additional fee(s) in connection with the transaction other than as may be required by law. The foregoing shall not prohibit MERCHANT from extending discounts to customers paying by cash or by any means other than electronic check processing; (i) all of MERCHANT'S business locations engage in the business activity listed on the face of this Agreement; (j) MERCHANT has not submitted duplicates of any transaction; and (k) no transaction submitted to GETI is with or through an entity other than MERCHANT.

7.1 **LIMITATION OF LIABILITY AND MERCHANT'S WAIVER OF DAMAGES.** GETI shall be responsible for performance of the ACH services as a third-party provider in accordance with the terms of this Agreement. GETI 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 GETI'S communication carrier or clearing houses, and no such entity shall be deemed to be a representative or an agent of GETI. **IN NO EVENT SHALL GETI 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 ELECTRONIC CHECKS RESULTING FROM GETI'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.**

8.1 **CHARGEBACKS.** MERCHANT shall bear all risk of loss, without warranty or recourse to GETI for the amount of any transaction, applicable fees, or other amounts due GETI (including GETI's actual costs and expenses). GETI shall have the right to debit MERCHANT'S incoming transactions, designated account or any other funds of MERCHANT in GETI's direct or indirect control by reason of GETI's security interest granted to GETI by MERCHANT hereunder, and to chargeback such transactions to MERCHANT including, but not limited to any of the following situations: (a) where goods have been returned or service canceled by the person submitting the electronic check for electronic processing and that person has requested a credit draft and such credit draft was not processed by MERCHANT; (b) where the transaction is for a type of goods or services sold other than as disclosed in the merchant application or approved in advance by GETI; (c) where a customer contends or disputes in writing to GETI, or the customer's financial institution named on the Electronic check that: (1) Goods or services were not received; or (2) Goods or services were defective or the customer has a claim, dispute or defense to payment related to the transaction; or (3) The dispute reflects a claim or defense authorized by a relevant statute or regulation; (d) 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 Electronic check or of which MERCHANT had notice not to honor and failed to reject the transaction or if MERCHANT disregarded any denial of authorization; (e) where security procedures were not followed; (f) where the customer's financial institution or GETI 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; (g) 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 (h) sale of services or product 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 GETI, 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. GETI shall retain any discount or fee related to a chargeback transaction. MERCHANT agrees that GETI will assess up to \$25.00 (twenty five dollars) for each chargeback, or such increased or additional charges as may be established by GETI from time to time.

8.2 **CHARGEBACK RESERVE ACCOUNT.** Notwithstanding any other language to the contrary contained in this Agreement, GETI 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 GETI'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 ARC business; (c) Failure by MERCHANT to fully disclose the true nature of its business to GETI to permit a fully informed decision as to the suitability of MERCHANT for processing through GETI; (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 GETI 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 GETI; (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 GETI, for all obligations on the part of MERCHANT to GETI under this Agreement, MERCHANT may request GETI to disburse to MERCHANT any funds remaining in the Chargeback Reserve Account unless otherwise agreed to by GETI. Such funds will not be disbursed to MERCHANT until the end of 180 (one hundred eighty) days after termination of this Agreement or ninety (90) days from the date of the last chargeback activity, whichever is later, unless GETI 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 GETI will notify MERCHANT of such fact and GETI 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.

9.1 **MERCHANT SHALL PAY, A Discount Fee, as per Schedule, based upon a percentage of the face amount of checks during the month. A transaction fee for access, a minimum monthly to be paid each month, as per Schedule. A minimum per transaction fee will be determined by GETI for: each ACH deposit and batch-out. A Subscription Fee as per Schedule A. Additionally, a fee of up to twenty-five dollars will be assessed for each reversal requested by MERCHANT at GETI's sole discretion and if applicable, a training fee will be determined by GETI.**

10.1 **ELECTRONIC CHECK PROCESSING.** MERCHANT shall be required to submit all documentation related to the transactions to GETI at GETI's request. MERCHANT shall make its books and records available to GETI.

10.2 **ASSIGNMENT OF ELECTRONIC CHECKS.** As of the date of this Agreement and by subscribing to GETI service, MERCHANT shall be deemed to have assigned to GETI, all of MERCHANT'S right, title and interest in any and all electronic checks return fees, including any rights to treble or punitive damages permitted under applicable law. MERCHANT shall execute and deliver endorsements, instruments, and papers and shall do whatever is necessary under the laws of any applicable jurisdictions to secure and defend GETI'S rights and shall do nothing to prejudice those rights. MERCHANT shall cooperate with GETI in pursuing GETI'S rights, including suing or prosecution of the customer under all applicable laws.

11.1 **ELECTRONIC CHECKS FOR WHICH MERCHANT WILL NOT BE FUNDED ON UNDER GETI.** In addition to the provisions set forth in this Agreement and notwithstanding any other provisions to the contrary, GETI shall have no obligation to reimburse Merchant for electronic checks that are: (a) Not honored by the customer's financial institution because of the customer's instructions to "stop payment" on the electronic check; (b) Fraudulent, due to activity by the Merchant, its employees or agents, either as a principal or as an accessory, in the issuance; (c) Accepted by merchant or its employees with advance knowledge of the likelihood of its being dishonored; (d) Lost, stolen, altered or counterfeit, and GETI 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 electronic check or any Electronic check upon which Merchant has accepted full or partial payment; (f) One of multiple electronic checks presented to Merchant in a single transaction for electronic processing; (g) For goods, if the goods are subsequently returned by customer or repossessed by merchant or lien holder, within 60 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) Electronic checks for which Merchant returns cash back to the customer, unless Merchant is approved in writing by GETI for such cash-back transactions; (j) Electronic checks not in compliance with this agreement and not processed in accordance with the electronic check processing provisions of this Agreement. In addition, before processing the electronic check and as a condition to honoring the electronic check, MERCHANT shall obtain sufficient personal information to locate the person presenting the electronic check.

12.1 **COMPLIANCE AND DISCLOSURE OF INFORMATION.** MERCHANT shall provide such information and certifications as GETI 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 GETI 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 GETI may request. MERCHANT grants to GETI continuing authority to conduct credit electronic checks and background investigations and inquiries concerning MERCHANT and MERCHANT'S owner(s) including, but not limited to, character and business references and the financial condition of MERCHANT and MERCHANT'S owner(s). MERCHANT expressly authorizes GETI 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. GETI 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 GETI and provide GETI with the opportunity to terminate this Agreement.

13.1 **DATA RETENTION.** According to current NACHA Rules, MERCHANT shall retain for a period of 2 years an image copy of all electronic checks received from customers including front and back. MERCHANT must destroy source document within 14 days of processing the transaction.

14.1 **ADDITIONAL MERCHANT REPRESENTATIONS.** MERCHANT agrees to permit GETI to audit MERCHANT'S transaction data upon reasonable notice. MERCHANT agrees that any outstanding amount(s) owed to GETI 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 GETI RESPONSIBILITIES.** GETI will accept entries via electronic check software on a 24-hour per day basis. GETI is only responsible for processing entries that have arrived at its premises in a proper format and on a timely basis. GETI will use information provided by MERCHANT to originate its entries in the ACH. MERCHANT understands and agrees that GETI may reject MERCHANT'S entries for any reason permitted in this Agreement and/or if acceptance of such entry would cause GETI 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, GETI 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 GETI 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 GETI 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 GETI

18.2 **TERMINATION.** This Agreement shall continue indefinitely unless and until terminated by either party. MERCHANT may terminate this Agreement upon 60 (sixty) days written notice to GETI. Monthly minimum and subscription fees will continue in effect for this time. GETI shall have the right to suspend or terminate this Agreement immediately and without notice to MERCHANT. Upon termination, a cancellation fee of up to \$2500.00 (two thousand five hundred dollars) may be charged by GETI.

18.3 **FORCE MAJEURE.** GETI shall not be responsible for delays, nonperformance, damages, lost profits or other losses caused directly or indirectly by any Act of God, including without limitation fires, earthquakes, tornadoes, hurricanes, wars, labor disputes, communication failures, legal constraints, power outages, data transmission loss or failure, incorrect data transmission or any other event outside the direct control of GETI.

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. GETI 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 GETI is non-refundable whether or not this Agreement is accepted by GETI.

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 GETI and the MERCHANT with respect to the subject matter hereof and supersedes any prior agreement(s) between GETI 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 GETI, 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 GETI, 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, GETI, 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 GETI.

24.1 **ATTORNEYS' FEES.** In the event that it becomes necessary for GETI to employ an attorney to enforce, interpret, mediate or arbitrate this Agreement, GETI 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 electronic checks 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 Destin, Florida upon its acceptance by GETI. 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 GETI.

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