

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

**SECURE** payment systems  
**achXPRESS™ ELECTRONIC FUNDS TRANSFER AGREEMENT**

MID # \_\_\_\_\_

By this Electronic Funds Transfer Agreement ("Agreement"), between **Secure Payment Systems, Inc.** ("SPS") and the undersigned ("Subscriber"), the parties mutually agree that this Agreement is effective on the later of \_\_\_\_\_, 201\_\_ or the effective date of this Agreement and applies to those electronic transactions transmitted by Subscriber to SPS for the initiation of ACH debits and credits to consumer and business demand deposit accounts resulting from legitimate business transactions properly authorized by the party to be debited or credited and conducted in compliance with all local, state, federal, and Uniform Commercial Code statutes.

**SERVICE PROVIDED TO:** CORP \_\_\_ LLC \_\_\_ SOLE PROP \_\_\_ PARTNERSHIP \_\_\_ # Years in Business \_\_\_ Fed Tax ID # \_\_\_\_\_

DBA \_\_\_\_\_ Contact Name: \_\_\_\_\_

Address \_\_\_\_\_ Phone Number: ( ) \_\_\_\_\_ Fax # ( ) \_\_\_\_\_

City/State/Zip \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

Services / Products \_\_\_\_\_ WebSite Address: \_\_\_\_\_

Officer/Owner/Partner:

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

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

**A. Fees** - Subscriber agrees to be debited electronically for fees due SPS on or about the 10th of each month for services rendered the previous month:

1. \$ \_\_\_\_\_ per electronic debit or credit      2. \$ \_\_\_\_\_ per "normal" return      3. \$ \_\_\_\_\_ per R7,8,10,29 return      4. \_\_\_\_\_ % per transaction value

5. \$ \_\_\_\_\_ start-up WEB server license fee      6. \$ \_\_\_\_\_ monthly transaction minimum (comprised of A.1)      7. \$ \_\_\_\_\_ monthly WEB server gateway fee

**B. Designated Depository Account** (Two Months Bank Statements Required)

Bank Name \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Contact \_\_\_\_\_ Phone \_\_\_\_\_

Bank Routing/Transit # \_\_\_\_\_ Bank Account # \_\_\_\_\_

**C. Business Credit References**

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

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

**D. Estimated Transaction / Batch Submission Volumes**      a. Maximum individual transaction \$ \_\_\_\_\_      b. Maximum # transactions / day \_\_\_\_\_

c. Maximum total \$ per day \$ \_\_\_\_\_      d. Maximum total \$ per month \$ \_\_\_\_\_      e. Average transaction amount \$ \_\_\_\_\_

**Reserve Funds:** Subscriber agrees that SPS shall be entitled to an initial reserve of \$ \_\_\_\_\_ payable in advance by money order, cashiers check, or business check. Thereafter SPS shall on a daily basis reduce financial settlement by an amount equal to \_\_\_\_\_ % of the face value processed and shall maintain such reserve based on a rolling 90 days processing as a deposit against Subscriber default during the term of the Agreement. Subsequent to termination, but not more than 180 days later, Subscriber shall be entitled to a refund of any such withholding provided all fees, charge backs, penalties (if any), and service charges have been successfully debited against Subscriber's designated depository account. Amounts not successfully debited against Subscriber's designated account will be deducted from the reserve and thereby reduce any balance due Subscriber as a refund.

**AGREEMENT**

By signature below, Subscriber hereby authorizes its financial institution to accept and process credits and debits initiated by SPS or its Originating Depository Financial Institution on the above designated depository account. Subscriber understands that this authorization shall remain in effect unless revoked in writing upon the mutual consent of the parties, but that Subscriber may not revoke such authorization during any period that electronic transactions are being cleared by SPS, nor for a period of 60 days following electronic transmission of a final electronic transmission. Subscriber understands that Subscriber must notify SPS of any change in (a) ownership or (b) designated depository account and that absent sufficient, advance written notice amounts credited or debited to Subscriber subsequent to any such change may be subsequently held by SPS until a determination is made regarding true and correct ownership of the transaction Entries in question. 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.

**This Agreement includes all of the terms and conditions on the reverse side (or if not on the reverse then on a separate document) 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.** Subscriber acknowledges, accepts, and agrees to be bound by all terms & conditions, even if not provided or shown such at the time Subscriber executes this Agreement, and that the absence of viewing such therefore does not invalidate or create a waiver or breach of this Agreement, and that Subscriber can find the most current form of this Agreement's respective terms and conditions online at [www.securepaymentsystems.com](http://www.securepaymentsystems.com).

**Accepted By:**

Subscriber Signature \_\_\_\_\_ Date \_\_\_\_\_ Authorized Signature for ACH debit \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_ Printed Name \_\_\_\_\_ Title \_\_\_\_\_

**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 Subscriber 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 Subscriber and mailing of the summons and complaint by SPS to Subscriber. 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's Signature \_\_\_\_\_

Guarantor's Signature \_\_\_\_\_

Guarantor's Printed Name \_\_\_\_\_

Guarantor's Printed Name \_\_\_\_\_

Social Security Number \_\_\_\_\_

Social Security Number \_\_\_\_\_

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

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

Sales Agent Name \_\_\_\_\_

SPS Mgmt Signature \_\_\_\_\_

Definitions – For purposes of this Agreement,

“**Entry**” means any order or request complying with the requirements of the Operating Rules of the National Automated Clearing House Association (“NACHA”) for (i) the deposit of money to the deposit account of a Receiver (“Credit Entry”), (ii) for the payment of money from the deposit account of a Receiver (“Debit Entry”), (iii) for a zero dollar entry, and (iv) for a DNE or ENR entry (as defined in the NACHA Rules) which in any such case is transmitted via the ACH network. “**Charge back**” means any electronic debit returned for non-payment by the maker’s financial institution. “**Designated Depository Account**” means that financial depository account of Subscriber to which SPS will credit electronic check transaction data and from which SPS will debit amounts due for fees, Charge backs, and penalties, if any.

**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 1 year and thereafter shall automatically renew for successive 1 year 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 and Rates:** 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. If the charges for Subscriber’s debit entries are less than the monthly minimum fee, then the minimum shall apply. 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. SPS reserves the right, without notice, to offset fee’s due SPS against daily settlements due Subscriber.

**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 that will be added to the subsequent invoice. Without prejudice to its rights in paragraph 1, SPS reserves the right to suspend its performance to Subscriber 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.

**4. Authorization** - Subscriber agrees that it will only request SPS to initiate debits for services requested by and provided to Customers of Subscriber which are made in accordance with Automated Clearing House rules and regulations. These rules and regulations stipulate that an initiator of an electronic debit may only do so when the Customer has given expressed written authorization for a stipulated amount and frequency. Such authorization shall either (a) be stored by Subscriber in electronic digital, retrievable media, (b) be stored by Subscriber in oral retrievable media, or (c) be transmitted by the Customer to Subscriber in a format provided by SPS prior to any such electronic debit being initiated and shall be delivered to SPS prior to any such request for electronic debit via (1) fax transmission or (2) electronic mail with image attachment or (3) first class U.S. mail. Subscriber shall deliver to SPS such authorization within 3 business days of when so requested.

**5. Charge Backs / Reserve Account / Right of Offset** - Unless a warranty service is being provided by SPS and such warranty is not excluded by the terms of Addendum A – Warranty Exclusions, Subscriber otherwise agrees that an electronic debit that fails to post (“charge back”) against a Customer account shall be the sole responsibility and liability of Subscriber. Such liability shall include administrative fees, if any, assessed for handling electronic returns. Subscriber agrees that SPS may debit Subscriber’s financial account for (a) service fees as noted below and (b) charge backs against which Subscriber had already received credit. In the event Subscriber’s financial account is overdrawn, then Subscriber agrees to a \$100 service fee per failed item and the sum of such charge backs and service fees shall, at the discretion of SPS, be either debited against any future sums due Subscriber by SPS or in the alternative, be offset against a Subscriber “reserve” account. Subscriber agrees that SPS shall have no obligation to either credit Subscriber or debit Customer accounts on behalf of Subscriber during any period in which Subscriber is in default, including but not limited to Subscriber being in an overdrawn position against which SPS cannot recover fees due it for services as provided herein.

## **6. Performance and Conditions of Service**

**6.1** 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 thereto, 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 (c) any applicable federal and state laws and regulations (including but not limited to the Fair Credit Reporting Act and Regulation E when and where they apply, and (d) any laws, regulations or rules promulgated after the Effective Date and applicable to the Service. Subscriber agrees to receive the Service as provided by SPS and shall perform its obligations hereunder in accordance with the terms and conditions of the Agreement and any amendments thereto.

**6.2** 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 by agreeing to reprocess the data at a later date.

**6.3** Notwithstanding any other provision of this Agreement or any ACH processing agreement entered into by Subscriber with any third party, 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.

**6.4** Subscriber will promptly review any reports, Entries or other communications submitted 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 date that Subscriber receives a statement of account or other report of activity, Subscriber will be solely liable for any and all losses or other costs associated with any erroneous or unauthorized transfer and Subscriber will hold SPS, its agents, and its affiliates harmless.

**7. Processing Authority** – SPS shall be responsible for electronically transmitting Subscriber’s customer transaction data, drawn on U.S. domiciled financial institutions, within 24 business hours to the SPS ACH origination processor. Such electronic transmission shall consist of debits (sale transactions) and where permitted, credits (void / credit transactions) properly requested and authorized by Subscriber. SPS shall use best efforts to electronically credit Subscriber’s designated depository account within three (3) business days of batch transmission requests made Monday through Friday (excluding bank holidays). Such electronic credit shall consist of the net amount due Subscriber for the given batch due to be settled. 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 debit Subscriber’s designated depository account, or any other account so designated by Subscriber, a \$25 processing fee for any electronic debit due SPS by Subscriber which is not paid by Subscriber’s financial institution upon presentment. Subscriber agrees that SPS may hold and / or offset funds due Subscriber in the event (a) fees electronically debited by SPS and due SPS for performing the Service on behalf of Subscriber fail to clear Subscriber’s designated depository account or (b) SPS and / or its ACH origination processor, in their own discretion, either together or individually, detect transaction activity that may represent an undue risk of loss or liability to SPS or the ACH origination processor.

**8. Compliance** – 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.

**9. 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 (c) each Entry is in all other respects properly authorized.

**10. 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 9 above; (b) any incorrect information provided to SPS by Subscriber hereunder; or (c) 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. 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. 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 quarter. Subscriber shall treat all information in connection with this Agreement as confidential and certifies to utilize such information only for originating business transactions as defined herein.

**11. Other** - 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. 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. 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. 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. In order to maintain high levels of service, conversations with Subscriber may be monitored without further notice or disclosure. 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. 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. Subscriber agrees that any claim, dispute, or cause of action brought by Subscriber against SPS will be resolved 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 Subscriber in any venue or jurisdiction it deems appropriate and shall be entitled to recover attorneys’ fees if it prevails.