

ISO AGENT # _____



“EXPRESSCHECK 21 AGREEMENT”

FOR OFFICE USE ONLY:

C/N INFORMATION: C/N ID Number _____ Service Center _____ 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.
Owner/Partner (1) Name: _____	% Ownership _____	SSN # _____	Drivers License # _____ State _____
Owner/Partner (2) Name: _____	% Ownership _____	SSN # _____	Drivers License # _____ State _____

Business Credit References

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

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

Service Requested [] ARC (Accounts Receivable Conversion) or [] ARC-IRD (Accounts Receivable Conversion with Integrated IRD Image Replacement Document for Non-Consumer check processing) or [] IRD only

Scanner Supplied by: [] Customer [] Bank [] ISO [] SPS

Scanner Desired: [] Magtek MICR-Imager (Single-Sided) [] TS-230-65 Ink-Jet
[] Magtek Excella STX (Dual-Sided) [] TS-350 Ink-Jet

Deploy Scanner to: [] Customer [] Bank [] ISO [] SPS

Account Exec/Salesperson: _____ Email: _____

PROCESSING – PLEASE INCLUDE 2 MONTHS OF BANK STATEMENTS

F/I as Originator [] C/N ABA No. [] Acct. No. [] or S/P as Originator []

GENERAL FEES

C/N Client Setup Fee: \$ Gateway Fee: \$ _____ per location Scanner Fee: \$

Monthly Minimum: \$ Private Labeling Fee: \$ Annual Software License Fee: \$

ACCOUNTS RECEIVABLE CONVERSION (ARC)

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

FEE SCHEDULE FOR TRANSACTIONS: Fee Per ARC Item \$ Fee Per Returned ARC Item (NSF, etc.) \$

IRD's (IMAGE REPLACEMENT DOCUMENTS)

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

FEE SCHEDULE FOR TRANSACTIONS: Fee Per Presented IRD \$ Fee Per Returned IRD (NSF, etc.) \$

_____ Initials

TERMS AND CONDITIONS

This document sets out the terms and conditions governing the agreement between the Service Provider (S/P) EFT Network, Inc., its officers, employees, affiliates, licensees and agents, the Financial Institution (F/I) Secure Payment Systems, and Customer of Financial Institution (C/N) named on page One of this agreement:

WHEREAS: C/N desires S/P, and S/P agrees, in conjunction with F/I to provide ARC (Accounts Receivable Conversion), ARC & IRD (Accounts Receivable Conversion & 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 S/P is to process transactions through S/P’s Banking Relationship, transactions will be placed through S/P as a third party originator of Origination Depository Financial Institution (“ODFI”) Transactions. S/P 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 S/P’s or F/I’s reasonable requests for record retention and signature authorization if and when necessary. C/N grants to F/I, S/P or its designees the right to audit these authorizations and record retention compliance at reasonable expense to C/N.

If F/I originates on behalf of C/N, F/I agrees to comply with, and instruct C/N regarding the applicable most recent NACHA operating rules and 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 - SPECIFIC ARC (ACCOUNTS RECEIVABLE CONVERSION) - IRD (IMAGE REPLACEMENT DOCUMENT) GUIDELINES

The following items must be specifically adhered to in conducting an Accounts Receivable Conversion (ARC) program but may not constitute all of the rules governing NACHA’s ARC program. Only checks drawn on Consumer Accounts qualify for ARC. Only checks initiated by an invoice or statement and mailed to the recipient, then mailed in for payment or dropped off at a payment location, are eligible for ARC. The check writer must be informed on each invoice or statement that their check WILL be electronically deposited. Suggested verbiage is as follows: “If you pay by check, your check will be electronically deposited unless you pay by Non-Consumer check, such as a Corporate Check, Money Order, Credit Card Check, Travelers Check, or other checks of a Non-Consumer nature.” NACHA requires an Opt-Out option for consumers not wishing to participate in an ARC program, in which case these checks will have to be processed as Non-Consumer checks. Checks of a Non-Consumer nature or checks unable to be processed as ARC items will be processed as IRD’s. Please see [Appendix](#) for detailed information as to the S/P’s User Manual and Notification and Opt-Out language requirements. C/N is responsible for adhering to the foregoing guidelines.

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 ACH transactions or IRD type transactions. S/P is very concerned that C/N remains compliant with the Rules and Regulations regarding ACH and other types of 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 S/P must and will comply with all rules and regulations governing ACH or IRD transactions.

2.2 Submitting Entries. While this agreement is in effect, C/N is authorized to use any of S/P’s applicable systems to process or transmit transactions to S/P. The use of any of S/P’s system is solely at C/N’s own risk. C/N can transmit electronic entries on a 24 hour daily basis.

2.3 Representations. C/N represents and warrants with respect to all entries that: (a) EACH check writer has authorized the debiting and/or crediting of his, her, or its account, (b) EACH entry is for an amount agreed to by the check writer, and (c) EACH entry is in accordance with the Rules and Regulations and properly authorized in all other respects. C/N agrees to defend, indemnify, and hold S/P and all its agents, as well as F/I, harmless for any losses, liabilities, legal action, costs or expenses S/P 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. S/P and F/I may rely solely on identifying numbers provided by C/N to determine the bank account and other information with respect to a check writer even if the numbers identify a bank or account holder different from the one C/N has identified by name. C/N will indemnify S/P and F/I for any losses, liabilities, costs, or expenses S/P 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 S/P or F/I may require C/N to maintain a minimum balance in C/N’s settlement account. C/N agrees that S/P 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 S/P 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 S/P’s Responsibilities. Submitting entries - Entries shall be submitted to S/P by C/N by using S/P’s web site or S/P’s PC based software utilizing supported equipment as provided or outlined by S/P. Entries received by S/P by 5:00 PM EST shall be processed the same day.

3.2 Accepting Transactions. S/P 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. S/P will use the information provided by C/N to create properly formatted files and, if contracted, to originate C/N’s entries through the ACH. C/N understands that S/P may reject C/N’s entries for any reason permitted or required in the Rules and Regulations. C/N also understands that an entry may be rejected by S/P or its origination may be delayed if the entry would cause S/P to knowingly violate any Federal Reserve or other regulatory risk control program or any law or regulation. At C/N’s request, S/P will make reasonable efforts to reverse or delete an entry, but S/P will have no responsibility for the failure of S/P 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 S/P.

3.4 Returned Entries and NOC’s. S/P will apply returned entries to C/N’s account when they are received. All returns will be processed and available through S/P’s web site or S/P’s proprietary software or by other means as agreed to by S/P, F/I and C/N.

3.5 Settlement and Finality.

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

(b) Returned Entries Beyond Settlement: Return entries not honored by C/N will be guaranteed to S/P by F/I and debited 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 S/P the amount of the deficiency on demand in immediately available funds. S/P may, as a last resort, hold or net settle transactions and or debit any account maintained by C/N to recover returned transactions. Any Credit Entries that C/N creates will be debited from C/N’s account in accordance with the hold period prior to the credit being distributed to C/N’s payees’ accounts. In the event the Debit Entry is returned for any reason, the Credit Entries will be canceled due to the unavailability of funds.

(c) Lockbox: C/N’s account will be credited after a pre-agreed hold period, which allows sufficient time for as many returns to be received by S/P as possible before settlement.

3.6 Reports. S/P will provide detailed reports of all funds transfers collected as a result of any and all funds transfers. Monthly transaction reports will be delivered to C/N by email, Fax, U. S. Mail, or on-line reporting via the Internet.

3.7 Limits of S/P’s and F/I’s Liability. S/P will be responsible for S/P’s performance in processing ACH services as a Third Party Service Provider of ODFI transactions or as a software or systems vendor in accordance with the terms of this Agreement, and the Rules and Regulations. S/P 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 S/P or F/I receives or transmits information, and no such entity shall be deemed S/P’s or F/I’s agent. S/P and F/I shall not 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 S/P’s and F/I’s control.

4.0 - OTHER TERMS AND CONDITIONS

4.1. Payment. F/I shall pay S/P for the activities of C/N and C/N shall make payment to F/I 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 rider to this agreement, and C/N authorizes F/I or S/P to electronically debit any of C/N's bank accounts held by F/I. Amounts not collected thirty-one days after billing will accrue interest at the rate of 1.5% per month beginning on the thirty-first day after billing until paid in full and C/N agrees to pay S/P or F/I a \$25.00 fee for any debits to C/N's account which are not honored.

4.2. Term and Cancellation. This Agreement shall have an initial term of twelve months and shall thereafter automatically renew unless terminated by 90 days notice.

4.3. Limited Warranty. S/P WARRANTS THAT S/P OWNS ALL INTELLECTUAL PROPERTY RIGHTS NECESSARY TO GRANT THIS LICENSE, AND S/P INDEMNIFIES F/I AGAINST ANY CLAIMS FROM THIRD PARTIES THAT F/I DOES NOT HAVE THE RIGHT TO USE S/P'S PRODUCT OR SERVICE. S/P ALSO WARRANTS THAT ITS SOFTWARE, PRODUCTS AND SERVICES WILL PERFORM IN ACCORDANCE WITH THE FOLLOWING DOCUMENTATION. S/P MAKES NO WARRANTY (OTHER THAN ABOVE), EXPRESSED OR IMPLIED, AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. S/P SHALL HAVE NO LIABILITY WITH RESPECT TO S/P'S OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR ANY DAMAGES OTHER THAN DIRECT DAMAGES TO F/I OR TO ANY THIRD PARTIES DEALING WITH F/I EVEN IF S/P 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 S/P, F/I or C/N more than one year after the cause of action is discovered. C/N agrees to indemnify and defend S/P and F/I against any and all claims or actions against S/P or F/I due to any action or inaction of C/N.

4.5 Independent Contractors. S/P, F/I, 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. All disputes between the parties arising out of this Agreement shall be submitted to binding arbitration, under the commercial arbitration rules of the American Arbitration Association. Venue for any arbitration proceedings initiated by One Party (Plaintiff) shall be in the county or local jurisdiction of the other, opposing party (Defendant). The arbitrators award may be entered in any court having jurisdiction of the parties. Any award may include attorneys fees and costs.

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 S/P prepares, or any confidential information that might be given to F/I in the course of S/P's services under this Agreement, are S/P's exclusive property and shall remain in S/P's possession on S/P's premises. Under no circumstances shall any such information or documents be removed without S/P's prior written consent. S/P may advise potential users of the services that S/P has with F/I. Furthermore, Public Law 106-102 limits the disclosure by financial institutions and their affiliates of nonpublic personal information relating to consumers. S/P agrees that all information received by S/P from F/I or any other sources on behalf of F/I relating to individual consumers or customers of F/I is confidential and shall not be used or disclosed by S/P except to carry out the purpose for which it was disclosed to S/P, in the ordinary course of business to carry out such purpose. Without limitation, S/P shall not copy such information or disseminate it to any other party other than S/P's employees actually and necessarily engaged in the performance of this Agreement without the express written consent of F/I. S/P agrees to maintain the confidentiality of all such information to the same extent that 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. S/P may advise potential users of the services that S/P has with F/I and/or C/N upon receipt of written approval from both to do such.

4.9 Modification, Term, and Termination. S/P will notify F/I and C/N in writing at least ninety (90) days ('Advance Notice') in advance of the Effective Date of any modifications to this Agreement. Use of the S/Ps services by F/I and/or C/N after the Effective Date of such modifications (ie. the expiration of the 'Advance Notice') shall serve as evidence to S/P and acceptance by F/I and/or C/N of the modifications. Any termination will not affect either party's rights or obligation arising before the termination.

4.10 Damage Waiver. S/P will not be liable to F/I or 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. S/P 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 S/P and C/N concerning S/P's ACH, IRD or software 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 ARC-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 1 through 3 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. C/N acknowledges that it can find the most current form of this Agreement's respective terms and conditions online at www.securepaymentsystems.com or obtain such by email to F/I upon request.

4.12 Acceptance. This Agreement and schedule is governed by New York Law and not binding on S/P until accepted by S/P at S/P's processing office in Westchester, New York.

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 S/P on behalf of the C/N.

Signature of F/I Officer _____ Title _____ Date _____ Name Printed _____

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

BINDING CONTRACT. This contract shall be binding on the parties only upon execution by an authorized representative of S/P.

Authorized S/P Signature _____ Date _____ Name Printed _____

Sales Agent _____	Sales Agent # _____	S/PI/D# _____	CR _____	% _____
S/P A/D _____	Date ____/____/____	By _____		
Percentage _____	MD# _____	Rule Set# _____	Note: This entire Section for S/P office use only.	

Appendix A
USER MANUAL
AND
NOTIFICATION AND OPT-OUT LANGUAGE

A1. **REFERENCE AGREEMENT:** This Appendix 'A' is made to reference and attach to an Agreement, titled "MERCHANT ARC-IRD SERVICES PROCESSING AGREEMENT", between S/P, F/I and C/N as named on the front of this Agreement.

A2. **USER MANUAL:** By reference, S/P has established the attached form of User Manual which includes operational instructions, guidelines, rules and regulations, etc. which are to be followed by the F/I and C/N in the use of the ARC-IRD check scanning and conversion program. This document(s) is authored by S/P, and shall be furnished by S/P to F/I for re-branding or as directly furnished by S/P to C/N in conjunction with specific check scanner equipment deployed by the S/P to F/I or C/N. F/I acknowledges that it will use the most recent updated version of this document as issued from time to time by S/P.

A3. **NOTIFICATION LANGUAGE AND OPT-OUT LANGUAGE:** The following is information that F/I and/or C/N shall use in order to comply with NACHA requirements concerning Notification and Opt-out language to C/N's consumer customers for use with NACHA's ARC check conversion program:

A3.1 Requirements Necessary to convert Consumer Checks to Electronic NACHA - ARC items:

NACHA's ARC program is a very effective payment processing system, requiring that everyone follow some simple rules. The primary rules are (1) that a Consumer be provided with **NOTIFICATION** that their personal/consumer check is going to be converted (a definitive statement, not an 'if' or 'may') and (2) an **OPT-OUT** provision, if the Consumer does NOT want their personal/consumer check converted. Therefore, if the following language is incorporated in the C/N's invoices, these requirements will be met: (If any adjustments are desired, please contact S/P for review)

"Payments received by check will be electronically deposited, unless you pay by non-consumer type check. You may opt out of this conversion program by paying with a money order or a travelers check."

The C/N should note that all non-consumer type checks will be processed as Check 21 IRD's (as a Check 21 type item), which requires **NO** Consumer notification or opt-out provisions whatsoever.

A3.2 Requirements Necessary to electronically Re-Present Returned items or to electronically recover a State Allowed NSF Fee:

The banking rules also require that the C/N provide their consumer customer with **NOTIFICATION** that any of their returned payments are subject to electronic re-presentation. The following language will fulfill this requirement, and can be added to the above language if the C/N is going to electronically re-present returned items:

"In the unlikely event your check (payment) is returned unpaid, we may elect to electronically (or by paper draft) re-present your check (payment) up to two more times."

Furthermore, in the event that the C/N also wishes to electronically recover a state allowed NSF fee, the banking rules require that authorization be secured from the C/N's consumer customers. This authorization may take a variety of forms, depending on the particulars of how the C/N engages their consumer customers. At a minimum, the following will fulfill this requirement. F/I and/or C/N can contact S/P to discuss further details.

"You also understand and agree that we may collect a return processing charge by the same means, in an amount not to exceed that as permitted by state law."

END OF APPENDIX 'A'