

Sub-Merchant Tri-Party Agreement

Last updated: February 15, 2021

INTRO

This agreement between you (“**you**”, “**your**”), ProPay, Inc. (“**ProPay**”), and Wells Fargo Bank, N.A. (“**Member Bank**”) governs your use of our payment processing services (“**Service(s)**”). “**We**” “**our**” and “**us**” refers to both ProPay and Member Bank. Member Bank may enforce any provisions of this agreement that relate to payment processing provided by Member Bank. The Services are being offered in conjunction with your agreement with your service provider (“**Provider Partner**”) and may not be used separately from that agreement.

1. THE SERVICES

1.1 GRANT OF USE

The Services allow you to accept payment from your customers via bankcards (“**Cards**”) validly issued by Visa, Mastercard, Discover, and American Express (the “**Card Brands**”) and also, if approved, via automated clearing house transactions (“**ACH**”). The Services may include TSYS EnsureBillSM and ThreatMetrix®, where applicable. You may inquire with your Provider Partner as to whether these Services are available to you. You must only use the Services for a business purpose and not for personal, family, or household use. We hereby grant you use of the Services according to the terms found herein.

1.2 REQUIRED INFORMATION

In order to use the Services, we may require that you provide us with certain information such as information relating to your identity, customers, transactions, and financial statements. You must provide us with accurate and complete information and keep the information up-to-date. We rely on this information for underwriting and to meet our obligations under applicable laws and other regulatory requirements. If the scope or nature of your business or the type of products or services you offer changes, you must notify Provider Partner prior to the change. You are liable to us for all losses and expenses incurred by us arising out of your failure to report changes to us. We reserve the right to refuse to allow you to use the Services for any reason.

1.3 VERIFICATION

You authorize us to make, from time to time, any business and personal credit inquiries (including, but not limited to, credit reports for your directors, officers, and principals), identity-verification inquiries, transaction-verification inquiries (including, but not limited to, with customers), and any other inquiries considered necessary relating to this agreement, and to provide any information and documentation to our sponsor banks and/or the Card Brands as required by them. You also authorize any person or credit reporting agency to compile information to answer those inquiries and to furnish that information to us.

1.4 PROCESSING LIMITS

We will assign a maximum dollar amount per sales ticket and an aggregate maximum dollar amount of Card and ACH transactions per calendar month.

1.5 DATA OWNERSHIP

ProPay will own all data associated with your use of the Services and you hereby grant us a perpetual, irrevocable, sub-licensable, assignable, worldwide, royalty-free license to use, reproduce, electronically distribute, and display this data for the following purposes: (a) providing and improving the Services; (b) internal usage, including but not limited to, data analytics so long as such data is anonymous and aggregated with other customer data; (c) complying with applicable legal requirements and assisting law enforcement agencies; and (d) any other purpose for which you provide consent.

2. CARD ACCEPTANCE

2.1 ACCEPTANCE

You will honor, without discrimination, any valid Card properly tendered by a person asserting to be the person in whose name the Card is issued ("**Cardholder**"). You may elect not to accept Visa and/or Mastercard branded debit cards, but you must provide ProPay with prior written notice of such election. You will not accept any payments from a Cardholder relating to previous charges for merchandise or services, and if you receive such payments, you will promptly remit them to us.

2.2 YOUR DISCLOSURES

You will properly disclose to the Cardholder, at the time of the Card transaction, your name, return policy, and other limitations you may have on accepting returned merchandise. Your refund policies for purchases made with a Card must be at least as favorable as your refund policy for purchases made with any other form of payment.

2.3 REQUEST AT TIME OF PAYMENT

When accepting payment you will request the Card expiration date and ZIP code or postal code from the Cardholder's billing address. It is also highly recommended that you obtain the security code from each Card, but you must not store this information permanently.

2.4 CARD AUTHORIZATION

No later than 72 hours from the time you initiate a transaction, but prior to completing it, you will request an authorization for the transaction using equipment meeting specifications determined by ProPay. This authorization request must include your name and account identifier, the Card expiration date, the ZIP code of the customer's billing address, and the total amount of the transaction, including taxes. ProPay may also require additional information in your request, such as: (a) CVV2 code or the equivalent; (b) a brief description of the goods or services involved; (c) the transaction authorization number; and, (d) if applicable, adjacent to the signature line, a notation that all sales are final. When authorization is obtained, you will be deemed to warrant the identity of the customer as the Cardholder. Authorizations are not a guarantee of acceptance or payment of a transaction and do not waive any provision of this agreement, or otherwise validate a fraudulent transaction or a transaction involving the use of an expired Card. We may refuse to authorize any transaction.

2.5 CARDHOLDER STATEMENTS

Our name will appear in conjunction with your name on Cardholders' statements. Under no circumstance will we be responsible for processing credits or adjustments related to transactions not originally processed by ProPay.

2.6 ADJUSTMENTS

All transactions and deposits are subject to our audit and final verification, and may be adjusted for inaccuracies. All credits provided to you are provisional and subject to chargebacks and adjustments in accordance with the Rules, whether or not a transaction is charged back by the Card issuer.

2.7 SALES TRANSMITTALS

You will retain a copy of the sales transmittal for the completed transaction in accordance with the Rules for 25 months or such longer period as the Rules may require. Within three business days of our request, you will produce copies of sales transmittals and other transaction evidence, otherwise ProPay will have chargeback rights with respect to such transactions.

3. ENSUREBILL

3.1 DESCRIPTION

TSYS EnsureBill Services, if available, include enrolling you, submitting information to the Card Brands for updating, and providing updated account information to you as received by the Card Brands, subject to the terms and conditions of this agreement. An update means a match between a submitted card and the applicable Card Brand resulting in the provision of a new card number; a notification that the account has been closed; a new expiration date; or a "contact cardholder" message. If you elect to enroll in the EnsureBill Services you authorize ProPay to enroll you with the Card Brands to receive the EnsureBill

Services and to provide information about you and your customers to ProPay's service providers, including the Card Brand and ProPay's processor, in order for ProPay to provide the EnsureBill Services.

3.2 USE WITHOUT PROTECTPAY

For Cards not stored in ProPay's ProtectPay service, you must:

- a. Request an update for every participating account in your customer database at least once every 180 calendar days;
- b. Submit requests only for those accounts with which you have an ongoing customer relationship that would require the use of the EnsureBill Services, e.g., subscription services, "express checkout" services, membership (club) services, or recurring payment services;
- c. Update your customer account database within five business days of receiving an update from us;
- d. Ensure that information received from the EnsureBill Services is properly incorporated into your customer database for utilization in future transactions;
- e. Correct erroneous account information within five business days of receipt of error notification from us or the Card Associations; and
- f. Correct operational errors within five business days of receipt of error notification from Bank, ProPay, or the Card Associations.

3.3 USE WITH PROTECTPAY

ProPay will perform the tasks in subparagraphs a. through f. in 3.2 above for Cards stored in ProtectPay.

3.4 LIMITATIONS

You may use EnsureBill Services (and the data associated therewith) solely for updating cardholder information in order to complete your future pre-authorized transactions in accordance with the Card Brands and will not use the EnsureBill Services (nor the data associated therewith) for any other purpose, including use of data with transactions for a different card type (or in connection with the development of any other service or product). You must not request authorization or an update on accounts that have returned a response of "Closed Account" or submit inquiries for the EnsureBill Services on behalf of any other entity.

4. THREATMETRIX

4.1 DESCRIPTION

ThreatMetrix Services, if available, include the device identification, device scoring, device reputation, and data analytics services provided by third party ThreatMetrix to you through your account. If you elect to use the ThreatMetrix Services, we grant you a non-exclusive, nontransferable, worldwide right to use the ThreatMetrix Services, and any other materials or intellectual property of ThreatMetrix provided to Client in connection with the ThreatMetrix Services (the "**ThreatMetrix Materials**"), solely for your own internal business purposes, after implementation and configuration of our website by ThreatMetrix, and subject to the terms and conditions of this agreement. Notwithstanding anything in this agreement to the contrary, we may modify the ThreatMetrix Services and our proprietary payment system without notice. Client shall not: (a) interfere with or disrupt the integrity or performance of the ThreatMetrix Services, our proprietary payment system, or the data contained therein; or (b) attempt to gain unauthorized access to the ThreatMetrix Services, our proprietary payment system, or its related systems or networks. You will provide such attribute information to us as may be necessary for us to provide to you the ThreatMetrix Services. You will also take such actions as may be legally and technically necessary to allow us and ThreatMetrix to collect the attribute information you decide to receive in connection with the ThreatMetrix Services.

4.2 USE OF LOGO

Client may place on its website the "Protected by ThreatMetrix" logo solely in the form and under the use criteria provided by us or ThreatMetrix. No other use of the "Protected by ThreatMetrix" logo is permitted, and you shall have no right to otherwise copy, distribute, transmit, or transfer, such logo or any other mark of ThreatMetrix. All goodwill associated with the use of ThreatMetrix's marks or logos inure to ThreatMetrix.

4.3 LIMITATIONS

The ThreatMetrix Services analyze the activities and other attributes of a device used in a transaction, and provide information and a rating score based on the data analyzed and the business policies you define. The ThreatMetrix Services provide information as to whether the device contains attributes which correlate to a device used in a fraudulent transaction, but do not determine the eligibility of your customer (or any other individual) for credit. You acknowledge and agree that neither we nor ThreatMetrix intend that the reports generated by the ThreatMetrix Services (the “**Device Reports**”), or any ThreatMetrix Materials, be considered consumer reports subject to the federal Fair Credit Reporting Act (“FCRA”). You represent that you will not use the Device Reports (or any other data provided by ProPay or ThreatMetrix) for making credit eligibility decisions or for any other permissible purpose listed in section 604 of the FCRA (15 U.S.C. 1681 b).

5. COMPLIANCE WITH THE RULES AND LAWS

5.1 COMPLIANCE WITH RULES

You must comply with the applicable Card Brand rules and operating regulations and the National Automated Clearing House Association rules (“**NACHA**”) (collectively, “**Rules**”). An abridged version of the Visa, Mastercard and American Express Rules may be viewed at usa.visa.com/merchants/operations/op_regulations.html, www.mastercardmerchant.com, and www.americanexpress.com\merchanttopguide. Copies of the NACHA Operating Rules and Guidelines are available for review online at www.achrulesonline.org. You specifically acknowledge and agree that this Sub-merchant Tri-party Agreement is deemed to include the provisions required by: (i) the Visa International Operating Regulations relating to the Merchant Chargeback Monitoring Program, the Merchant Agreement Requirements, and Merchant Card Acceptance; and (ii) Section 5.1 and Sections 5.6 through 5.12 of the Mastercard Rules; and (iii) chapter 4, “transaction processing”, chapter 11, “chargebacks and inquiries,” and chapter 12, “specific industries” of the American Express Merchant Regulations – U.S. 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 Reference Guide, US, which is a summary of the above-referenced American Express regulations, is available at www.americanexpress.com. In the event of any conflict between the terms of this Agreement and the terms of the Card Brand Rules, the Card Brand Rules shall prevail. You: (i) represent and warrant that you have reviewed in full the contents of the Card Brand Rules applicable to you (in particular, those sections referenced above); and (ii) covenants that you will, from time to time, review the contents of the Card Brand Rules to ensure you remain aware of, and are capable of performing, your duties and obligations under this Sub-merchant Tri-party Agreement. ProPay is a Payment Card Industry (“**PCI**”) level 1 service provider and is qualified to handle Cardholder data (i.e., information associated with a Card, such as account number, expiration date, and CVV2) in connection with the Services. ProPay will comply with the Payment Card Industry Data Security Standards (“**PCI DSS**”) to the extent ProPay possesses or otherwise stores, processes, or transmits Cardholder data on your behalf. If you possess or otherwise store, process, or transmit Cardholder data, then you must comply with PCI DSS. You agree that the Card Brands may enforce any provisions of the Card Brands and to prohibit you from engaging in any conduct that a Card Brand deems could injure or could create a risk of injury to the Card Brand, including injury to reputation, or that could adversely affect the integrity of the interchange system, a Card Brand’s Confidential Information, or both, and you further agree that you will not take any action that could interfere with or prevent the exercise of this right by any Card Brand. You further agree that a Card Brand may limit or terminate your Sub-merchant Tri-party Agreement at any time, if there are any significant circumstances that create harm or loss of goodwill to the Card Brands systems, and that your Sub-merchant Tri-party Agreement will automatically and immediately terminate if a Card Brand de-registers ProPay or if Member Bank ceases to be a member bank of a Card Brand for any reason or fails to have a valid license with a Card Brand to use any Card Brand mark accepted by you.

5.2 COMPLIANCE WITH LAWS AND POLICIES

You further agree to comply with applicable federal, state, and local laws, rules, and regulations (collectively, “**Laws**”). You also agree to the terms of the Privacy Policy, High Risk/Acceptable Use Policy, and other policies as applicable found at <https://www.propay.com/legal-agreements/> (“**Policies**”). You will assist us if we are required to ascertain your compliance with any Rules, Laws, PCI DSS, or Policies. We may, within our sole discretion, suspend the Services for a reasonable period of time required to investigate

suspicious or unusual activity, and we shall have no liability for any losses you may attribute to any suspension of funds disbursement. We may reverse Card transactions we deem to violate this agreement, the Laws, Rules, PCI DSS, or Policies, and you agree to reimburse us for any such reversal. If any terms of this agreement conflict with the Rules, including PCI DSS, the Rules will govern.

5.3 DATA SECURITY

You must keep secure all systems and media containing account, Cardholder, or transaction information (physical or electronic) and destroy in a manner that will render the data unreadable all such media that is no longer necessary or appropriate to store. If you store Cardholder account numbers, expiration dates, and other personal Cardholder data in a database, you must follow Card Brand guidelines on securing such data. You may not retain or store magnetic stripe or CVV2, CVC2, or CID data after authorization. You shall maintain industry "best practices" regarding continuity procedures and systems to ensure security of Cardholder account information in the event of a disruption, disaster, or failure of your respective data storage system and/or facility. You agree to display your consumer privacy policy on your website as well as your security method for transmission of Cardholder data.

5.4 PROHIBITED PRACTICES

You will not present for processing or credit, directly or indirectly, any transaction not originated as a result of a Card transaction directly between you and a Cardholder or any transaction you know or should know to be fraudulent or not authorized by the Cardholder. We will refer perpetrators of fraudulent transactions, in our discretion, to the appropriate law enforcement agency. You must not honor any Card that is expired or listed on a current Electronic Warning Bulletin file, regardless of whether authorization has been obtained. You must not request an ACH transfer that violates the Rules or Laws. You agree not to initiate any ACH debits or credits to or from a savings account, or a foreign bank or the branch of a foreign bank in a U.S. territory. The term foreign bank does not include: (i) A U.S. agency or branch of a foreign bank; and (ii) An insured bank organized under the laws of a U.S. territory. You may not split transactions into multiple Card transactions except where: (a) partial payment is entered on the transaction record and the balance of the transaction amount is paid in cash or by check at the time of transaction; or, (b) the amount represents an advance deposit in a Card transaction completed in accordance with this agreement and the Rules. You will not use the Services to accept amounts representing the refinancing of an existing uncollectible obligation, debt, or dishonored check of a Cardholder. You may not process transactions for, receive payments on behalf of, or (unless required by Law) redirect payments to a third party. You must not use the Service for high risk transactions or illegal activities, as per the Policies. You agree that ProPay may, at its discretion or at the direction of Member Bank or a Card Brand, immediately terminate the Sub-Merchant Tri-party Agreement for activity deemed to be fraudulent or otherwise wrongful by ProPay, Member Bank, or a Card Brand.

5.5 RECURRING TRANSACTIONS

You must obtain the Cardholder's prior written consent for recurring transactions, including a description of the product and the frequency and duration of the recurring charge, and notify the Cardholder that he or she may cancel recurring billing charges at any time. You must retain evidence of such written consent for 24 months from the date you submit the last recurring billing charge. You will honor any Cardholder cancellation, and if this agreement is terminated for any reason, you will, at your own cost, advise all Cardholders to whom you submit recurring billing charges that you no longer accept the Card for amounts owed.

5.6 ACH PROCESSING

To enable you to make and accept ACH payments, you authorize us to originate credit or debit records for the purpose of a funds transfer ("**Entries**") into the ACH network. We will use reasonable efforts to originate Entries on your behalf in accordance with this agreement. You must only submit Entries for bona fide transactions with your customers made in the ordinary course of business in accordance with this agreement, the Rules, and Laws. You shall obtain and maintain appropriate authorizations in accordance with the Rules from each of your customers for each ACH transaction. All disputes between you and any of your customers relating to any ACH transaction must be resolved between you and that customer. If ProPay receives any notice of an ACH dispute or NACHA inquiry, we will forward such notice directly to you. ProPay bears no financial responsibility for any disputed transaction. You must maintain an unauthorized return rate, as described in the NACHA Regulations, below 0.5% of originating debits.

5.7 USE OF TRADEMARKS

The Card Brands are the sole and exclusive owners of their marks and your use of their marks must comply with the Rules. We are the sole and exclusive owner of our marks and your use of our marks will fully comply with our policies and instructions. At any time we or the Card Brands may prohibit your use of the marks or require changes to your use of the marks as we deem necessary or appropriate. Your right to use our marks and the Card Brand marks will cease upon termination of this agreement and you agree not to contest the ownership of the marks for any reason.

5.8 THIRD PARTY SERVICE PROVIDERS

You may be using special services or software provided by a third party to assist you in processing transactions, including authorizations and settlements, or accounting functions. You must make sure that such third parties comply with the Rules (including PCI DSS) and Laws. You must notify Partner Provider if you use third party service providers. If there is unauthorized access to Cardholder data in the possession of you or your agents, you must immediately notify Partner Provider and cooperate with us regarding reasonable requests for information regarding the compromise.

5.9 CONFIDENTIALITY

You must retain in strictest confidence all information and data belonging to or relating to our business, and will safeguard such information and data by using the same degree of care, but no less than a reasonable amount of care, that you use to protect your own confidential information.

5.10 DISPUTES

a. YOUR DUTY TO MONITOR

ProPay will not, and has no obligation to, confirm the validity of the recipient or the underlying transaction pursuant to which funds are transferred. We assume no liability for any unauthorized transfer request and the attendant transfer of funds, unless and until we receive appropriate and timely notice by you of the unauthorized transfer requests. You must promptly and consistently inspect your transaction history. Immediately report any possible errors.

b. DISPUTES, INQUIRIES, AND CHARGEBACKS

All disputes between you and any of your customers relating to any ACH transaction must be resolved between you and that customer. If ProPay receives any notice of an ACH dispute or NACHA inquiry, we will forward such notice directly to you. Working with Provider Partner, we will handle Card Brand inquiries about your card transactions, in addition to disputes between you and a customer involving card payment transactions. Based on customer disputes we may reverse Card transactions ("**chargebacks**"), and we will offset the value of such chargebacks from monies owed to you. You must not reenter or reprocess any Card transaction that has been charged back, but instead allow the chargeback process to proceed to its conclusion as described in each Card Brand's Rules. If you disagree with a chargeback, you may request a chargeback reversal within the applicable Card Brand's timeline in its Rules. "**Excessive Activity**" means: chargebacks in excess of .50% of the transaction ratio of your Card transactions; or, chargebacks in excess of .50% of the transaction ratio of the dollar amount of your Card transactions; or, returns in excess of 3% of the transaction ratio of your Card transactions; or, denied transactions in excess of 5% of the transaction ratio of your Card transactions. The existence of Excessive Activity will be a breach of this agreement and may result in action as we deem necessary, including, but not limited to, termination or suspension of processing privileges or creation or maintenance of a reserve. We may revoke or reverse any credit given to you where: (i) the Card transaction was not made in compliance with this agreement and the Laws, Rules, and Policies; (ii) the Cardholder disputes liability to us for any reason, including but not limited to those chargeback rights enumerated in the Rules; (iii) the Card transaction was not directly between you and the Cardholder; or (iv) a deposit to you was made erroneously.

c. REFUND CREDITS

You will not submit a credit relating to any Card transaction not originally submitted to us, nor will you submit a credit that exceeds the amount of the original Card transaction.

5.11 AMERICAN EXPRESS

Important Note: The following sections apply only if you accept American Express Cards. If there is a conflict between any of the following sections and any other section of this agreement as it applies to American Express Cards, the following sections will govern. Bank is not a party to the following sections.

a. AMERICAN EXPRESS COMPLIANCE.

You authorize ProPay and/or its affiliates to submit American Express Transactions to, and receive settlement on such Transactions from, American Express on behalf of Merchant. You agree to comply with all 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 agreement. The American Express Merchant Operating Guide may be viewed at: www.americanexpress.com/merchantopguide. You shall abide by and fully comply with DSR and PCI DSS. A copy of the American Express Data Security Requirements (“DSR”) can be obtained online at www.americanexpress.com/dsr. You acknowledge and agree to: (i) ensure data quality and that Transaction Data and customer information are processed promptly, accurately, and completely, and in compliance with the American Express Technical Specifications; (ii) report all instances of a Data Incident immediately to ProPay after discovery of an incident; and (iii) being aware of and adhering to privacy and data protection Laws; and (iv) provide specific and adequate disclosures to Card-members regarding collection, use, and processing of personal data. You certify that all indebtedness arising from Transactions will be for bona fide sales of goods and services (or both) at your business locations and free of liens, claims, and encumbrances other than ordinary sales taxes.

b. HIGH CHARGE VOLUME SPONSORED MERCHANTS.

In the event that your Estimated Annual Charge Volume becomes \$1,000,000 USD or greater, you will become a direct Card-accepting merchant under the standard American Express acceptance program and cease to be a sponsored merchant under ProPay. As a direct Card-accepting merchant, you will be bound by the then-current American Express Card acceptance agreement and American Express will set pricing and other fees payable by you for card acceptance.

c. PROCESSING RESTRICTIONS.

You are 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 you 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 you from selling or assigning future American Express-related Transaction receivables to any third party.

d. THIRD PARTY BENEFICIARY RIGHTS.

You understand and covenant that you are not a third-party beneficiary under ProPay’s agreement with American Express, including all schedules and exhibits, or the American Express Rules. You acknowledge and agree that American Express is a third-party beneficiary under this agreement between you and ProPay. This means American Express has the rights, but not the obligation, to enforce the terms of this agreement against you.

e. AMERICAN EXPRESS LIABILITY.

You acknowledge and agree that in no event shall American Express, its affiliates, agents, successors, or assigns be liable to you 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 agreement.

f. MERCHANT WEBSITE DISPLAY REQUIREMENTS.

You will adhere to the following website information display guidelines in the event a you have a website and/or operate an e-commerce business (“**Merchant Website**”). The Merchant Website must display the following:

- i. 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.
- ii. Your physical address in the U.S.

- iii. An email address or telephone number for customer service disputes.
- iv. Return/refund policy.
- v. A description of your delivery policy (e.g., no overnight delivery).
- vi. A description of your security practices (e.g., information highlighting security practices you use to secure Transactions on your systems, including Transactions conducted on the Internet).
- vii. A statement of known export restrictions, tariffs, and any other regulations.
- viii. A privacy statement regarding the type of personal information collected and how the information is used. Additionally, you 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.

g. COMMUNICATION

- i. You agree that ProPay may disclose to American Express information from the agreement and otherwise regarding you and your 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 you in connection with American Express marketing and administrative purposes.
- ii. You agree you 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 your mailing address, phone numbers, email addresses or fax numbers. You 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. You may opt-out of receiving future commercial marketing communications from American Express by contacting ProPay; however, you 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 you from receiving important transactional or relationship messages from American Express.

h. TERMINATION

- i. ProPay has the right to terminate your participation in American Express Card Acceptance immediately upon written notice to you: (a) if you breach any of the provisions of this agreement applicable to American Express Card Acceptance, including, but not limited to, the American Express Merchant Operating Guide; or (b) if ProPay has cause to believe you are engaged in illegal or fraudulent activity; or (c) upon American Express’s request.
- ii. You may opt out of accepting American Express at any time by written request to ProPay without directly or indirectly affecting your rights to accept other Cards.
- iii. In the event your participation in American Express Card Acceptance is ended for any reason, you must immediately cease all use of and remove all American Express branding and marks from your business location(s), website(s) and anywhere else they are displayed.

g. REFUND POLICY

Your refund policies for American Express-related Transactions must be at least as favorable as your refund policy for purchase with any other Card, and the refund policy must be disclosed to cardholders at the time of purchase and in compliance with applicable Law. You may not bill or attempt to collect from any cardholder for any American Express-related Transaction unless: (i) a Chargeback has been exercised, (ii) You have fully paid for such Chargeback, and (iii) You otherwise has the right to do so.

6. FEES, TAXES & IRS REPORTING

6.1 FEES

Fees for the Services are set out in a fee schedule provided to you by Provider Partner.

6.2 DEPOSIT OF FUNDS TO MERCHANT POOL ACCOUNT

Our sponsor banks will deposit to the non-interest bearing pooled account titled in the name of our sponsor bank for the benefit of all ProPay merchants (“**Merchant Pool Account**”) all amounts of Card transactions complying with the terms of this agreement and the Rules. We will instruct our sponsor bank to move funds

owed to you from the Merchant Pool Account to an account designated by your or your Provider Partner ("**Designated Account**"). You acknowledge that the Designated Account may be an account owned by Provider Partner and that ProPay may rely on the information provided by the Provider Partner with respect to the Designated Account. You agree that ProPay's deposit of funds to the Designated Account discharges ProPay of its settlement obligations to you. Any disputes concerning the amount of funds or their receipt in the Designated Account will be between you and Provider Partner.

6.3 ELECTRONIC FUNDS TRANSFER AGREEMENT

You authorize ProPay to initiate, process, transmit, and settle through our sponsor bank ACH debits or credits to the Designated Account. Your authorization will remain in effect after termination of this agreement and until ProPay has received written notice terminating this authorization and all your obligations to ProPay have been paid in full. You irrevocably authorize us to immediately debit the Designated Account for the amounts of any chargebacks, ACH returns, fines, losses, and costs we may incur because of your use of the Services. You may change the Designated Account, but no more than once every 90 days, and must promptly notify Provider Partner of any changes.

6.4 RESERVE

ProPay may, in its reasonable discretion, establish a reserve if it believes there is a risk of potential chargebacks, returns, or any other risk or liability associated with your use of the Services or to ensure current or future payment owed to ProPay. We will provide you with notice of the reserve and the terms of the reserve. ProPay may require that a certain portion of your transaction proceeds be held by us in reserve for a certain period of time, or that you make a lump sum payment for the reserve. ProPay may change the terms of the reserve at any time by providing you with notice of the new terms. ProPay has the right to use your funds in the Merchant Pool Account or funds otherwise owed to you to establish, increase, or maintain funds in reserve. We may hold a reserve as long as we deem necessary to mitigate risks associated with your transactions. You understand and agree that if you are required to establish a reserve, you have an obligation under this agreement to maintain at all times the balance in the reserve set by ProPay. ProPay may, without notice, apply funds designated as reserves against any outstanding amounts owed to us under this agreement. ProPay may also debit the reserve to exercise its rights under this agreement to collect any amounts due to us including, without limitation, rights of set-off and recoupment. You agree that you are liable for all obligations associated with your use of the Services even after the release of any reserve. You will not be entitled to a return of any sums remaining in reserve for up to 270 days following termination of your use of the Services.

6.5 TAXES & IRS REPORTING

To comply with IRS 1099-K reporting requirements, we may be required to file a form 1099-K with the U.S. Internal Revenue Service (IRS). We may collect federal backup withholding upon transaction settlement, on behalf of the IRS, from you if you do not supply your legal name, SSN or EIN, or if you fail to respond to a request from us to verify the same.

7. **PROPAY'S STATUS WEBSITE.** The website status.propay.com is ProPay's communication tool for operational issues. You are 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 you do subscribe, it is your responsibility to keep your contact information updated at status.propay.com to assure that the proper individual(s) receive the updates. If you do not subscribe, you acknowledge that you may miss out on important updates about ProPay's system.

8. YOUR WARRANTIES & INDEMNIFICATION

8.1 REPRESENTATIONS AND WARRANTIES

You represent and warrant to us: (1) that all information you submit to us relating to your application to use and continued use of the Services is correct, complete, and fully describes and details the nature, type, and scope of the business in which you are engaged; (2) that you are at least 18 years of age; (3) that, if an individual account, you are a sole proprietorship validly existing in the United States or its territories, and if an entity, that the entity was validly formed, registered and is in good standing in at least one of the fifty United States or its territories; (4) that you have never been placed on the Mastercard MATCH system or the Combined Terminated Merchant File, and if so, you have disclosed this to us or to Partner Provider; (5)

that all transactions are bona fide and no transaction involves the use of a Card for any purpose other than the purchase of goods or services from you and does not involve a Cardholder obtaining cash from you unless allowed by the Rules and agreed in writing with us; and (6) that you are responsible for your employees' actions; (7) that you will promptly provide to us the current address of each of your offices, all "doing business as" (DBA) names used by you, and a complete description of goods sold and services provided by you.

8.2 INDEMNIFICATION

You agree to indemnify, defend, and hold us harmless for and from any and all loss, cost, expense, claim, damage, and liability (including attorneys' fees and costs, and collections costs) paid or incurred by us and arising from, caused by, or attributable to, any of the following: (1) any of your acts or omissions with respect to your use of the Services; (2) acting any Card transaction processed under this agreement, (3) any breach by you of this agreement; (4) willful misconduct, fraud, intentional tort or negligence by you or that of your employees, agents or representatives; (5) action by us exercising any right we have under this agreement, Laws, Rules, or Policies.

9. PROPAY'S LIABILITY & DISCLAIMER OF WARRANTIES

9.1 LIMITATION OF LIABILITY

Any liability we have to you under this agreement, whatever the basis of the liability, will not exceed in the aggregate the amount of \$5,000. In no event will we be liable for indirect, special, or consequential damages.

9.2 DISCLAIMER OF WARRANTIES

The Services are provided "AS IS" and "AS AVAILABLE." We make no warranty, express or implied, regarding the Services, and nothing contained in this agreement will constitute such a warranty. To the extent allowed by Law, we disclaim all implied warranties and conditions, express, implied or statutory, including without limitation those of merchantability and fitness for a particular purpose, the implied warranties of title and/or non-infringement. Some states do not allow the disclaimer of implied warranties, so the foregoing disclaimers may not apply to you. Each party acknowledges that it has not entered into this agreement in reliance upon any warranty or representation except those specifically set forth herein.

10. INTELLECTUAL PROPERTY RESTRICTIONS

All materials or intellectual property provided to you in connection with the Services ("**Materials**") are protected intellectual property of ProPay or its third party providers. You shall not (and shall not permit any agent or third party) to: (a) copy all or any portion of any Materials; (b) decompile, disassemble, or otherwise reverse engineer (except to the extent expressly permitted by applicable law, notwithstanding a contractual obligation to the contrary) the Services or Materials, or any portion thereof, or determine or attempt to determine any source code, algorithms, methods, or techniques used or embodied in the Services or any Materials or any portion thereof; (c) modify, translate, or otherwise create any derivative works based upon the Services or any Materials; (d) distribute, disclose, market, rent, lease, assign, sublicense, pledge, or otherwise transfer the Services or any Materials, in whole or in part, to any third party; or (e) remove or alter any copyright, trademark, or other proprietary notices, legends, symbols, or labels appearing on the Services or in any Materials.

11. SECURITY INTEREST, BANKRUPTCY

This agreement will constitute a security agreement under the Uniform Commercial Code wherein you grant to us a security interest in and lien upon: (a) all funds representing amounts owing you under this agreement at any time in the Merchant Pool Account, regardless of the source of such funds; (b) all funds at any time in reserve, regardless of the source of such funds; (c) present and future Card transactions; (d) any amount which may be due to you under this agreement, including, without limitation all rights to receive any payments or credits under this agreement; and (e) upon our request, any other security to secure your obligations under this agreement. (collectively, the "**Secured Assets**"). You agree to execute financing statements or other documents to evidence this security interest. These security interests and liens will secure all of your obligations under this agreement and any other agreements now existing or later entered into between you and us and we will have all rights afforded under the Uniform Commercial Code, any other applicable law, and

in equity. We may exercise this security interest without notice or demand by making an immediate withdrawal or freezing of your Secured Assets. You represent and warrant that no other person or entity has a security interest in the Secured Assets and you agree to obtain from us written consent prior to granting a security interest of any kind in the Secured Assets to a third party. You agree that this is a contract of recoupment and as such, we are not required to file a motion for relief from a bankruptcy action automatic stay to realize on any of the Secured Assets. Nevertheless, you agree not to contest or object to any motion for relief from the automatic stay filed by us.

12. GOVERNING LAW, JURISDICTION, WAIVER OF JURY TRIAL

This agreement will be governed by and construed in accordance with the laws of Utah except where federal law is applicable. You agree that all performances and transactions under this agreement will be deemed to have occurred in Utah and that your entry into and performance of this agreement will be deemed to be the transaction of business within the state of Utah. You agree that the exclusive jurisdiction and venue for any disputes hereunder shall be an appropriate court located in Salt Lake County, Utah. You and we waive any right to trial by jury in any action concerning any rights or disputes under this agreement.

13. MISCELLANEOUS

13.1 AGENCY RELATIONSHIP

You authorize us with respect to the Services to act as your agent for the limited purposes of holding, receiving, and disbursing funds on your behalf. Your authorization permits ProPay to generate an electronic funds transfer to process each payment transaction. This authorization will continue until this agreement is terminated. You agree that ProPay's receipt of transaction proceeds satisfies your customers' obligations to you.

13.2 FORCE MAJEURE

No party will be liable to the other party for any failure or delay in its performance of this agreement if such failure or delay arises out of causes beyond the control and without the fault or negligence of such party.

13.3 SEVERABILITY AND WAIVER

If any provision of this agreement is held invalid, illegal, void, or unenforceable by reason of any judicial decision, all other provisions of this agreement shall nevertheless remain in full force and effect. No course of dealing, delay, or failure to enforce any provision or exercise any right under this agreement by us shall be construed as a waiver or estoppel of such provision or right, nor shall it amend this agreement or affect the validity of this agreement or curtail our ability to enforce such provision or exercise such right in the future. All waivers must be in writing and signed by us.

13.4 RIGHTS AND REMEDIES CUMULATIVE

The rights conferred upon us in this agreement are not intended to be exclusive of each other or of any other rights and remedies we have under this agreement, at law, or in equity. Rather, each right we have at law or in equity will be cumulative and concurrent and in addition to every other right.

13.5 ENTIRE AGREEMENT

This agreement, including, Policies, the Rules, and any amendment or supplement to this agreement or other referenced agreements, all of which are incorporated into this agreement, constitutes the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded by this agreement.

13.6 CONSTRUCTION

The headings used in this agreement are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

13.7 ASSIGNABILITY

This agreement may be assigned by us, but may not be assigned by you without our prior written consent.

13.8 AMENDMENTS

You are bound by this agreement as it may be amended or revised at any time upon notice to you. It is your sole responsibility to review and maintain familiarity with the agreement, Rules, Law and Policies. If you do not agree to the aforementioned amendments and do not wish to be bound the terms and conditions thereto, you shall provide written notice to Provider Partner. If you do not agree to the terms of the amendment, your right to use the Services will be terminated.

13.9 CONSENT TO DO BUSINESS ELECTRONICALLY, ELECTRONIC COMMUNICATION, AND NOTICES

You consent to do business electronically, which means that you agree that all ProPay agreements and Policies, including amendments thereto and documents referenced therein, as well as any notices, instructions, or any other communications regarding transactions and your agreements with ProPay (all of which are referred to herein as the "**Communications**") may be presented, delivered, stored, retrieved, and transmitted electronically. You must keep Provider Partner informed of any change in your electronic or mailing address or other contact information. You may withdraw your consent to doing business under the ProPay agreements and policies electronically at any time by giving written notice to ProPay and withdrawing your consent to transact business electronically. If you do so, this agreement will be terminated as per section 13.10 below. However, any Communications or transactions between us before the effective date of termination of the ProPay agreements will be valid and binding. Any written notice to us must be sent to: ProPay, Inc., 3400 N Ashton Blvd, Suite 200, Lehi, UT 84043, and if to you: to the last electronic or mailing address shown on Provider Partner's records.

13.10 TERMINATION

We may terminate this agreement as our sole and absolute discretion, effective immediately, upon written, electronic, or oral notice to you. You may terminate this agreement at any time by providing written notice of termination (including without limitation withdrawal of consent to do business electronically) to ProPay at ProPay's address in section 13.9 above. Your ProPay agreements will be terminated within three business days of ProPay's receipt of such notice. ProPay will confirm with you by written notice the effective date of termination of the ProPay agreements. However, any Communications or transactions between us before the effective date of termination will be valid and binding.