



MERCHANT AGREEMENT

In consideration of the mutual promises and covenants contained in this Merchant Agreement ("Agreement"), the parties agree as follows:

1. **Parties.** The parties to this Agreement are ("Bank", as marked in the Acquiring bank Disclosure on the Merchant Application), Convergence Technologies Inc dba IP Pay, an Illinois S Corporation whose address is 16W215 83rd Street, Ste D, Burr Ridge, IL 60527 ("IP PAY"), (JetPay Merchant Services, LLC whose address is 3361 Boyington Drive, Suite 180, Carrollton, TX 75006) and the Merchant set forth on the Merchant Application form to which this Agreement is attached ("Merchant").
2. **Definitions.** For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires:
 - a. **Address Verification** shall mean a service that allows Merchant to verify the home address of Cardholders with the relevant Issuer.
 - b. **Association(s)** shall mean VISA USA, Inc. ("Visa"), MasterCard International, Inc. ("MasterCard"), American Express Travel Related Services Company, Inc. ("American Express") and Discover® Network ("Discover Network").
 - c. **Authorization** shall mean an affirmative response, by or on behalf of an Issuer to a request to effect a Transaction, that a Transaction is within the Cardholder's available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions require Authorization.
 - d. **Authorization Center** shall mean the facility or facilities designated from time to time by Bank or IP PAY to which Merchant shall submit all requests for Authorization.
 - e. **Business Day** shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which banking institutions are authorized by law or executive order to be closed (and on which Bank is in fact closed).
 - f. **Card(s)** shall mean either a Visa, MasterCard, American Express or Discover Network credit card, debit card or other similar card that requires a PIN for identification purposes or pre-paid, stored-value or gift card.
 - g. **Cardholder** shall mean a Card Member or person authorized to use a Card.
 - h. **Chargeback** shall mean a Transaction that Bank returns to Merchant pursuant to this Agreement.
 - i. **Forced Sale** shall mean a sales Transaction processed without an approved electronic Authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.
 - j. **Full Recourse Transactions** shall mean mail orders, telephone orders, e-commerce (Internet) orders, Pre-Authorized Recurring Order Transactions, and other "card not present" sales.
 - k. **Issuer** shall mean a member of an Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards.
 - l. **Merchant Statement** shall mean an itemized monthly statement of all charges and credits to the Operating Account (as that term is defined in Section 9 of this Agreement).
 - m. **Mid-Qualified Transactions** shall mean: (i) key-entered retail Transactions; (ii) Visa telephone or mail Transactions without Address Verification; (iii) any MasterCard or Discover Network telephone or mail Transaction; and (iv) any Transaction designated as such by the organization designated by Bank to settle Transactions with the Associations
 - n. **Non-Qualified Transactions** shall mean: (i) any Transaction submitted for processing more than 48 hours past the time the Authorization occurred; (ii) any Transaction missing required data; and (iii) any Transaction designated as such by the organization designated by Bank to settle Transactions with the Associations.
 - o. **Normal Transaction** shall mean a Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the Card's magnetic strip and (ii) any American Express Transaction.
 - p. **Pre-Authorized Recurring Order Transactions** shall mean Transactions that have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.
 - q. **Qualified Transactions** shall mean: (i) retail Transactions in which the Card is swiped; (ii) Visa telephone or mail Transactions with Address Verification; or (iii) Transactions that are part of a special registered program approved by the Associations.
 - r. **Services** shall mean the transaction processing services provided by Bank under this Agreement.
 - s. **Transaction** shall mean the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank, whether the Transaction is approved, declined, or processed as a Forced Sale. The term "Transaction" also includes credits, errors, returns and adjustments.
3. **Merchant agrees to participate in program.** Merchant agrees to participate in the card processing services program established by Bank.
 - a. **Contact with Merchant** If Merchant elects to receive messages from IPpay, Bank, JetPay, and Card Associations regarding products, services and resources available to it, as indicated on the Merchant Application, Merchant agrees messages maybe sent by IPpay, Bank, JetPay, and Card Associations to the phone numbers, facsimile numbers, or email addresses provided by Merchant. If a wireless number is provided, Merchant agrees communications may be sent via SMS or text in addition to automated calls. Merchant may opt out of receiving messages by contacting IPpay at support@ippay.com. Opting-out will not preclude you from receiving important transactional or relationship messages from IPpay, Bank, JetPay, and Card Associations.
 - b. Merchant agrees to abide by American Express' U.S. Merchant Regulations available at <http://www.americanexpress.com/merchantopguide>.
 - c. For American Express, Merchant expressly agrees:
 - i. Authorize IPpay to submit Transactions to and receive settlement from American Express or JetPay
 - ii. Allow IPpay to to disclose Transaction Data, Merchant Data or other information to American Express and American Express may use such information to perform its responsibilities in connection with the Program, promote American Express Network, perform analytics and create reports, or for any other lawful business purpose.
 - iii. American Express may use information obtained in the Merchant Application and/or monitor merchant in connection with Card marketing and administrative purposes
 - iv. If Merchant processes over \$1 million in annual volume, Merchant may be converted to a direct processing relationship with American Express and be bound by the American Express then-current Card Acceptance agreement and American Express will set the rates and fees payable by Merchant for Card acceptance
 - v. Merchants may sell and assign future Transaction receivables to JetPay, its affiliated entities and/or any other cash advance funding source that partners with IPpay or its affiliated entities, without consent of American Express
 - vi. American Express has third-party beneficiary rights, but not obligations, to the Merchant Agreement that will fully provide American Express with the ability to enforce the terms of the Merchant Agreement against Merchant.
 - vii. They are prohibited against billing or collecting from any Card Member for any purchase or payment on the Card unless Chargeback has been exercised, the Merchant has fully paid for such Charge, and it otherwise has the right to do so.
 - viii. To remove American Express Licensed Marks from the Merchant Website and wherever else they are displayed upon termination of the Merchant Agreement or a Program Merchant's participation in the Program.
4. **IP PAY to provide services to Merchant.** During the term of this Agreement, subject to the terms and conditions of this Agreement, IP PAY agrees to provide technical documentation and support in order to allow Merchant to accept and process Transactions. IP PAY shall provide technical support and customer support for all Transactions, including, without limitation, Authorization, settlement, Chargeback processing and reporting, twenty-four hours each day, seven days each week during the term of this Agreement. IP PAY agrees to provide Merchant with the Services on *Schedule A* which are not provided by Bank, as amended from time to time by IP PAY, during the term of this Agreement, subject to the terms and conditions of this Agreement.
5. **Bank to Provide Services to Merchant.** Bank agrees to provide Merchant with the Services indicated on *Schedule A*, as amended from time to time by Bank, during the term of this Agreement, subject to the terms and conditions of this Agreement.
6. **Independent Contractor.** In the performance of its duties hereunder, IP PAY shall be an independent contractor, and not an employee or agent of Bank.
7. **Compliance with Association Rules.** Merchant agrees to comply with the bylaws, rules, regulations, policy statements and guidelines of the Associations.



8. **Term.** This Agreement shall become effective when all parties sign the Merchant Application form to which this Agreement is attached and, unless sooner terminated, shall remain in effect for a term of three (3) years. This Agreement shall renew automatically for successive terms of one (1) year each, unless any party provides written notice of termination to the other parties at least 90 days prior to the end of the then-current term. Prior to termination and regardless of the circumstances for termination, Merchant grants IP PAY a right of first refusal in connection with any proposal made to Merchant by any other merchant services provider to provide a product or service that is the same or substantially similar to any product or service offered by Bank or IP PAY and which proposal Merchant wishes to accept. Merchant shall promptly notify IP PAY, in writing, of any such proposal and if Merchant fails to provide such notice, IP PAY shall have the option to charge merchant for liquidated damages (LD), as specified in Section 38 of this Merchant Agreement. The notice from Merchant shall reasonably and sufficiently describe both the price and the non-price terms of the products and services to be offered pursuant to the proposal. Within thirty (30) days from the date IP PAY received written notice from Merchant, IP PAY may elect to exercise its right of first refusal by offering the same or substantially similar product or service on the same or more favorable price and non-price terms as that of the other merchant services provider and so notifying Merchant in writing. In the event IP PAY fails to exercise its right of first refusal with respect to any such proposal, Merchant may accept that proposal, provided, however, that IP PAY's failure to exercise its right of first refusal in any one instance shall not preclude or otherwise void or affect IP PAY's right of first refusal with respect to any other proposal. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and Merchant shall remain liable for all obligations to Cardholders and Bank incurred while this Agreement was in effect.
9. **Merchant Operating Account.** Prior to accepting any Cards, Merchant shall establish a demand deposit account at Bank, or at a financial institution approved by Bank ("Operating Account"), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant authorizes Bank to debit all amounts Merchant owes Bank or IP PAY hereunder from the Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank, through the ACH Banking Network or by a manual debit of the Operating Account. Merchant waives any claims for loss or damage arising out of any such charges or debits to the Operating Account against any other financial institution where the Operating Account is maintained.
10. **Reserve Account.** Upon, or at any time after, execution of this Agreement, Bank may establish a reserve account at Bank or any other financial institution designated by Bank "Reserve Account", for all future indebtedness of Merchant to Bank or IP PAY that may arise out of or relate to the obligations of Merchant under this Agreement, including, but not limited to, Chargebacks and fees, in such amount as Bank from time to time may determine in its sole discretion. Bank may fund the Reserve Account by deduction from payments due Merchant or a charge against Merchant's Operating Account or against any of Merchant's accounts at Bank. The Reserve Account will be maintained for a minimum of six months after the date on which this Agreement terminates or until such time as Bank determines that the release of the funds to Merchant is prudent, in the best interest of Bank, and commercially reasonable, and that Merchant's account with Bank is fully resolved. Upon expiration of this six-month period, any balance remaining in the Reserve Account will be paid to Merchant. Bank will inform Merchant in writing of any charges debited to the Reserve Account during this six-month period.
11. **Fees.** Merchant shall pay Bank and IP PAY all fees specified on *Schedule A*, as amended by Bank or IP PAY from time to time. For each Transaction, Bank or IP PAY will charge Merchant as follows:
- Actual Visa, MasterCard and Discover Network interchange and assessments, American Express wholesale fees and assessments; and/or;
 - An amount ("Merchant Discount Fees") equal to a specified percentage of the total cash price of each sales and cash withdrawal Transaction ("Merchant Discount Rate");
 - A specified amount per Transaction ("Transaction Fee"); and
 - A specified amount per Authorization ("Authorization Fee").
- The Merchant Discount Rate, Authorization Fees and Transaction Fees are set forth on *Schedule A*. The Merchant Discount Fees are based on sales, not net sales. Different Merchant Discount Rates apply to Qualified, Mid-Qualified and Non-Qualified Transactions, as shown on *Schedule A*. Merchant agrees that Bank and IP PAY will deduct Merchant Discount Fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on *Schedule A*. Merchant also agrees to pay Bank or IP PAY the amount of any fees, charges or penalties assessed against Bank or IP PAY by any Association or Issuer for Merchant's violation of the by-laws, rules, regulations, guidelines, policy statements or threshold requirements of such entities. Merchant shall pay Bank or IP PAY for any other services provided to Merchant by Bank or IP PAY and for all other fees shown on *Schedule A*, including, but not limited to monthly minimum fees, Chargeback fees and customer service fees.
12. **Billing.** All amounts Merchant owes Bank or IP PAY may be charged to the Operating Account or Reserve Account, recouped by adjustment to any credits due to Merchant, or set off against any account or property Bank or IP PAY holds for or on behalf of Merchant. Merchant agrees to maintain an account at a financial institution domiciled in the United States.
13. **Security Interest.** As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Bank a security interest in the funds held in the Operating Account and in the Reserve Account. Merchant will execute and deliver to Bank such documents, in form satisfactory to Bank, as Bank may reasonably request in order to perfect Bank's security interest in the Operating Account and Reserve Account, and will pay all costs and expenses of filing the same or of filing this Agreement in all public filing offices, where filing is deemed by Bank to be necessary or desirable. Bank is authorized to file financing statements relating to the Operating Account and the Reserve Account without Merchant's signature where authorized by law.
14. **Power of Attorney.** Merchant appoints Bank as its attorney-in-fact to execute such documents as are necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or IP PAY.
15. **Equipment.** In processing Transactions, Merchant shall use only equipment or software programs provided or approved by the Authorization Center or IP PAY ("equipment") and related equipment installed or approved by IP PAY, subject to Bank's approval, and the following additional terms:
- The equipment shall be suitable for processing the Services;
 - Merchant will provide, at Merchant's expense, suitable electric power and telephone services and will pay for any alterations to Merchant's premises required to properly locate Merchant's equipment;
 - If Merchant is using equipment, Merchant acknowledges receipt of a copy of the equipment User's Guide. Merchant will use and operate the equipment only in accordance with the equipment User's Guide; and
 - Bank will have no liability to Merchant if any installation is delayed or cannot be completed. IP PAY will not have liability to Merchant if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of IP PAY. At no time will IP PAY liability exceed the amount of fees collected or reasonably expected to be collected from merchant for this delay period.
16. **Documenting Transactions.** Merchant shall submit the following information to Bank or Bank's designee in connection with Transaction processing:
- The DBA name of Merchant (if any), name of Merchant and Merchant's address;
 - Merchant's customer service telephone number;
 - Merchant's Internet address (if applicable);
 - The Merchant Number assigned to Merchant by Bank;
 - The Card account number, validation date and/or expiration date of the Card, if one appears on the Card used to effect the Transaction;
 - Such additional information as may from time to time be required by Bank and/or the relevant Issuer

Merchant shall not submit a Transaction to Bank (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant shall not transmit any Transaction to Bank that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions. Merchant may transmit a Transaction that effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.



17. Authorization for Transactions. Merchant shall obtain Authorization for Transactions as follows:

- a. **Electronically Transmitted Transaction.** Merchant shall submit each Normal Transaction for Authorization to the Authorization Center using the equipment. The Authorization Center shall authorize or decline a Normal Transaction transmitted for Authorization and shall capture and process for Merchant the information relating to the Normal Transaction. If equipment is inoperable at the time of an Authorization request, the Transaction may be authorized by using the appropriate dial-up facility. If that case, the Transaction shall be entered as a Forced Sale Transaction, provided the approval number is also entered, and Merchant shall be subject to an additional voice or audio response unit "ARU" Authorization Fee as outlined on *Schedule A*
- b. **Full Recourse Transactions.** The following additional requirements apply to Full Recourse Transactions:
 - i. All Full Recourse Transactions are at Merchant's risk. As to each Full Recourse Transaction, Merchant warrants to Bank that the person whose name is submitted to Bank as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank may charge back the Transaction to Merchant. If Bank charges back the Transaction to Merchant: (i) Merchant shall pay Bank the amount of the Transaction, any Chargeback fee set forth on *Schedule A*, plus any Association fine or assessment; and (ii) Bank may charge all such amounts to the Operating Account or Reserve Account without prior notice to Merchant;
 - ii. All Full Recourse Transactions must be electronically authorized through the Authorization Center and, in addition to the information required in Section 16 of this Agreement, each such request for Authorization also shall include: (i) an Authorization code, if required; (ii) the Cardholder's address and Address Verification results; and (iii) in lieu of the Cardholder's signature, a notation of (A) mail order (MO), (B) telephone order (TO), (C) e-commerce order (EO), or (D) pre-authorized order (PO) on the signature line;
 - iii. If Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to Merchant a written request for this pre-authorization. This written request shall be maintained by Merchant and made available upon request to Bank. All annual billings must be reaffirmed at least once each year. Merchant shall not deliver goods or perform services covered by a pre-authorization order after receiving notification from the Cardholder that the pre-authorization is canceled or from Bank that the Card covering the pre-authorization is not to be honored; and
 - iv. Merchant shall verify Cardholder's address from the Association network. For telephone or mail order sales, Merchant shall transmit a ticket/invoice number and shall do an Address Verification to qualify for the Qualified Transaction discount rate.
 - v. High Risk Merchants are hereby notified that IPpay has Merchant automatically placed under American Express' Fraud Full Recourse Program, in writing, together with the distribution of the Merchant Agreement. High Risk Merchants include:
 - 1. Automated Fuel Dispensers (CAT Terminals) - 5542
 - 2. Cable & Other Pay Television Services - 4899
 - 3. Computer Networks/Information Services - 4816
 - 4. Drinking Places - Bars, Taverns, Night Clubs, Cocktail Lounges & Discotheques - 5813
 - 5. Information Retrieval Services (Internet Information Retrieval Services/Internet Electronic Services) - 7375
 - 6. License Massage Parlors

18. Prohibited Transactions. Merchant shall not do any of the following with respect to any Transaction:

- a. Impose a surcharge on a Cardholder who elects to use a Card in lieu of payment by cash, check or other mode of payment;
- b. Charge a Cardholder more than the amount the Cardholder would pay if payment were made by cash or check;
- c. Establish a minimum or maximum dollar Transaction amount;
- d. Obtain multiple Authorizations for amounts less than the total sale amount;
- e. Obtain Authorization for purposes of setting aside Cardholder's credit line for use in future sales;
- f. Extend credit for or defer the time of payment of the total cash price in any Transaction;
- g. Honor a Card except in a Transaction where a total cash price is due and payable;
- h. Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
- i. Transmit or accept for payment any Transaction that was not originated directly between Merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Merchant Application form to which this Agreement is attached;
- j. Honor or accept a Card as payment for any legal services or expenses arising out of or related to: (i) the defense of any crime other than a traffic violation; (ii) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or (iii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- k. Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;
- l. Redeposit a previously charged Transaction, regardless of whether the Cardholder consents;
- m. Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
- n. Use the equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;
- o. Use the equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
- p. Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
- q. Disclose any information obtained through the equipment to any person except for necessary disclosures to affected Cardholders, Bank and/or the Issuer;
- r. Add any tax to Transactions unless applicable law expressly requires that Merchant be permitted to impose a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
- s. Disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
- t. Disburse funds in the form of cash;
- u. Accept a Card to collect or refinance an existing debt;
- v. Issue a transaction credit in respect of goods or services acquired in a cash transaction which are returned; or
- w. Make any cash refund to a Cardholder who has made a purchase with a Card. All transaction credits will be issued to the same Card account number as the sale.

19. Prohibition of Furnishing Account Information. Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange Card account number information in the form of Transaction documents, carbon copies of imprinted Transaction documents, mailing lists, tapes, journal rolls or other media obtained by reason of a Card to any third party.

20. Daily Reconciliation of Transactions.

- a. **Electronically Transmitted Transactions.** Transactions will be settled on a daily basis. Bank shall deliver payment to Merchant as soon thereafter as practicable by a credit to the Operating Account equal to the reconciled summary Transaction total of all of Merchant's total summary Transactions since the previous credit. This credit will be reduced, if necessary, by: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all refunds processed on account of Cardholders during said time period; (iii) the fees and charges, including Chargebacks, Merchant owes Bank or IP PAY hereunder; (iv) all taxes, penalties, charges and other items incurred by Bank that are reimbursable pursuant to this Agreement; and (v) all applicable rates, fees and charges described on *Schedule A*.
- b. **Reconciliation of Transactions.** Merchant shall reconcile each settled Transaction within fifteen (15) days after the date on which such Transaction is submitted to Bank for payment, and shall notify Bank and IP PAY immediately of any discrepancies or errors Merchant notes as a result of such reconciliation. Neither Bank nor IP PAY shall have any responsibility or liability for Transaction-related errors or omissions that are brought to their attention more than thirty (30) days after the date on which the Transaction to which such error or omission relates is first presented to Bank for settlement.
- c. **Provisional Credit.** Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to Chargeback by the Issuer, Cardholder or Associations. Bank may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Issuer or Bank and/or IP PAY receive adequate supporting documentation from Merchant to authenticate the Transaction and mitigate Chargeback risk



21. **Adjustments and Returns.** Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall pay Bank the excess. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this Section 21. If no refund or return will be given, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction. Cardholder also must be advised in writing of any policy of Merchant that provides for no-cash refunds and in-store credit only. Merchant shall follow Association reservation/no-show policies. Merchant shall notify Cardholders in writing of this policy on all advance reservations. Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.
22. **Chargebacks.** The acceptance by Bank of any Transaction processed in accordance with the terms of this Agreement shall be without recourse to Merchant, except for: (i) Full Recourse Transactions; (ii) as otherwise indicated in this Agreement; and (iii) as follows:
- No specific prior Authorization for the Transaction was obtained from the Authorization Center, the approval number does not appear in the electronic transmittal that is maintained by Bank, or the Transaction was submitted to the Bank or IP PAY thirty (30) days or more after the date on which the goods and/or services to which the Transaction relates were purchased or leased by the relevant Cardholder;
 - The Transaction was based on a pre-authorization form and the Card on which the Authorization was based has been canceled and Merchant was so notified prior to the Transaction;
 - The Card giving rise to the Transaction was canceled and prior to, or at the time of, the Transaction, and Merchant received notice of the cancellation through the electronic terminal, in writing or otherwise;
 - The Card expired prior to the date of the Transaction or the date of Transaction was prior to the validation date, if any, indicated on the Card;
 - The information required in Sections 16 and 17(b) above was not submitted to Bank;
 - Bank or Issuer has received a complaint from or on behalf of a Cardholder stating that there is an unresolved dispute or defense to a charge (whether or not valid) between Merchant and Cardholder;
 - The Cardholder makes a written complaint to Bank or Issuer that the Cardholder did not make or authorize the Transaction;
 - A setoff or counterclaim of any kind exists in favor of any Cardholder against Merchant that may be asserted in defense of an action to enforce payment against the Cardholder in a Transaction;
 - The Transaction was made at or by a Merchant other than Merchant named in this Agreement;
 - The Transaction otherwise violates the terms of this Agreement or any other Association or Issuer bylaw, rule, regulation, policy or guideline;
 - A Transaction is charged back by an Issuer; or
 - Any representation or warranty made by Merchant in connection with the Transaction is false or inaccurate in any respect.

In any such case, Bank shall not be obligated to accept a Transaction for credit to the Operating Account. If Bank has credited the Operating Account or Reserve Account for such a Transaction, Bank may return the Transaction to the Merchant, and Merchant shall pay Bank the amount of the Transaction. Merchant agrees that Bank, without prior notice to Merchant, may (i) charge the amount of the Transaction to the Operating Account or Reserve Account; (ii) recoup the amount of the Transaction by adjustment of the credits due to Merchant; or (iii) set off the amount of the Transaction against any account or property Bank holds for or on behalf of Merchant. If Merchant disagrees with Bank's decision to charge back a Transaction, Merchant must so notify Bank in writing within 10 days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued.

Without limiting the generality of any other provision of this Agreement, if Bank or IP PAY, if IP PAY has indemnified Bank, takes legal action against Merchant for any Chargebacks or any amounts due Bank or IP PAY hereunder, Merchant shall pay the costs and attorneys' fees incurred by Bank and/or IP PAY, whether suit is commenced or not.

23. **Merchant Statement.** At least once per month, Bank shall provide Merchant with a statement (the "Merchant Statement"). All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within 30 days of the date of the Merchant Statement.
24. **Retention of Original Sales Information.** Merchant shall retain the information required by Sections 16 and 17(a) for seven years from the date of the Transaction. At the request of Bank, Merchant shall provide such information to Bank or IP PAY, as directed by Bank, within five (5) days of receipt of a request from Bank. Failure to meet such time frame or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.
25. **Recovery of Cards.** Merchant will use its best efforts to reasonably and peaceably recover and retain any Card for which Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given: (i) electronically through the equipment; (ii) by the Authorization Center through any means; or (iii) by listing on any canceled Card or restricted Card list. Merchant shall also take reasonable steps to recover a Card which it has reasonable grounds to believe is counterfeit, fraudulent or stolen.
26. **Customer Complaints.** Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Bank, Bank may terminate this Agreement. Bank reserves the right to charge Merchant reasonable fees and reimbursement on account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:
- The Cardholder's name;
 - The Card account number;
 - The date and time the Cardholder asserted the claim or defense;
 - The nature of the claim or defense; and
 - The action that Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank with this information in writing within 10 days.

27. **Confidentiality.** Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information except for necessary disclosures to affected Cardholders, to Bank, to IP PAY and to Issuers.
28. **Associations' and Issuers' Requirements.** Merchant shall comply with all bylaws, rules, regulations, policies and guidelines of the Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement. Merchant will display prominently at its place of business Card emblems and other promotional material and literature provided by Bank directly or through IP PAY. Subject to the prior written consent of Bank and upon such conditions as authorized by Bank, Merchant may use Card service marks or design marks in its own advertisement and promotional materials.
29. **Compliance with Applicable Law.** Merchant represents and warrants that it has obtained all necessary regulatory approvals, certificates and licenses to sell any product or provide any service it intends to offer, and that it is in compliance with the Telephone Disclosure and Dispute Resolution Act and the regulations of the Federal Trade Commission and the Federal Communications Commission. Merchant shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act and the Federal Equal Credit Opportunity Act, as amended.
30. **Taxes.** Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If Bank or IP PAY are required to pay any taxes, interests, fines or penalties owed by Merchant, said amount shall become immediately due and payable by Merchant to Bank or IP PAY. If excise, sale or use taxes are imposed on the



Transactions, Merchant shall be responsible for the collection and payment thereof. Bank or IP PAY shall be entitled to recover of any of said taxes paid by it on behalf of Merchant from Merchant immediately after payment.

31. **Limitation of Liability.** In addition to all other limitations on the liability of Bank and IP PAY contained in this Agreement, neither Bank nor IP PAY shall be liable to Merchant or Merchant's customers or any other person for any of the following:
- Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;
 - Any loss caused by a Transaction downgrade resulting from defective or faulty equipment regardless if owned by Bank, IP PAY or Merchant;
 - The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Bank, IP PAY or any other person for any reason; or
 - Interruption or termination of any Services caused by any reason except for failure of IP PAY to repair or replace equipment at Merchant's expense. At no time will IP PAY's liability exceed the amount of fees collected or reasonably expected to be collected from merchant for this delay period.

NEITHER BANK NOR IP PAY SHALL BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR IP PAY PURSUANT TO THIS AGREEMENT.

MERCHANT ACKNOWLEDGES THAT BANK HAS PROVIDED NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT AND THAT BANK HAS NO LIABILITY WITH RESPECT TO ANY EQUIPMENT. BANK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S OR IP PAY'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S AND IP PAY'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE OR SUPPLYING SUCH OMISSIONS IN THE WORK PRODUCT IN WHICH THEY HAVE OCCURRED.

32. **Limitation on Damages.** In no case shall Merchant be entitled to recover damages from IP PAY or Bank that exceed the fees retained by Bank and IP PAY pursuant to this Agreement during the six month period immediately prior to the event giving rise to the claim for damages.
33. **Indemnification.** Merchant agrees to indemnify and hold Bank and IP PAY harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of Bank or Bank's affiliates, IP PAY or affiliates of IP PAY) arising out of any of the following:
- Merchant's failure to comply with this Agreement;
 - Any act or omission of Merchant;
 - Merchant's failure to comply with the equipment's User's Guide;
 - Merchant's failure to comply with any bylaw, rule, regulation, guideline or policy of any Association or Issuer;
 - Merchant's failure to comply with any applicable law, rule or regulation;
 - Any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service;
 - The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;
 - Merchant's selection of an Internet service provider or other telecommunication services provider;
 - The theft of or damage or destruction to any equipment; or
 - Full Recourse Transactions, unauthorized Transactions and prohibited Transactions.
34. **Credit Investigation and Bank Auditing.** Bank may audit, from time to time, Merchant's compliance with the terms of this Agreement. Merchant shall provide all information requested by Bank to complete Bank's audit. Merchant authorizes parties contacted by Bank to release the credit information requested by Bank, and Merchant agrees to provide Bank a separate authorization for release of credit information, if requested. Merchant shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchant's financial condition. Such information shall be true, complete and accurate. [Without limiting the generality of the foregoing, Merchant shall provide to Bank and IP PAY its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement.]
35. **Termination of Agreement by Bank and IP PAY.** Bank may terminate this Agreement upon at least 30 days' prior written notice to the other parties. In addition, Bank and IP PAY jointly may terminate this Agreement without notice to Merchant under any of the below listed circumstances. Any such notice of termination by Bank is effective upon mailing.
- Any information concerning Merchant obtained by Bank is unsatisfactory to Bank in Bank's sole discretion;
 - Any act of fraud or dishonesty is committed by Merchant, its employees and/or agents, or IP PAY or Bank believes in good faith that Merchant, its employees and/or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation;
 - Chargebacks are excessive in the opinion of Bank;
 - Breach of this Agreement by Merchant;
 - Any representation or warranty made by Merchant in this Agreement is not true and correct;
 - Merchant files a petition under any bankruptcy or insolvency law;
 - Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Bank hereunder;
 - Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Bank;
 - Any insurance policy obtained by Bank, IP PAY or Merchant relating to Transactions and/or Chargebacks is cancelled or terminated for any reason;
 - (j) Merchant fails to provide financial statements suitable to Bank on request; or
 - IP PAY does not or cannot perform its duties under this Agreement and Bank determines that it is not feasible to provide to Merchant the Services contemplated by this Agreement.

Bank is not obligated to provide replacement Services if IP PAY does not or cannot perform.

Bank may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement. In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of such Transaction.

36. **Termination of Agreement by Merchant.** Merchant may terminate this Agreement upon at least 30 days' prior written notice to the other parties if Bank amends *Schedule A* pursuant to Section 39 to increase the rates, fees or charges Merchant pays hereunder, except for fees or rates that result from a pass through from an Association.
37. **Setoff.** In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank and/or IP PAY may set off any amounts due to Bank and/or IP PAY under this Agreement against any property of Merchant in the possession or control of Bank or IP PAY.
38. **Exclusivity.** Merchant shall submit, on an annual basis, not less than 75% of Merchant's total Transactions to Bank, unless Bank indicates to Merchant that it cannot or will not process that number of Transactions for Merchant. Additionally, Merchant shall provide to Bank the name and address of each other entity that Merchant elects to use to process Transactions, and copies of monthly statements from each such entity, in order to allow Bank to verify compliance by Merchant with the foregoing requirement. In the event Merchant fails to submit to Bank at least 75% of the total number of Transactions processed for or on behalf of Merchant during any twelve-month period during the term of this Agreement, Merchant: (i) acknowledges and agrees that the actual damages sustained by Bank as a result of such failure would be



difficult, if not impossible, to calculate with precision; and (ii) agrees to pay to Bank and IP PAY, as liquidated damages for such failure, an amount calculated as per Schedule A:

The obligations of Merchant under this Section 38 shall survive any termination or expiration of this Agreement

- 39. **Amendments to this Agreement.** From time to time Bank may amend this Agreement as follows:
 - a. **Amendment to Cards and/or Services.** Bank may amend or delete Cards or Services listed in *Schedule A* by notifying Merchant in writing of any such amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.
 - b. **Amendment to Fees and Charges.** From time to time, Bank or IP PAY may change all rates, fees and charges set forth on *Schedule A*. Bank or IP PAY will provide written notice to Merchant of all such amendments. Bank or IP PAY may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in the Merchant Application form to which this Agreement is attached. If notice is required, Bank or IP PAY will give written notice on the Merchant Statement or by sending separate notice by mail. All new rates, fees and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement or was sent by mail, unless Merchant terminates this Agreement in accordance with Section 36.
 - c. **Amendments to all other Provisions.** Bank may amend this Agreement in any manner other than as described in Section 39(a) or 39(b) above simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the latter of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Bank in such written notice.
 - 40. **Assignment.** This Agreement may not be assigned by Merchant without the prior written consent of Bank. Bank may assign this Agreement without limitation. Assignment of this Agreement by Bank shall relieve Bank of any further obligations under this Agreement.
 - 41. **Financial Accommodations.** Bank, IP PAY and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.
 - 42. **Waiver.** To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's rights or claims under this Agreement.
 - 43. **Cooperation.** In their dealings with one another, each party agrees to act reasonably and in good faith and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby.
 - 44. **Entire Agreement.** This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.
 - 45. **Severability.** If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.
 - 46. **Notices.** Except for notices provided by Bank to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party hereunder shall be in writing and each shall be deemed to have been properly given when (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) Business Days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed as follows:

If to BANK:	With a Copy to:
Address listed on Acquirer Discloser	IP PAY
If to IP PAY:	If to MERCHANT:
IP PAY: ATTN: Charles Wu 16W215 83 rd Street, Ste D Burr Ridge, IL 60527	Address listed on Merchant Application
- Any party may change the address to which subsequent notices are to be sent by notice to the others given as aforesaid.
- 47. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Illinois.
 - 48. **Captions.** Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.
 - 49. **No Waiver.** Any delay, waiver or omission by Bank to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.
 - 50. **Force Majeure.** The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.
 - 51. **ACH Processing.** When requested by Merchant, IP PAY will also provide ACH processing services under the terms and conditions specified in the ACH Processing Addendum at the rates specified in *Schedule A*. Merchant agrees that information supplied in this application may be used to establish a separate ACH account. If this service is requested, Merchant understands that a personal credit review may be deemed necessary and authorizes such an action. Merchant agrees that Bank and IP PAY will deduct processing fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on *Schedule A*. Merchant also agrees to pay Bank or IP PAY the amount of any fees, charges or penalties assessed against Bank or IP PAY.
 - 52. **Honoring Cards.**
 - a. Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to Visa rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchant's election is set forth in the Application.
 - b. Merchant shall not establish minimum or maximum amounts for Card sales as a condition for accepting any Card.



- c. Merchant shall not require any Cardholder to pay as a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a customer presenting a Card to pay any charge or price as a condition of sale that is not also required from a customer paying cash. However, Merchant may not, by this term, be prevented from offering discounts to customers for cash purchases.
- d. Merchant shall not engage in a Card Transaction (other than a mail order, telephone order, ecommerce or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.
- e. The Merchant may opt out of American Express Card acceptance with no impact their acceptance of other card brands

53. Important Merchant Responsibilities.

- a. Ensure compliance with cardholder data security and storage requirements.
- b. Maintain fraud and chargebacks below Association thresholds.
- c. Review and understand the terms of the Merchant Agreement.
- d. Comply with Visa Operating Regulations which can be located at <http://usa.visa.com/merchants/merchant-support/international-operating-regulations.jsp>.
- e. Comply with all other card brand operating rules, regulations or requirements which can be located at:

American Express - <http://www.americanexpress.com/merchanttopguide>

MasterCard - <http://www.mastercard.us/merchants/support/rules.html>

Discover Network – Merchant may contact IPpay at support@ippay.com for link to this card brand operating rules.

ACH/eCheck PROCESSING ADDENDUM

The Terms and Conditions governing the agreement between the Merchant named on the Application and Agreement to which these Terms and Conditions are attached and Convergence Technologies Inc, dba IP Pay, hereinafter "IP PAY", and its officers, employees, affiliates, licensees, agents and/or its Designated Service Provider/s (hereinafter Processor):

WHEREAS: Merchant desires IP Pay, and IP Pay agrees, to provide Automated Clearing House (ACH) Services as a Processor of ACH transaction data. The transactions are placed through a third party ACH processor who will send all transactions through an Origination Depository Financial Institution (ODFI). IP Pay will debit money (a Debit Entry) for purposes of collecting payments for (1) the accounts of Merchant's customers (Receivers); (2) checks returned to Merchant for non-sufficient funds (NSF); (3) Point of Sale Purchases from the accounts of Merchant's customers, and/or credit money (Credit Entry) to the Merchant's accounts, all in accordance with the terms of this Agreement, the Operating Rules (Rules) of the National Automated Clearing House Association (NACHA) and the applicable Federal Regulations (Regulations) governing ACH transaction. Entry or Entries shall mean either a Credit Entry or Debit Entry as appropriate. In order to provide ACH services according to the Rules and Regulation the parties hereto agree as follows: 1) The Merchant agrees to comply with all rules at the time each entry is initiated by the Merchant with respect to NACHA's most recent Represented Check Entry Program Guidelines and that each entry shall in no way breach any Federal, State, or local statute of regulation pertaining to and for electronic funds transfers and/or electronic check re-presentation, including the Electronic Funds Transfer Act and Regulation E, and all such other laws and regulations including the Operating Rules of NACHA.

1.0 SPECIFIC ELECTRONIC CHECK RE-PRESENTMENT/ACH GUIDELINES

1.0 The following items must be specifically adhered to in conducting electronic re-presentation but do not constitute all of the rules governing NACHA's RCK (electronic check re-presentation) program.

[A] A represented item must meet a minimum of the following eligible item requirements:

1. A check in an amount less than \$5,000.
2. A check dated 180 days or less from the day of issuance.
3. A check that has not been transmitted twice electronically - a total of 3 deposits are allowed on any check in any combination of physical or electronic presentations.
4. A check that indicates on its face that it was returned NSF, Non Sufficient Funds, Uncollected Funds, or comparable language.

[B] Merchant must notify customer of Merchant's intentions to redeposit check electronically should the check be returned:

Compliance may be in the form of:

1. Signed authorization or other recorded authorizations as prescribed by REG E.
2. Posted notice at point of sale,
3. Letter of notification informing customer of electronic redeposit and their ability to recover the original paper check.

[C] Merchant must obtain or have some kind of written authorization from the account holder when collecting a fee.

[D] Merchant must retain the original paper check for 90 days and a copy or image for 7 years.

[E] All other rules in the current NACHA Guidelines must be adhered to a copy will be supplied upon request.

1.1 Definitions. In the Agreement which follows, persons presenting checks to you for settlement are Merchant's Customer's checks presented to the automated clearing house for presentment to Merchant's Customer's bank are debits or for presentment to your bank to pay back funds previously credited are called credits; Debits and credits are called entries. The account at Merchant's bank (the settlement bank) at which the credits are offset against the debits is the settlement account, and the residual balance which is maintained in the settlement account to pay credits is called the reserve. The writing approved by IP PAY by which Merchant's customer authorizes you to process the entry electronically and to charge the state's allowable fee if the entry is returned is called the authorization. The laws and regulations governing electronic transfers and automated clearing house transactions are called rules.

2.0 MERCHANT'S RESPONSIBILITIES

2.1. Obtaining Authorizations. (a) Point-Of-Sale (P.O.S.) Entries: Merchant will obtain a signature authorization from a Customer/Accountholder prior to asking us to process an Entry (b) Return Item Entries: Merchant will obtain a signature authorization prior to asking IP Pay to charge the Customer the state's allowable fee for NSF checks. (c) Record Retention: You will comply with IP PAY's requests for record retention and signature authorization. Merchant is granting to IP PAY or our designee the right to audit these authorizations and Merchant's record retention compliance, at Merchant's expense.

2.2. Submitting Entries. (a) POS Entries: Merchant can transmit electronic entries on a 24 hour daily basis.

2.3. Representations. Merchant represents and warrants with respect to all entries we process for Merchant that: (a) EACH Customer has authorized the debiting and/or crediting of his, her, or its account and the collection of any NSF check fees, (b) EACH entry is for an amount agreed to by the Customer, (c) EACH entry is in accordance with the rules and properly authorized in all other respects. Merchant agrees to defend, indemnify, and hold IP PAY and all its agents harmless for any losses, liabilities, costs or expenses IP Pay may incur as a result of any breach of these representations and warranties. Merchant shall cease initiating Entries immediately upon receiving actual or constructive notice of the termination or revocation by the Receiver of authority (Merchant's Customer).

2.4. Regulatory Compliance. Merchant will use its best efforts, & bears the final responsibility to ensure that Merchant's policies and procedures meet the requirements of all applicable. Rules and Regulations pertaining to ACH Transactions of any kind. IP PAY is very concerned that Merchant remains compliant to the rules and regulations regarding ACH Transactions. Merchant is encouraged to consult their counsel regarding compliance of authorization and payment procedures whenever there is any doubt



about compliance. It is understood that IP PAY is solely a Data Processor and therein not required to be licensed by any Federal, State or Local government. IP PAY must and will comply with all rules and regulations governing ACH transactions.

2.5. Identifying Numbers. IP PAY may rely solely on identifying numbers provided by Merchant to determine the bank account and other information with respect to a Receiver even if the numbers identify a bank or account holder different from the one Merchant identified by name. Merchant will indemnify IP PAY and/or its affiliates for any losses, liabilities, costs, or expenses IP PAY and/or its affiliates suffer or incur as a result of all data supplied by Merchant or its affiliates.

2.6. Settlement and Hold Period Requirements. Merchant agrees that IP PAY may require Merchant to maintain a minimum balance in your settlement account. Merchant agrees that IP PAY may require an increase in this amount, or an extension of the hold period as a condition of Merchant's continued service. Merchant authorizes IP PAY to create a reserve in Merchant's name to cover any liabilities that may arise. IP Pay has the right to increase the amount of this reserve upon notice to Merchant.

2.7 SECONDARY COLLECTIONS: Merchant agrees that if the any items cannot be collected electronically (account closed, etc.) they may be sent to a third party collection agency at no charge to the Merchant. Any items that cannot be processed or collected electronically will be returned to the Merchant if the Merchant opts not to use a Secondary Collection Agency.

3.0 DEBIT AUTHORIZATION

3.0 Merchant hereby authorizes IP PAY, or its designees, to initiate debit and/or credit entries to Merchant's bank account in accordance with the banking information provided in this agreement. IP PAY's authority will remain in full force and effect until either (a) 180 days after IP PAY has received written notification from Merchant of the termination of this agreement to provide IP PAY and/or its affiliates reasonable opportunity to act upon any outstanding liabilities; or (b) all obligations of Merchant to IP PAY that have arisen under this agreement have been paid in full, including, but not limited to, those obligations described in this agreement. This obligation extends to such entries in said account concerning liquidated damages, lease, rental, or purchase agreements for P.O.S. terminals and/or accompanying equipment and/or check processing fees and/or guarantee fees. (c) Wherein Merchant is processing bankcard transactions with IP PAY and request that ACH services also be rendered, this agreement, whether signed or not, is considered legally binding on all parties involved.

3.1 IP PAY's Responsibilities. Submitting entries - Entries shall be submitted to the IP PAY by the Merchant using the Virtual Terminal, IP PAY's approved Software, or batch protocol as provided by IP PAY. Entries received by IP PAY by 3:30 PM EST shall be processed the same day.

3.2 Accepting Transactions: (a) P.O.S. Entries: IP PAY will accept any properly authorized check accepted by an approved electronic check reader/imager or other device as specified in 3.1. IP PAY is responsible for accepting and processing only those entries that have been received in a proper format and on a timely basis. (b) Returned Entries: Any entry returned to IP PAY will be re-presented by IP PAY in accordance with the rules.

3.3 Originating Transactions. IP PAY will use the information provided by Merchant to originate Merchant entries through the ACH. Merchant understands that IP PAY may reject Merchant's Entries for any reason permitted or required in the Rules and Regulations. Merchant also understands that an Entry may be rejected by IP PAY or its origination may be delayed if the Entry would cause IP PAY to knowingly violate any Federal Reserve or other regulatory risk control program or any law or regulation. At Merchants request, IP PAY will make reasonable efforts to reverse or delete an Entry, but IP PAY will have no responsibility for the failure of IP PAY or any other person or entity to comply with Merchant's request. All requests MUST be in writing and faxed, delivered or mailed to IP PAY.

3.4 Returned Entries IP PAY will apply returned Entries any of Merchants accounts when they are received. All returns will be processed and available through the Virtual Terminal, approved software, or by other means as agreed to by IP PAY and Merchant.

3.5 Settlement and Finality. IP PAY will settle all entries as follows: (a) P.O.S. Settlement: Entries received prior to IP PAY's cut off time of 3:30 PM EST on any banking day (as defined by the Federal Reserve) will be credited to Merchant's settlement bank the following banking day, or after the hold period, at IP Pay's discretion. (b) Settlement of Returned Entries: Entries not honored by Merchant's customer's bank will be debited from Merchant's settlement account. After the entries have been successfully recovered by the re-presentment process, if service is being provided by IP PAY, IP PAY will recredit Merchant's account. (c) If any Debit Entry is returned to IP PAY, IP PAY will debit the Account for the amount of the returned item plus fees and costs incurred by IP PAY immediately or on a mutually agreed schedule. In the event there are not sufficient funds in the Account to cover Merchant's obligations under this Agreement, Merchant agrees to pay IP PAY the amount of the deficiency on demand in immediately available funds. IP PAY may, as a last resort, debit any account maintained by Merchant to recover returned transactions. Any Credit Entries that Merchant creates will be debited from Merchant account in accordance with the hold period prior to the credit being distributed to Merchant 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. (d) Re-presentment, and Lockbox – Merchant's account will be credited after a pre-agreed hold period, normally five (5) business days from the date the Return items are initially transmitted to the ACH or on a schedule agreed to in writing and made as part of this agreement. This hold period allows sufficient time for as many returns to be received by IP PAY as possible before settlement.

3.7 Limits of Our Liability. IP PAY will be responsible for IP PAY's performance in processing ACH services as a Third Party Processor of ODFI transactions in accordance with the terms of this Agreement, and the Rules and Regulations. IP PAY does not accept responsibility for errors, acts or failures to act of others, including, and among other entities, banks, communications carriers or clearing houses through which Entries may be originated or IP PAY receives or transmits information, and no such entity shall be deemed IP PAY's agent. IP PAY 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 IP PAY or its affiliates control.