# Terms and Conditions

# United States

Except as otherwise agreed in a written document signed by Convera USA, LLC, these Terms and Conditions apply to customers receiving payment processing and foreign exchange products and services provided to customers from Convera USA, LLC.

## 1. Definitions

**ACH Network (ACH):** The automated clearinghouse network operated by financial institutions as a means of transferring funds electronically in the United States in accordance with the NACHA rules.

**Additional Partial Prepayment (Margin Call/Risk Exposure Top-Up Payment):** An additional security payment required by Convera to secure Client's performance of a Forward Contract. The amount of such payment shall be determined solely by Convera and shall be based on the actual adverse foreign currency fluctuation from time to time relative to Client's original Forward Contract purchase price and/or an adverse change in Client's financial standing and/or credit worthiness.

**Affiliate:** an entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a Party.

**Authorized User:** An individual authorized by Client to access the Online Payment System or otherwise provide binding Instructions to Convera on behalf of Client.

**Beneficiary Bank:** A bank account of the Payee designated by Client for the transmission of a Payment to a Payee.

**Cancellation:** A request by Client to cancel an Instruction to transmit a payment to a Payee when the payment has not yet been released by Convera for transmission to the Payee's Beneficiary Bank.

**CFTC:** The Commodity Futures Trading Commission.

**CFTC Regulations:** Regulations promulgated by the CFTC.

**Client:** The entity entering into these Terms and Conditions with Convera.

**Client Access Methods:** The unique password(s) and user identification(s) and other security measures required to access the Online Payment System.

**Contract Funds:** Means in the case of a Standing Order Instruction, the type of currency (e.g., USD, Euro) and amount Client agrees to purchase/sell from/to Convera.

**Convera:** Convera USA, LLC

**Convera Website:** means the public website of Convera or any Convera Affiliate (or their successors} accessible through the Internet. As of the Effective Date, the primary Convera Website is located at www.convera.com.

**Customer Application:** The application submitted by Client as part of Convera's onboarding of Client as a Convera customer for the purpose of gathering information about Client, its owners, officers, managers, business, and contemplated use of the Services.

**Derivative Contract:** means a Forward, Option or swap contract.

**Draft:** A paper instrument drawn on a Convera bank account, or a bank account of a Convera affiliate or a Convera processing bank, made payable to the Payee designated by Client in an Instruction. Currencies for which Drafts are available shall be determined by Convera and may change at any time without notice to Client.

**Effective Date:** Means the date Client signs these Terms and Conditions or signs the Customer Application to which these Terms and Conditions are attached or, in the case of a modification of the Terms and Conditions posted to the Convera Website after the original Effective Date, the date of such posting.

**Forward Contract:** A foreign exchange forward contract as further described in an addendum to this Agreement to be entered into by the Parties in the event the Client wishes to enter into forward contracts.

**Holding Balances:** Client funds temporarily held by Convera as stored value for the convenience of Client pending receipt from Client of an Instruction, including Payee designation, or the same Service made available to other clients of Convera and other Convera Affiliates.

**HTH Service:** shall mean the Service whereby Convera enables Client to receive Inbound Payments or make Outbound Payments, or the same service made available to other clients of Convera and other Convera Affiliates.

**Incoming Payment**: has the meaning set forth in Section 6.

**Inbound Payment:** in connection with the HTH Service, shall mean a transfer of funds into Client's Holding Balance maintained in a particular currency from a Second Client's Holding Balance maintained in the same or a different currency.

**Initial Partial Prepayment:** A security payment required by Convera to secure Client's performance of Derivate Contract.

**Instruction (Request):** A request by Client for Convera to provide Services, including any request for Services made by email, facsimile, telephone, file transfer, a Standing Order Instruction, the Online Payment System or by other means.

**Minor Overpayment:** an overpayment of Settlement funds by a Client to Convera of up to $5 USD.

**NACHA:** The U.S. electronic payments association through which participating financial institutions and processors conduct transmission of funds via the ACH Network on behalf of senders.

**Option Contract:** a foreign exchange option contract as further described in an addendum to this Agreement to be entered into by the Parties in the event the Client wishes to enter into option contracts.

**ODFI (Originating Depository Financial Institution):** The financial institution that will serve as the originating depository financial institution as defined in the NACHA rules for any ACH Transaction authorized by Client.

**Online Payment System:** An on-line platform made available by Convera through which Client can submit Instructions, access Transaction data, and utilize the HTH Service, as well as access other features and services offered by Convera from time to time.

**Outbound Holding Payment:** in connection with the HTH Service, shall mean a transfer of funds from Client's Holding Balance maintained in a particular currency into a Second Client's Holding Balance maintained in either (1) the same currency or (2) a different currency. A transfer referred to in clause (2) shall be made pursuant to the Client's request to purchase funds of such different currency from Convera or a Convera Affiliate in exchange for funds in the Client's applicable Holding Balance.

**Party or Parties:** Individually or collectively, Client and Convera.

**Payee, Beneficiary or Receiver:** Any third party to which Client instructs Convera to deliver a payment.

**Payment:** An Outbound Holding Payment, or a payment transmitted by Convera to a Payee's bank account pursuant to an Instruction from Client, or an Incoming Payment.

**Payment Amount**: the amount of a Payment to be transmitted to a Payee in the Payment Currency as set forth in an Instruction.

**Payment Currency:** the currency designated by Client, and agreed by Convera, for transmission to a Payee.

**Recall:** A request by Client for Convera to recall a Payment that has been transmitted to a Beneficiary Bank.

**Sanction:** any trade, economic, or financial sanctions laws, regulations, embargoes, or restrictive measures administered, enacted, or enforced by an internationally recognized sanction authority including the governments and institutions or agencies of the United Nations, the United States of America, the European Union, and the United Kingdom.

**Second Client:** shall mean another client of Convera (i.e., other than Client) or another Convera Affiliate using the HTH Service to make and/or receive Payments.

**Services:** Whether in the singular or the plural, means, as applicable, the buying or selling of foreign currency, the making of payments by electronic means or via a Draft, the use of the Online Payment System, entering into a Forward Contract or other foreign exchange derivative contract with Convera, Incoming Payments, or any other Services described in any Addendum.

**Settlement:** The total amount Client owes to Convera in connection with a Transaction, less (in the case of a Forward Contract or Option Contract ) any Initial Partial Prepayment and/or Additional Partial Prepayment (Margin Call/Risk Exposure Top-Up Payment) made. If Settlement is paid to Convera electronically, Client agrees that Settlement shall not be recallable by Client without Convera's prior written consent.

**Settlement Currency:** The currency designated by Client, and agreed by Convera, as the currency for settlement from Client to Convera in connection with funding Client's payment for a Transaction.

**Site Administrator:** The individual designated by Client to access and administer the security of Client's and its Authorized User's use of the Online Payment System.

**Standing Order Instruction:** Client's Instruction to purchase/sell Contract Funds at the Target Rate within the Standing Order Effective Period, without further approval from Client.

**Standing Order Effective Period:** The time within which Client has instructed Convera to purchase or sell the Contract Funds at the Target Rate.

**Sustainable and Purchasable:** Refers to such time where the Target Rate is offered and traded in the foreign exchange markets with volume sufficient to sustain that rate level for a commercially reasonable timeframe.

**Target Rate:** The rate at which Client has instructed Convera to purchase/sell Contract Funds if and when the stipulated rate is Sustainable and Purchasable.

**Terms and Conditions or Agreement:** These Terms and Conditions and any Exhibits, Attachments, Schedules and/or Addenda as amended from time to time, shall govern the relationship between the Parties, as it relates to the ordering and delivery of the Services contemplated herein.

**Transaction :** a purchase of foreign currency or an initiation of a Payment hereunder, or a Forward Contract or Option.

**Transaction Confirmation:** An electronic notification that sets forth a confirmation number and other relevant details related to the Transaction(s) Client has directed Convera to execute.

**Transaction Date:** The date on which Convera executes an Instruction on behalf of Client as set forth in a Transaction Confirmation.

**A. Reliance on Instruction.** Client hereby authorizes Convera to accept, act and rely upon any Instruction that Convera reasonably

## 2. Conducting Business with Convera

believes to have been delivered by Client.

**B. Accuracy of Instruction.** Before transmitting an Instruction to Convera, Client shall be responsible for ensuring that all information contained in the Instruction is complete, accurate and, if in writing, legible. If Client subsequently learns of any error in an Instruction, Client must immediately notify Convera in writing.

**C. Inaccuracy of Instruction.** For Payments, if Client fails to provide a timely, complete and (if in writing) legible Instruction, Convera will place the Payment Currency in a Holding Balance pending receipt from Client of the information necessary to complete the Transaction(s), provided that Client is not otherwise in default hereunder. Convera shall not be liable for any loss or damage suffered by Client as a result of any such delay. Convera additionally reserves the right to refuse any Instruction that is incorrect, incomplete, or unsatisfactory to Convera for any reason.

**D. Transaction Processing.** Convera agrees to process Transactions for Client in accordance with Client's Instruction, subject to Section 14 and the other provisions of these Terms and Conditions. Available Payment Currencies and locations and Beneficiary Banks to which Payments may be transmitted are subject to change at any time at Convera's sole discretion. Payments may be transmitted electronically or, for certain currencies though a Draft, as indicated by Client in an Instruction. Notwithstanding anything herein to the contrary, the Parties agree that a Transaction shall be binding and final once a Transaction confirmation number has been generated by Convera. Once a Transaction confirmation number has been generated and the Instruction has been processed, Convera will transmit to Client or make available through the Online Payment System a Transaction Confirmation. Client shall notify Convera immediately, and in any event within 24 hours of Convera sending Client a Transaction Confirmation, of any error or omission in the Transaction Confirmation. If no such notification by Client is made within 24 hours as set out above, the Transaction will be deemed to be confirmed by Client 24 hours from the time that Convera sent the Transaction Confirmation to Client. Convera will send Draft(s) to Client or Payee (as instructed by Client) once the Instruction is processed or where the Instruction is for the electronic transmission of the Payment, initiate the electronic funds transfer(s) to the Payee(s) upon receipt of Settlement from Client, unless otherwise agreed in writing between Convera and Client. Client must provide all required Transaction information as specified by Convera for the processing of a Transaction. Client acknowledges and agrees that Convera shall have no liability to Client if a Transaction is delayed or transmitted to an incorrect party, or if Convera is unable to process a Transaction due to Client's failure to provide accurate or required Transaction information.

**E. Cancellations/Recalls.** Client may request a Cancellation of a Payment Instruction or a Recall of a Payment. For a Payment that has not been released by Convera' for transmission to the Payee, if a Client requests a Cancellation, Convera will use reasonable efforts to stop the release of the Payment, provided the request is received sufficiently in time prior to the scheduled release of the Payment. For Payments that have been transmitted to the Payee, Client may request that Convera transmit a Recall request to the Beneficiary Bank. Convera shall have no liability to Client if it unable to process a Cancellation or obtain the return of funds transmitted to the Beneficiary Bank and Client shall remain liable for any amounts owed in connection with the processing of the Instruction. Convera, in its discretion, may require payment of a fee for a Recall, and may require Client to execute an indemnification agreement, indemnifying Convera for any claims brought by third parties in connection with the Recall.

**F. Liability for Losses Caused by Changes in Foreign Exchange Rates.** In the event of a Recall of a Payment, or in the event a Payment to a Payee is rejected by a Beneficiary Bank or otherwise is unable to be delivered to the Payee for any reason, Client agrees and acknowledges that in connection with the return of any funds to Client, the Beneficiary Bank, an intermediary bank, or Convera may convert the funds from the Payment Currency back to the Settlement Currency, at the then-prevailing rates, as determined by Convera or the processing institution in its sole discretion. Convera shall not be liable to Client for any foreign exchange losses occurring due to such re-conversion.

**G. No liability for Acts of Beneficiary Bank.** Client acknowledges and agrees that Convera's sole obligation is to deliver the designated Payment Amount to the Beneficiary Bank with directions to credit the Beneficiary Account as identified by Client in an Instruction. Convera shall have no liability to Client if the Beneficiary Bank fails to credit the Beneficiary Account, or credits the Beneficiary Account for less than the full Payment Amount where Convera has transmitted the designated Payment Amount to the Beneficiary Bank with instructions to credit the Payee as set forth in the Instruction.

**H. Assignment of Interest to Convera.** Client understands that no interest will be paid by Convera to Client with respect to any funds held by Convera (e.g., an Initial Partial Prepayment, Additional Partial Prepayment (Margin Call/Risk Exposure Top-Up Payment), funds maintained in a Holding Balance, etc.). In consideration for Client's use of the Services, Client irrevocably transfers and assigns to Convera any ownership right that Client may have in any interest that may accrue on any funds held by Convera. For avoidance of doubt, such assignment applies only to the interest earned on the funds and not to the principal amount held by Convera.

**I. Fees.** Client understands that Convera will charge certain fees for the Services, which fees shall be set forth in a fee schedule that will be provided to Client from time to time or upon request. Convera may change the fees charged for the Services (excluding any fees set forth in any Addendum, if applicable) at its sole discretion at any time upon written notice to Client. Any changes shall be effective from the date of the notice.

**J. Convera's Use of Affiliates and Third Parties.** Client acknowledges and agrees that Convera may perform this Agreement in part through its Affiliates, or using the services of third parties. Notwithstanding the foregoing, Convera and not such Affiliates or third parties shall be liable to Client for any-breach or nonperformance of the Agreement.

**A. Online Payment System License.** Convera grants to Client, for so long as these Terms and Conditions remain in effect, not to

## 3. License Agreement and Terms of Use; Indemnity

exceed one (1) year of continued non-use of the Services by Client, a non-exclusive, non-transferable, non-sublicensable license to use the Online Payment System for the sole purpose of facilitating its use of the Services. Client agrees to use the Online Payment System in accordance with these Terms and Conditions.

**B. Online Payment System Restrictions.** Client agrees that the Online Payment System is and shall remain the exclusive property of Convera and that no rights therein, express, or implied, shall be acquired by Client, except to the extent contemplated in these Terms and Conditions. Accordingly, Client shall not distribute or disclose the Online Payment System to, or permit use of the Online Payment System by, any third party. Client shall not, directly, or indirectly, decompile, disassemble, reverse engineer, or otherwise attempt to derive or discern the source code or internal workings of the Online Payment System.

**C. Intellectual Property Indemnity.** Convera shall indemnify and hold Client harmless of any damages and costs awarded by a court of competent jurisdiction against Client, which relate directly to a finding by such court that Client's use of the Online Payment System in accordance with these Terms and Conditions infringed any copyright, patent, trade secret or other intellectual property right of a third party; provided, however, Client must provide Convera with prompt notice of any actual or potential third party claim, and agree to allow Convera, to the extent it chooses, to defend and direct all activities relating to the defense and/or settlement of any such third party claim.

## 4. Online Payment System Security

**A. Authentication Methods.** If Client requests access to the Online Payment System, Convera will issue each Authorized User an authentication method of their choosing, from those currently offered by Convera and Client will assume sole responsibility for use of such authentication method(s) chosen by such Authorized User(s). Client agrees that, if using the digital certificate authentication method, the digital certificate(s) will be used only by an Authorized User on Client's premises or at a Client authorized remote location(s).

**B. Site Administrator.** Client shall appoint and maintain the appointment of a Site Administrator and provide the name of this individual to Convera. The Site Administrator shall be designated as the primary Client contact (unless otherwise communicated in writing by the Site Administrator, which writing shall designate a replacement primary contact).

**C. Authorized Users.** The Site Administrator shall provide Convera with a list of Authorized User(s) so Convera can properly assign the Client Access Methods. Each Authorized User may change its Client Access Methods at any time after Convera's initial assignment. In addition, the Site Administrator may at any time after the initial assignment, change the Client Access Methods or amend certain access rights for any Authorized User.

**D. Security of Client Access Methods**. The security of Client's access to the Online Payment System, including, but not limited to the security and secrecy of the Client Access Methods, shall be the sole responsibility of Client and shall be administered by the Site Administrator and the Authorized User, as applicable. Client shall notify Convera immediately in the event of any suspected or actual breach of the Client Access Methods, any change in the information contained in the digital certificate(s) or upon learning of any suspected or actual compromise in the security of the private key underlying the digital certificate(s), or any change, compromise, addition, or deletion of an Authorized User's Client Access Methods. Notwithstanding such notification, Client accepts responsibility for all acts or omissions of any person that accesses the Online Payment System through the Client Access Methods and, agrees to be bound by the terms of all online Transactions executed and orders placed through the Online Payment System using the Client Access Methods.

**E. Additional Security Provisions.** Client acknowledges and agrees that it is responsible for the security of any email systems it uses to communicate with Convera, including assuring that its systems (whether provided directly by Client or through a third party) are not accessed by an unauthorized third party. Client represents and warrants that it has commercially reasonable authentication and user credential procedures designed to authenticate users of its systems. Client shall:

(1) maintain physical, electronic, and procedural controls associated with all information systems used to process, transmit or store information, in accordance with industry standards;

(2) implement appropriate controls to ensure that systems used to process, transmit or store information are protected against malware; and

(3) maintain sufficient software, hardware, systems, personnel, and other resources to ascertain whether a penetration attempt is being made against any part of Client's network, mainframe, server or other infrastructure, application or facility used by Client to process, transmit or store information. In the event Client receives Instructions or other communications from a third party on which it relies to transmit Payment Instructions to Convera, Client shall take reasonable measures to confirm that such communications or Instructions are accurate and properly authorized and are not from an unauthorized third party.

**F. Responsibility for Erroneous Instructions; Risk of Fraud.** Client and not Convera shall be responsible for any erroneous Instructions sent to Convera by Client that are based on false or erroneous information received by Client from a third party. Convera has no obligation to confirm the legitimacy of the designated Payees or Beneficiary Bank accounts provided by Client. Client understands and acknowledges that third parties might attempt to defraud Client by taking on the identity of their customers, vendors or other Payees and providing them fraudulent payment instructions. Client shall implement reasonable controls to assure

that any payment instructions it receives from a third party are legitimate, and have not been fraudulently altered, or have not been generated by someone other than Client's intended Payee. Client shall immediately inform Convera in the event of any security breach, or other material cause for reasonable concern about information security, which could result in any unauthorized Instruction being sent to Convera.

**H. Convera Reliance on Client Instructions; Indemnity.** Client acknowledges and agrees that, absent actual knowledge by Convera that Instructions purporting to be from Client or Client's Authorized User are not in fact from Client, Convera may accept Instructions for Client from any person using the Client Access Methods. In the event Client elects to provide Instructions to Convera by email, Convera may accept Instructions transmitted from or appearing to be transmitted from Client's email account unless Client has notified Convera that such Instructions should not be accepted. Without limiting the generality or applicability of any other provision of these Terms and Conditions, Client agrees to indemnify and hold Convera harmless for any damages, losses, costs, and expenses incurred by Convera arising out of:

(1)  any breach of the Client Access Methods;

(2)  any Instruction made by email or other means reasonably believed by Convera to have been delivered by Client, including without limitation following any compromise of the passwords or user identifications associated with an email account or any other "hacking" of an email account; and/or

(3)  any breach of any Client system(s) used to access the Online Payment System or otherwise used by Client.

# 5. Standing Order Instructions

**A. Standing Order Instruction.** If Client issues a Standing Order Instruction to Convera, Client authorizes Convera to accept and act in accordance with the Standing Order Instruction to purchase/sell Contract Funds at a specified Target Rate. Each Standing Order Instruction shall be effective only after Convera has received it and has had a commercially reasonable opportunity to act upon it.

**B. Standing Order Purchase or Termination.** If the terms of the Standing Order Instruction are met by the end of the Standing Order Effective Period, Convera will send to Client a Transaction Confirmation. If the terms of the Standing Order Instruction are not met by the end of the Standing Order Effective Period, the Standing Order Instruction will expire. Client agrees to promptly review each Transaction Confirmation for accuracy and immediately advise Convera of any error or discrepancy therein.

**C. Cancellation of Standing Order Instruction.** In order to cancel a Standing Order Instruction, Convera must receive from Client a written Instruction directing cancellation and have had a commercially reasonable opportunity to act upon such Instruction before the Contract Funds have been purchased by or sold to Convera. In the absence thereof, Convera shall act in accordance with the Standing Order Instruction and Client shall be liable for Settlement.

**D. Target Rate.** If the Target Rate does not become Sustainable and Purchasable during the Standing Order Effective Period, the Standing Order Instruction shall automatically expire at the end of the Standing Order Effective Period. Standing Order Instructions are accepted between 9:00 a.m. and 5:00 p.m. ET. Unless otherwise stated in the Standing Order Instruction, Standing Order Instructions shall remain in effect until 11:59 p.m. ET on the last day of the Standing Order Effective Period.

# 6. Incoming Payments

**A.  Delivery of Incoming Payments.** Client may instruct a third party to electronically deliver funds for the benefit of Client into a correspondent bank account designated, owned, and maintained by Convera, a Convera Affiliate or a third party designated by Convera  (the "Incoming Payment"). Client shall require that the third-party sender to include the Client's name and account number (as designated by Convera) in the memo or reference line of any such Incoming Payment. Convera may in its sole discretion, attempt to contact the third-party sender to secure any additional information that may be needed to ensure accurate processing of the Incoming Payment. Convera shall not be liable to Client for any loss or damage suffered by Client as a result of any delay in delivery of the Incoming Payment which results from the lack of complete and accurate Incoming Payment information. Following Convera's receipt and confirmation of the Incoming Payment, Convera shall deduct its applicable fees and may deliver the Incoming Payment into Client's Holding Balance or, if Client previously had delivered an Instruction to Convera stipulating the disposition of the Incoming Payment, Convera shall initiate the Payment in accordance therewith.

**B.  Convera acting as Client's Agent for Payment.**  In connection with Incoming Payments received by Convera for Client, Client acknowledges and agrees that Convera acts as Client's agent for payment and that receipt by Convera of Payment from a third party shall be deemed to be Payment to the Client, and that Client shall look solely to Convera and not the third party, with respect to the further transmission to Client of any Payments from such third party received by Convera.

# 7. Settlement; Right of Set-off

**A. Settlement.** Unless otherwise provided in these Terms and Conditions or agreed in writing between Convera and Client, Client agrees to deliver Settlement to Convera in immediately available funds to Convera within two (2) business days. If Client does not deliver Settlement within five (5) business days following Client's Instruction to purchase/sell the Contract Funds, or in the case of a Forward Contract, as contemplated in the Forward Contract Addendum, or in the case of a Future Payment Contract, as contemplated

in the Future Payment Contract Addendum, Convera shall have the right to suspend or ultimately terminate the Services, net out or set-off any amounts Convera owes to Client against any and all amounts owed or that may be owed to it by Client, including any fees, losses or indemnities, and/or initiate any proceedings necessary to recover any balance due. Such steps shall be at the sole discretion of Convera, and Client agrees:

   (1)      that Convera shall have no liability to Client, and Client waives any claim or action against Convera, in the event of such suspension or ultimate termination and

   (2)      to indemnify and hold Convera harmless from any and all liability, claims, damages, and costs, including all reasonable fees incurred by Convera resulting from Client's failure to pay and Convera's effort to collect any balance due. Client agrees that Convera may recover interest upon any unpaid amounts due at the rate of two percent (2%) plus prime, as periodically announced by CITIBANK, N.A., New York, plus a late fee.

**B. Settlement Using Collateral.** In the event any failure by Client to effect Settlement for amounts due hereunder, Convera may satisfy any liability arising hereunder out of any collateral (e.g. Initial Partial Prepayment, Additional Partial Prepayment (Margin Call/Risk Exposure Top-Up Payment, funds maintained in a Holding Balance, etc.), which it holds for Client or, by deducting amounts owed to Convera from the money Convera receives from a third party on Client's behalf or any other obligation it has to Client, without prior notification to Client. In the event such collateral is insufficient, Client shall remain liable to Convera for any remaining balance owed for Settlement and will promptly pay on demand the amount of any loss or expense sustained by Convera. For the avoidance of doubt, Convera may additionally net out or set-off any amounts Convera owes to Client against any and all amounts owed or that may be owed to Convera by Client, including any fees, losses, or indemnities.

**C. Electronic Debits.** If Client has instructed Convera to initiate an electronic debit(s) (including any amendments or cancellations thereto) to Client's bank, Client agrees that in the case of debit instructions transmitted through the Online Payment System, the usage of the Client Access Methods is a security procedure which constitutes a commercially reasonable method of protecting against unauthorized debits. Client agrees to be bound by any debit instruction(s), whether authorized or not, issued in its name and acted upon by Convera, and Client agrees to indemnify Convera and hold it harmless from and against any and all liability and expense incurred by Convera in connection with its execution of a debit instruction(s) believed by Convera to have been issued by an Authorized User. In the event Client elects not to use or adhere to the security procedures described above, Client shall remain liable as set forth hereinabove for any debit instruction(s) issued in its name, whether authorized or not, and acted upon by Convera. Client agrees that Convera and Client's depository financial institution are authorized to credit Client's account from time to time in the event that credit adjustments become necessary. Client authorizes Convera to communicate with Client's depository financial institution as necessary to effectuate the Services contemplated in these Terms and Conditions.

**D. Changes in Client's Depository Financial Institution.** Client shall provide written notice to Convera if Client changes the account(s) at its depository financial institution(s) from which Convera has been granted the authority to initiate electronic debits. Unless otherwise agreed by Convera, such notice shall take effect thirty (30) days after Convera's receipt thereof.

**E. E-Debit Execution.** If as a result of an error or omission caused by Convera, Convera incorrectly debits Client's bank account in an amount that exceeds the value of Settlement actually due, Convera shall return to Client the over-debit amount (i.e., the difference between the amount debited and the amount of Settlement actually due). Said return of funds shall be made within five (5) business days of Convera's receiving written notice of the over-debit. Return of the over-debit amount shall be Client's sole and exclusive remedy for any such error or omission. If as a result of an error or omission caused by Convera, Convera incorrectly debits Client's bank account in an amount that is less than the value of Settlement actually due, Convera is authorized to initiate an additional debit(s) from Client's bank account for the additional funds owed by Client to Convera.

**F. Dishonored Settlement.** In the event any U.S. Dollar check delivered, or electronic debit authorized by Client is dishonored by Client's depository financial institution, Convera will charge, and Client agrees to pay all processing costs associated with each returned check or rejected electronic debit.  To the extent permissible by the NACHA rules, Convera may submit rejected debits in order processed an authorized debit.

**G. Waiver for Minor Overpayments**: If there is a Minor Overpayment, the Client irrevocably waives any right the Client may claim to have with respect to any Such Minor Overpayment. The Client expressly acknowledges that this waiver is made in favor of Convera, in light of the administrative costs associated with retuning a Minor Overpyament. Convera reserves the right, in its sole discretion, to apply the Minor Overpayment to a Settlement that is due and owing pursuant to subsequent Services, in the event that the Client makes a specific request in this regard.

## 8. Data Rights; Confidentiality; Data Protection

**A. Limitation on Client's Online Payment System Rights.** Client agrees that all Convera webpages (including service marks, logos, and trademarks), Services, applications, process, and systems are Convera property and protected by copyright law or other intellectual property laws. Except as set forth in this Section 8, Client may not:

   (1)      reproduce any part(s) thereof in any form;

   (2)      create any derivative work based thereon, or

   (3)      incorporate the site into other websites, electronic retrieval systems, publications or otherwise. Client is, however, provided Client agrees to comply with these Terms and Conditions, permitted to view, use, and download a single copy of any

webpage(s), (but not any applications, processes, or systems) for the purposes of its internal recordkeeping and accounting for Transactions.

**B. Convera's Intellectual Property.** Client acknowledges and agrees that all copyright and other intellectual property rights in and to any deliverables produced by Convera in carrying out any of the Services for Client (including, but not limited to reports, compilations, or databases in any and all media) shall be the property of Convera. Client shall be permitted to use such reports, compilations, or databases for its own internal business purposes, but it shall not disclose, disseminate, sell, or otherwise make any such deliverables available to any third party whether in whole or in part, without the express written consent of Convera.

**C. Client Transaction Data.** Client acknowledges that, for Convera to perform any of the Services hereunder, it will be necessary for Client to provide certain information to Convera, such as Client's banking details, Transaction currencies, amounts or any other information related to the payment ("**Confidential Client Transaction Information**"). Convera shall not disclose, sell, or otherwise transfer Confidential Client Transaction information to a non-affiliated third party, except as necessary to provide the Services or comply with applicable law or regulation.

**D. Payee Data.** Convera, at times and in its sole discretion, may, contact any Payee to effectuate the delivery and provision of the Services, including, but not limited to, the ongoing maintenance of Payee remittance details (e.g., bank account information, routing number and contact details) (the "Payee Data"). Nothing contained in these Terms and Conditions is intended or shall be construed to:

(1)      preclude, restrict, or prevent Convera from establishing or maintaining with any Payee a commercial relationship that is separate and distinct from the Services provided to Client hereunder or

(2)      relieve Client of its responsibility to ensure the accuracy of all Payee Data contained in any Instruction. Client further acknowledges that Convera already holds and maintains Payee Data for an extensive compilation of Payees and, therefore, Client's right to any particular Payee Data shall not be exclusive. Convera agrees that any Payee Data received from Client shall not be disclosed to any third party, except as necessary to deliver the Services, for Convera's own business purposes, including, but not limited to conducting surveys to ascertain Payee satisfaction with the Services, marketing the Services to any Payee or as otherwise contemplated under these Terms and Conditions.

**E. Data Protection.**

(1)      Client's personal information is processed under the applicable law and controlled by Convera. Convera uses personal information the Client provides to Convera when using Convera's products and Services, as well as other information that is collected or generated during Convera's relationship with Client. This information is used to provide Client with the Services Client agreed to and activities like administration, customer service, anti-money laundering duties, validate Client details, to complete analysis and research, to help prevent and detect of fraud, debt, and theft recovery, and to help Convera improve its products and services and operations.

(2)      Convera may also use, collect from, and share with other businesses who work with Convera information from other products and services and convenience and/or rewards programs, which Client has registered for during Client's relationship with Convera. Convera will hold and retain the information that Client gives Convera about another person including the details of any of Client's nominated beneficiaries in order to execute the Transaction. It is the Client's obligation to ensure prior to providing this information that Client has notified and secured authorization from the other person on Convera's use and disclosure of this information as set out in this Section.

(3)      Convera may transfer information to Affiliates in countries other than the country in which the information was originally collected or created, including to Affiliates outside of the United States. Convera may also provide the information to other organizations, that help Convera run its business, if there is a reasonable need, to carry out or aide the payment services, future services, or for any of the reasons or uses set out in this Section. Convera may add to information Client provides with information from available other business or individuals, including information to validate the accuracy of Client information provided by Client. Convera may disclose personal information, including without limitation, name, customer ID number, address, Transaction patterns and bank account information,

a)      if required to do so by domestic or foreign law or legal process or

b)      to law enforcement authorities or other government officials (including those in this country, the United States, or elsewhere) for purposes such as detecting, investigating, prosecuting, and preventing crimes, including money laundering and related criminal activity, and the recipients may further disclose the information for these and other related purposes.

(4)      The information Convera holds may be accessed by Convera and its Affiliates including but not limited to any authorized third-party service providers for any of the purposes set out in this Section or for other purposes to which Client has agreed. Client has a right to ask Convera to see and get a copy of Client's information, which Convera may charge a small fee for. Client can also correct, erase or limit Convera's use of the information, which is incomplete, inaccurate, or out-of-date. And Client may object at any time on legitimate reasons to the use of Client's information, where the processing is not required to complete the Service, or required by law or regulation. If Client wishes to exercise these rights or no longer wish to receive commercial communications from Convera, please contact Convera by emailing privacymatters@convera.com.

(5)      Where the Client has been referred to Convera by a third-party referral partner, Client expressly authorizes and instructs Convera to disclose Confidential Client Information to such third-party referral partner as necessary to calculate any commission owed to the third-party referral partner. Convera shall notify Client in writing that Client has been referred to Convera via a third-party referral partner and Client may, upon request, (i) obtain more details on the nature of any Confidential Client Information

disclosed to such third party referral partner, and (ii) request Convera to limit the information shared with such third party referral partner. Convera shall, at all times, ensure such Confidential Client Information disclosed to a third-party referral partner is subject to confidentiality obligations no less stringent than those found within this Agreement.

**F. Confidentiality.**

(1).     Each Party may receive other Confidential Information of the other Party. "Confidential Information" means any nonpublic information or material, whether verbal, written, graphic, or electronic in form, that is disclosed, provided, or made accessible by, or on behalf of, Convera or Client, and which is identified as "confidential" or "proprietary" or, which given the nature of the information or material, or the circumstances surrounding its disclosure, should reasonably be understood by the receiving Party to be confidential or proprietary to the disclosing Party. Without limiting the generality of the foregoing, the Confidential Information of Convera specifically includes, but is not limited to, information relating to Convera's businesses, operations, employees, products, and services, and any such information relating to a customer or potential customer of Convera or any of its Affiliates.

(2)     Each Party receiving Confidential information shall: (a) safeguard all Confidential Information of the disclosing Party by using a reasonable degree of care, but not less than the degree of care used by the receiving Party in safeguarding its own similar information; (b) not disclose the other Party's Confidential Information to third parties; (c) limit access to Confidential Information only to one or more of its directors, officers, employees, Affiliates, consultants, technology providers, advisors, and agents (collectively, "Representatives") with a need to know such Confidential Information in furtherance of this Agreement; and (d) use the Confidential Information of the other Party solely for the purpose of carrying out its responsibilities and obligations, or exercising its rights under the terms of this Agreement. The obligations set forth in this Section 8G shall continue until this Agreement is terminated and for a period of two (2) years thereafter.

(3)     Neither Party's obligations of confidentiality hereunder shall extend to any of the following: (a) information that was previously known, without obligation of confidentiality, by the receiving Party, prior to any disclosure from the other Party; (b) information that is or otherwise becomes available to the general public through no breach of this Agreement by the receiving Party; (c) information that was received from a third party free of any restriction and without breach of this Agreement; or (d) information that the receiving Party developed independently without use of any Confidential Information of the disclosing Party. In the event applicable law, a governmental agency, or valid legal order requires the receiving Party to disclose any Confidential Information, the party seeking to make such disclosure will notify the other party promptly in writing before making such disclosure, unless prohibited to do so by applicable law or regulation.

(4)     For the avoidance of doubt (a) Convera's confidentiality obligations with respect to Client's Confidential Client Transaction Information shall be governed by Section 8C rather than this Section; (b) this Section shall not be construed as limiting Convera's ability to disclose or report   information to financial services regulators without notice to Client about its business, customers, and transactions processed, including information in its records about Client or Client Transactions.

## 9. Indemnification; Exclusion of Warranties; Limitation of Liability

**A. Client Indemnity.** Client agrees to indemnify and hold Convera harmless for any damages, losses, costs, and expenses incurred by Convera in connection with any Instruction made by Client or Convera's reasonable actions in response to receiving an Instruction from Client, unless such damages, losses costs and expenses are caused by Convera's gross negligence or intentional misconduct.

**B. NO WARRANTIES; INFORMATION WARRANTY EXCLUSION**. CLIENT UNDERSTANDS THAT THE SERVICES (INCLUDING THE ONLINE PAYMENT SYSTEM) ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED. CONVERA DOES NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE INFORMATION AVAILABLE THROUGH THE ONLINE PAYMENT SYSTEM OR GUARANTEE UNINTERRUPTED, CONTINUOUS AND SECURE ACCESS TO THE SERVICES (INCLUDING THE ONLINE PAYMENT SYSTEM).

**C. UNDERLYING PAYMENT WARRANTY EXCLUSION.** CONVERA DOES NOT WARRANT ANY ASPECT OF THE UNDERLYING TRANSACTION(S), INCLUDING, FOR EXAMPLE, WHETHER GOODS OR SERVICES FOR WHICH PAYMENT IS BEING MADE ARE CONFORMING OR SATISFACTORY OR WHETHER PAYMENT HAS BEEN MADE IN THE RIGHT AMOUNT OR WITHIN THE TIME AGREED BETWEEN CLIENT AND PAYEE.

**D. DISCLAIMER.** CONVERA EXPRESSLY DISCLAIMS ANY LIABILITY FOR ERRORS, OMISSIONS, OR INTERRUPTIONS TO THE SERVICES (INCLUDING THE ONLINE PAYMENT SYSTEM) AND ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND PERFORMANCE. CLIENT AGREES THAT CONVERA SHALL NOT BE LIABLE FOR ANY ERRORS OR LOSSES CAUSED BY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO ANY BANKING INSTITUTION.

**E. LIMITATION ON LIABILITY.**

(1) CLIENT AGREES THAT CONVERA SHALL NOT BE LIABLE TO CLIENT FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, ARISING FROM OR IN CONNECTION WITH THE SERVICES (INCLUDING THE ONLINE PAYMENT SYSTEM), THESE TERMS AND CONDITIONS AND/OR ANY ADDENDUM, IF APPLICABLE (HOWEVER ARISING, REGARDLESS OF THE NATURE OF THE CLAIM OR THE FORM OF CAUSE OF ACTION), INCLUDING NEGLIGENCE AND REGARDLESS OF WHETHER CONVERA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(2) FOR ANY CLAIM RELATED TO THE PROCESSING OF A TRANSACTION FOR CLIENT, CONVERA'S LIABILTY SHALL BE LIMITED TO COMPLETING THE PAYMENT TRANSACTION, OR RETURNING THE SETTLEMENT FUNDS, PLUS PAYING AN AMOUNT EQUAL TO THE FEES CHARGED IN CONNECTION WITH THE TRANSACTION. THE FOREGOING SHALL NOT OBLIGATE CONVERA TO COMPLETE ANY PAYMENT OR RETURN SETTLEMENT FUNDS WHERE SUCH ACTION IS PROHIBITED BY APPLICABLE LAW.

(3) FOR CLAIMS UNRELATED TO A PARTICULAR TRANSACTION, CONVERA'S MAXIMUM LIABILITY HEREUNDER SHALL NOT EXCEED A SUM EQUAL TO THE FEES CHARGED BY CONVERA TO CLIENT IN THE SIX (6) MONTH PERIOD PRIOR TO THE DATE ON WHICH THE CLAIM AROSE.

(4) CLIENT EXPRESSLY AGREES THAT ANY CLAIM FOR DAMAGES OR LOSSES OF ANY KIND WHATSOEVER ARISING HEREUNDER MUST BE ASSERTED WITHIN TWELVE (12) MONTHS OF THE CIRCUMSTANCES THAT ALLEGEDLY CAUSED THE INCIDENT GIVING RISE TO THE CLAIM.

**F. Liability under Force Majeure.** For the avoidance of doubt, nothing in this Section 9 shall be construed as giving rise to liability under a force majeure event, as set out in Section 16(D), the occurrence of which shall not make Convera liable to Client for damages of any kind.

**G. Nonresident Alien and Foreign Corporation Withholding; Foreign Account Tax Compliance Act ("FATCA").** For the avoidance of doubt, the parties acknowledge and agree that it is the Client's responsibility to determine the chapter 3 and chapter 4 status of the Payee in accordance with Internal Revenue Code Sections 1441 through 1446 and 1471 through 1474, and that the parties' expectation is that Convera would not know or have reason to know of the withholding status of a payment to a Payee. Accordingly, Client represents and warrants to Convera that Client has determined the chapter 3 and chapter 4 status of the Payee in accordance with Internal Revenue Code Sections 1441 through 1446 and 1471 through 1474, and the regulations promulgated thereunder, and has withheld the appropriate amount, if any, required. Client shall indemnify and hold harmless Convera from and against any claims by the U.S. Internal Revenue Service (IRS) for tax, interest, and penalties, and expenses incurred by Convera arising out of or in respect of the Client's under-withholding or other noncompliance with respect to the IRS withholding rules, including but not limited to FATCA. This indemnity will survive the completion of any payment and the termination of this Agreement.

## 10. Legal Compliance; Representations and Warranties

**A. Limitation on Services.** Client represents that the Services are being used for business/commercial purposes only, and not for personal, family or household purposes. Client agrees not to use the Services to make payments for any illegal purpose. In addition, Client certifies that it will not use the Services to make any payments relating to online gambling, pornography, or other similar activities. Client acknowledges that any Instruction issued by Client pursuant to these Terms and Conditions will be binding upon and enforceable against Client and does not violate the terms of any other agreement to which Client is bound.

**B. Client Funds.** Client represents and warrants that it is acting as a principal and has legal title to all funds used in connection with the Transactions, and that any Transaction is being undertaken in accordance with applicable law. Client represents and warrants that Client has entered into these Terms and Conditions for lawful and commercial purposes connected with Client's business and not for the purpose of investment or speculation. Client further represents and warrants that each use of the Services by Client is exercised in connection with Client's line of business and to manage the risk associated with an asset or liability owned or incurred, or reasonably likely to be owned or incurred, in the conduct of Client's business.

**C. Authority.** Client represents and warrants that the individual executing the Customer Application has the authority to bind Client by these Terms and Conditions and that the person executing the Customer Application is authorized to act on Client's behalf.

**D. Disclosure.** Client understands that Convera takes appropriate measures to ensure that it is not participating or assisting in money laundering or terrorist financing. Client agrees that Convera, at its sole discretion, may disclose any Transaction-related information in order to satisfy Convera's legal obligations under applicable law, including, but not limited to, the Commodity Exchange Act and CFTC Regulations, anti-money laundering, trade, and economic sanctions laws and/or regulations, or as may otherwise be required by law or court order. Furthermore, such disclosure may be made to any governmental agency, body or department that exercises regulatory or supervisory authority with respect to Convera's operations, where such disclosure is made to satisfy routine governmental audit or examination requirements or as part of informational submissions required to be made to such governmental entities in the ordinary course of business.

**E. Additional Information.** Upon request, Client agrees to provide any additional information that Convera may need to satisfy its obligations under Section 10(D).

**F. Transaction Processing.** Client understands, acknowledges, and agrees that all Transactions, wherever originated, may be processed by Convera, or may be processed on behalf of Convera by one or more of its Affiliates, one or more of which may be located outside of the country of Client. As such, all Transactions, wherever originated, shall be processed in accordance with the laws and regulations of the jurisdiction where the Transaction is being processed or transmitted, including but not limited to, those laws and regulations relating to anti-money laundering, anti-terrorism, and foreign asset control.

**G. Rejection of Transactions.** Convera may decline to process any Transaction in its sole discretion and shall notify Client if it has declined to process a Transaction. Unless prohibited by applicable law, any funds paid by Client in connection with a rejected Transaction will be credited to Client's Holding Balance or returned to Client. In accordance with its compliance and credit policies, Convera may suspend Client's right to submit Transactions for processing pending any review of Client's account, subject to reactivation or termination, as determined by Convera in its sole discretion.

**H. Acknowledgement.** Client acknowledges and agrees that:

(1)    information and explanations related to managing foreign currency risk, including the terms and conditions of any foreign currency Transaction, do not constitute advice or a recommendation to enter into any such Transaction(s);

(2)    information and explanations communicated by Convera with respect to any foreign currency Transaction(s) effected under these Terms and Conditions are incidental to Convera's business and will not serve as the primary basis for any decision made by Client to enter into any such Transaction(s)

(3)    Convera has no authority, power or control over any decisions made by Client with respect to any Transaction(s);

(4)    Convera is not acting as a fiduciary or advisor with respect to any Transaction(s) and Convera shall have no responsibility under these Terms and Conditions for compliance with any law or regulation governing the conduct of fiduciaries or advisors;

(5)    Client is acting for Client's own account and has made Client's own independent decisions regarding whether to effect any Transaction(s) and/or whether any Transaction(s) is prudent or appropriate for Client. If Client chooses to use a third-party advisor, including but not limited to receiving advice on the use of any Services, Client acknowledges and agrees that Convera bears no responsibility for the advice rendered by such third-party advisor, and Client has made its own independent decisions to enter into any Transaction(s). Client agrees and acknowledges that there is no existing relationship between Convera and any third-party advisor of Client. If Client retains such a third-party advisor and the third-party advisor is empowered to act on behalf of Client including, but not limited to, entering into Transactions on behalf of Client, Client will have such third-party advisor set up as an Authorized User pursuant to these Terms and Conditions and Client will be liable for all actions of such Authorized User as set forth in these Terms and Conditions.  Neither Client nor Convera is acting as a fiduciary or an advisor to the other party in respect of any Transaction or other Services pursuant to these Terms and Conditions.

**I. Compliance with Law.**  Client represents and warrants that the Client's use of the Services will not violate this Agreement or any law, including, without limit, laws relating to money laundering, illegal gambling activities, support for terrorist activities or fraud. Client further represents and warrants that the Client is not subject to any Sanctions.

**J. Anti-Bribery.** Client agrees that it shall not directly or indirectly make, offer, promise, or receive, and shall not authorize any third party to make, offer, promise or receive, any bribes, gifts or other improper payments, or anything of value (including disproportionate corporate hospitality) to, for or from any individual, company or government authority or official (including candidates for political office, any political party, or any official of a political party) to induce the authority or official to act or to grant any permission, license or approval, or to induce the individual or company to take any improper action, in connection with any Service(s). Client shall ensure that none of its employees, directors or representatives or agents makes, solicits, accepts, or receives any bribes, gifts, or other improper payments in connection with any Service(s).

## 11. ACH Payment Terms

**A. ODFI.** Client acknowledges and agrees that:

(1)    Convera has full and exclusive power to provide the ODFI with directions on Client's behalf;

(2)    the ODFI has no liability whatsoever for Convera's acts, omissions or representations and is not responsible for any loss caused by Convera;

(3)    Convera is not an agent of the ODFI and has no authority to act or make commitments on behalf of the ODFI;

(4)    the ODFI is not monitoring Convera's Transactions for Client's benefit in respect to Client's funds;

(5)    Client's claims relating to the Services  shall be made solely against Convera;

(6)    IN NO EVENT SHALL THE ODFI BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, NOR SHALL THE ODFI HAVE LIABLITY IN ANY EVENT IN EXCESS OF THE FEES IT RECEIVES FOR HANDLING CLIENT'S TRANSACTIONS, PROVIDED HOWEVER, THE FOREGOING LIMITATION ON LIABILITY SHALL NOT APPLY IN THE EVENT OF THE ODFI'S INTENTIONAL MISCONDUCT; and

(7)    The ODFI shall be entitled to rely upon and enforce these Terms and Conditions. These Terms and Conditions, as it relates to the provisions of this Section 11, may not be amended, terminated, revoked, or otherwise altered without the prior written consent of the ODFI. Client waives notice of the ODFI'S acceptance of these Terms and Conditions.

**B. Use of ACH System; NACHA Rules.** Client agrees and acknowledges that in the event Client instructs Convera to transmit a payment to a U.S. Beneficiary via the ACH system, such Transaction shall be subject to the Electronic Funds Transfer Act, the Uniform Commercial Code Article 4A, and the NACHA rules and that Client is designated as Originator of such Transaction, as defined by the NACHA rules, and shall be bound by the NACHA rules to the extent applicable to the Transaction. Client agrees that Instructions to Convera shall constitute authorization to Convera's Originating Depository Institution (ODFI) to originate an ACH entry on Client's behalf and Client agrees to assume all obligations of an Originator under the NACHA rules and shall in no event authorize a Transaction in violation of the laws of the United States. The ODFI may suspend or terminate Client's right to submit ACH entries for breach of the NACHA rules in a manner to permit the ODFI to comply with the rules. Convera and/or its ODFI may audit Client's compliance with this Agreement as it pertains to this Section 11.

**C. ACH Payments to Receivers.** Client agrees and understands that for payments to Receivers sent through the ACH system, credit given by the receiving depository institution (RDFI) to the Receiver for the entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or otherwise has received payment as provided for in Section 4A-403(a) of Article 4A of the Uniform Commercial Code. If the RDFI does not receive such payment for the entry, the RDFI is entitled to a refund from the receiver in the amount of the credit to the receiver's account, and the originator (Client) will not be considered to have paid the amount of the credit entry to the Receiver.

## 12. File Transfer

**A.  Transmission of Instructions Via File Upload.** In addition to entering Instructions directly using the Online Payment System, Convera may accept Instructions in a  bulk form (i.e., multiple instructions) through a file upload whereby Client submits multiple Instructions in a format specified by Convera.

**B.   Acceptance and Processing of Instruction Files.** Once Convera has notified Client that all set-up and testing has been completed with respect to Client's desire to deliver an Instruction to Convera in a file format, Convera shall then accept and process each Instruction delivered in a file format and notify Client of any issues relating to the format or receipt of any such file.

**C. Consistent File Format.** Client agrees to ensure that all files are transmitted to Convera pursuant to the file specifications specified by Convera.  It is expressly understood that Convera shall not be responsible for any delays or errors caused by a file that deviates from the specified format and specification. Any change to the file format and specification, or to its implementation schedule, must be agreed to by Convera.  Client may agree to process a file that misses certain required data, but Convera shall have no liability to Client for any delayed or misapplied Payments that are not complete  or are not properly formatted.

**C. Rejected Files.** Client agrees to be solely responsible for resubmitting any file that has been rejected by Convera.

## 13. Foreign Currency Check Purchase

**A. Purchase and Conversion of Foreign Currency Checks.** Convera may agree to purchase and convert into U.S. Dollars, or some other currency agreed by Convera, a foreign currency check(s) that Client has received payable to Client and delivered to Convera. Client acknowledges and agrees that Convera may refuse to accept any foreign currency check at any time and for any reason. Client further acknowledges and agrees that Convera may request additional information satisfactory to Convera, in its sole discretion, that Client has the authority to deliver the foreign currency check to Convera for purposes of foreign currency conversion and negotiation.

**B. Endorsement.** Any foreign currency check(s) delivered to Convera must be endorsed, without restriction or qualification, by an authorized representative of Client and state the following: "Pay to the Order of Convera USA, LLC" or such third-party as Convera may designate.

**C. Non-negotiable Check(s).** In the event that a foreign currency check(s) is returned to Convera as non-negotiable, returned for insufficient funds, or otherwise not accepted by Convera's depository financial institution, such check(s) shall be returned to Client and Client agrees to immediately reimburse Convera for amounts delivered to Client by Convera in connection with the foreign currency check(s) purchase, plus any charges or fees that Convera may have incurred.

**D. Lost, Stolen or Destroyed Check(s).**  In the event that a foreign currency check(s) is lost, stolen, or destroyed in transit during the clearing process, Convera shall promptly notify Client after being advised of any such loss, theft, or destruction. Convera shall provide Client with a letter certifying that Convera has not received value for the foreign currency check(s) and Client agrees to immediately reimburse Convera for any amounts delivered to Client by Convera in connection with the foreign currency check(s) purchase.

**E. Foreign Currency Check Indemnity.** Client agrees to indemnify and hold Convera harmless for any damages, losses, costs, and expenses incurred by Convera in connection with Convera's acceptance, negotiation or purchase of any foreign currency check received by Convera from Client. Client acknowledges that Convera is relying upon this indemnity in providing value in exchange for any foreign currency check.

## 14. Conversion to Local Currency (Auto-convert)

**A.** In the event Client provides an Instruction to initiate a payment in a Payment Currency that is different from the local currency used in the jurisdiction where the Payee's bank account is located, Client hereby authorizes and instructs Convera, in its sole discretion, to initiate the payment in the local currency used in the jurisdiction where the Payee's bank account is located (the "Conversion Currency") rather than the Payment Currency. Client agrees that, in order to make the relevant payment, Convera shall perform the conversion to the Conversion Currency using a foreign exchange rate determined solely by Convera or Convera's correspondent bank.

**B.** Client may revoke the foregoing authorization at any time after the date of these Terms and Conditions by providing written notice thereof to Convera. Notwithstanding anything herein to the contrary, Client agrees that Convera may discontinue the provision of any service provided for in this Section 14 at any time, with or without notice.

**C.** In the event that the Client receives a complaint from its Payee that payment(s) were made in the Conversion Currency (instead of the Payment Currency), Convera agrees, subject to the conditions set out in (i), (ii) and (iii) of this paragraph, to either re-perform the service by making the payment in the Payment Currency or reimburse the Client or its Payee (as applicable) for the actual foreign exchange loss (if any) directly attributable to the payment(s) being made in the Conversion Currency rather than the Payment Currency, provided that:

(1)     the Client must notify Convera of the complaint, including providing documentation of such foreign exchange loss (if any), within thirty (30) days of the date of the Transaction subject to the Payee complaint;

(2)     Convera shall elect in its sole discretion whether to re-perform the service or reimburse the Client or its Payee (as applicable) for such foreign exchange loss; and

(3)     the Client's sole remedy shall be either the re-performance of the service or the reimbursement of such foreign exchange loss. Except as expressly set out above, Convera shall not be liable to Client, the Payee or any third party for any losses, damages, costs, and expenses incurred by Client, Payee or any third party arising from or in connection with payments being initiated in the Conversion Currency (instead of the Payment Currency).

## 15. Holding Balance and Holding to Holding (HTH) Service

**A.      Holding Balances.**  Holding Balances are stored value funds held by Convera for Client's benefit and may be used by Client to fund Transactions.  Holding Balances are available for USD and certain foreign currencies, as designated by Convera from time to time.   Unless a longer period is approved by Convera, Holding Balance funds  may be maintained by Client in a Holding Balance for a maximum of one hundred and eighty (180) days, or for a period otherwise agreed to by Client and Convera.  Client shall be responsible for all foreign exchange risks (e.g., volatility of the foreign currency market) associated with Client maintaining Holding Balances in one or more foreign currencies. If Convera does not receive an Instruction for the disposition of such funds prior to the end of  the maximum holding period, those funds will be converted to Client's home currency (generally USD) at the then-prevailing exchange rate(s) and returned to Client.

**B.      Provision of HTH Service.**

(1).     Convera agrees to provide Client with the HTH Service in accordance with and subject to the following provisions and all of the other provisions of these Terms and Conditions. The HTH Service shall provide Client the ability to: (a) send Instructions to Convera to enable the transmission of an Outbound Payment from Client's Holding Balance; or (b) receive an Inbound Payment into Client's Holding Balance.

(2).     Notwithstanding any other provision of these Terms and Conditions, Convera shall have no obligation to process an Instruction for an Outbound Payment if Client's Holding Balance does not contain sufficient funds to make such Outbound Payment. Without limiting the generality or applicability of the foregoing, Client shall be liable to Convera for all Outbound Payments transmitted by Convera in accordance with a Client Instruction, even if any such amount exceeds the balance then available in Client's Holding Balance. Convera may recover interest upon any unpaid amounts due at the rate of two percent (2%) plus prime, as periodically announced by CITIBANK, N.A., New York, plus a late fee, in accordance with Section 7.A above.

(3)     The Parties agree that an Outbound Payment transmitted pursuant to a Client Instruction shall be deemed to be completed once Convera or another Convera Affiliate credits the Second Client's (Payee's) Holding Balance and makes the Outbound Payment funds available to such Second Client (Payee). Upon credit to such Second Client (Payee), Convera and any other Convera Affiliate shall treat the funds transferred via the Outbound Payment as funds of such Second Client and not funds of Client, and Convera shall have no obligation to return the Outbound Payment to Client or otherwise accept Client's instructions with respect to such amounts credited to such Second Client. Convera shall have no liability to Client for any disputes arising between Client and any Second Client in connection with any Outbound Payment, including with respect to any wrongful acts, failure to perform, or defective performance of a Second Client under any agreement between Client and such Second Client.

(4)     For Inbound Payments, Convera shall treat the credit to Client's Holding Balance as final except: (a) where Convera is required by applicable law to take some action with respect to such Inbound Payment, including reversing or blocking Client's access to funds; and (b) where Convera has erroneously credited all or a portion of an Inbound Payment to Client's Holding Balance, in which case Convera may reverse such Inbound Payment to the extent of the error. Client authorizes Convera to credit its Holding Balance with any funds which a Second Client instructs Convera or another Convera Affiliate to transmit to Client's Holding Balance.

**C. Client Errors; Unauthorized Transactions.** In the event an erroneous or unauthorized Second Client (Payee) receives an Outbound Payment sent in accordance with Client's Instructions (including all Instructions sent using the Client Access Methods or email whether or not authorized by Client) Convera shall have no obligation to reverse such Outbound Payment, absent actual knowledge of Convera at the time of payment transmission that the Instructions were erroneous or unauthorized. Any refund of an Outbound Payment sent to a Second Client by Client in accordance with Client's Instruction shall be at the sole discretion of Convera. In the event that Convera is able or elects to refund an Outbound Payment involving a foreign exchange Transaction, such refund shall be at the then-applicable market rate for the relevant currencies, as determined by Convera in its sole discretion except that, in the case a Convera error, the refund shall be at the rate originally provided to Client for the Outbound Payment.  Client agrees and acknowledges that, notwithstanding any other provision hereof, in the event that Convera is unable or elects not to reverse an Outbound Payment, Client shall be solely responsible for recovering any Outbound Payment directly from the improperly paid party.

**D. Payments Subject to Applicable Law.** Client understands and agrees that the processing of Outbound Payments and Inbound Payments is subject to applicable law, including any laws requiring the reporting of the Transaction in Client's country or location, or in the country or location of the Second Client.

**E. Modifications.** In addition to the right to make modifications as provided in these Terms and Conditions, Convera reserves the right to change, amend or otherwise modify the HTH Service upon written notice to Client, with such changes applicable to Client's subsequent use of the HTH Service. Convera may provide notice of such changes through the Convera Website or the Online Payment System which shall constitute written notice to Client. Client's sole remedy in the event Client objects to such modifications will be to discontinue use of the HTH Service.

**F. Covenant of Client.** Client agrees to:

> (1)      provide each Second Client (Payee) to which Client elects to transmit an Outbound Payment with notice of Client's use of the HTH Service to transmit an Outbound Payment;

> (2)      provide accurate Instructions hereunder; and

> (3)      comply with applicable laws in connection with the transmission of any Outbound Payment to a Second Client (Payee).

## 16. Miscellaneous

**A. Relief.** Convera and Client agree that money damages may not be a sufficient remedy for breach of the confidentiality and license undertakings in these Terms and Conditions. Accordingly, in addition to all other remedies, each Party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any breach of those provisions. Client and Convera agree to waive any requirement for a bond in connection with the granting of any such injunctive or other equitable relief.

**B. Governing Law and Venue.** These Terms and Conditions are governed by the laws of the State of New York, without regard to the law of conflicts, and the Parties agree to be subject to the jurisdiction and venue of the state and federal courts of New York for the borough of Manhattan with respect to any disputes arising out of these Terms and Conditions.

**C. Modification of Terms and Conditions**. Convera reserves the right, in its sole discretion, to change, amend or otherwise modify these Terms and Conditions upon written notice to Client or, upon posting a revised version of its Terms and Conditions to the Convera Website. Any change, amendment, or modification so conveyed to Client shall be effective as of the date of notice or the posting on the Convera Website, whichever is earlier, and shall govern Services received after such Effective Date. All pre-existing Addendums in effect prior to such change in the Terms and Conditions shall remain in effect unless such revised Terms and Conditions provide otherwise. If Client rejects such change, amendment or modification, Client's sole remedy shall be to cease using the Services. By continuing to use the Services following notice or posting of a change, amendment or modification, Client hereby consents to such change, amendment, or modification. Any Client change, modification or amendment to these Terms and Conditions shall not be binding unless set forth in a written addendum signed by Client and Convera.

**D. Force Majeure**. Except for the obligation to pay for Services delivered or otherwise pay money owed to the other Party, nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, other natural disasters, governmental acts, acts of terror or orders or restrictions, failure of suppliers, or act of God, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing Party.

**E. Telephone Recording.** Client understands and agrees that telephone communications with Convera may be monitored and/or recorded for the protection of Client and Convera.

**F. Historical Transaction Data Costs.** Client understands and agrees that, to the extent possible, Convera will respond to any Client request for copies of historical Transaction information or other similar information (e.g., a copy of a cashed check), provided, however, these Terms and Conditions remain in effect. Client acknowledges and agrees that any costs associated with retrieving and providing such information will be billed to and payable by Client.

**G. Entire Agreement.** These Terms and Conditions, as amended by Convera from time to time in accordance with the provisions of these Terms and Conditions, shall constitute the entire agreement between the Parties concerning the subject matter hereof and supersede all prior agreements between the Parties concerning the subject matter hereof. In the event of any conflict or ambiguity between the provisions of these Terms and Conditions and any other agreement (e.g., a previously executed confidentiality agreement), the provisions of these Terms and Conditions shall control. It is expressly agreed by Client that, with respect to the Services provided hereunder, any indemnification obligation in effect and contemplated in any prior agreement shall be extinguished as of the Effective Date and the provisions of Section 9 of this Agreement shall govern Convera's liability hereunder.

**H. Termination and Survival.** Unless otherwise contemplated in any Addendum, if applicable, either Party may terminate these Terms and Conditions with or without cause at any time upon providing written notice to the other Party. Termination for any reason including a breach of these Terms and Conditions by Convera shall not affect Client's obligation to pay any Settlement owed to Convera at the time of termination. The provisions in these Terms and Conditions relating to indemnification in Section 3, the Online Payment System security in Section 4, and all of Sections 7, 8, 9, 10, 11, and 16 shall survive completion of Convera's Services to Client and termination of these Terms and Conditions.

**I. Taxes.** Client shall be responsible for remitting to the appropriate tax authority any taxes that may apply to any payments initiated in connection with the Services. Client acknowledges that Convera shall not be responsible for determining what, if any, taxes apply to Client's payments.

**J. Escheatment.**

(1)        If a check(s) remains un-cashed for a period of six (6) months, as measured from the date on the check, Convera will notify Client of the un-cashed check(s). If Client does not respond to Convera's notice and provide Convera with an Instruction for the disposition of such funds (e.g., request that Convera stop payment on the un-cashed check) Convera may escheat the funds to the applicable Payee's state of residency, if known, or, otherwise, escheat the funds to the State of Delaware in accordance with applicable abandoned property laws.

(2)  If Convera  holds any other funds of Client without having received instruction from Client as to the disposition of such funds, and, after making commercially reasonable efforts to contact Client, is unable to do, Convera  may escheat funds to the Client's last designated state of residency, subject to compliance with the laws of such state relating to escheatment.

**K. Independent Contractors.**   Except as set forth in Section 6B, Convera and Client shall each act at all times as independent contractors and nothing contained in these Terms and Conditions shall be interpreted, construed, or implied to create any agency, partnership, or joint venture between Convera and Client.  Nothing in these Terms and Conditions shall be interpreted, construed, or implied as creating or establishing the relationship of employer and employee between Convera and Client. At no time shall either Convera or Client make commitments for or in the name of the other.

**L. Publicity.** Neither Party may use the Party's name in news releases, articles, brochures, marketing materials, advertisements and other publicity or investor promotions without the written consent of the other Party.

**M. Severability.** If for any reason a court of competent jurisdiction finds any provision of these Terms and Conditions, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of these Terms and Conditions shall continue in full force and effect.

**N. Waiver.** Any failure by either Party to require strict performance by the other of any provision of these Terms and Conditions shall not constitute a waiver of such provision or thereafter affect the Party's full rights to require strict performance.

**O. Notices.** Communications and notices required or permitted under these Terms and Conditions shall be deemed delivered when hand-delivered to the receiving person, upon delivery via certified mail (return receipt requested), upon electronic transmission via email, upon delivery via a national or international package delivery company (return receipt requested or delivery confirmation received), and when such delivery is made to the address first set forth in the Customer Application or when faxed to the facsimile number set forth in the Customer Application or electronically transmitted to the email address set forth in the Customer Application. Notices transmitted electronically shall be deemed to be in writing when made in accordance with this provision. Any Party may change its address for purposes of this notice provision by giving notice in the manner prescribed above.

**P. Assignment.** Client may not transfer or assign its rights or obligations under these Terms and Conditions without Convera's prior written consent. Convera shall have the right to transfer or assign its rights and obligations under these Terms and Conditions to any legal successor or affiliated Convera Affiliate. These Terms and Conditions shall be binding upon and inure to the benefit of the Parties and their permitted successors and assigns.

**Q. Third Party Rights.**   Unless expressly provided otherwise in this Agreement, the Parties do not intend for any provision of these Terms and Conditions to be enforceable by any person or entity that is not a Party to these Terms and Conditions.

**R. Bankruptcy.** Either Party may immediately terminate these Terms and Conditions and/or, with respect to Convera only, close out (or unwind) any Forward Contract or Option Contract (whether matured or not), by providing written notice to the other Party if

(1) the other Party becomes insolvent,

(2)        the other Party initiates any proceeding under Federal bankruptcy or state insolvency laws regarding its own bankruptcy, insolvency, or reorganization,

(3)        the initiation of any proceeding under Federal bankruptcy or state insolvency laws against the other Party, which proceeding is not dismissed within thirty (30) days,

(4)        the appointment of a receiver or a similar officer for the other Party or for a substantial part of the other Party's property or,

(5)        the other Party making an assignment for the benefit of creditors or otherwise being reorganized for the benefit of creditors. The Parties hereto agree that this Agreement is intended to be a forward contract, securities contract and/or swap agreement under the Bankruptcy Code, and the applicable Parties hereto shall be afforded the rights and benefits under such contracts including the right, under certain circumstances, to terminate, liquidate or accelerate such contracts and to set-off amounts owing hereunder.

**S. Headings.** The headings of several Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of these Terms and Conditions.