

# SECURE POS VENDOR ALLIANCE, LTD. MEMBERSHIP AGREEMENT

This MEMBERSHIP AGREEMENT (“Agreement”) is entered into between Secure POS Vendor Alliance, Ltd. (“SPVA”), a Delaware non-stock corporation, and the undersigned (“Member”).

Member agrees to be a Member of SPVA on the following terms and conditions:

## 1. MEMBERSHIP

- 1.1 Class of Membership.** Subject to the terms and conditions of this Agreement and the Bylaws, Member agrees to be a Member of SPVA in the class designated on the signature page of this Agreement. Member’s assignment to a class is subject to meeting the qualifications for membership in the class and confirmation by the SPVA Board of Directors.
- 1.2 Qualifications.**
  - 1.2.1 Founding Members.** There shall be three Founding Members: The Ingenico SA (“Ingenico”), Hypercom Corporation (“Hypercom”) and VeriFone Holdings Inc. (“VeriFone”).
  - 1.2.2 General Members.** General Membership shall be open to any individual, firm, partnership, corporation, unincorporated association, or governmental body whose primary focus is the development of secure POS payment terminals.
  - 1.2.3 Associate Members.** Associate Membership shall be open to any individual, firm, partnership, corporation, unincorporated association, or governmental body who has products or solutions that interact with secure POS payment terminals.
- 1.3 Support for Mission.** During the term of its membership in SPVA, the Member will support the purposes of SPVA and use reasonable efforts to cooperate with the Technical Working Groups.
- 1.4 Member Benefits.** The Member shall be entitled to the benefits provided by this Agreement and the Bylaws. The Member shall be entitled to participate in SPVA membership meetings, to receive materials disseminated to the Member, to access World Wide Web pages maintained by SPVA, and to the other benefits of the applicable class of membership, as determined by the SPVA Board of Directors or as specified in the Bylaws.

- 1.5 Use of Name.** The Member may publicly disclose that it is a Member of SPVA. However, the Member may not identify any product or service as being sanctioned by, sponsored by or associated with SPVA, or compliant with any specification, standard, guideline, or best practice developed by a SPVA Technical Working Group or adopted by the SPVA, unless in accordance with policies and procedures which may be established by SPVA. SPVA shall have the right to include the Member's name in any lists of Members published by SPVA and to announce that the Member has joined SPVA. Upon acceptance, Members will be required to share their company logo with the SPVA, for use on the SPVA website as well as other SPVA promotional material.
- 1.6 Designated Representative.** The Member acknowledges and agrees that it and its Affiliates shall be treated for all purposes as one Member, entitled to one vote on all matters upon which the Member is entitled to vote. Any Member that is an entity acknowledges and agrees that it shall designate a single, natural person to serve as its Designated Representative, who shall represent the Member and its Affiliates interests. Member may, at any time, remove or change the Designated Representative, provided that the Member promptly notifies SPVA of such change.

## **2. OBLIGATIONS OF MEMBERS**

- 2.1 Bylaws.** The Member has reviewed, hereby approves and agrees to abide by the Bylaws. Terms used in this Agreement have the same meaning as when the same terms are used in the Bylaws.
- 2.2 Dues and Other Fees.** The Member shall pay dues, fees and other assessments applicable to its class, as established from time to time by the SPVA Board of Directors. Dues within a class shall be nondiscriminatory. The SPVA Board of Directors may establish reasonable additional fees or charges for participation in meetings or for other benefits of membership.
- 2.3 Compliance with Laws.** The Member will comply with all applicable federal, regional, state, or local laws, statutes, ordinances, rules, regulations, judgments, decrees, requirements, orders, procedures, or public policy of any legislative, judicial, administrative, governmental, or regulatory body, agency, or other authority of any kind in any jurisdiction where the Member is acting pursuant to this Agreement. Noncompliance with this provision of the Agreement will result in termination of membership.
- 2.4 Antitrust Policy.** The Member has reviewed, hereby approves and agrees to abide by SPVA's Antitrust Guidelines. The Member also agrees to comply with all applicable antitrust laws pertaining to the Member's participation in SPVA. Noncompliance with this provision of the Agreement will result in termination of membership.

### 3. INFORMATION

**3.1 Confidential Information.** In connection with its membership or participation in SPVA's Technical Working Groups, the Member and its Affiliates may be given or have access to certain confidential information of SPVA or third parties (collectively, "Confidential Information"). Confidential Information is all information that SPVA considers confidential or proprietary information of SPVA or third party sources, regardless of whether such information is marked as such by SPVA. Confidential Information shall include, but is not limited to, information regarding the organization, operations, programs, activities, policies, procedures, practices, financial condition, trade secrets, membership lists, and standards of SPVA, its members, or third parties. Confidential Information also shall include, but is not limited to, unpublished or pre-release versions of SPVA's standards, guidelines, best practices, specifications, white papers, and other documents and information, or internal use only or limited circulation documents and information.

The Member and its Affiliates covenant and agree not to disclose or permit to be disclosed any Confidential Information, and that the Member and its Affiliates will not appropriate, photocopy, reproduce, or in any fashion replicate any Confidential Information without the prior written consent of SPVA. The Member and its Affiliates agree that any disclosure of Confidential Information in violation of this Agreement shall cause immediate and substantial damage to SPVA and to any parties that provided the Confidential Information to SPVA. The Member and its Affiliates agree to use reasonable efforts to maintain the confidentiality of the Confidential Information and agree not to use any Confidential Information for its own benefit or that of a third party unless authorized in advance in writing by SPVA. No Member or its Affiliates will be liable for the disclosure of any information that is:

- (i) in the public domain other than by the recipient's breach of a duty of confidentiality;
- (ii) rightfully received from a third party without any obligation of confidentiality;
- (iii) rightfully known to the recipient without any limitation on use or disclosure prior to its receipt from the disclosing party;
- (iv) independently developed by employees or contractors of the recipient;
- (v) disclosed as required by law;
- (vi) made public by agreement of the SPVA Board of Directors; or
- (vii) inherently disclosed in the manufacture, marketing, sale or maintenance of a product or service.

The obligations of this Section shall survive termination of this Agreement.

## 4. INTELLECTUAL PROPERTY

### 4.1 Definitions.

For purposes of this Section 4, the following terms, when capitalized, have the following meanings:

**“Accepted Letter of Assurance”** and **“Accepted LOA”** shall mean a Letter of Assurance that SPVA has determined is complete in all material respects.

**“Affiliate”** shall mean an entity that directly or indirectly, through one or more intermediaries, controls the Submitter, is controlled by the Submitter, or is under common control with the Submitter. For the purposes of this definition, the term “control” and its derivatives, with respect to for-profit entities, means the legal, beneficial or equitable ownership, directly or indirectly, of more than fifty percent (50%) of the capital stock (or other ownership interest, if not a corporation) of an entity ordinarily having voting rights. “Control” and its derivatives, with respect to nonprofit entities, means the power to elect or appoint more than fifty percent (50%) of the Board of Directors of an entity.

**“Blanket Letter of Assurance”** shall mean a Letter of Assurance that applies to all Essential Patent Claims that a Submitter may currently or in the future have the ability to license.

**“Enabling Technology”** shall mean any technology that may be used to make or use any product or portion thereof that complies with a SPVA Standard, but that is neither explicitly required by, nor expressly set forth in, the standard.

**“Essential Patent Claim”** shall mean any Patent Claim the use of which was necessary to create a compliant implementation of either mandatory or optional portions of the normative clauses of a SPVA Standard when, at the time of the standard’s approval, there was no commercially and technically feasible non-infringing alternative. An Essential Patent Claim does not include any Patent Claim that was essential only for Enabling Technology or any claim other than that set forth above even if contained in the same patent as the Essential Patent Claim.

**“Letter of Assurance”** and **“LOA”** shall mean a document, including any attachments, stating the Submitter’s position regarding ownership, enforcement, or licensing of Essential Patent Claims for a specifically referenced SPVA Standard, submitted in a form acceptable to the SPVA.

**“Patent Claim(s)”** shall mean one or more claims in issued patent(s) or pending patent application(s).

**“Reasonable and Good Faith Inquiry”** includes, but is not limited to, a Submitter using reasonable efforts to identify and contact those individuals who are from, employed by, or otherwise represent the Submitter and who are known to the Submitter to be current or past participants in the development process of an SPVA Standard identified in a Letter of Assurance, including, but not limited to,

participation in a Technical Working Group. If the Submitter did not or does not have any participants, then a Reasonable and Good Faith Inquiry may include, but is not limited to, the Submitter using reasonable efforts to contact individuals who are from, employed by, or represent the Submitter and who the Submitter believes are most likely to have knowledge about the technology covered by a SPVA Standard.

**“Statement of Encumbrance”** shall mean a specific reference to an Accepted LOA or a general statement in a transfer or assignment agreement that the Patent Claim(s) being transferred or assigned are subject to encumbrances that may exist as of the effective date of such agreement. An Accepted LOA is an encumbrance.

**“SPVA Standard”** shall mean any standard, specification and related material, as well as any product based on such documents, whether in draft or final form, developed by the SPVA, any of its Technical Working Groups, committees or subcommittees.

**“Submitter”** when used in reference to a Letter of Assurance shall mean an individual or an organization that provides a completed Letter of Assurance. A Submitter may or may not hold Essential Patent Claims.

**4.2 Copyrights of the Member.** The Member grants to the SPVA a worldwide, irrevocable, nonexclusive, nontransferable copyright license to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the contributions of the Member solely for the purposes of developing, publishing and distributing SPVA Standards.

**4.3 Trademarks.** In the event that the SPVA proposes to adopt any other name or logo as a trademark or trade name (collectively “Trademarks”), the SPVA shall notify the Member in writing of the proposal. The SPVA shall take such steps as the SPVA Board of Directors deems necessary and proper to protect its rights under such Trademarks adopted for use by the SPVA. In furtherance thereof, the SPVA Board of Directors shall establish and disseminate reasonable conditions and procedures for the licensing and use of such Trademarks, demonstrably free of any unfair discrimination among the members.

**4.4 Patents.** SPVA Standards may be drafted in terms that include the use of Essential Patent Claims. The Member and its Affiliates must disclose any proprietary interest, including patents, patent claims, or patent applications, in any Essential Patent Claims that are incorporated in a proposed SPVA Standard that SPVA adopts or is considering.

If the SPVA receives notice that a proposed SPVA Standard may require the use of a potential Essential Patent Claim, the SPVA shall request licensing assurance, on the SPVA Board approved Letter of Assurance form, from the patent holder or patent applicant. The SPVA shall request this assurance without coercion.

The patent holder or patent applicant may, after Reasonable and Good Faith Inquiry, submit a Letter of Assurance. A Letter of Assurance must contain one or more of the following:

- (a) a statement that the Submitter does not provide any assurance with respect to any actual or potential Essential Patent Claims;
- (b) a statement that the Submitter does not provide any assurance with respect to some actual or potential Essential Patent Claims (specifying which);
- (c) a statement that the Submitter is not aware of any Patent Claims that the Submitter may own, control, or have the ability to license that might be or become Essential Patent Claims;
- (c) a general disclaimer to the effect that the Submitter without conditions will not enforce any present or future Essential Patent Claims against any person or entity making, using, selling, offering to sell, importing, distributing, or implementing a compliant implementation of the standard; or
- (d) a statement that a license for a compliant implementation of the standard will be made available to an unrestricted number of applicants on a worldwide basis without compensation or under reasonable rates, with reasonable terms and conditions that are demonstrably free of any unfair discrimination. At its sole option, the Submitter may provide with its assurance any of the following: (i) a not-to-exceed license fee or rate commitment, (ii) a sample license agreement, or (iii) one or more material licensing terms. If the Submitter holds, or has applied for, more than one actual or potential Essential Patent Claim, the statement hereunder must specify the actual or potential Essential Patent Claims to which it refers.

If the patent holder or patent applicant provides a Letter of Assurance, it should do so as soon as reasonably feasible in the standards development process, and in any event prior to the SPVA Board's approval of the standard. If assurance cannot be obtained with respect to an actual or potential Essential Patent Claim (e.g., because a Letter of Assurance is not provided or the Letter of Assurance indicates that assurance is not being provided) the Technical Working Group shall reconsider the inclusion in the proposed standard of the requirement covered by the Essential Patent Claim.

The Submitter and all Affiliates (other than those Affiliates excluded in a Letter of Assurance) shall not assign or otherwise transfer any rights in any Essential Patent Claims that are the subject of a Letter of Assurance with the intent or effect of circumventing or negating any of the representations and commitments made in such Letter of Assurance.

The Member agrees that neither it nor its Affiliates will assign or transfer any intellectual property that is or may become essential to an SPVA standard that has been adopted or is being considered unless the transferee or assignee agrees to abide by the same licensing terms that govern the license of the intellectual property to the SPVA at the time of the assignment or transfer. The Submitter of a Letter of Assurance agrees to (a) provide notice of a Letter of Assurance to all assignees or transferees, either through a Statement of Encumbrance or by binding all assignees or transferees to the terms of such Letter of Assurance; and (b) require its assignee or transferee to (i) agree to similarly provide such notice and (ii) bind its assignees or transferees to agree to provide such notice as described in (a) and (b).

A Letter of Assurance shall apply to the Submitter and its Affiliates except those Affiliates the Submitter specifically excludes on the relevant Letter of Assurance.

If, after providing a Letter of Assurance to the SPVA, the Submitter becomes aware of additional Patent Claim(s) not already covered by an existing Letter of Assurance that are owned, controlled, or licensable by the Submitter or its Affiliates and that may be or become Essential Patent Claim(s) for the same SPVA Standard but are not the subject of an existing Letter of Assurance, then such Submitter shall submit a Letter of Assurance stating its position regarding enforcement or licensing of such Patent Claims. For the purposes of this commitment, the Submitter is deemed to be aware of whether any of the following individuals who are from, employed by, or otherwise represent the Submitter have personal knowledge of additional potential Essential Patent Claims, owned or controlled by the Submitter, related to a proposed SPVA Standard and not already the subject of a previously submitted Letter of Assurance: (a) past or present participants in the development of the proposed SPVA Standard, or (b) the individual executing the previously submitted Letter of Assurance.

The assurance is irrevocable once submitted and accepted and shall apply, at a minimum, from the date of the standard's approval to the date of the standard's withdrawal.

The SPVA is not responsible for identifying Essential Patent Claims for which a license may be required, for conducting inquiries into the legal validity or scope of those Patent Claims, or for determining whether any licensing terms or conditions provided in connection with the submission of a Letter of Assurance, if any, or in any licensing agreements are reasonable or non-discriminatory.

Nothing in this policy shall be interpreted as giving rise to a duty to conduct a patent search. No license is implied by the submission of a Letter of Assurance.

If prior to the adoption of an SPVA standard, a Member fails to disclose to the SPVA any intellectual property, including any actual or potential Essential Patent Claim, held by such Member or its Affiliates that is essential to such adopted

SPVA standard, then (a) the Member shall license such intellectual property to the SPVA either at no cost or upon fair, reasonable and non-discriminatory terms, and (b) with respect to each such item of intellectual property, neither the Member nor any of its Affiliates shall seek fees from more than one licensee in connection with the adoption, issuance, or implementation of an SPVA standard.

The Member agrees that no SPVA standard shall be adopted if it includes an actual or potential Essential Patent Claim that is (a) held by a Member or a Member's Affiliate and (b) the SPVA is not a licensee of that Essential Patent Claim either at no cost to the SPVA or upon fair, reasonable, and non-discriminatory terms.

The Member agrees that, in connection with the adoption, issuance, or implementation of an SPVA standard, the SPVA shall not seek fees from more than one licensee with respect to any specific item of intellectual property held by the SPVA.

In order for SPVA's patent policy to function efficiently, the Member shall inform the SPVA (or cause the SPVA to be informed) of all holders of all actual or potential Essential Patent Claims of which the Member or its Affiliates are aware and that are not already the subject of an existing Letter of Assurance.

**4.5 Ownership.** Subject to Section 4.6, the Member hereby acknowledges and agrees that the SPVA shall be the owner of any and all standards, guidelines, best practices, specifications, white papers, and other documents and information, whether in final or draft form, developed or created by a Technical Working Group (collectively, "SPVA Works"). The SPVA hereby reserves unto itself rights of every kind and nature, including but not limited to rights to trademarks, service marks, certification marks, copyrights, and any such other intellectual property related to the SPVA Works. The SPVA further reserves the right to submit a patent application as the sole owner of any patentable invention developed by SPVA, its Technical Working Groups, or any committee or subcommittee thereof. The Member shall not use the SPVA Works without prior written approval from the SPVA Board of Directors; such approval shall not be unreasonably or discriminatorily withheld. The Member hereby assigns and agrees to assign to SPVA ownership of all right, title and interest in and to all the SPVA Works, including ownership of the entire copyrights in the SPVA Works and all rights associated with the copyrights. The Member hereby agrees to execute all papers, take all actions, and provide assistance as reasonably requested by SPVA to perfect its ownership of the copyrights, patents and other intellectual property in the SPVA Works.

**4.6 No Other License.** The Member agrees that it shall continue to retain all existing rights in its own intellectual property, and no intellectual property license, immunity or other right is granted hereunder by such Member or its Affiliates to any other members or their Affiliates or to the SPVA, either directly or by implication, estoppel or otherwise, other than as set forth in this Section 4.

## 5. TERM AND TERMINATION

- 5.1 Term.** Unless terminated as provided herein, this Agreement shall remain in full force and effect, renewing annually upon the Member's payment of dues.
- 5.2 Termination by Member.** The Member may withdraw from membership by terminating this Agreement at any time upon the giving of written notice to the Secretary-Treasurer. Member shall be obligated to pay dues, assessments, or fees which accrued prior to the effective date of termination.
- 5.3 Termination by SPVA.** SPVA may terminate this Agreement on written notice, if Member breaches its obligations under this Agreement or under the Bylaws, provided SPVA shall first give Member written notice and thirty (30) days' opportunity to cure the breach. Member shall be obligated to pay dues, assessments, or fees which accrued prior to the effective date of termination.

## 6. LIMITATION OF LIABILITY/REPRESENTATION

- 6.1 LIMITATION OF LIABILITY.** IN NO EVENT SHALL ANY MEMBERS OR AFFILIATES OR SPVA BE LIABLE TO OTHER MEMBERS OR AFFILIATES OR TO SPVA FOR ANY INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 6.2 REPRESENTATION.** THE MEMBER REPRESENTS THAT IT SHALL NOT SUBMIT A CONTRIBUTION THAT IT KNOWS VIOLATES THE COPYRIGHT OR TRADE SECRET RIGHTS OF ANY OTHER MEMBER OR THIRD PARTY.

## 7. OTHER PROVISIONS

- 7.1 No Transfer.** The Member may not transfer, assign or sublicense any of its rights or obligations under this Agreement without the prior written consent of SPVA, except to its Affiliates so long as its Affiliate becomes a Member of SPVA and executes this Agreement. Any attempted transfer in violation of this Section is null and void.
- 7.2 Notice.** Notice under this Agreement may be sent to the Member at its address stated below or to its Designated Representative. Any notification made under this Agreement shall be deemed delivered on the next business day following it being sent by electronic mail, by facsimile, by express mail or by courier, or three (3) days after being sent first-class mail, postage prepaid, addressed to the Member or its Designated Representative at the address provided. Notice of a breach of this Agreement and notice of termination of this Agreement shall be given both by express mail or by first class mail, postage prepaid, and, in addition, by electronic mail or by facsimile.
- 7.3 No Joint Venture.** Nothing contained in this Agreement and no action taken by the Member shall be deemed to render the Member or its Affiliates an employee, agent or representative of SPVA or any other Member or their Affiliates, or shall be deemed to create a legal partnership, joint venture or syndicate among or between any of the Members or their Affiliates or with SPVA.

- 7.4 Compliance with Laws.** The obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, pertaining to the Member's participation in SPVA.
- 7.5 Governing Law.** This Agreement shall be governed by and construed under, and the legal relations among the parties hereto shall be determined in accordance with, the laws of the State of Delaware, excluding conflict-of-law principles that would cause the application of the laws of any other jurisdiction.
- 7.6 Severability.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, then the remaining provisions will nevertheless remain in full force and effect; and a substitute, valid, and enforceable provision most nearly reflecting the original intent shall be developed in place of the invalid provision.
- 7.7 Amendments.** This Agreement may be amended on a nondiscriminatory basis by the affirmative vote of at least two-thirds (2/3) of the SPVA Board of Directors. The Member shall be given at least thirty (30) days' prior written notice of the effective date of an amendment, and amendments shall be prospective only. A Member shall be bound by a duly adopted amendment, unless it elects to terminate this Agreement and its membership in SPVA.
- 7.8 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 7.9 Integration.** This Agreement supersedes and replaces any and all prior representations, agreements and understandings relating to the Member's membership in SPVA, except the Bylaws.
- 7.10 Authority.** The Member represents and warrants that it is authorized to enter into this Agreement. The undersigned person represents and warrants that he/she is authorized to sign this Agreement on behalf of the Member.

## **8. EFFECTIVE DATE**

This Agreement shall be effective when it is accepted by SPVA.

***[Signatures appear on the following page.]***

SPVA  
3525 Piedmont Road - Building Five, Suite 300 - Atlanta, GA 30305 - USA  
Phone: +1 404 760 4223 - Fax: +1 404 240 0998 - E-mail: [info@spva.org](mailto:info@spva.org) - Web: [www.spva.org](http://www.spva.org)

**MEMBER:**

Member Name: \_\_\_\_\_

Authorized Representative Signature: \_\_\_\_\_

Authorized Representative Printed Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

*Membership Class (Check one – see Section 1.2):*

Founding Member: \_\_\_\_\_

General Member: \_\_\_\_\_

Associate Member: \_\_\_\_\_

Check here if you don't want your contact information shared with other members

**Member ACCEPTED AND AGREED:**

**SECURE POS VENDOR ALLIANCE, LTD.:**

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

Printed Name: \_\_\_\_\_

Job Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Dated: \_\_\_\_\_

CONFIRMED AS TO THE FOLLOWING MEMBERSHIP CLASS:

\_\_\_\_\_