

## TERMS OF USE

The following terms of use shall apply to any business entity (“Merchant”) that uses the ReSubmitIt<sup>®</sup> electronic check recovery services (the “Services”) provided by MTSI - ReSubmitIt Inc. For the purposes of this agreement (“Agreement”), “use” of the Services shall be evidenced by the ReSubmitIt processor’s acceptance of Merchant’s returned deposit items (“Returned Checks”), which includes checks, IRDs and ACH items. Merchant may discontinue the Services at any time by notifying ReSubmitIt or Merchant’s financial institution to discontinue sending Returned Checks to the ReSubmitIt processor.

1. All transactions contemplated under this Agreement are governed by Articles 3 and 4 of the Uniform Commercial Code, Regulation CC and E established by the Federal Reserve Board, The Electronic Funds Transfer Act, the Operating Rules of the National Automated Clearing House Association (“NACHA Rules”) as in effect from time to time and other applicable laws and regulations. Electronic entries may not be initiated that violate these or any other laws of the United States, including but not limited to, the prohibition against fraudulent transfers.
2. Merchant authorizes the ReSubmitIt processor to re-present all eligible Returned Checks in accordance with applicable laws and regulations.
3. ReSubmitIt shall pay Merchant 100% of the collected face value of Returned Checks that are collected via primary (electronic or paper draft) or secondary (contact by letter or phone) collection efforts. In the event a Returned Check is not eligible for collection via primary collection efforts or those efforts have been exhausted, Merchant may authorize ReSubmitIt to commence secondary collection efforts (contact by letter or phone) by filling out the Contact Information form.
4. ReSubmitIt shall pay Merchant weekly for all Returned Check collections settled no more than 7 days prior. Merchant authorizes the ReSubmitIt processor to transmit amounts due to Merchant through the Automated Clearing House (ACH) Network into a bank account(s) designated by Merchant. In the event Merchant receives funds that are later charged back or were credited in error, Merchant authorizes ReSubmitIt to off-set any future payments or debit Merchant’s bank account for such amount.
5. For payment of Services, Merchant authorizes the ReSubmitIt processor to electronically debit or paper draft a separate Fee posted by the Merchant and/or agreed to by the check writer. The Fee shall not exceed the maximum applicable state mandated fee.
6. Merchant agrees to post notices supplied to Merchant by ReSubmitIt at all point of sale locations at all times and/or print the notice supplied by ReSubmitIt on invoices and/or stamp checks to notify Merchant’s customers that in the event their check is returned, they have authorized Merchant to electronically or by paper draft collect the Returned Check amount and also collect a Fee.
7. Services are not designed to guarantee check payment to Merchant in any manner. ReSubmitIt is acting as a data processor and not as an insurer. Merchant is responsible for establishing its own check acceptance procedures to minimize risk of the acceptance of fraudulent checks or insufficient fund checks. ReSubmitIt does not warranty the collection or validity of any Returned Checks. ReSubmitIt may amend the terms of this Agreement at any time by giving Merchant ten (10) days prior notice of such change.
8. In the event Merchant decides to discontinue Services, ReSubmitIt shall be allowed ninety (90) days to complete any in-process check recovery services under the terms of this Agreement.
9. In the event Merchant receives direct payment from a Customer for a Returned Check and the Fee, Merchant agrees to promptly remit payment of the Fee to ReSubmitIt.
10. ReSubmitIt shall notify Merchants by mail and return all Returned Checks if they are ineligible for representment, or have exhausted all representment attempts, unless Merchant has elected to use secondary collection services and items are eligible for such service. ReSubmitIt reserves the right at its sole discretion, without notice or reason, to refuse to process any transaction submitted by Merchant and/or discontinue Services to Merchant.
11. Merchant shall indemnify and hold harmless ReSubmitIt, its subsidiaries, and service providers and their respective officers, directors, employees and agents from and against any claims, damages, actions, costs or expenses (including reasonable attorneys’ fees and costs) for any third party claims resulting from or arising out of the Services provided by ReSubmitIt and its service providers under this Agreement, except to the extent that such claims result from or arise out of the gross negligence or willful misconduct of ReSubmitIt or its service providers.
12. ReSubmitIt shall not be responsible for delays in receipt of Merchant information, processing of Merchant information, Merchant’s failure to properly enter and/or transmit information, and/or Merchant’s failure to properly notify its customers or obtain proper authorization. IN NO EVENT SHALL RE\$UBMITIT BE LIABLE FOR ANY ERRORS, OMISSIONS, DELAYS, OR LOSSES UNLESS CAUSED BY RE\$UBMITIT’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN NO EVENT SHALL RE\$UBMITIT BE LIABLE FOR INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES EVEN IF RE\$UBMITIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL CLAIM, LOSS OR DAMAGE. The foregoing limitation of liability and exclusion of certain damages shall apply regardless of the success or effectiveness of other remedies. Merchant agrees that ReSubmitIt’s cumulative liability under this Agreement shall be limited to the amount of fees Merchant has paid to ReSubmitIt during the three months prior to the date of notice of the initial claim.
13. Any dispute between Merchant and ReSubmitIt shall be settled by submitting the matter to binding arbitration, pursuant to the rules of the American Arbitration Association. Any arbitration proceedings will occur in Charlotte, North Carolina, Mecklenburg County. The laws of the state of North Carolina shall govern this Agreement without regard to its conflict of laws principles.