

**ELECTRONIC “CHECK CONVERSION” ADDENDUM**

By this Electronic “Check Conversion” Addendum (“Addendum”), the following terms are added to or modify that Services Agreement (“Agreement”) by and between Secure Payment Systems, Inc. (“SPS”) and the undersigned (“Subscriber”), having a federal tax identification # \_\_\_\_\_:

**1. Electronic Check Transactions** - This Addendum is effective on the later of \_\_\_\_\_, 201\_\_ or the effective date of the Agreement and applies only to the location whose designated depository account is shown below for which point-of-purchase (POP) authorization is requested by Subscriber for the conversion of paper-based checks to electronic or image based debits.

**2. Definitions** – For purposes of this Agreement,

- (a) “**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.
- (b) “**Chargeback**” means any paper or electronic check returned for non-payment by the maker’s financial institution for which a warranty is not being honored by SPS due to an exclusion as defined under either Section 6 of the Services Agreement or Section 6 herein.
- (c) “**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, Chargebacks, and penalties, if any.

**3. Fees** – The fees shown and agreed to on the Services Agreement to which this Addendum is attached shall prevail except that the network access fee is revised in its entirety to \$.20 per electronic access, which shall include batch closing requests, and if a non guarantee transaction (verification or otherwise) then a fee of \$1.00 per return item will also apply. SPS may debit the designated account of Subscriber directly without further authorization for the purpose of causing payments due to SPS to be received. SPS may additionally pursue all other lawful means of collecting funds due it from Subscriber.

**4. Owner / Partner / Officer Information**

Owner/Partner/Officer (1) Name _____	% Ownership _____	SSN # _____	Drivers License # _____	State _____
Owner/Partner/Officer (2) Name _____	% Ownership _____	SSN # _____	Drivers License # _____	State _____

**4a. Business Credit References**

Business Name (1) _____	Contact _____	Title _____	Phone # _____
Business Name (2) _____	Contact _____	Title _____	Phone # _____

By my signature below, I (Subscriber) hereby authorize my financial institution to accept and process credits and debits initiated by SPS or its Originating ACH Processor on the depository account shown on the Service Agreement to which this Addendum is attached. I (Subscriber) understand that this authorization shall remain in effect unless revoked in writing, but, that I (Subscriber) may not revoke such authorization during any period that electronic check transactions are being cleared by SPS, nor for a period of 30 days following electronic transmission of a final electronic check authorization. I (Subscriber) understand that I (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.

**5. Performance and Conditions of Service**

**5.1** SPS agrees to provide the Service to Subscriber in accordance with (a) the terms and conditions of this Addendum, 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, 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 each apply, and (d) any laws, regulations or rules enacted after the Effective Date and applicable to the Service. Subscriber agrees to the Service as provided by SPS and shall perform its obligations hereunder in accordance with the terms and conditions of the Services Agreement as amended. In connection with this application and approval thereof, by Subscriber’s signature below, owners / partners 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.

**AGREEMENT**

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) or obtain such by email to SPS upon request.

<b>Accepted By:</b> _____	<b>SECURE PAYMENT SYSTEMS, INC.</b>
Subscriber	
_____	_____
Printed Name	Title
_____	_____
Signature	Date
_____	_____
	Printed Name
	Title
	_____
	Signature
	_____

**5.2** 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 as Subscriber may accept paper based checks in lieu of electronic checks. SPS shall have no liability under this section for circumstances contemplated in section 9 (ii) of the Services Agreement.

**5.3** 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.

**5.4** Subscriber will regularly and 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 shall hold SPS, its agents, and its affiliates harmless.

**6. Limited Warranty** – In addition to those warranty terms and conditions noted in Section 6 of the Services Agreement, additional warranty exclusions also apply with respect to “point-of-purchase” electronic check transactions covered under this Addendum: warranty does not apply where the paper check is a business check (where such is not payable directly to Subscriber in the ordinary course of business, or where such item is a payroll check except where such service specifically includes the warranty of payroll checks drawn on legitimate business accounts, or where the phone number of the business is not entered into the transaction and/or printed on the check, or where both the front and back side of the check are not imaged when so prompted by the pos device, or where the most current version of a pos terminal program permitting electronic conversion of business checks or non-convertible ACH items as certified by SPS is not properly downloaded into the pos terminal, or where such front and backside check images of a given transaction are not transmitted to SPS within 2 business days, even if such images were properly captured by the imaging device), where the check is not drawn on a United States domiciled financial institution, where the paper check is drawn on a credit card account, where the paper check is issued by a federal, state, county or local governmental authority, where the account holder is not present in order to concurrently sign both the paper check and electronic debit authorization receipt, where the check is post-dated, where the check writer refuses to sign the printed authorization receipt, where Subscriber cannot produce the printed authorization receipt in the event an imaged receipt cannot be recovered, where Subscriber refuses to keep prominently posted in conspicuous places the point-of-sale decals provided by SPS, where one or more checks are being held pursuant to a Retail or Motor Vehicle Payday Addendum, where the check is issued in connection with a Verification (non-warranty) transaction, where the check is made payable to “CASH”, where an approved electronic check transaction is subsequently voided, where the check is part of a batch that is not closed by Subscriber within two (2) business days of the date and time of the check in question, where Subscriber has accepted the equivalent of a cash payment (e.g. cash, money order, cashier’s check, or cleared paper check) on a previously dishonored electronic check, where Subscriber fails to reprocess an electronic check transaction following an SPS authorization operator approval (and consequently fails to put the approved transaction into the terminal batch), where the check is issued in connection with a PAYDAY Loan transaction, or where Subscriber does not use a check imager and, upon notification by SPS of a dishonored electronic debit, fails to provide SPS with the actual paper check or facsimile thereof within 5 business days of when so requested. Warranty also does not apply where Subscriber performs an electronic check authorization and additionally deposits the consumer’s paper check, where SPS has reason to believe that Subscriber or its employee(s) has acted fraudulently, or where the Entry is not properly authorized according to the NACHA Operating Rules. For Subscribers requesting SPS to perform electronic debits based upon telephone, mail order or Internet/Web authorizations warranty does not apply when Subscriber (a) fails to obtain and archive the consumer’s written or taped oral consent, or in the case of an Internet transaction, positive confirmation, prior to any such electronic debit and (b) fails to provide the consumer’s full name, address, and home telephone number to SPS within 5 business days of being notified by SPS of a failed ACH debit.

**7. Processing Authority** – Subscriber agrees that SPS has no responsibility for transmitting ACH data unless Subscriber has properly closed an “electronic check” batch within 48 hours of the first transaction in the batch. Provided Subscriber has done so properly, SPS shall be responsible for electronically transmitting Subscriber’s consumer transaction data within 24 hours to the SPS ACH origination processor. SPS shall use best efforts to electronically credit Subscriber’s designated depository account within two (2) business days of a successful batch closing request. Such electronic credit shall consist of the net amount due Subscriber for the given batch due to be settled. Subscriber agrees and consents to the debiting of its designated depository account in the event a consumer debit is returned unpaid by the consumer’s financial institution for which a warranty exclusion is applicable pursuant to either Section 6 of the Services Agreement or Section 6 above. 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 check or 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.

**8. Charge Back Rights** – Subscriber agrees without further recourse that SPS may debit Subscriber’s designated depository account, or any other account as Subscriber may designate in writing from time to time, in the event a paper check or electronic check that has been paid or credited to Subscriber by SPS is subsequently dishonored for warranty due to a warranty exclusion as defined under either Section 6 of the Services Agreement or Section 6 herein.

**9. 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.

**10. 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.

**11. 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 10 above; (b) any incorrect bank account or other 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.

**12. Reporting** – At no cost to Subscriber, SPS will provide along with its monthly invoice (Statement of Services) a monthly reconciliation summarizing daily “electronic check” batch activity including but not limited to sales, voids, credits, and charge backs resulting in daily net deposit activity.

**13. Exclusivity** – During the term of this Agreement, and any extension thereto, Subscriber agrees that SPS shall be the exclusive provider of the Service to Subscriber and that Subscriber will not directly or indirectly utilize any service offered by another provider that is similar or analogous to the Service offered by SPS hereunder.

**14. Definitions and Conflicts** - All terms not specifically defined in this Addendum shall have the same meaning as in the Agreement. In the event of a conflict between the terms of this Addendum and the Agreement, then this Addendum shall control.