
ProFac Sub-Merchant Terms and Conditions

INTRODUCTION

This agreement between “you” and ProPay, Inc. (“ProPay,” “we,” “our,” “us”) governing your use of our payment processing services (“Service(s)”). 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 THE SERVICES

The Services are intended to be used for business purposes and not for personal, family or household 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”). Services may include TSYS EnsureBillSM and ThreatMetrix®, as described in section 2, if such services are made available by your Provider Partner. We reserve the right to change the availability of any of the Services without notice. You shall not: (a) interfere with or disrupt the integrity or performance of the Services, or the data contained therein; or (b) attempt to gain unauthorized access to the Services, As the provider of the Services, we have certain obligations under the Card Brand Rules. .

1.2 REQUIRED INFORMATION, VERIFICATION

Our sponsor banks and the Card Brands require us to verify your identity, credit, business operations and compliance with the obligation under this Agreement. In order to use the Services, you must provide us sufficient information and documentation as requested by us including information to verify your identity, financial statements, and customer information. 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. We reserve the right to refuse to allow you to use the Services for any reason. You authorize us to make, from time to time, any business and personal credit inquiries, identity-verification inquiries, and any other inquiries considered necessary relating to this agreement, and to provide any required information and documentation to our sponsor banks and/or the Card Brands. You also authorize any person or credit reporting agency to compile information to answer those inquires and to furnish that information to us.

1.3 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. If your use of the Services meets certain Card processing volume thresholds, we may notify you that you must enter into an additional agreement with our sponsor bank.

1.4 DATA OWNERSHIP & SHARING DATA WITH PROVIDER PARTNER

ProPay owns 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) using the data internally, 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; (d) sharing data about your use of the Services with your Provider Partner; and (e) any other purpose for which you provide consent.

1.5 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.

2. ENSUREBILL AND THREATMETRIX SERVICES

2.1 ENSUREBILL

- a. Description. TSYS EnsureBill Services, if made available by your Provider Partner, 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. 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, as necessary to provide you the EnsureBill Services.
- b. Limitations. You may use the EnsureBill Services solely for updating cardholder information in order to complete your future pre-authorized transactions in accordance with the Card Brand Rules and will not use the EnsureBill Services 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 for accounts that have been closed or submit EnsureBill Services inquiries on behalf of any other entity.
- c. Use outside of ProtectPay. For Cards not stored in ProPay’s ProtectPay, you must:

- i. Request an update for every participating account in your customer database at least once every 180 calendar days;

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;

Update your customer account database within five business days of receiving an update from us;

Ensure that information received from the EnsureBill Services is properly incorporated into your customer database for utilization in future transactions;

Correct erroneous account information within five business days of receipt of error notification from us or the Card Brands; and

Correct operational errors within five business days of receipt of error notification from Bank, ProPay, or the Card Brands.

ProPay will perform the tasks in subparagraphs (i) through (vi) above for Cards stored in ProtectPay.

2.2 THREATMETRIX

- a. Description. ThreatMetrix Services, if made available by your Provider Partner, include device identification, device scoring, device reputation, and data analytics services provided by third-party ThreatMetrix. If you elect to use the ThreatMetrix Services,

800-785-7901 sales@bluemaxpay.com

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 and subject to the terms and conditions of this agreement.

Notwithstanding anything in this agreement to the contrary, we may modify the ThreatMetrix Services without notice. Client shall not: (a) interfere with or disrupt the integrity or performance of the ThreatMetrix Services, or the data contained therein; or (b) attempt to gain unauthorized access to the ThreatMetrix Services, 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.

b. **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.

c. **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).

3. COMPLIANCE WITH RULES AND LAWS

3.1 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 accessed at <https://usa.visa.com/support/consumer/visa-rules.html>, <https://www.mastercard.us/en-us/business/overview/support/rules.html>, and www.americanexpress.com/merchanttopguide. Copies of the NACHA Operating Rules and Guidelines are available for review online at www.achrulesonline.org. 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.

3.2 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/en-US/legal/\("Policies"\)](https://www.propay.com/en-US/legal/(). 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 such suspension.. 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.

3.3 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 notify Partner Provider if you use such third-party service providers and ensure that such third parties comply with the Rules (including PCI DSS) and Laws. . 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.

3.4 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 Services for high risk transactions or illegal activities, as per the Policies.

3.5 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 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.

4. ACCEPTING PAYMENT

4.1 CARD 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"). Terms specific to American Express cards are set forth in section 13. 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 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. Our name will appear in conjunction with your name on Cardholders' statements. 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.

4.2 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 reserve the right to refuse to authorize any transaction.

4.3 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.

4.4 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.

4.5 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 Rules, below 0.5% of originating debits.

5. DISPUTES

5.1 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.

5.2 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 the 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.

5.3 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.

6. CONFIDENTIALITY & DATA SECURITY

6.1 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.

6.2 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.

7. FEES, TAXES & IRS REPORTING

7.1 FEES

Fees for the Services are set out in a fee schedule provided to you by Provider Partner. In certain instances, ProPay may charge additional fees as follows:

Processing Fee (for unclaimed property transferred to a governmental body as permitted by law)

Up to \$80

Printed Monthly Statement Fee (per month – if requested)

Up to \$10

Intensive Investigation Fee (for reasonable time spent in excess of three hours to respond to requests related to Merchant from ProPay's sponsor bank, the Card Brands, government and other regulatory bodies including, but not limited to, investigation of high value chargebacks, subpoenas, levies or temporary restraining orders)

\$180 per hour

ACH Stop Payment/Customer Cancellation Fee (per item)

\$20.00

7.2 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 and ACH 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 you designate with Provider Partner ("Designated Account").

7.3 ELECTRONIC FUNDS TRANSFER AGREEMENT

You authorize ProPay to initiate, process, transmit, and settle through our sponsor bank ACH debits or credits to you 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.

7.4 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. ProPay reserve the right to hold your reserve for up to 270 days following termination of your use of the Services.

7.5 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.

7.6 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.

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; and (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.

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. 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.

11. 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 Georgia and that your entry into and performance of this agreement will be deemed to be the transaction of business within the state of Georgia. You agree that the exclusive jurisdiction and venue for any disputes hereunder shall be an appropriate court located in Muscogee County, Georgia. You and we waive any right to trial by jury in any action concerning any rights or disputes under this agreement.

12. MISCELLANEOUS

12.1 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.

12.2 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.

12.3 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.

12.4 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.

12.5 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.

12.6 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.

12.7 ASSIGNABILITY

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

12.8 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 any 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.

12.9 CONSENT TO DO BUSINESS ELECTRONICALLY, ELECTRONIC SIGNATURE, 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. Your electronic signature, including, without limitation clicking "Agree and Continue" or an action of similar meaning or significance, shall be the legal equivalent of your manual signature. You may withdraw your consent to doing business under the ProPay agreements and policies electronically at any time by contacting Provider Partner and withdrawing your consent to transact business electronically. If you do so, this agreement will be terminated. However,

any Communications or transactions between us before your withdrawal of such consent, will be valid and binding. Any written notice to us must be sent to: ProPay, Inc., 2675 West 600 North, Lindon, UT 84042, and if to you: to the last address shown on Provider Partner's records.

12.10 TERMINATION

We may terminate the agreement at its sole and absolute discretion, effective immediately, upon written, electronic, or oral notice to you.

13. 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.

13.1. 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 other 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.

13.2. 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.

13.3. 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.

13.4. 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.

13.5. 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.

13.6. 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:

- a. 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.
- b. Your physical address in the U.S.
- c. An email address or telephone number for customer service disputes.
- d. Return/refund policy.
- e. A description of your delivery policy (e.g., no overnight delivery).
- f. 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).
- g. A statement of known export restrictions, tariffs, and any other regulations.
- h. 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.

13.7. COMMUNICATION

- a. 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: (i) to perform its responsibilities in connection with American Express Card Acceptance; (ii) to promote the American Express Network; (iii) to perform analytics and create reports; (iv) for any other lawful business purposes including commercial marketing communications purposes within the parameter of the Program Agreement, (v) for important transactional or relationship communication from American Express, and (vi) to screen and/or monitor you in connection with American Express marketing and administrative purposes.
- b. 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.

13.8. TERMINATION

- a. ProPay has the right to terminate your participation in American Express Card Acceptance immediately upon written notice to

you: (i) 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 (ii) if ProPay has cause to believe you are engaged in illegal or fraudulent activity; or (iii) upon American Express's request.

b. 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.

c. 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.

13.9. 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: (a) a Chargeback has been exercised, (b) You have fully paid for such Chargeback, and (c) You otherwise has the right to do so.

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