**MEMORANDUM OF AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement (the “Agreement”) is made and executed this \_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_ 2013 at San Juan City, by and between:

**EXPRESSPAY, INC.,** a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 8th Floor, Jafer Place, 19 Eisenhower St., Greenhills, San Juan City, represented herein by its President, **Alexander Benedict G. Mascenon** (hereinafter referred to as “Expresspay”);

- and -

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a (corporation/partnership/sole proprietorship) duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,represented herein by its Owner, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as the “Company”).

WITNESSETH: That –

WHEREAS, Expresspay, as a result of the expenditure of time, skill, effort and money, has developed a distinctive system and business model for the provision of payment services through the use of electronic payment solutions for online commercial transactions that may be availed of by means of the Internet, mobile phones, Point of Sale (POS) systems, and other similar technologies (hereinafter, the “Expresspay System”);

WHEREAS, the distinctive characteristics of the Expresspay System include, without limitation, the software systems, methodology, financial back-end, distribution, business model, products, services, designs, specifications and methods; consistency and uniformity of the products and services offered and the competitive rates applicable thereto; training and assistance; and advertising and promotional programs, as the same may be improved and further developed by Expresspay from time to time;

WHEREAS, the Company was organized with the purpose of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for the benefit of its customers and has \_\_\_\_\_\_\_\_ offices (the “Outlets”) throughout the Republic of the Philippines (the “Territory”);

 WHEREAS, the Company and Expresspay have agreed to collaborate and work together towards the distribution of payment services through the Company’s Outlets, such as but not limited to, online bills payment, money remittance, and prepaid e-load facilities (hereinafter, the “Expresspay Services”);

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants herein set forth, the parties agree as follows:

**ARTICLE 1 – THE ARRANGEMENT**

1.1 Subject to the terms of this Agreement, Expresspay authorizes the Company to market, promote, and provide the Expresspay Services on a non-exclusive basis, through the Company’s existing Outlets and establishments.

1.2 During the term of this Agreement, Expresspay shall grant the Company access to the Expresspay System in order that the Company shall be able to provide the Expresspay Services to the latter’s members and the public in general (the “Customers”), subject to such guidelines and conditions on the use of the Expresspay System as Expresspay may impose from time to time.

1.3 The Company hereby agrees and undertakes that, with respect to the Customers, all electronic payment services shall be negotiated by and coursed exclusively through Expresspay. Accordingly, no similar or special payment arrangements shall be made by the Company with any provider of similar electronic payment services.

1.4 Expresspay reserves the right, from time to time, in its sole discretion and without liability to the Company, to modify, change or discontinue any of the Expresspay Services at any time; provided, however, that Expresspay shall use commercially reasonable efforts to promptly notify the Company of any material modifications, changes or discontinuances.

1.5 The Company shall not have any right or authority to further appoint third parties to market and provide the Expresspay Services without the written consent and approval of Expresspay.

1.6 The right of the Company to provide the Expresspay Services shall be limited to the Territory and the Company undertakes not to provide any Expresspay Services, directly or indirectly, outside of the Territory.

1.7 The general policies on marketing of the Expresspay Services and the pricing thereof shall be mutually agreed upon by the Parties in writing.

1.8 Upon reasonable request by the Company, Expresspay may provide technical support services to the Company.

**ARTICLE 2 – SERVICE FEES**

2.1 The Company shall pay Expresspay a one-time set-up fee of One Hundred Ninety Six Thousand Pesos (Php196, 000.00), for every Outlet that shall be set-up with the Expresspay System in order to provide the Expresspay Services under this Agreement, which fee shall cover the initial costs of training the Company’s personnel in the use of the Expresspay System, access to the Expresspay helpdesk, and marketing support. The foregoing set-up fee shall be understood to be non-refundable and shall be deemed to have been fully earned by Expresspay upon payment thereof, as compensation for Expresspay for the expenses it incurred in furnishing assistance and services to the Company and the deferred opportunity for Expresspay to enfranchise others.

2.2 In quoting the fees or charges to prospective Customers for each electronic payment transaction to be made through the Expresspay System, the Company shall be entitled to rely on the service fees provided in the system.

2.3 The Company acknowledges that the unique and competitive advantage of the Expresspay Services is its lower rates or fees charged on every electronic transaction made using the Expresspay System. Accordingly, the Company agrees not to impose rates higher that those provided in the system, unless otherwise agreed between the parties in writing.

2.4 The Company agrees that the fees charged in the system may hereof be amended or modified by Expresspay from time to time to take into account changes in the rates, taxes, fees and charges imposed by banks, internet service providers, telecommunication companies, content providers, licensors, government authorities and other entities that could in any way affect the pricing of the Expresspay Services, provided that no change thereof shall take effect unless the Company shall have been notified in writing at least thirty (30) days prior to the effectivity of such changes.

2.5 The manner of documenting the order for Expresspay Services by a Customer and the procedure to be observed with respect thereto shall be in accordance with the guidelines set forth by Expresspay in the User Manual provided to the Company.

2.6 All the Gross Profits obtained from the provision of the Expresspay Services by the Company to the Customers shall be shared between the Parties as follows:

1. For bills payment, money remittance, and courier service, fifty percent (50%) thereof shall pertain to Expresspay and fifty percent (50%) to the Company;
2. For prepaid e-load facilities, fifteen percent (15%) thereof shall pertain to Expresspay and eighty five percent (85%) to the Company;
3. For e-ticketing, one hundred percent (100%) shall pertain to the Company;

Provided, however, that a modification of this sharing arrangement as a whole or on a per Outlet basis may be established between the Parties upon their mutual agreement in writing. “Gross Profits” shall mean all revenues received by the Company for providing Expresspay Services less direct cost of goods sold associated with the services or products incurred by Expresspay.

**ARTICLE 3 – CONDUCT OF BUSINESS**

3.1 The Company shall exercise, to the best of its abilities and make every effort to market and promote and solicit sales of the Expresspay Services in accordance with this Agreement. The Company shall, at all times: (i) conduct business in a manner that reflects favorably on Expresspay and the Expresspay Services, their services and good name; (ii) avoid deceptive, misleading, or unethical practices that are or might be detrimental to Expresspay, the Expresspay Services, or its good name, including but not limited to disparagement of Expresspay and the Expresspay Services; (iii) not intentionally make false or misleading representations with respect to Expresspay and the Expresspay Services; (iv) not publish or use any misleading or deceptive advertising materials; (v) make no representations or warranties with respect to the Expresspay Services that are inconsistent with or expand the scope of those made by Expresspay, including any warranties or disclaimers of Expresspay; and (vi) conduct its business in accordance with this Agreement, as well as all laws, ordinances, regulations and rules of applicable governmental and other authorities.

3.2 The Company shall bear all of its own expenses incurred in connection with this Agreement and its performance. Except for advertising and promotional materials furnished by Expresspay, the Company shall provide for itself all materials, equipment and facilities as may be necessary to carry out this Agreement. The use by the Company of any marketing or promotional materials for the Expresspay Services that are not provided by Expresspay shall require the prior written consent of Expresspay.

3.3 The Company shall be solely and absolutely responsible for collection and custody of any cash and other forms of payment made by Customers. As such, the Company shall bear the risk of any loss of such cash or payment. The Company undertakes to indemnify Expresspay and hold Expresspay free and harmless from or against all damages, judgments, decrees, costs and expenses resulting from any alleged shortage in delivery, defect or deficiency in remittance of cash and other payments to Expresspay,

and to defend, upon request of Expresspay, at the expense of the Company, any action which may be brought by or against Expresspay or its assigns by reason thereof. Expresspay shall not bear any loss or responsibility for any such shortage.

3.4 The Company shall indemnify and hold harmless Expresspay, its subsidiaries and affiliates, including their directors, officers, employees, agents, attorneys, successors and assigns from any and all claims, losses, liabilities, damages, suits, actions, government procedures, taxes, penalties or interest, legal costs and other costs arising directly or indirectly from or in connection with a breach by the Company of any of the terms and conditions of this Agreement or any willful default or negligence on the part of the Company.

3.5 Expresspay shall under no circumstances be held liable whether in contract, in tort, under any warranty, indemnity or any other theory of liability, for any indirect, incidental or consequential damages, such as, without limitation, loss of revenue or profit, loss of opportunity, loss of goodwill, business disruption or other pecuniary loss arising out of this Agreement.

**ARTICLE 4 – TRADEMARKS**

4.1 The Company shall only promote the Expresspay Services under the proprietary trademarks of Expresspay.

4.2 The Expresspay Services and the Expesspay System, the patents or trademarks thereto, and all other materials of Expresspay or its suppliers or licensors that are provided to the Company in the course of this Agreement, and all versions and derivatives thereof, are and at all times shall remain the sole and exclusive property of Expresspay and/or its suppliers or licensors (collectively, the “Proprietary Materials”), including all worldwide Intellectual Property Rights that are embodied in, related to, or represented by, the Proprietary Materials.

4.3 Subject to the terms and conditions of this Agreement, the Company shall use the Proprietary Materials only in such manner as may be authorized by Expresspay, as the case may be. Title to and ownership of the Proprietary Materials shall remain with Expresspay. The Company shall not take any action that is inconsistent with Expresspay’s ownership of the Proprietary Materials, and any benefits accruing from use of such Proprietary Materials shall inure to the benefit of Expresspay.

4.4 The Company shall not modify, obscure or remove any Expresspay proprietary rights notices (including patent, trademark and copyright notices) incorporated in any way into any Proprietary Materials.

4.5 The Company undertakes to promptly notify and advise Expresspay whenever it shall become aware of any infringement by any third party of the trademarks or other intellectual property rights related to the Expresspay Services, the Expresspay System, or the Proprietary Materials.

**ARTICLE 5 – RELATIONSHIP**

5.1 Performance by the Company under this Agreement shall be as an independent contractor. Nothing contained herein or done in pursuance of this Agreement shall constitute the Company as a partner, agent, legal representative or employee of Expresspay for any purpose whatsoever. Except in pursuance of this Agreement and confined to the selling activities for the Expresspay Services, neither Expresspay nor the Company is granted any right or authority to assume or to create any obligation or responsibility express or implied, in behalf of the other, or to bind the other in any manner or thing whatsoever.

5.2 In the performance of their obligations hereunder, each Party’s employees, workers and agents and other personnel shall in no way be considered employees of the other Party. The Company shall hold Expresspay free and harmless from any and all claims and liabilities of the Company’s personnel or to third parties, particularly claims under the Labor Code of the Philippines and other pertinent social and labor legislation. The Company agrees to indemnify Expresspay for any and all damages that may be suffered by the latter in connection therewith.

**ARTICLE 6 – REPRESENTATIONS AND WARRANTIES**

6.1 The Company represents and warrants to Expresspay that:

(a) It is a corporation duly organized, validly existing and in good standing under the laws of the Republic of the Philippines and has the requisite corporate power and authority to enter into this Agreement and to carry out its obligations hereunder.

(b) All the necessary corporate or legal actions for the execution, delivery and performance of this Agreement and sale of the Expresspay Services within the Philippines as contemplated hereunder have been duly taken and this Agreement constitutes the legal, valid and binding obligations of the Company, enforceable against it in accordance with the terms hereof. No consents or approvals are required to be obtained from, or filings or registrations made with, any governmental body or agency, or any other third party for the due execution and performance by the Company of this Agreement.

(c) The execution, delivery and performance by the Company of this Agreement do not and will not: (i) violate in any respect any provision of, or result in the breach of, or constitute a default under [1] the organization documents of the Company, [2] any agreement, contract, undertaking or instrument to which the Company is a party or which is binding upon the Company or any of its properties or assets; or (ii) constitute a violation of any statute, rule or regulations, order or judgment or decree of any court, administrative body or authority applicable to the Company.

(d) It shall hold Expresspay free and harmless from any and all liability or damage that may be incurred as a result of any breach of the foregoing representations and warranties.

6.2 Expresspay represents and warrants to the Company that:

(a) It has the capacity to make, deliver and perform this Agreement and all transactions contemplated hereby;

(b) This Agreement is a valid and binding agreement of Expresspay enforceable against it in accordance with its terms;

(c) The execution and delivery of this Agreement and the consummation of the transactions contemplated herein will not result in or constitute: (i) a default, breach or violation of any material agreement to which Expresspay is a party, or (ii) a violation of any law, rule or regulation, or (iii) an event which would require any registration, filing, application, notice, consent, approval or permit from any Government agency or third party;

6.3 The foregoing representations and warranties shall survive the execution of this Agreement. Any investigation or examination by or on behalf of any Party shall not operate as a waiver of any breach of warranty or representation. Each warranty or representation is deemed made separately and constitutes an essential condition of this Agreement, each of the Parties having placed complete reliance thereon.

**ARTICLE 7 – CONFIDENTIALITY**

7.1 Each Party understands and agrees that during the course of this Agreement it may be furnished with or otherwise have access to information that the other Party considers to be confidential, including but not limited to business and technical information, marketing plans, research, designs, plans, methods, techniques, processes, clients, customers, distribution channels, agents and representatives, and know-how, whether tangible or intangible and whether or not stored, compiled or memorialized physically, electronically, graphically or in writing (the “Confidential Information”). Each Party agrees to secure and protect the Confidential Information of the other in a manner consistent with the maintenance of the other Party’s rights therein, using at least as great a degree of care as it uses to maintain the confidentiality of its own confidential information of a similar nature, but in no event use less than reasonable efforts. Neither Party will use, sell, transfer, publish, disclose, or otherwise make available any portion of the Confidential Information of the other Party to third parties, except as necessary to perform its obligations under this Agreement or as expressly authorized in this Agreement.

7.2 Notwithstanding the foregoing, Confidential Information of a Party shall not include information which: (i) is, as of the time of its disclosure or thereafter becomes part of the public domain through a source other than the Receiving Party; (ii) was rightfully known to the Receiving

Party as of the time of its disclosure; (iii) is independently developed by the Receiving Party; (iv) is subsequently learned from a third party not under a confidentiality obligation to the Disclosing Party; or (v) is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority, whereupon the Party subject to same shall provide prompt written notice to the other Party prior to such disclosure, so that such Party may seek a protective order or other appropriate remedy.

**ARTICLE 8 – TERM AND TERMINATION**

8.1 The initial term of this Agreement shall be twelve (12) months commencing on the date hereof (the “Initial Term”), unless terminated in accordance with this Agreement. Thereafter, this Agreement shall renew automatically for successive twelve (12) month periods (each, a “Renewal Term”), unless a Party gives the other Party a written notice of its intent not to renew not later than sixty (60) days prior to the end of the Initial Term or any renewal term. (The Initial Term as extended by the Renewal Term(s) shall collectively constitute the “Term”)

8.2 Either Party may terminate this Agreement upon notice to the other if a Party breaches this Agreement or fails to comply with any of its material obligations under this Agreement, which is not cured ten (10) days following receipt of written notice thereof. In addition, either Party may, at its option, terminate this Agreement upon fifteen (15) days’ advance written notice in the event that the other Party files for bankruptcy (or an equivalent action under applicable local laws) or suffers an involuntary bankruptcy or if the other party ceases to conduct operations in the ordinary course of business.

8.3 Expresspay may rescind, terminate or cancel this Agreement effective immediately, by giving notice in writing to the COMPANY upon any of the following grounds:

(a) Violation by the COMPANY of the conditions of this Agreement;

(b) Abandonment of the Service or, without the prior consent of Expresspay, assignment by the COMPANY, of the execution of the services to others; or

(c) Non-performance by the COMPANY on its obligations or executing the services in bad faith.

8.4 Upon termination or expiration of this Agreement:

(a) all rights granted to the Company hereunder shall immediately terminate, and the Company shall immediately cease: (i) marketing, promoting or soliciting sales of the Expresspay Services, or otherwise engaging in the activities described in this Agreement, or (b) using any of Expresspay trademarks, logo and company name in the conduct of its business, including without limitation in its business documents;

(b) the Company shall forthwith return to Expresspay all advertising or promotional materials in its possession;

(c) the Company shall effect a settlement of all liabilities and accountabilities that may have accrued prior to such termination; and

(d) the Company shall not be entitled to claim any indemnification of any kind as a result of the termination, unless the termination is a direct result of Expresspay’s breach of its obligations pursuant to this Agreement.

**ARTICLE 9 – FORCE MAJEURE**

9.1 Neither Party shall be responsible for delays or failure of performance resulting from acts beyond the reasonable control of such Party. Such acts shall include, but not be limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, failure of suppliers to perform, governmental regulations, power failure(s), earthquakes, or other disasters. Performance of the obligations under this Agreement shall be considered to be reasonably extended for a period of time equivalent to the time lost because of such delay.

9.2 Each Party shall be entitled to terminate this Agreement forthwith upon written notice in the event the circumstances of force majeure last over two (2) consecutive months.

**ARTICLE 10 – MISCELLANEOUS PROVISIONS**

10.1 The failure of either Party hereto at any time to require performance by the other Party of any provision of this Agreement shall not affect the right of such Party to require performance by the other Party of that provision, and any waiver by any Party of any breach of any provision of this Agreement shall not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of such provision or a waiver of any right under this Agreement.

10.2 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior agreements between the Parties, whether written or oral, relating to the same subject matter.

10.3 The Company acknowledges that Expresspay and its stockholders, directors, officers and employees and successors and assigns are the intended beneficiaries of certain provisions of this Agreement as indicated herein, and any of said parties may accordingly enforce their rights hereunder directly against the Company. Subject to the foregoing, this Agreement shall be binding upon and inure solely to the benefit of Expresspay and the Company, their successors and permitted assigns.

10.4 If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.

10.5 This Agreement is being entered into by the Parties based on each Party’s particular abilities. Therefore, either Party shall not assign or transfer any or all of its rights, interests (including obligations) in and to his Agreement, without the prior written consent of the other party. Provided, however, that Expresspay may allow the assignment or transfer of this Agreement to third parties, whereby the rights of the Company to provide the Expresspay Services shall be assumed by a third party, but only after proper application and compliance by the Company and the third party transferee with Expesspay’s policies, terms and conditions, for such assignment or transfer to Expresspay’s full satisfaction. Any such assignment or transfer without the required written consent shall be void.

10.6 No modifications, amendments or supplements to this Agreement shall be effective for any purpose unless in writing and signed by each Party. Approvals or consents hereunder by a Party shall also be in writing. Without limitation, no term of any purchase order shall amend or modify this Agreement.

10.7 The parties hereto agree that any legal action or proceeding arising out of or in connection with this Agreement shall be brought exclusively before the proper courts of the National Capital Judicial Region, to the exclusion of all other courts, the parties hereto submitting to such court’s exclusive jurisdiction.

10.8 This Agreement shall be governed by and construed in accordance with the laws of the Republic of the Philippines.

In Witness Whereof, the parties have hereunto affixed their signatures on the date and at the place above written.

**EXPRESSPAY, INC.**

 By:

**ALEXANDER BENEDICT MASCENON**

**President**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Owner

SIGNED IN THE PRESENCE OF:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ACKNOWLEDGMENT**

REPUBLIC OF THE PHILIPPINES)

 ) S.S.

BEFORE ME, a Notary Public for and in the City of San Juan this \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ personally appeared the following:

Name Comm. Tax Cert. No. Issued On/At

Alexander Benedict D/L NO1-93-148586 July 24, 2013/QC

Mascenon

who are known to me and by me known to be the same persons who executed the foregoing Memorandum of Agreement and they acknowledged the same to me to be their own free and voluntary act and deed as well as the free act and deed of the corporations herein represented.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the date and at the place above written.

Doc. No. \_\_\_\_;

Page No. \_\_\_\_;

Book No. \_\_\_\_;

Series of 2013.