

MERCHANT SERVICES TERMS AND CONDITIONS

Last updated: May 15, 2025

Please read section 20 (“attorney fees; arbitration; class action waiver”) carefully as it relates to arbitration and class actions.

These merchant services terms and conditions (“**Terms and Conditions**”) are for merchant card payment processing services among the merchant (“**Merchant**”) that signed the merchant services application (“**Merchant Application**”), PNC Bank, N.A. (“**Member Bank**”), and ProPay, Inc. (“**ProPay**”). The Merchant Application and the Terms and Conditions are part of the “**Merchant Agreement**” as defined below. Subject to Card Brand Rules (defined below), ProPay and Member Bank reserve the right to allocate duties and obligations amongst themselves as they agree appropriate in their sole discretion, and Member Bank or ProPay may jointly or individually assert or exercise any rights or remedies provided hereunder. If Merchant wishes to address any act or omission by, or make or bring any claim or action against, Member Bank or ProPay relating to this Merchant Agreement, it shall first discuss such issue with ProPay prior to making or bringing any claim or action against Member Bank (in which case ProPay shall address the issue as agreed with Member Bank). Member Bank is responsible for sponsoring Merchant with Visa and Mastercard, and for settlement of Merchant sales funds. Unless otherwise noted, all other products, services and obligations to Merchant are the sole responsibility of ProPay.

Member Bank, as a member of Visa® U.S.A. Inc. (“**Visa**”) and Mastercard® International Incorporated (“**Mastercard**”), provides transaction processing and other services and products in connection with financial services provided by Visa and Mastercard. ProPay provides transaction processing and other services and products in connection with financial services provided by American Express® Travel Related Services Company, Inc. (“**American Express**”), and DFS Services LLC (“**Discover**”). If elected by Merchant on the Merchant Application, ProPay will settle American Express and Discover transactions in accordance with the terms set forth in the Merchant Application and in doing so, ProPay does not represent or indicate in any way that Member Bank sponsors ProPay into the American Express Network and Discover Network. If Merchant elects and is approved to participate in the American Express OptBlue Program, Merchant agrees to comply with the American Express OptBlue Merchant Operating Guide, which may be accessed at www.americanexpress.com/merchantopguide. Visa, Mastercard, American Express, and Discover are collectively defined as the “**Card Brands**” and their cards are each a “**Card**”. If elected by Merchant, ProPay will settle American Express and Discover transactions. Member Bank does not sponsor ProPay into the American Express network and Discover network, is not providing or agreeing to provide Merchant any services hereunder with respect to American Express and Discover transactions, and has no responsibility or liability to Merchant for American Express and Discover transactions.

ProPay, as an agent of Member Bank, provides payment card processing services. Merchant is engaged in the business of selling goods and services, and desires that ProPay and Member Bank provide the services described in the Merchant Agreement (the “**Merchant Services**”) on the terms and conditions of this Merchant Agreement.

1. **MERCHANT’S APPLICATION AND INFORMATION.** By completing the Merchant Application, Merchant applies for the Merchant Services. In their sole and absolute discretion, ProPay and/or Member Bank may accept or reject Merchant’s Application. Merchant may present Transactions to ProPay only for the activities and in the volumes described on the Merchant Application. “**Transaction**” means a purchase by Card of goods or services from Merchant or a refund by Merchant to a Card done through Merchant Services. The earlier date of the presentation of the first Transaction, including any test Transaction, by Merchant to ProPay or the date ProPay approves the Merchant Application signifies the effective date of the Merchant Agreement (“**Effective Date**”). By either Merchant’s signature on the Merchant Application or Merchant’s processing a Transaction (including a test Transaction) with ProPay, Merchant affirmatively accepts and agrees to be bound by the Merchant Agreement. If Merchant fails to submit Transactions for processing within 120 days after the Effective Date for any reason other than ProPay’s failure to perform its obligations under the Merchant Agreement, then Merchant shall pay to ProPay as damages (and not as a penalty) \$100 for each 30 day period in which Merchant processes no Transactions. Damages shall begin accruing as of the 121st day following the Effective Date and shall stop accruing as soon as Merchant begins processing Transactions under this Merchant Agreement.

2. MERCHANT AGREEMENT; INCORPORATION OF ADDITIONAL TERMS AND PROVISIONS.

- 2.1. The exhibits to these Terms and Conditions, as amended from time to time, are part of these Terms and Conditions, as are the Merchant Application, fee schedule, and the Card Brand Rules, and are hereinafter individually and collectively referred to as the “**Merchant Agreement**.” “**Card Brand Rules**” means the by-laws, operating regulations, rules, policies, and procedures of the Card Brands, as in effect from time to time. Without limiting the foregoing, this Agreement includes the provisions required by: (a) the Visa International Operating Regulations relating to the Merchant Chargeback Monitoring Program, the Merchant Agreement Requirements, and Merchant Card Acceptance (the “**Visa Regulations**”); and (b) section 5.1 and sections 5.6 through 5.12 of the Mastercard Rules (the “**Mastercard Rules**”); and (c) chapter 4, “**Transaction Processing**”, chapter 11, “**Chargebacks and Inquiries**,” and chapter 12, “**Specific Industries**” of the American Express Merchant Operating Guide, and Exhibit C “**American Express Card Acceptance**”. Copies of the Visa Regulations (<http://corporate.visa.com/about-visa/our-business/operating-regulations.shtml>) and the Mastercard Rules (http://www.Mastercard.com/us/merchant/pdf/BM-Entire_Manual_public.pdf) are available for review online. The American Express Merchant Operating Guide, which is a summary of the above-referenced American Express regulations, is available at www.americanexpress.com/merchantsopguide. Merchant shall periodically review the contents of the Card Brand Rules to ensure it remains in compliance with them.
- 2.2. The following documents (as found at <https://www.propay.com/us/legal>, as may be amended from time to time by ProPay with or without prior notice to Merchant) are incorporated into this Merchant Agreement: (a) the Privacy Policy; (b) the Terms of Use; (c) the Electronic Communication Agreement; (d) the Electronic Funds Transfer Agreement; and (e) the ProPay High Risk Acceptable Use Policy. Violation of any of the foregoing may result in any one or more of the following: (i) refusal of an authorization to process Transactions; (ii) suspension of the Merchant Services; and/or (iii) immediate termination of this Merchant Agreement.

3. PROCEDURES FOR TRANSACTIONS.

- 3.1. In accepting Cards for the purchase of Merchant’s goods or services, Merchant shall comply with the requirements of the Merchant Agreement, including but not limited to the Card Brand Rules, as the same are revised from time to time.
- 3.2. **Submission of Valid Transactions.**
 - 3.2.1. Merchant will submit to ProPay a Transaction only if the Transaction is made or approved by the cardholder who is issued the Card used for the Transaction. The burden of verifying the identity of the cardholder and the cardholder’s authority to initiate a Transaction rests solely with Merchant. Merchant will not submit directly or indirectly: (a) any Transaction that Merchant knows or should have known to be fraudulent or not authorized by the cardholder; (b) any Transaction that results from a transaction outside of Merchant’s normal course of business, as described on the Merchant Application; or (c) any Transaction using a Card issued to Merchant or Merchant’s business owners, family members, or principals.
 - 3.2.2. If at any time the volume of Transactions substantially exceeds or decreases from the projected annual volume stated on the Merchant Application, or if at any time ProPay suspects fraud, money laundering or violations of the Card Brand Rules, ProPay may, in its sole and absolute discretion and in addition to other remedies that the ProPay may have: (a) refuse to process the excessive or suspect Transactions; (b) process the Transactions and retain the funds received from processing until such time as the excess or suspect Transactions are found to be valid or invalid and processed in accordance with the Card Brand Rules; (c) suspend processing and/or terminate the Agreement; or (d) amend the Merchant Agreement to protect the interests of ProPay.
- 3.3. **Payments to Merchant for Valid Transactions.**
 - 3.3.1. Member Bank and ProPay will provide provisional credit to Merchant for each undisputed and valid Transaction that Merchant submits to ProPay by crediting Merchant’s ProPay Account, provided Member Bank and ProPay have received settlement for the valid Transaction through the interchange procedures specified by the relevant Card Brand. Member Bank and ProPay are not obligated to provide provisional credit to Merchant for Transactions submitted that are not valid Transactions, and may suspend or discontinue any provisional credit in Member Bank’s and/or ProPay’s sole and absolute discretion, including for any reason that would justify termination of the Merchant Agreement. Each provisional

credit from Member Bank and ProPay to Merchant will be subject to adjustment, including revocation, upon ProPay's further review and verification. ***Provisional credit to Merchant for a Transaction disputed by a cardholder for any reason is not final.***

- 3.3.2. Member Bank is responsible for providing settlement funds to Merchant, and ProPay shall not have access to or hold settlement funds. Member Bank deposits Transaction proceeds into a non-interest-bearing, aggregated account at Member Bank in the name of Member Bank for the benefit of all ProPay's merchant customers. The subaccount shown in ProPay's software for tracking Merchant's funds in the aggregated account is Merchant's "**ProPay Account**". Merchant's ProPay Account is not an actual account at Member Bank. Funds will remain in the Merchant's ProPay Account until: (a) such funds are released by Merchant at its discretion, as evidenced on ProPay's website; or (b) Merchant informs ProPay to release such funds to the bank account designated by Merchant in accordance with the Electronic Funds Transfer ("**Designated Account**").
- 3.3.3. Merchant may utilize multiple ProPay Accounts to allow for easier reporting of Transactions. Such additional ProPay Accounts require approval by ProPay and are subject to the terms of this Merchant Agreement. Merchant is responsible for any additional fees or costs associated with having multiple ProPay Accounts. These additional ProPay Accounts collectively count toward underwriting limits for Merchant, as such collective limits are established by Member Bank.
- 3.3.4. Merchant will promptly provide ProPay or Member Bank with any information it requests in response to an inquiry from a Card Brand. A Card Brand may make an inquiry when it needs information about a disputed Transaction. In order to be able to respond to an inquiry, Merchant must maintain records and follow business practices that are in accordance with the Card Brand Rules.
- 3.3.5. "**Chargeback**" means a Transaction returned by a Card issuer to Member Bank. Merchant must not reenter or reprocess any Transaction that has been charged back. Instead Merchant must allow the Chargeback process to proceed to its conclusion. If Merchant disagrees with a Chargeback, Merchant may make a reversal request pursuant to applicable Card Brand Rules. Merchant acknowledges that regardless of its refund or return policy, Chargebacks will be handled in accordance with this Merchant Agreement and Card Brand Rules regarding returns and Chargebacks. Merchant is liable to ProPay and Member Bank for the amount of all Chargebacks, Card Brand fines, and associated fees. Merchant authorizes ProPay and Member Bank to deduct, recoup, or offset from incoming Transactions and to debit Merchant's ProPay Account, the Merchant Reserve Account, and the Billing Reserve described below to recover any Chargeback. Member Bank may suspend accepting Transactions or releasing funds represented by Transactions to Merchant until Merchant reimburses Member Bank for all unpaid Chargebacks.
- 3.3.6. Merchant is liable to ProPay and Member Bank for the amount by which credit Transactions processed on any day exceed valid Transactions submitted on that day. ProPay and Member Bank may deduct the amount of any credit Transaction processed for Merchant in the same manner as it would a Chargeback.
- 3.4. **Restrictions.** Merchant may not (a) indicate or imply that the Card Brands, ProPay or Member Bank endorses any Merchant goods or services; (b) refer to a Card Brand, ProPay or Member Bank in stating eligibility for Merchant's products, services or membership; or (c) use any marks, symbols or logos owned by any Card Brand, ProPay or Member Bank for any purpose other than those permitted in the Card Brand Rules, provided that any use of ProPay or Member Bank's marks, symbols or logos shall be in accordance with and subject to any branding guidelines provided by ProPay or Member Bank. Merchant acknowledges that Member Bank and ProPay shall remain the sole and exclusive owners of their respective intellectual property and Confidential Information (defined below). Except to the extent expressly provided herein, no rights to ProPay or Member Bank's intellectual property or Confidential Information are granted hereunder, and all rights therein are expressly reserved.
- 3.5. **Authorizations with and without ProtectPay**
 - 3.5.1. It is highly recommended that Merchant obtain the CVV2, CVC2 or CID information, as applicable, from each Card. However, Merchant must never store this value permanently. Merchant shall not submit an authorization on behalf of any third party.
 - 3.5.2. When a Merchant runs Transactions through ProPay's ProtectPay service, it is recommended that Merchant identify the cardholder accepting payment for goods or services. When Merchant uses ProtectPay, ProPay will provide a means to collect and utilize the expiration date, and zip code or postal

code from the cardholder's billing address. If the expiration date is not stored in ProtectPay, Merchant must obtain the Card expiration date and forward it to ProPay as part of the authorization request.

3.5.3. When Merchant does not run Transactions through ProtectPay, Merchant shall obtain (using equipment meeting specifications determined by ProPay) an authorization for each Transaction in accordance with the terms of exhibit A.

4. **MERCHANT'S WARRANTIES.** Upon signing the Merchant Application, and each time Merchant submits a Transaction, Merchant represents and warrants that:
- 4.1. Merchant has abided by the Merchant Agreement, and all applicable laws and the Card Brand Rules;
 - 4.2. Each statement made on the Merchant Application was true as of the date Merchant signed the Merchant Application agreeing to be bound by the Merchant Agreement;
 - 4.3. There have been no materially adverse changes in information provided in the Merchant Application or in Merchant's financial condition, or management;
 - 4.4. Merchant does not do business under a trade name or style not previously disclosed in writing, and there has been no change in the nature of Merchant's business or product lines that have not been previously disclosed to ProPay and Member Bank;
 - 4.5. Each Transaction is genuine and arises from a bona fide sale of merchandise or services by Merchant, represents a valid obligation for the amount shown on the Transaction receipt, and does not involve the use of the Card for any other purpose;
 - 4.6. Merchant has title to the Transaction and Transaction receipt, there are no liens or other encumbrances on it, and Merchant has the authority to convey the Transaction for processing;
 - 4.7. No Transaction is subject to any set-off or counterclaim;
 - 4.8. No Transaction has been previously presented for processing unless allowed by the Card Brand Rules;
 - 4.9. Each statement on the Transaction receipt is true, and Merchant has no knowledge of facts that would impair the validity or collectability of the amount of the Transaction;
 - 4.10. The person who executes the Merchant Application on behalf of Merchant has the full power and authority to execute the Merchant Application and to enter into the Merchant Agreement;
 - 4.11. The Merchant Agreement is a legal, valid, and binding obligation of Merchant enforceable against Merchant in accordance with its terms;
 - 4.12. Merchant shall submit Transactions only in accordance with the information contained in the Merchant Application and the Merchant Agreement;
 - 4.13. Merchant has the power and authority to authorize the automatic funds transfer provided for in the Merchant Agreement;
 - 4.14. The Designated Account is owned and controlled by Merchant and will be open at all times during the Term and as long as the Merchant Reserve Account and Billing Reserve (as described below) are in effect;
 - 4.15. Merchant is not (a) a sanctioned person: (b) located in or operating under a license issued by a jurisdiction whose government has been identified by the U.S. Department of State as a sponsor of international terrorism under 22 U.S.C. 2371 or 50 U.S.C. App. 2405(j); (c) located in or operating under a license issued by a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the U.S. is a member; or (d) located in or operating under a license issued by a jurisdiction that has been designated by the U.S. Secretary of Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns;
 - 4.16. Merchant will immediately notify Member Bank and ProPay in writing of any material changes to any information provided herein including but not limited to a change in Merchant's legal entity, location, business type, or the types of goods and/or services offered for sale by Merchant;
 - 4.17. There is no action, suit or proceeding pending or, to Merchant's knowledge, threatened that, if decided adversely, would materially impair Merchant's financial condition or operations, or its ability to perform its obligations under this Merchant Agreement, or pay its debts;
 - 4.18. Merchant complies fully with the High Risk Acceptable Use Policy; and

4.19. Merchant shall ensure that only authorized individuals access Merchant's ProPay Account to, among other things, effect transfers of funds to and/or from such account. Merchant shall be solely responsible for any loss that arises out of any unauthorized individual gaining access to Merchant's ProPay Account using Merchant's ID number and PIN, and shall indemnify, defend and hold ProPay and Member Bank harmless from and against any such loss, unless such unauthorized access is solely the fault of ProPay or Member Bank.

5. **CONFIDENTIALITY; DATA SECURITY.**

- 5.1. Merchant will treat as confidential: (a) the terms of the Merchant Agreement; (b) all information or data, of whatever nature, relating to ProPay (including its operations, policies, procedures, accounts and personnel) accessed or used by or disclosed to Merchant in connection with the Merchant Agreement; (c) ProPay's IRS W-9 form; and (d) all information or data that is proprietary to a third party (including ProPay's customers and contractors) and that ProPay is obligated to treat as confidential, accessed or used by or disclosed to Merchant in connection with the Merchant Agreement (individually and collectively, "**Confidential Information**"). Merchant shall not use or disclose Confidential Information without ProPay's prior written consent. Merchant may only disclose Confidential Information to Merchant employees who have a need to know such information in connection with Merchant's performance hereunder and who are bound to confidentiality restrictions no less restrictive than those herein. Merchant shall exercise at least the same degree of care to maintain the confidentiality of Confidential Information that it uses for its own similar information, but in no event less than a reasonable degree of care. The foregoing obligations shall not apply to any information that (i) is received from any third party source that is properly authorized to disclose it without restriction, (ii) is or becomes generally known to the public by publication or some other means other than a breach by Merchant or its employees of any agreement or confidentiality obligations, or (iii) is required by law to be divulged, provided that the request is proper and the disclosure does not exceed that which is required. In the case of (iii), Merchant will provide prior notice thereof and cooperate with ProPay to limit disclosure. Upon ProPay's request, and upon termination or expiration of the Merchant Agreement, Merchant shall return or, only if requested by ProPay, destroy all Confidential Information in its possession or control. Merchant acknowledges that a breach of this section 5 may cause ProPay irreparable injury and that ProPay may have no adequate remedy at law. Accordingly, ProPay may seek provisional or injunctive relief in addition to any other rights or remedies.
- 5.2. "**Merchant Servicer**" means a third-party agent that: (a) is engaged by a Merchant; (b) is not a member of the Card Brands; and (c) has access to cardholder data, or processes, stores, or transmits Transaction data. Merchant must notify ProPay and receive ProPay's approval prior to engaging any Merchant Servicer in connection with Merchant's acceptance of Cards or the submission of Transactions to ProPay. Merchant shall provide ProPay at least 60 days' advance written notice of Merchant's election to use a Merchant Servicer. Member Bank and/or ProPay may individually approve or deny the use of a Merchant Servicer in their sole and absolute discretion and at any time. If a Merchant Servicer is required to certify, register, or act in any fashion pursuant to the Card Brand Rules, Merchant shall cause such Merchant Servicer to cooperate with ProPay in completing any steps required for registration, certification and/or action. Merchant is solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such registration, certification and/or action. ProPay and Member Bank shall in no event be liable to Merchant or any third party for any actions or inactions of Merchant Servicer(s) used by Merchant, and Merchant expressly assumes all such liability.
- 5.3. The use of a Merchant Servicer or software or systems provided by a Merchant Servicer that has connectivity to the Internet poses an increased risk, and Merchant assumes all liability for such increased risks. If Merchant utilizes software or hardware with a connection to the Internet such hardware or software interacts in any capacity with the provision of services contemplated pursuant to this Merchant Agreement, Merchant is solely liable without limitation for any and all consequences of such interaction.
- 5.4. Merchant agrees and shall ensure that Merchant Servicers utilized by Merchant provide the same levels of security as those required of Merchant, and that such Merchant Servicers transmit data in accordance with: (a) the required format(s) of the Card Brands; (b) the Card Brand Rules; and (c) the requirements of ProPay and Member Bank. Merchant must have a written contract between itself and its Merchant Servicers that stipulates adherence to the provisions of such information security requirements. Merchant's written contract with any such third party must contain provisions obligating the third party to comply with (to the extent applicable); (i) law, CISP, SDP, DISC, PCIDSS, PA-DSS, PIN and PED security requirements; (ii) all other Card Brand requirements pertaining to confidentiality and security and integrity of cardholder and Transaction data; (iii) all rules prohibiting storage of certain Transaction data; and (iii) all other applicable Card Brand

Rules and the requirements of ProPay and Member Bank. Merchant will only allow Merchant Servicers to have access to cardholder data for the purposes that are authorized by the Card Brand Rules. Any fees, fines or liability assessments from actual or alleged noncompliance will be the sole liability of Merchant. Merchant shall indemnify and hold Member Bank and ProPay harmless against losses or damages arising from the acts or omissions of Merchant Servicers engaged by Merchant.

- 5.5. Merchant must immediately notify Member Bank and ProPay of any suspected or confirmed loss or theft of materials or records that contain cardholder account numbers or Transaction information. In the event of a suspected or confirmed loss or theft Merchant shall provide immediate access to all facilities, systems, procedures, equipment, and documents as may be deemed appropriate by ProPay and Member Bank or their designated representatives, regulators or auditors for inspection, audit, and copying as deemed appropriate by both Member Bank and ProPay in their individual sole discretion. Merchant shall be responsible for all costs associated with such inspection, audit, and copying however such costs may occur. Merchant shall make reasonable efforts to address and remedy the cause of the breach, intrusion, compromise or otherwise unauthorized access to cardholder account information.
- 5.6. Merchant authorizes ProPay to release its name and address to any third party whom ProPay determines needs to know such information in order for ProPay to perform the Merchant Services and who has requested such information.
- 5.7. Merchant will never (even in the event of including Merchant's failure, bankruptcy, insolvency, or other suspension of business operations): (a) provide cardholder account numbers, personal cardholder information or Transaction information to anyone except ProPay, the Card Brands, or Merchant's servicers or agents for the purpose of assisting Merchant in completing Transactions, or as specifically consented to by cardholder or required by law or in response to valid legal process; (b) retain or store Card magnetic stripe, CVV, CVV2, CVC2 or CID data (including track data) subsequent to authorization for a Transaction; or (c) release any cardholder information over the telephone under any circumstances. If Merchant's business fails or ceases to exist, Merchant is required to return to ProPay all such information or provide proof of destruction of this information to ProPay.
- 5.8. Merchant agrees to establish security procedures to protect cardholder information and comply with the Visa Cardholder Information Security Program (CISP), MasterCard's Site Data Protection (SDP) Program, Discover Information Security Compliance (DISC), American Express Data Security Requirements, and the Payment Card Industry (PCI) Data Security Standards. Detailed information about PCI DSS can be found at the PCI DSS Council's Website: www.pcisecuritystandards.org. The Card Brands, ProPay or Member Bank, and their respective representatives, may inspect the premises of Merchant or any servicer or agent engaged by Merchant for compliance with security requirements. Merchant acknowledges that any failure to comply with security requirements may result in the imposition of restrictions on Merchant or the permanent prohibition of Merchant's participation in Card acceptance programs by the Card Brands. Merchant shall indemnify and hold ProPay and Member Bank harmless against any losses or damages arising from Merchant's actual or alleged failure to comply with security procedures and any losses or damages arising from or related to Merchant's acts or omissions that result in an actual or alleged breach of data security, including but not limited to Merchant's non-participation in any breach security program ProPay may offer.
- 5.9. ProPay acknowledges that it will maintain compliance with all applicable Card Brand Rules, including, without limitation, the PCI DSS requirements.
- 5.10. Federal regulations enacted pursuant to the USA PATRIOT Act and other applicable laws require financial institutions with which ProPay has relationships to verify the identity of every person who seeks to open an account with a financial institution. Merchant shall provide documentary verification of Merchant's identity, such as a driver's license or passport for an individual and certified copy of organization documents for an entity in manner acceptable to ProPay and Member Bank. ProPay and Member Bank reserve the right to verify Merchant's identity through other non-documentary methods as ProPay and Member Bank deem appropriate in their sole discretion. ProPay and Member Bank may retain a copy of any document it obtains to verify Merchant's identity with the financial institution.

6. CARD BRAND RULES.

- 6.1. Merchant must comply with the Card Brand Rules, as the same may be amended from time to time. The Card Brand Rules may change with little or no advance notice and Merchant will be bound by all such changes. If Merchant objects to any change in the Card Brand Rules, it must immediately stop accepting new Transactions for Cards governed by the change. The Card Brand Rules will govern if there is any inconsistency between the

Merchant Agreement and the Card Brand Rules. If there is an inconsistency between the Merchant Agreement (including the Card Brand Rules) and applicable law, applicable law will govern, but only to the extent necessary to resolve the inconsistency.

- 6.2. Card Brand Rules of the debit networks may differ among them with respect to the Transactions they allow. ProPay, at its discretion, may require that the most restrictive requirements of one debit network apply to all of Merchant's online debit Transactions, regardless of Card type.

7. APPLICABLE LAW; MERCHANT'S BUSINESS; OTHER PROCESSORS.

- 7.1. Merchant will comply with all applicable federal, state, and local laws and regulations, including but not limited to laws and regulations regarding anti-money laundering compliance, in completing Transactions, submitting them to ProPay, performing its obligations under the Merchant Agreement, and otherwise conducting its business.
- 7.2. Merchant will give ProPay and Member Bank at least 30 days' prior written notice before any change in Merchant's name or location, any change in ownership or management of Merchant's business, any sale, assignment, rental, lease or transfer of ownership of any location that accepts Cards, or any material change in information concerning Merchant in the Merchant Application, and material change in the type or nature of the business carried out by Merchant or otherwise required to be provided to ProPay.
- 7.3. To the extent permitted by applicable law, Merchant agrees that it will not participate in a Card processing program with another financial institution or processor without ProPay's written approval.

8. CREDIT REPORTS AND OTHER INFORMATION.

- 8.1. From time to time, ProPay may obtain credit and other information on Merchant, owners and officers of Merchant, and any and all personal guarantors of Merchant, and any signatory to the Merchant Application, from others (such as customers and suppliers of Merchant, lenders and credit reporting agencies), and furnish information on Merchant's relationship with ProPay and ProPay's experience with Merchant to others seeking the information.
- 8.2. Merchant will provide ProPay with updated business and financial information concerning Merchant, including financial statements, tax returns, evidence of required licenses and other information and documents ProPay may reasonably request from time to time. Merchant shall further provide ProPay such information as it may request for the making of insurance claim, regulatory or other filings related to Merchant's activity pursuant to this Agreement. All material marked "confidential" which ProPay receives from Merchant will be used only by ProPay, Member Bank or the Card Brands in performing the Merchant Services under this Merchant Agreement or related services and reporting. ProPay, Member Bank and any Card Brand, regulator, auditor or any other entity having authority may audit Merchant's records relating to this Merchant Agreement. Merchant shall provide all documentation, information or other inspection rights requested by ProPay's or Member Bank's regulators or auditors or otherwise to enable ProPay and Member Bank to meet the requirements of applicable law. Without limiting the generality of the foregoing, Merchant understands and agrees that if, at the time of signing this Merchant Agreement Merchant is undergoing a forensic investigation, Merchant must notify ProPay and fully cooperate with the investigation until it is completed.
- 8.3. Merchant authorizes ProPay to release and use information collected in connection with ProPay's provision of the Merchant Services to third parties that provide services to ProPay or Merchant or to any third party that requests and has a reason to know such information, including but not limited to the Card Brands, and any third party having regulatory control over any party.

9. TERM; TERMINATION.

- 9.1. **Term/Renewal.** The initial term of this Merchant Agreement shall be for the term of three years (the "**Initial Term**") from the Effective Date. By either Merchant's signature on the Merchant Application or Merchant's processing a Transaction with ProPay, Merchant confirms acceptance of the Merchant Agreement. At the expiration of the Initial Term, this Merchant Agreement will automatically renew for successive one year periods (each a "**Renewal Term**" and collectively with the Initial Term the "**Term**") unless a party provides the other parties with notice of its intent not to renew the Merchant Agreement at least 90 days prior to the expiration of the then-current term.

9.2. Termination.

- 9.2.1. **Termination without Cause.** ProPay or Member Bank or ProPay's or Member Bank's designated representative may terminate the Merchant Agreement as to all Card types or individually specified Card types, without cause, upon 30 days' advance written notice.
- 9.2.2. **Termination for Cause by ProPay or Member Bank.** ProPay or Member Bank or ProPay's or Member Bank's designated representative may terminate the Merchant Agreement in its sole and absolute discretion, effective immediately, upon written, electronic or oral notice to Merchant if ProPay or Member Bank reasonably determines that any of the following conditions exists:
- 9.2.2.1. Merchant has violated any provision of the Merchant Agreement.
 - 9.2.2.2. There is a material adverse change in Merchant's financial condition, material change in Merchant's processing activity, processing activity inconsistent with the Merchant Application, or ProPay or Member Bank determines in its sole discretion that Merchant's processing activity could result in a loss to ProPay or Member Bank.
 - 9.2.2.3. A petition in bankruptcy has been filed by or against Merchant, Merchant is generally unable to pay its debts as they become due, a receiver, custodian, trustee, liquidator or similar official is appointed for a substantial portion of Merchant's business, there is a general assignment for the benefit creditors, or the business terminates.
 - 9.2.2.4. Any information which Merchant provided to ProPay or Member Bank, including Merchant Application information, was false, incomplete or misleading when received, or has materially changed since Merchant provided such information.
 - 9.2.2.5. At any time during the term of the Merchant Agreement, Merchant has had a monthly ratio of Chargebacks to Transactions that ProPay or Member Bank, in their sole and absolute discretion, deems excessive.
 - 9.2.2.6. Merchant or any of Merchant's officers or employees has been involved in processing Transactions with ProPay or Member Bank or other parties arising from fraudulent or otherwise unauthorized transactions.
 - 9.2.2.7. Merchant is or will be unable or unwilling to perform its obligations under the Merchant Agreement or any applicable laws.
 - 9.2.2.8. Merchant has failed to pay ProPay or Member Bank any amount when due.
 - 9.2.2.9. Merchant has failed to promptly perform or discharge any obligation under the Merchant Agreement, the Merchant Reserve Account or the Billing Reserve.
 - 9.2.2.10. Any of Merchant's representations or warranties made in connection with the Merchant Agreement was not true or accurate when given.
 - 9.2.2.11. Merchant has defaulted on any agreement it has with ProPay or Member Bank.
 - 9.2.2.12. ProPay or Member Bank is served with legal demand, order or process seeking to attach or garnish any of the provisional credits arising out of or relating to the Merchant Agreement, Merchant's funds or property in ProPay's or Member Bank's possession.
 - 9.2.2.13. The Card Brand Rules are amended in any way such that ProPay or Member Bank determines that the continued existence of the Merchant Agreement would cause ProPay or Member Bank to be in breach of such Card Brand Rules.
 - 9.2.2.14. Any guaranty supporting Merchant's obligations is revoked, withdrawn or terminated or altered in any way.
 - 9.2.2.15. Any governmental entity initiates proceedings against or an investigation regarding, Merchant, or ProPay or Member Bank reasonably believes that a governmental entity may do so.
 - 9.2.2.16. If any circumstances arise regarding Merchant or its business that in ProPay's or Member Bank's discretion, make harm or loss of goodwill to ProPay or Member Bank or any Card Association likely.
- 9.2.3. **Termination for Cause by Merchant.** Merchant may terminate the Merchant Agreement in the event of a material breach of the terms of the Merchant Agreement by ProPay, provided Merchant gives ProPay

written notice of any alleged breach and such breach remains uncured for a period of 30 days following receipt of written notice by the ProPay.

9.2.4. Liquidated Damages for Early Termination.

9.2.4.1. In addition to all other remedies available to ProPay under the Merchant Agreement or as otherwise available in law or equity, if the Merchant Agreement is terminated prior to the expiration of the applicable Term for any reason other than for a material, uncured breach by ProPay, Merchant agrees to pay ProPay as liquidated damages (and not as a penalty), a sum computed by multiplying (a) the average of the monthly fees paid by Merchant to ProPay over the immediately preceding six months and (b) the number of months remaining in the unexpired Term. Payment of liquidated damages for termination will not relieve either party of any obligations arising prior to the date of termination.

9.2.4.2. Merchant agrees that such liquidated damages as calculated above shall also be due to ProPay if Merchant discontinues submitting Transactions for processing during the Term for a period of 90 consecutive days, and is not designated on the Merchant Application, or by notice to ProPay, as a seasonal merchant or as otherwise agreed to by ProPay.

9.2.4.3. Merchant acknowledges and agrees that the liquidated damages are a reasonable computation of the financial harm caused by the termination of the Merchant Agreement by Merchant.

9.2.5. Member Bank's or ProPay's rights of termination under the Merchant Agreement are cumulative. A specific right of termination shall not limit any other right of ProPay or Member Bank to terminate the Merchant Agreement expressed elsewhere in the Merchant Agreement. Notice of termination may be given orally or in writing, if given orally, shall be confirmed in writing, except as otherwise stated in the Merchant Agreement.

9.2.6. Upon termination, Merchant's rights to complete Transactions and submit them to ProPay will cease. Termination of the Merchant Agreement will not terminate the rights and obligations of Merchant, ProPay and Member Bank relating to acts or omissions occurring before termination, including for example, any fees or other service fees owed to ProPay, any Transactions processed for Merchant by ProPay (whether before or after termination), Merchant's Chargeback and indemnity obligations, and the security interest granted to ProPay and Member Bank in the Merchant Agreement.

9.2.7. It is understood that a file for terminated merchants referred to as Member Alert to Control High-Risk Merchants ("**MATCH**"), formerly known as the Terminated Merchant File or "**TMF**", is managed and maintained by Mastercard and utilized by the Card Brands and acquiring banks to identify the names of any business (and its principals) that have been terminated for certain reasons, including fraud, depositing excessive counterfeit paper, excessive unauthorized transactions, excessive chargebacks, depositing paper for others (laundering), bankruptcy or breach of a merchant agreement. Merchant acknowledges that ProPay or Member Bank is required to report Merchant to the **MATCH** (and/or on the Consortium Merchant Negative File or "**CMNF**" published by Discover® Network) if the Merchant Agreement is terminated for any of the foregoing reasons or other reasons as may be modified by the Card Associations. Merchant agrees and consents to such reporting in the event of the termination of the Merchant Agreement for any of the foregoing reasons.

10. **MERCHANT RESERVE.** If ProPay or Member Bank believes there is a high level of risk associated with Merchant's use of the Merchant Services, ProPay may require the establishment of a reserve ("**Reserve**"). In lieu of establishing a Reserve Account, Processor may, at its election, demand and receive other forms of additional collateral security, including, without limitation, letters of credit or certificates of deposit. Failure to supply such additional collateral security shall constitute a material breach of this Merchant Agreement. Factors ProPay may consider are in requiring a reserve are chargebacks, returns, unfulfilled orders, or credit risk. ProPay will hold funds in Reserve for as long as it deems necessary to mitigate risks associated with Merchant's use of the Merchant Services. If ProPay does require establishment of a Reserve, ProPay will provide Merchant with notice specifying the terms of the Reserve, which terms ProPay may change at any time on notice to Merchant. Merchant will remain liable for all obligations related to its use of the Merchant Services even after the release of any Reserve. The Reserve may be raised, reduced or removed at any time by ProPay, in its sole discretion. Funds in reserve will be held in an account maintained by Member Bank (the "**Merchant Reserve Account**"). The Merchant Reserve Account will be under the sole control of Member Bank. Notwithstanding anything in this Merchant Agreement to the contrary, Merchant shall have no ownership or property rights in the Merchant Reserve Account or the funds therein, no right of withdrawal from the Merchant Reserve Account, and no right to receive interest on the funds held in the Merchant Reserve

Account. ProPay will reasonably determine the amount of funds in the Merchant Reserve Account based on the level of risk Merchant presents. ProPay or Member Bank may fund the Reserve in any of the following ways: pulling funds directly from Merchant's ProPay Account; withholding a portion of transactions; requiring a payment directly from Merchant; and/or debiting the Designated Account. Member Bank may continue to deposit funds in the Merchant Reserve Account after termination of the Merchant Agreement.

11. **BILLING RESERVE.** If ProPay believes there is a high level of risk that Merchant will be unable to pay the fees owing under this Merchant Agreement, ProPay may require the establishment of a billing reserve ("**Billing Reserve**"). ProPay will hold funds in the Billing Reserve for as long as it deems necessary to mitigate risks associated with Merchant's ability to pay fees. If ProPay does establish a Billing Reserve, it will provide Merchant with notice specifying the terms of the Billing Reserve, which terms ProPay may change at any time on notice to Merchant. Merchant will remain liable for all obligations related to its use of the Merchant Services even after the release of any Billing Reserve. The Billing Reserve may be raised, reduced or removed at any time by ProPay, in its sole discretion. Funds in the Billing Reserve will be held and owned by ProPay. ProPay will reasonably determine the amount of funds in the Billing Reserve based on the level of risk Merchant presents. ProPay may fund the Billing Reserve in any of the following ways: instructing Member Bank to pull funds from Merchant's ProPay Account; instructing Member Bank to withhold a portion of transactions; requiring a payment directly from Merchant; and/or debiting the Designated Account. ProPay may instruct Member Bank to continue to deposit funds in the Billing Reserve after termination of the Merchant Agreement. At its sole discretion, ProPay may return some or all of the funds in the Billing Reserve to Merchant.

12. **SECURITY INTEREST.**

12.1. Merchant hereby grants ProPay and Member Bank a security interest in any funds held in Merchant's ProPay Account and in the Merchant Reserve Account (without in any way suggesting that Merchant has any ownership interest or property rights in the Merchant Reserve Account), to secure the performance by Merchant of its obligations to ProPay and Member Bank under this Merchant Agreement. Upon request of ProPay, Merchant will execute one or more financing statements or other documents to perfect this security interest.

12.2. This Merchant Agreement will constitute a security agreement under the Uniform Commercial Code under which Merchant grants ProPay and Member Bank a security interest in and lien upon: (a) all funds owing Merchant under this Merchant Agreement, regardless of the source of such funds; (b) all funds in the Merchant Reserve Account; (c) present and future Transactions; (d) any amount which may be due to Merchant under this Merchant Agreement, including, without limitation all rights to receive any payments or credits under this Merchant Agreement; and (e) upon ProPay's or Member Bank's request, any other security to secure Merchant's obligations under this Merchant Agreement (collectively, the "**Secured Assets**"). Merchant agrees to execute financing statements or other documents to evidence this security interest. These security interests and liens will secure all of Merchant's obligations under this Merchant Agreement and any other agreements now existing or later entered into between Merchant, ProPay and Member Bank will have all rights afforded under the Uniform Commercial Code, Law, and in equity. ProPay or Member Bank may exercise this security interest without notice or demand by making an immediate withdrawal or freezing of Merchant's Secured Assets. Merchant warrants that no other person or entity has a security interest in the Secured Assets and Merchant agrees to obtain from ProPay and Member Bank written consent prior to granting a security interest of any kind in the Secured Assets to a third party.

13. **CUSTOMER CLAIMS.** To the extent that ProPay or Member Bank has paid or may become liable for a Chargeback or credit transaction receipt, Merchant will be obligated to reimburse ProPay and Member Bank for any sums ProPay and Member Bank pays or for which ProPay or Member Bank is liable. If Merchant does not reimburse ProPay or Member Bank, ProPay and Member Bank will have all of the rights and remedies of cardholders, including the cardholders' rights under 11 U.S.C. §507(a)(6). ProPay and Member Bank may assert any claim on behalf of a cardholder individually or on behalf of all cardholders as a class.

14. **PROCESSING FEES.**

14.1. **Fee Schedule.** Merchant will pay the fees in the amount specified in the fee schedule or as otherwise provided for in this Merchant Agreement or an addendum thereto. Monthly recurring fees will be assessed upon approval of the Merchant Application. ProPay shall have the right to modify or amend the terms and conditions of this Merchant Agreement, including, without limitation, the right to modify, amend, or supplement applicable fees, charges, and/or discounts. Modifications and amendments related to changes to the Card Brand Rules, changes to the fees charged by the Card Associations, Member Bank, or third parties, or in

response to changes in requirements of Law (collectively, a **“Third Party Change”**) may be made effective immediately, with or without notice. Modifications or amendments unrelated to a Third Party Change shall be effective upon the date specified in a notice to the Merchant (the **“Change Notice”**), provided that the date shall not be fewer than five business days after the date of such Change Notice. Such Change Notice may be provided as a message attached to Merchant’s monthly billing statements. Following the Effective Date, in the event of any modification or amendment not related to a Third Party Change, Merchant shall have the right to terminate this Merchant Agreement, without liability for premature termination by providing written notice thereof to ProPay, provided that such notice must be given within five business days following the date of the Change Notice.

14.2. **Card Brand Actions.** ProPay will not be required to provide Merchant with 5 days’ notice of an increase in fees if any Card Brand or any other entity having such authority increases fees and the effective date for implementation of the increased fees is less than 5 days. In such cases, ProPay shall make reasonable efforts to notify Merchant but failure to provide notice of will not affect Merchant’s obligation to pay the increased fees.

14.3. **Government and Regulatory Actions.** ProPay will not be required to provide Merchant with advance notice for any increase in fees resulting from any fine, charge, fee or cost incurred in connection with any state, federal or other regulatory action, change in laws or regulations of Merchant’s funds. ProPay shall make reasonable efforts to notify Merchant but failure to provide notice of will not affect Merchant’s obligation to pay the increased fees.

14.4. **Payment and Authorization to Debit Designated Account.** Merchant authorizes ProPay or Member Bank to deduct fees and other service charges, fines, obligations, liabilities, or any other amounts owed by Merchant to ProPay or Member Bank from amounts due Merchant, from the Designated Account, or from the Merchant Reserve Account or Billing Reserve. This authorization will remain in effect until the Merchant Reserve Account and Billing Reserve are closed. If Merchant changes the Designated Account, this authorization will apply to Merchant’s subsequent Designated Account. Merchant will pay the amounts due by the next business day if sufficient funds are not available in any of these accounts. ProPay may suspend accepting Transactions or releasing ProPay Account funds to Merchant until Merchant has paid outstanding fees.

15. **PROPAY’S STATUS WEBSITE.** The website status.propay.com is ProPay’s communication tool for operational issues. Merchant is encouraged to visit status.propay.com at any time to review the operational status of Merchant Services and subscribe to real time operational updates via email, SMS, slack or webhook. If Merchant does subscribe, it is Merchant’s responsibility to keep its contact information updated at status.propay.com to assure that the proper individual(s) receive the updates. If Merchant does not subscribe, Merchant acknowledges that it may miss out on important updates about ProPay’s system.

16. **NO WARRANTIES.** *To the maximum extent permitted by applicable law, ProPay and Member Bank specifically disclaim all warranties of any kind, expressed or implied, including, without limitation, warranties of title, availability, non-infringement, merchantability, fitness for a particular purpose, or any warranty arising out of any proposal, description, specification, course of dealing, or sample. The Merchant Services are offered solely on an “As Is” and “As Available” basis. ProPay and Member Bank expressly disclaim any representation or warranty that the Merchant Services will be uninterrupted or error-free.*

17. **INDEMNIFICATION; LIMITATION OF LIABILITY.**

17.1. Merchant shall indemnify both ProPay and Member Bank, including their respective officers, directors, employees, independent sales organizations (“ISOs”) and agents, against and hold them harmless from any and all claims, demands, settlements, losses, damages, liabilities, costs and expenses of any kind (including reasonable attorney’s fees) of any party arising from or based upon any actual or alleged act or omission of Merchant, Merchant’s employees, Merchant’s designated representatives, servicers, or agents, in connection with or arising out of this Merchant Agreement, the duties to be performed by Merchant pursuant to the Merchant Agreement, any Transactions which Merchant submits to ProPay (including Chargebacks), or Merchant’s violation of the Card Brand Rules or any requirements of applicable law. If ProPay or Member Bank is made a party to any litigation, proceeding, arbitration, bankruptcy proceeding, or other legal process (collectively **“Actions”**) commenced by any third party, Merchant shall protect and hold both ProPay and Member Bank harmless from and with respect to the Actions and shall indemnify such party from and against all costs, expenses, and attorney’s fees, including in-house legal fees, incurred or paid in connection with the Action, together with any judgments, settlements, losses, damages or other liabilities. Merchant shall indemnify, defend, and hold harmless both ProPay and Member Bank from and against any actual or alleged

hacking, infiltration, or compromise of Merchant's systems or the systems of Merchant, Merchant servicers or Merchant's agent(s), or designated representatives.

17.2. ProPay and Member Bank will not accept responsibility for errors, acts, or failure to act by others, including but not limited to, Merchant servicers, agents, third party suppliers of software, equipment or services; or, banks, communication common carriers, data processors or clearinghouses through which transactions may be passed, originated and/or authorized. ProPay and Member Bank will not be responsible for any loss, liability or delay caused by fires, earthquakes, war, civil disturbances, power surges or failures, acts of governments, acts of terrorism, labor disputes, failures in communication networks, legal constraints or other events beyond the control of ProPay and Member Bank. ProPay and Member Bank undertake no duties to Merchant other than the duties expressly provided for in the Merchant Agreement, and any and all other or additional duties that may be imposed upon ProPay and Member Bank in law or equity are hereby irrevocably waived and released to the maximum extent permitted by law. ***In any event, to the maximum extent permitted by applicable law, the cumulative liability of each of ProPay and Member Bank, as well as their respective officers, directors, employees, and agents, to merchant, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed the lesser of \$10,000 or, the amount equal to the aggregate of monthly net processing fees paid by Merchant in the three month period prior to the month that the incident giving rise to liability occurred.***

17.3. ***To the maximum extent permitted by law, in no event shall ProPay or Member Bank or their respective officers, directors, employees and agents be liable for special, incidental, indirect, consequential or exemplary damages or for any interruption or loss of use, data, business or profits, whether or not such loss or damages were foreseeable or ProPay or Member Bank was advised of the possibility thereof and regardless of whether any limited remedy herein fails of its essential purpose.***

18. **BANKRUPTCY.**

18.1. Merchant will notify ProPay immediately if any bankruptcy, insolvency or similar petition is filed by or against Merchant. Merchant acknowledges that this Merchant Agreement constitutes an executory contract to extend credit or financial accommodations as defined in 11 U.S.C. §365(c)(2) and that the Merchant Agreement cannot be assumed or assigned in the event of bankruptcy. In the event of Merchant's bankruptcy, ProPay shall be entitled to suspend further performance under this Merchant Agreement.

18.2. In the event of a bankruptcy proceeding, Merchant must establish a Merchant Reserve Account and/or Billing Reserve, or maintain a previously established and then-current Merchant Reserve Account and/or Billing Reserve in amounts required by ProPay. ProPay will have the right to set-off against the Merchant Reserve Account and Billing Reserve for any and all obligations which Merchant may owe ProPay, without regard as to whether the obligations relate to Transactions initiated or created before or after the filing of the bankruptcy petition.

19. **GEORGIA LAW; JURISDICTION; VENUE.** Merchant's offer to enter into this Merchant Agreement is made in Muscogee County, Georgia; this Merchant Agreement shall be performed by Merchant in Muscogee County, Georgia and governed by Georgia law, excluding its conflict of laws rules. Merchant and Guarantor agree to bring any claim or action relating to the Merchant Agreement in binding arbitration as set forth in Section 20.2 below. Any matters not otherwise subject to arbitration (such as, by way of example only, injunctive relief, action to recover any monetary losses or damages from unpaid obligations of the Merchant under the Merchant Agreement, or claims to enforce an arbitration award), shall be brought in the state or federal courts located in Muscogee County, Georgia. Merchant, Guarantor, and ProPay irrevocably and unconditionally submit to the jurisdiction of such courts with respect to any such action. In the event that Processor or Member Bank is required to resolve a dispute with Merchant that requires any action under this provision, Merchant hereby agrees and consents to receive service of process by certified mail.

20. **ATTORNEY FEES; ARBITRATION; CLASS ACTION WAIVER.**

20.1. **Attorney Fees.** Merchant and/or Guarantor will be liable for and will indemnify and reimburse ProPay and Member Bank for all attorneys' fees, including in-house legal fees, and other costs and expenses paid or incurred by ProPay and Member Bank in the enforcement of this Merchant Agreement or in matters relating to this Merchant Agreement, or arising from any breach by Merchant of this Merchant Agreement, or any other wrongdoing by Merchant or Guarantor. In the event ProPay or Member Bank must engage in any recovery or collection efforts to collect any amounts due from Merchant to ProPay or Member Bank, Merchant will reimburse ProPay and Member Bank for all fees and expenses incurred in such collection, plus reasonable administrative fees and expenses.

20.2. Arbitration.

Note: please read this section carefully as it affects your rights and the resolution of disputes

Except for disputes or claims asserted by or against Member Bank, any dispute or claim arising out of, relating to, or in connection with this Agreement or the relationships which result from this Agreement shall be resolved by binding arbitration, rather than in court. Arbitration does not proceed before a jury and may involve more limited discovery than a court proceeding. Any arbitration under this Agreement will only be on an individual basis. Class arbitrations, class actions, private attorney general actions, and consolidation with other arbitrations are not permitted.

The arbitrator's award or decision will not affect issues or claims involved in any proceeding between ProPay or Member Bank and any person or entity who is not a party to the arbitration. The arbitrator may award monetary, declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. The arbitrator's award, if any, will not apply to any person or entity that is not a party to the arbitration. However, nothing in this Section or Merchant Agreement shall preclude any party from bringing issues to the attention of federal, state or local agencies. Such agencies can, if the law allows, seek relief on your behalf.

Further, notwithstanding the foregoing, nothing in this Section or this Merchant Agreement prohibits a party from applying to a court of competent jurisdiction for a temporary restraining order, preliminary injunction, or other equitable relief.

The Federal Arbitration Act (9 U.S.C. § 1 et seq.) governs the interpretation and enforcement of the arbitration provisions of this section. Arbitration will be administered by JAMS (www.jamsadr.com). For claims greater than \$250,000, the JAMS Comprehensive Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply (if no such rules are in effect, JAMS default arbitration rules shall apply). For claims equal to or less than \$250,000, the JAMS Streamlined Arbitration Rules and Procedures in effect at the time the arbitration is commenced will apply (if no such rules are in effect, JAMS default arbitration rules shall apply). Unless the arbitrator(s) determine that justice or fairness require otherwise: (i) any arbitration will proceed in Muscogee County, Georgia (although, for the convenience of the Merchant or Guarantor (as applicable), any party or its counsel may participate telephonically); and (ii) the arbitrator(s) will oversee limited discovery, taking into account the amount in controversy and the parties' desire to keep proceedings cost-effective and efficient. Any decision rendered in any arbitration proceeding shall be final and binding on each of the parties to the arbitration and judgment may be entered thereon in any court of competent jurisdiction. The parties will maintain the confidential nature of the arbitration proceeding except as may be necessary to enforce any award or to comply with applicable law.

If the total damage claims in an arbitration are \$10,000 or less, not including Merchant's attorney fees ("Small Arbitration Claim"), the arbitrator may, if the MERCHANT, prevails, award the Merchant reasonable attorney fees, expert fees and costs (separate from Arbitration Costs as defined below), but may not grant ProPay its attorney fees, expert fees or costs (separate from Arbitration Costs) unless the arbitrator determines that the Merchant's claim was frivolous or brought in bad faith. In a Small Arbitration Claim case, ProPay will pay all arbitration filing, administrative and arbitrator costs (together, "Arbitration Costs"). The Merchant must submit any request for payment of Arbitration Costs to JAMS at the same time the Merchant submits its Demand for Arbitration. However, if the Merchant wants ProPay to advance the Arbitration Costs for a Small Arbitration Claim before filing, ProPay will do so at the Merchant's written request which must be sent to ProPay at the address in Section 18 above.

If the Merchant's total damage claims in an arbitration exceed \$10,000, not including the Merchant's attorney fees ("Large Arbitration Claim"), the arbitrator may award the prevailing party its reasonable attorneys' fees and costs, or it may apportion attorneys' fees and costs between the Merchant and ProPay (such fees and costs being separate from Arbitration Costs). In a Large Arbitration Claim case, if the Merchant is able to demonstrate that the Arbitration Costs will be prohibitive as compared to the costs of litigation, ProPay will pay as much of the Arbitration Costs as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive.

Merchant hereby agrees that claims applicable to American Express may be resolved through arbitration as further described in the American Express Merchant Requirements Guide (the "American Express Guide").

A court, not the arbitrator, will decide any questions regarding the validity, scope and/or enforceability of this Section

20.3 Class Action Waiver.

Note: please read this section carefully as it affects your rights and the resolution of disputes

Merchant and guarantor (if applicable) acknowledge and agree that all disputes arising out of or related to this merchant agreement shall be resolved on an individual basis without resort to any form of class action and shall not be consolidated with the claims of any other parties.

21. GENERAL PROVISIONS.

- 21.1. **Amendments.** Other than the amendments set forth above in Section 14.1, this Merchant Agreement may be amended only in writing signed by Merchant, Member Bank, and ProPay.
- 21.2. **Notices.** Any notices or other communications required or permitted by this Merchant Agreement shall be in writing and shall be delivered either by personal delivery, by a nationally recognized overnight courier service, electronic mail or other electronic means, by first class mail or by certified or registered mail, return receipt requested, addressed as set forth above or to such other address as any party shall have designated to the others by written notice given in the manner set forth above. Notices and approvals required under this Merchant Agreement shall be deemed given: one day after sent, if sent by overnight courier; when delivered and receipted for, if hand delivered; when received, if sent by facsimile, electronic mail or other electronic means or by first class mail; or when receipted for (or upon the date of attempted delivery where delivery is refused or unclaimed), if sent by certified or registered mail, return receipt requested.
- 21.3. **Assignment.** The Merchant Agreement is binding upon the successors and assigns of ProPay, Member Bank and Merchant. Merchant will not assign or transfer (including by merger, change of control or operation of law) the Merchant Agreement (in whole or in part) to another person or entity without ProPay's and Member Bank's prior written consent and any purported assignment made without ProPay's and Member Bank's consent will be void.
- 21.4. **Waiver.** ProPay or Member Bank's failure to enforce this Merchant Agreement will not waive ProPay's or Member Bank's rights under this Merchant Agreement. Waivers of any provision of this Merchant Agreement must be in writing and signed by ProPay and Member Bank. A waiver in one instance will not apply to other occasions unless that intent is clear from the signed waiver.
- 21.5. **Agency Relationship.** Merchant authorizes Member Bank with respect to the Services to act as Merchant's agent for the limited purposes of holding, receiving, and disbursing funds on Merchant's behalf. Merchant's authorization permits Member Bank to generate an electronic funds transfer to process each Transaction. This authorization will continue until Merchant's ProPay Account is closed or terminated. Merchant agrees that Member Bank's receipt of Transaction proceeds satisfies Merchant's customers' obligations to Merchant. Member Bank will remit to Merchant funds actually received by Member Bank on Merchant's behalf, less amounts owed to ProPay and Member Bank, subject to any Chargebacks or reserve withheld or applied as per this agreement.
- 21.6. **Relationship of Parties.** Merchant designates ProPay as its agent to receive payments for transactions processed pursuant to this Merchant Agreement. ProPay, however, shall not be considered a partner or fiduciary to Merchant, and nothing in this Merchant Agreement or the rendition of services related to this Merchant Agreement shall be deemed to create a joint venture, partnership, or fiduciary relationship between or among the parties. Rather, the relationships between Member Bank and Merchant, and between ProPay and Merchant, are arm's length commercial relationships.
- 21.7. **Survival.** Sections 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 16, 17, 19.1, 19.2, 19.3, 19.4., 19.10, 19.11 and 19.12 will survive termination of the Merchant Agreement.
- 21.8. **Severability.** If any one or more of the provisions contained in this Merchant Agreement shall in any jurisdiction be held or determined by a court having jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be deemed modified so as to be enforceable to the maximum extent permitted by law consistent with the intent of the parties as herein expressed, and such invalidity shall not affect the remaining provisions of this Merchant Agreement, which shall continue in full force and effect.
- 21.9. **No Remedies Exclusive.** No right or remedy granted pursuant to the terms of this Merchant Agreement shall be deemed to be exclusive of any other right or remedy available at law or equity. All such rights and remedies, whether granted now or hereafter, shall be deemed to be cumulative and not alternative, and may be exercised concurrently, independently or successively.
- 21.10. **No Third Party Beneficiaries.** This Merchant Agreement is for the exclusive benefit of the parties, and no other person or entity, including any affiliate or creditor of any party, shall have any right or claim against any

party by reason of this Merchant Agreement or shall be entitled to enforce any provision of this Merchant Agreement against any party.

- 21.11. **Entire Agreement.** This Merchant Agreement constitutes the entire agreement among the parties, and supersedes all prior oral and written negotiations with respect to the subject matter hereof.
- 21.12. **Headings.** Headings listed in this Merchant Agreement are inserted for convenience only, do not constitute a part of this Merchant Agreement, and are not to be considered in connection with the interpretation or enforcement of this Merchant Agreement.
- 21.13. **Review of Books and Records.** ProPay or Member Bank shall have the right, at its cost and expense and by providing not less than 30 days' prior written notice to Merchant, to review those books and records of Merchant that pertain to the performance by Merchant of its obligations under this Merchant Agreement, for the purpose of confirming or assessing compliance with the terms and conditions of this Merchant Agreement. Any such review shall be conducted during normal business hours at a place reasonably designated by Merchant.
- 21.14. **Counterparts.** The parties agree that this Merchant Agreement may be executed (a) in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same agreement; and (b) by using an electronic or handwritten signature, which are of equal effect, whether on original or electronic copies.

EXHIBIT A
AUTHORIZATION FOR TRANSACTIONS WITHOUT PROTECTPAY

1. **CARDHOLDER INFORMATION.** Merchant will identify the cardholder when accepting payment for products sold or services rendered. As part of the cardholder identification process, Merchant will obtain the expiration date, and ZIP Code or Postal Code from the cardholder's billing address. Merchant will not honor any Card if: (a) the Card has expired; or; (b) the account number embossed on the Card is listed on a current Electronic Warning Bulletin file.
2. **AUTHORIZATION**
 - 2.1. **Authorization required for all Transactions.** Merchant will obtain authorization via ProPay's web site, touch-tone phone system, Merchant Application Program Interface ("API") or other method acceptable to ProPay prior to completing any Transaction. Merchant will follow any instructions received during the authorization process. Upon receipt of authorization, Merchant may consummate only the Transaction authorized and must note on the Merchant's record of cardholder purchase the authorization number. Where authorization is obtained, Merchant will be deemed to warrant the true identity of the customer as the cardholder. Transactions will be deemed invalid on Cards that are expired, whether or not an authorization has been obtained. Merchant must obtain the Card expiration date and forward it as part of the authorization request.
3. **PRESENTMENT OF SALES TRANSMITTALS**
 - 3.1. **Forms.**
 - 3.1.1. Merchant will transmit to ProPay necessary information to document each Transaction. Each Transaction will contain: (a) Merchant name and account identifier; (b) the Card expiration date; and (c) the total amount of the sale (including any applicable taxes) or credit Transaction.
 - 3.1.2. ProPay may also require addition information, such as: (a) zip code of customer's billing address; (b) CVV2 code or the equivalent; (c) a brief description of the goods or services involved; (d) the Transaction authorization number; and (e) if applicable, adjacent to the signature line, a notation that all sales are final.
 - 3.2. **Delivery and Retention of Transactions.** Merchant will retain the merchant copy of the Transaction or credit memorandum for at least 25 months following the date the Merchant initiates the Transaction. When Merchant retains this information, Merchant must do so in accordance with the applicable Card Brand Rules, security and confidentiality requirements as referenced in the Merchant Services Agreement.
 - 3.3. **Electronic Transmission.** Merchant will enter at the ProPay web site, or transmit via API to ProPay, the data related to a Transaction no later than 72 hours from the date the Merchant initiates the Transaction. Information regarding a sales or credit Transaction transmitted with a computer or magnetic stripe reading terminal will be transmitted by Merchant to ProPay or its agent in the form ProPay from time to time specifies, or as required under Card Brand Rules. If ProPay requests a copy of a Transaction, Merchant's record of return or refund to be credited to cardholder's account ("**Credit Voucher**") or other Transaction evidence, Merchant will provide it within three (3) business days following the request. Merchant acknowledges that ProPay shall have Chargeback rights with respect to any Transaction or Credit Voucher for which Merchant fails to provide such documents within such time period.

EXHIBIT B
API LICENSE AGREEMENT

1. **PURPOSE.** ProPay owns and operates a proprietary payment network. ProPay has developed the API, which is for use by Merchant to build software applications that interface with or otherwise communicate with ProPay's payment network. ProPay provides this license to Merchant to enable Merchant's interaction with ProPay's payment network via ProPay's API. All elements of ProPay's API and Merchant's specific Authorization Information (as defined below) will constitute the ("**Licensed Materials**").

2. **LICENSE GRANT.** Subject to the terms and conditions of this license and the Merchant Agreement it is attached to, ProPay grants to Merchant a nontransferable, nonexclusive, non-sublicense-able, limited license to use the Licensed Materials solely in accordance with this license. Merchant may do the following under this license:

- 2.1 Sign up users for payment and/or merchant accounts;
- 2.2 Transfer money, including commission payments, between ProPay accounts;
- 2.3 Take action against payment cards consisting of authorizing, capturing, voiding, and refunding transactions;
- 2.4 Initiate SpendBack transactions;
- 2.5 Initiate SplitPay transactions; and
- 2.6 Make informational requests regarding ProPay accounts, subject to system or API limitations.

Any combination of subsections 2.1–2.6 above will be deemed a "**Permitted Use**." A Permitted Use is subject to all restrictions identified herein. ProPay shall provide to Merchant confidential data which is specific to Merchant that will permit Merchant to access and use the API ("**Authorization Information**"). The Authorization Information is the property of ProPay and may be immediately revoked or terminated by ProPay if Merchant shares the same with any third party (other than Third party Service Providers from Merchant), if compromised by a third party, or if Merchant uses or accesses the API in any way not expressly permitted or granted under this license.

3. **RESTRICTIONS.** ProPay reserves all rights in the Licensed Materials not expressly granted herein. Except as expressly provided herein: (a) Merchant shall not copy, nor allow others to copy, any of the Licensed Materials; (b) Merchant shall not sell, assign, pledge, lease, deliver, sublicense or otherwise transfer the Licensed Materials or any part thereof to any third party; (c) Merchant shall not disclose to any third party or permit any third party to have access to or use the Licensed Materials or any part thereof; (d) Merchant shall not modify, alter or change the Licensed Materials or any part thereof, or develop any diagram, drawing or other documentation based on the Licensed Materials or the information contained therein; (e) Merchant shall not use the Licensed Materials to develop, manufacture, modify or reproduce any other product or service that it has reason to know, or is notified by ProPay, that competes with any ProPay product or service manufactured and/or distributed by or for ProPay; (f) Merchant may not reverse engineer the Licensed Materials; (g) Merchant may not distribute, facilitate, enable, or allow access or linking to ProPay's payment network from any location or source other than Merchant's Website; and (h) Merchant shall not permit or enable third parties to copy or obtain ProPay data from Merchant's Website in any unauthorized manner including, but not limited to, the use of using robots, spiders, scraping, or any other technology. Notwithstanding the foregoing, Merchant may disclose the Licensed Materials to any third party service provider for the sole purpose of accomplishing a Permitted Use of this license provided that said third party agrees in writing to be bound by all the terms and conditions of this license.

4. **OWNERSHIP OF LICENSED MATERIALS.** Merchant acknowledges and agrees that all right, title and interest in and to the Licensed Materials and all patents, copyrights, trademarks, trade names, trade secrets and other proprietary rights related to or residing in the Licensed Materials, and all copies of all or any part thereof in any form whatsoever, will remain with ProPay. Merchant understands and agrees that the Licensed Materials contain trade secrets of ProPay that must be kept confidential. Merchant shall promptly notify ProPay of any actual or threatened misappropriation or infringement of ProPay's proprietary rights which may come to Merchant's attention.

5. **PROPRIETARY NOTICES.** Merchant shall not remove from the Licensed Materials, or alter, any of ProPay's trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Licensed Materials, without the prior express written consent of ProPay. Merchant shall duplicate all such proprietary rights notices on each copy of the Licensed Materials permitted to be made hereunder.

8. **BREACH.** Merchant understands that if it fails to comply with the provisions of this license, ProPay will suffer

irreparable harm, which may not be adequately compensated for by monetary damages alone. Merchant, therefore, agrees that in the event of its breach or threatened breach of this license, ProPay will be entitled to monetary damages as well as injunctive and/or other preliminary or equitable relief, in addition to any other remedies as available by law.

EXHIBIT C

AMERICAN EXPRESS® CARD ACCEPTANCE

This Exhibit applies only if Merchant accepts American Express Cards (each a “**Sponsored Merchant**”). If there is a conflict between any of the following sections and any other section of the Terms and Conditions as they apply to American Express Cards, the following sections will govern. ProPay and Member Bank are not a party to the following sections. ProPay does not represent or indicate in any way that Member Bank sponsors ProPay into the American Express Network.

1. **CONSENT.** Sponsored Merchant authorizes ProPay and/or its affiliates to submit American Express Transactions to, and receive settlement on, such Transactions from, American Express on behalf of Merchant.
2. **AMERICAN EXPRESS COMPLIANCE.**
 - 2.1. Sponsored Merchant agrees to comply with all American Express Card Brand Rules, Applicable Laws, rules and regulations, including the American Express Merchant Operating Guide requirements, which are incorporated into this agreement by reference as if they were fully set forth in the Merchant Agreement. The American Express Merchant Operating Guide may be viewed at: www.americanexpress.com/merchantopguide. Any undefined capitalized terms set forth in this section have the meanings given to them in the American Express Merchant Operating Guide.
 - 2.2. Sponsored Merchant shall abide by and fully comply with DSR and Payment Card Industry Data Security Standard (“**PCI DSS**”). A copy of the American Express Data Security Requirements (“**DSR**”) can be obtained online at www.americanexpress.com/dsr.
 - 2.3. Sponsored Merchant acknowledges and agrees to: (a) ensure data quality and that Transaction Data and customer information is processed promptly, accurately, and completely, in compliance with the American Express Technical Specifications; (b) report all instances of a Data Incident immediately to ProPay after discovery of an incident; (c) be aware of and adhere to privacy and data protection laws; and (d) provide specific and adequate disclosures to Cardmembers regarding collection, use, and processing of personal data.
 - 2.4. Sponsored Merchant certifies that all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both) at its business locations and free of liens, claims, and encumbrances other than ordinary sales taxes.
3. **HIGH CHARGE VOLUME SPONSORED MERCHANTS.** In the event that Sponsored Merchant’s estimated annual American Express charge volume becomes \$1,000,000 USD or greater, Sponsored Merchant may, at the discretion of ProPay and American Express become a direct Card-accepting merchant under the standard American Express acceptance program and cease to be a Sponsored Merchant under a Merchant Services Provider. As a direct Card-accepting merchant, Sponsored Merchant will be bound by the then-current American Express Card acceptance agreement and American Express will set pricing and other fees payable for card acceptance.
4. **PROCESSING RESTRICTIONS.** Sponsored Merchant is prohibited from processing Transactions or receiving payments on behalf of, or (unless required by law) re-directing payments to any other party. Provided, however, that Sponsored Merchant may sell and assign future American Express-related Transaction receivables to ProPay, its affiliated entities and/or any other cash advance funding source that partners with ProPay or its affiliated entities, without consent of American Express. Notwithstanding the foregoing, ProPay prohibits Sponsored Merchant from selling or assigning future American Express-related Transaction receivables to any third party.
5. **THIRD PARTY BENEFICIARY RIGHTS.**
 - 5.1. Sponsored Merchant confers on American Express the beneficiary rights, but not obligations, to the Sponsored Merchant’s Merchant Agreement and subsequent addendums (collectively the “**Merchant Agreement**”) between Sponsored Merchant and Payment Service Provider and, as such, American Express has the express right to enforce the terms of the Merchant Agreement against the Sponsored Merchant.
 - 5.2. Sponsored Merchant warrants that it does not hold third party beneficiary rights to any agreements between Payment Service Provider and American Express and at no time will attempt to enforce any such agreements against American Express.

6. **AMERICAN EXPRESS LIABILITY.** *Sponsored merchant acknowledges and agrees that in no event shall American Express, its affiliates, agents, successors, or assignees be liable to sponsored merchant for any damages, losses, or costs incurred, including incidental, indirect, speculative, consequential, special, punitive, or exemplary damages of any kind (whether based on contract, tort, including negligence, strict liability, fraud, or otherwise, or statutes, regulations, or any other theory), arising out of or in connection with the Merchant Agreement.*
7. **MERCHANT WEBSITE DISPLAY REQUIREMENTS.** Sponsored Merchant will adhere to the following website information display guidelines in the event a Sponsored Merchant has a website and/or operates an e-commerce business ("**Merchant Website**"). The Merchant Website must display the following:
 - 7.1. An accurate description of the goods/services offered, including the currency type for the Transaction (e.g., U.S. Dollars). Note: Transaction currency must be in U.S. Dollars.
 - 7.2. Sponsored Merchant's physical address in the U.S.
 - 7.3. An email address or telephone number for customer service disputes.
 - 7.4. Return/refund policy.
 - 7.5. A description of the Sponsored Merchant's delivery policy (e.g., no overnight delivery).
 - 7.6. A description of the Sponsored Merchant's security practices (e.g., information highlighting security practices the Merchant uses to secure Transactions on its systems, including Transactions conducted on the Internet).
 - 7.7. A statement of known export restrictions, tariffs, and any other regulations.
 - 7.8. A privacy statement regarding the type of personal information collected and how the information is used. Additionally, Sponsored Merchant must provide to customers the option to decline being included in marketing campaigns or having their personal information included on lists sold to third parties.
8. **COMMUNICATION.**
 - 8.1. Sponsored Merchant agrees that ProPay may disclose to American Express information from the Merchant Agreement and otherwise regarding Sponsored Merchant and its Transactions, and that American Express may use such information: (a) to perform its responsibilities in connection with American Express Card Acceptance; (b) to promote the American Express Network; (c) to perform analytics and create reports; (d) for any other lawful business purposes including commercial marketing communications purposes within the parameter of the Program Agreement, (e) for important transactional or relationship communication from American Express, and (f) to screen and/or monitor Sponsored Merchant in connection with American Express marketing and administrative purposes.
 - 8.2. Sponsored Merchant agrees it may receive messages from American Express, including important information about American Express products, services, and resources available to its business. These messages may be sent to the mailing address, phone numbers, email addresses or fax numbers of Sponsored Merchant. Sponsored Merchant may be contacted at its wireless telephone number and the communications sent may include autodialed short message service ("**SMS**" or "**Text**") messages or automated or prerecorded calls. Sponsored Merchant may opt-out of receiving future commercial marketing communications from American Express by contacting ProPay; however, Sponsored Merchant may continue to receive marketing communications while American Express updates its records to reflect this choice. Opting out of commercial marketing communications will not preclude Sponsored Merchant from receiving important transactional or relationship messages from American Express.
9. **TERMINATION**
 - 9.1. ProPay has the right to terminate Sponsored Merchant's participation in American Express Card Acceptance immediately upon written notice to Sponsored Merchant: (a) if Sponsored Merchant breaches any of the provisions of this exhibit or any other terms of this Merchant Agreement applicable to American Express Card Acceptance, including, but not limited to, the American Express Merchant Operating Guide; (b) if ProPay has cause to believe Sponsored Merchant is engaged in illegal or fraudulent activity; or (c) upon American Express's request.
 - 9.2. Sponsored Merchant may opt out of accepting American Express at any time by written request to ProPay without directly or indirectly affecting its rights to accept other Cards.
 - 9.3. In the event Sponsored Merchant's participation in American Express Card Acceptance is ended for any reason, Merchant must immediately cease all use of and remove all American Express branding and marks from

Sponsored Merchant's business location(s), website(s) and anywhere else they are displayed.

10. **REFUND POLICY.** Sponsored Merchant's refund policies for American Express-related Transactions must be at least as favorable as its refund policy for any other Card, and the refund policy must be in compliance with Applicable Law and disclosed to Cardholders at the time of purchase. Sponsored Merchant may not bill or attempt to collect for any American Express-related Transaction unless: (a) a Chargeback has been exercised; (b) Sponsored Merchant has fully paid for such Chargeback; and (c) Sponsored Merchant otherwise has the right to do so.