

ISO AGENT # \_\_\_\_\_



“EXPRESSCHECK 21 AGREEMENT”

FOR OFFICE USE ONLY:

C/N INFORMATION: C/N MID Number \_\_\_\_\_ New C/N \_\_\_\_\_ or Change Info \_\_\_\_\_

Business (C/N) Name \_\_\_\_\_ Corp \_\_\_ Sole Prop \_\_\_ Partnership \_\_\_ Years in Business \_\_\_

DBA/Location Name \_\_\_\_\_ Contact E-Mail: \_\_\_\_\_

Physical Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_ Zip \_\_\_\_\_

Mailing Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_ Zip \_\_\_\_\_

Web URL \_\_\_\_\_ Federal EIN # \_\_\_\_\_ State EIN # \_\_\_\_\_

Telephone \_\_\_\_\_ Fax \_\_\_\_\_ # of Locations \_\_\_\_\_ DUNS # \_\_\_\_\_

C/N Contact: \_\_\_\_\_  
Name Title Phone # Ext.

C/N Alternate Contact Email Address: \_\_\_\_\_

**Owner / Officer / Partner**

(1) Name \_\_\_\_\_ % Ownership \_\_\_\_\_ SSN# \_\_\_\_\_ Birth Date \_\_\_/\_\_\_/\_\_\_ Drivers License # \_\_\_\_\_ State \_\_\_\_\_

(2) Name \_\_\_\_\_ % Ownership \_\_\_\_\_ SSN# \_\_\_\_\_ Birth Date \_\_\_/\_\_\_/\_\_\_ Drivers License # \_\_\_\_\_ State \_\_\_\_\_

**Business Credit References (U.S.)**

Business Name (1) \_\_\_\_\_ Contact \_\_\_\_\_ Title \_\_\_\_\_ Phone # \_\_\_\_\_

Business Name (2) \_\_\_\_\_ Contact \_\_\_\_\_ Title \_\_\_\_\_ Phone # \_\_\_\_\_

**Include Copy of Voided Check:** ABA # \_\_\_\_\_ Acct.#. \_\_\_\_\_

Interface Method  Host-to-Host  SPS WEB Platform

Scanner Supplied by:  Customer  ISO  SPS

Scanner Desired:  Digital Check CX-30  TS-230 / 240 Ink-Jet

Deploy Scanner to:  Customer  ISO  SPS

**PROCESSING – PLEASE INCLUDE 2 MONTHS OF BANK STATEMENTS**

C/N shall, prior to origination of any transactions, provide SPS via wire transfer or ACH credit, with a non-interest bearing reserve deposit equal to \$ \_\_\_\_\_ and thereafter \_\_\_\_\_ % reserved out of each batch settlement as a deposit against C/N default during the term of the Agreement. Such reserve shall be refunded in full less any unpaid chargebacks, fees, or penalties not later than ninety (90) days following the last transaction originated by SPS on behalf of C/N.

**GENERAL FEES**

Setup / Annual Fee: \$ \_\_\_\_\_

Gateway Fee: \$ \_\_\_\_\_ / mo

Monthly Minimum: \$ \_\_\_\_\_

**IRD's (IMAGE REPLACEMENT DOCUMENTS)**

**TRANSACTION INFORMATION:** Est # Items per Month: \_\_\_\_\_ Avg \$ Amt / Item \$ \_\_\_\_\_ Max Item Amt \$ \_\_\_\_\_

**FEE SCHEDULE:** (1) Per Item = \$ \_\_\_\_\_ + \_\_\_\_\_ % Settlement Timing: \_\_\_\_\_ Business Days

**FEE SCHEDULE:** (2) Per Regular Return = \$ \_\_\_\_\_ (3) Per Stop Pay / Unauth Return = \$ \_\_\_\_\_ (4) Per Adjustment = \$ \_\_\_\_\_

\_\_\_\_\_ Initials

# TERMS AND CONDITIONS

This document sets out the terms and conditions governing the agreement between the Service Provider (SPS) Secure Payment Systems, its officers, employees, affiliates, licensees and agents, the Originating Depository Financial Institution (F/I), and the Business Customer (C/N) named on page One of this Agreement:

**WHEREAS:** C/N desires SPS, and SPS agrees, in conjunction with F/I to provide IRD processing (Image Replacement Document, as outlined in U.S.C. §§ 5001 et seq, as amended and related regulations (“Check21”), IRD (Image Replacement Document, as outlined in Check21), Automated Clearing House (ACH) and other services to C/N as indicated on page one of this Agreement. If SPS is to process transactions through SPS’ Banking Relationship, transactions will be placed through SPS as a third party originator of Origination Depository Financial Institution (“ODFI”) Transactions. SPS will send all transactions through an ODFI in accordance with the terms of this Agreement, the Operating Rules of the National Automated Clearing House Association (“NACHA”) and the applicable Federal Regulations governing ACH transactions and IRD checks. C/N understands that a violation of any NACHA rules may result in fines issued by NACHA for said violations and said fines will be passed on to C/N. C/N agrees to comply with SPS’ or F/I’s reasonable requests for record retention and signature authorization if and when necessary. C/N grants to F/I, SPS, or its designees the right to audit these authorizations and record retention compliance at reasonable expense to C/N. C/N agrees that each entry shall in no way breach any Federal, State, or local statute or regulation pertaining to and for electronic funds transfers, including the Electronic Funds Transfer Act, Regulation E, Check 21, and all such other laws and regulations. (“Rules and Regulations”).

## 1.0 – INTENTIONALLY LEFT BLANK

## 2.0 - C/N’s RESPONSIBILITIES

**2.1 Regulatory Compliance.** C/N will use its best efforts, and will bear the final responsibility to ensure that C/N’s policies and procedures meet the requirements of the Rules and Regulations pertaining to IRD type transactions. C/N is encouraged to consult C/N’s counsel regarding the compliance of authorization and payment procedures whenever there is any doubt about compliance. It is understood that SPS must comply with all rules and regulations governing IRD transactions. C/N must pass strict regulatory compliance in both the U.S. and wherever elsewhere domiciled as such is contemplated by any and all U.S. and foreign Bank Secrecy Acts, Money Transmitter Licensing, Check Cashing Licensing (including but not limited to behaving as an aggregator of check cashers), et al. C/N must provide ample and reasonable evidence of passing any and all audits in a successful manner.

**2.2 Submitting Entries.** While this Agreement is in effect, C/N is authorized to use any certified data processing system to capture transaction data and images for subsequent direct or indirect transmission or retransmission to SPS. The use of any of system other than one provided directly by SPS is done solely at C/N’s own risk. C/N can transmit electronic entries and check 21 images on a 24 hour daily basis though SPS shall only settle transactions of that given day where such are received prior to 5pm eastern standard time.

**2.3 Representations.** C/N represents and warrants with respect to all entries that EACH check is an unaltered, single party check, share draft, money order, cashier’s check, or U.S. Treasury check in its original form, drawn on a U.S. domiciled financial institution, properly signed and dated, and payable in U.S. dollars directly to the individual whose name is listed as Payee. C/N agrees that the Payee must show sufficient identification in order to execute the transaction that is contemplated. C/N agrees to defend, indemnify, and hold SPS and all its agents, as well as F/I, harmless for any losses, liabilities, legal action, costs or expenses SPS or F/I incurs as a result of any breach of these representations and warranties either intentionally or unintentionally by C/N. C/N shall cease initiating Entries immediately upon receiving actual or constructive notice of the termination or revocation by the check writer of authority.

**2.4 Identifying Numbers.** SPS and F/I may rely solely on identifying routing and account numbers of checks drawn on U.S. banks, including but not limited to checks drawn on the U.S. Treasury. C/N will indemnify SPS and F/I for any losses, liabilities, costs, or expenses SPS or F/I suffers or incurs as a result of incorrect data supplied by C/N.

**2.5 Settlement and Hold Period Requirements.** C/N agrees that SPS or F/I may require C/N to maintain a minimum balance in C/N’s settlement account. C/N agrees that SPS or F/I may require an increase in this amount, or an extension of the hold period as a condition of C/N’s continued service. C/N authorizes SPS or F/I to create a reserve in C/N’s name to cover any liabilities that may arise. S/P and F/I have the right to increase the amount of this reserve.

## 3.0 - DEBIT AUTHORIZATION

C/N hereby authorizes F/I, if contracted, and S/P or its designees, to initiate debit and/or credit entries to C/N’s bank account in accordance with this agreement. S/P’s and F/I’s authority will remain in full force and effect until either (a) 90 days after S/P and F/I have received written notification from C/N of the termination of this agreement, to provide S/P and F/I reasonable opportunity to act upon any outstanding liabilities; or (b) all obligations of C/N to S/P and F/I that have arisen under this agreement have been paid in full, including, but not limited to, those obligations described in this agreement.

**3.1 SPS’ Responsibilities.** Submitting entries - Entries shall be submitted to SPS by C/N by using S/P’s web site or third party software utilizing supported equipment as provided or outlined by SPS. Entries received by SPS by 5:00 PM EST shall be processed the same day.

**3.2 Accepting Transactions.** SPS is responsible for accepting and processing only those entries that have been received in a proper format and on a timely basis.

**3.3 Originating Transactions.** SPS will use the information provided by C/N to create properly formatted files and, if contracted, to originate C/N’s entries through the Federal Reserve System using the F/I as originator. C/N understands that SPS or F/I may reject C/N’s entries for any reason permitted or required in the Rules and Regulations or, if at the sole discretion of either SPS or F/I either such party determines that processing such files or entries represents an undue risk of loss or reputation to either such party or themselves. C/N also understands that any entry may be rejected by SPS or its origination may be delayed if the entry would cause SPS to knowingly violate any Federal Reserve or other regulatory risk control program or any law or regulation. At C/N’s request, SPS will make reasonable efforts to reverse or delete an entry, but SPS will have no responsibility for the failure of SPS or any other person or entity to comply with C/N’s request. All requests MUST be in writing and faxed, delivered or mailed to SPS.

**3.4 Returned Entries.** SPS will apply returned entries, invalid entries, or monetary adjustments dues as a result of erroneous data capture, to C/N’s account when they are received. All returns will be processed and available through SPS’ web site or such third party processor (DP) acting as intermediary between C/N and SPS.

### 3.5 Settlement and Finality.

(a) If SPS originates the files, SPS will settle all entries after the pre-established hold period to C/N’s designated depository account, normally up to five (5) business days after the date the transactions are initially transmitted to the F/I or on a schedule agreed to in writing and made a part of this agreement or at SPS’ or F/I’s discretion.

(b) Returned Entries Beyond Settlement: C/N agrees to honor ALL return entries and permit debiting from C/N’s settlement account. In the event there are not sufficient funds in C/N’s account to cover C/N’s obligations under this Agreement, C/N agrees to pay SPS the amount of the deficiency on demand in immediately available funds. SPS may, as a last resort, hold or net settle transactions and or debit any account maintained by C/N to recover returned transactions. In all cases, a charge back that fails to clear C/N’s account shall have a fee of \$250 debited against C/N’s account.

### 3.6 Intentionally Left Blank

**3.7 Limits of SPS’ and F/I’s Liability.** SPS will be responsible for SPS’ performance in processing check 21 IRD transactions, which shall not include remotely created checks/drafts, as a Third Party Service Provider of IRD transactions or as a software or systems vendor in accordance with the terms of this Agreement, and the Rules and Regulations. SPS and F/I do not accept responsibility for errors, acts or failures to act of others, including other entities, banks, communications carriers or clearing houses through which entries may be originated or SPS or F/I receives or transmits information, and no such entity shall be deemed SPS’ or F/I’s agent. Neither SPS nor F/I shall be responsible nor bear any loss, liability or delay caused by fires, earthquakes, wars, civil disturbances, power surges or failures, acts of government or God, labor disputes, failures in communication networks, legal constraints or other events beyond SPS and F/I’s control. Notwithstanding anything to the contrary herein, in no event shall SPS’ liability under this Agreement exceed the total amount of fees paid to SPS by Subscriber pursuant to this Agreement during the preceding twelve months.

## 4.0 - OTHER TERMS AND CONDITIONS

**4.1 Payment.** C/N or C/N’s data capture processor (DP) shall pay SPS for the activities of C/N for fees and expenses pursuant to the price and payment terms set forth on page one of this agreement. Fees and expenses will be billed monthly, or as agreed to as per a rider to this agreement, and C/N authorizes SPS to electronically debit any of C/N’s bank accounts. In the event DP fails to make payment to SPS, C/N agrees that such fees may be deducted from SPS settlement funds due C/N. If SPS is settling funds directly to DP on behalf of C/N then C/N agrees that amounts owed by DP to SPS, for fees or chargebacks, may be offset against settlement amounts due DP or C/N.

**4.2 Term and Cancellation.** This Agreement shall have an initial term of twelve months and shall thereafter automatically renew for successive one year terms unless otherwise terminated by either party by providing thirty (30) days advance written notice prior to the end of the initial term or any renewal term. C/N agrees that during the initial term and any renewal term F/I shall, without notice, have the sole unrestricted right to terminate the Agreement and origination of C/N’s entries where continued processing of such entries are deemed by F/I at its sole discretion to represent transactions of undue risk and reputational harm. C/N agrees that during the initial term and any renewal term that SPS be the exclusive provider of Check21 image processing services and that neither C/N nor any directly controlled entity or subsidiary shall use any other third party service provider for the services contemplated hereunder.

\_\_\_\_\_ Initials

**4.3. Limited Warranty.** SPS WARRANTS THAT SPS OWNS ALL INTELLECTUAL PROPERTY RIGHTS NECESSARY TO GRANT THIS LICENSE, AND SPS INDEMNIFIES C/N AGAINST ANY CLAIMS FROM THIRD PARTIES THAT C/N DOES NOT HAVE THE RIGHT TO USE SPS' PRODUCT OR SERVICE. SPS ALSO WARRANTS THAT ITS SOFTWARE, PRODUCTS AND SERVICES WILL PERFORM IN ACCORDANCE WITH THE FOLLOWING DOCUMENTATION. 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 C/N OR TO ANY THIRD PARTIES DEALING WITH C/N EVEN IF SPS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**4.4 Limitation of Actions.** No action or proceeding arising out of this Agreement may be brought by C/N more than one year after the cause of action is discovered. C/N agrees to indemnify and defend SPS and F/I against any and all claims or actions against SPS or F/I due to any action or inaction of C/N.

**4.5 Independent Contractors.** SPS, F/I, DP, and C/N 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.

**4.6 Arbitration.** C/N agrees that for any claim, dispute, or cause of action brought by C/N against SPS that resolution will be via binding arbitration using a qualified representative of the American Arbitration Association in Las Vegas, Nevada. SPS reserves the right to file a cause of action against C/N in any venue or jurisdiction it deems appropriate and shall be entitled to recover attorneys' fees if it prevails.

**4.7 Notice.** All notices required or permitted to be given shall be deemed sufficient if sent by fax, email, or U.S. mail and received at the addresses set forth herein.

**4.8 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 F/I or DP selected by C/N in the course of services under this Agreement are exclusive property of SPS 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 C/N. Furthermore, Public Law 106-102 limits the disclosure by financial institutions and their affiliates of nonpublic personal information relating to consumers. SPS agrees that all information received by SPS from C/N or DP or any other sources on behalf of F/I or C/N relating to individual consumers or customers of C/N 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 C/N. SPS agrees to maintain the confidentiality of all such information to the same extent that C/N and F/I is required to maintain it under Public Law 106-102 (15U.S.C. § 6801, et seq.) and applicable regulations. This provision shall survive the termination of this Agreement.

**4.9 Modification, Term, and Termination.** SPS will notify C/N in writing at least thirty (30) days ('Advance Notice') in advance of the Effective Date of any modifications to this Agreement. Use of the SPS services by C/N after the Effective Date of such modifications (ie. the expiration of the 'Advance Notice') shall serve as evidence to SPS and acceptance by SPS and C/N of the modifications. Any termination will not affect either party's rights or obligation arising before the termination.

**4.10 Damage Waiver.** SPS will not be liable to C/N 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.

**4.11 Entire Agreement.** This Agreement makes up the entire agreement between SPS and C/N concerning SPS' IRD processing and settlement services. If any provision of this Agreement is deemed unenforceable, the remaining provisions shall remain enforceable. There are no third party beneficiaries of this Agreement. C/N means each C/N named on this IRD Services Processing Agreement and any and all other parties as the contract requires. If there is more than one C/N named on the Processing Agreement, each and every so named C/N is bound by the signing thereof. This Agreement includes all of the terms and conditions on pages 2 through 3 of this Agreement and has been executed on behalf of and by the authorized management of each party as of the date written below in multiple copies each being effective as an original. C/N acknowledges, accepts, and agrees to be bound by all terms & conditions, even if not provided or shown such at the time C/N executes this Agreement, and that the absence of viewing such therefore does not invalidate or create a waiver or breach of this Agreement. In connection with this application and approval thereof, Subscriber, and the guarantors below, collectively by their signatures hereto, authorize SPS or its agents to procure investigative consumer reports and understand that such report may contain information about personal financial stability, background, character, and reputation.

**4.12 Acceptance.** This Agreement and schedule is governed by Nevada Law and not binding on SPS until accepted by SPS at SPS' processing office in San Diego, California.

Signature of C/N Officer \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_ Printed Name \_\_\_\_\_  
Residence Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip \_\_\_\_\_ Phone: \_\_\_\_\_

The officer(s) signing here have the authority to execute this Agreement containing pages 1-3 in its entirety with SPS.

**BINDING CONTRACT.** This contract shall be binding on the parties only upon execution by an authorized representative of SPS.

Authorized SPS Signature \_\_\_\_\_ Date \_\_\_\_\_ Name Printed \_\_\_\_\_

**PERSONAL GUARANTY** – The undersigned jointly and severally, hereby unconditionally guaranty, without deduction or diminution by reason of Counterclaim, offset, or defense, and in accordance with all terms and conditions, the prompt and complete payment and performance of the Agreement including any and all modifications, addendums, and amendments thereof. The undersigned warrant and guaranty that the Agreement has been properly executed, and agree that this guaranty shall be of full force and effect irrespective of any invalidity or unenforceability of the Agreement or any provisions thereof. The undersigned hereby waive notice of acceptance hereof, all notices of any kind to which we may be entitled, and all defenses of a guarantor or surety. The obligation and liability of each of the undersigned is direct, continuing, and unconditional, and SPS shall not be required to proceed against C/N or resort to any other right, remedy or security before proceeding against the undersigned under this guaranty. Service may be affected over the Guarantor by service on C/N and mailing of the summons and complaint by SPS to C/N. Subscriber and any guarantor hereby waive any and all rights to a trial by jury and agree to the venue and jurisdiction of any court SPS may choose. The undersigned warrant that they have read the Agreement that is hereby ratified and confirmed, and agree that only the full payment and performance of the Agreement can discharge the undersigned's liability hereunder.

**Guarantor (1) Signature** \_\_\_\_\_ **Guarantor (2) Signature** \_\_\_\_\_

**Guarantor (1) Printed Name** \_\_\_\_\_ **Guarantor (2) Printed Name** \_\_\_\_\_

**Social Security Number (1)** \_\_\_\_\_ **Social Security Number (2)** \_\_\_\_\_

**Guarantor (1) Street Address** \_\_\_\_\_ **Guarantor (2) Street Address** \_\_\_\_\_

**Guarantor (1) City/State/Zip** \_\_\_\_\_ **Guarantor (2) City/State/Zip** \_\_\_\_\_

**Guarantor (1) Date Signed** \_\_\_\_\_ **Guarantor (2) Date Signed** \_\_\_\_\_

**Witnessed By:** \_\_\_\_\_ **Witnessed By:** \_\_\_\_\_