

Terms and Conditions

Merchant Operating Guide

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

If you would like a PDF copy of this agreement, right click [here](#), and select "Save Target As".

Processor Disclosure

The 'JetPay' party listed throughout this agreement will refer to one of the checked entities below.

- JetPay, LLC, a Texas limited liability company whose address is

3361 Boyington Drive,
Suite 180,
Carrollton, TX 75006

MERCHANT AGREEMENT

In consideration of the mutual promises and covenants contained in this Merchant Agreement ("Agreement"), the parties agree as follows:

1. Parties. The parties to this Agreement are ("Bank", as marked and described below, with respect to Visa, MasterCard, and Discover Network Transactions), JetPay, a Texas limited liability company whose address is 3361 Boyington Drive, Suite 180, Carrollton, TX 75006 ("JetPay"), and the Merchant set forth on the Merchant Application form to which this Agreement is attached ("Merchant").

2. Definitions. For the purposes of this Agreement and the Schedules referred to herein, the following definitions apply unless the context otherwise requires:

- (a) Address Verification shall mean a service that allows Merchant to verify the home address of Cardholders with the relevant Issuer.

- (b) Card Association(s) shall mean American Express Travel Related Services Company, INC. (AXP), and VISA USA, Inc. ("Visa"), and MasterCard International, Inc. ("MasterCard") and Discover Network ("Discover Network").
- (c) Card Association Operating Rules are relevant portions of the Visa International Operating Regulations, the MasterCard Rules, the American Express Merchant Requirements, the Discover Merchant Operating Regulations, and the bylaws, rules, regulations, policy statements, guidelines, bulletins, notices, and similar documents issued by the Card Associations, and may be obtained through the Card Associations' own websites or by contacting JetPay directly at: http://www.jetpay.com/merchant/about_merchant_terms.php
- (d) Authorization shall mean an affirmative response, by or on behalf of an Issuer to a request to effect a Transaction, that a Transaction is within the Cardholder's available credit limit and that the Cardholder has not reported the Card lost or stolen. All Transactions require Authorization.
- (e) Authorization Center shall mean the facility or facilities designated from time to time by Bank or JetPay to which Merchant shall submit all requests for Authorization.
- (f) Business Day shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which banking institutions are authorized by law or executive order to be closed (and on which Bank is in fact closed).
- (g) Card(s) shall mean either American Express, Visa, MasterCard, or Discover Network credit card, debit card, or other similar card that may or may not require a PIN for identification purposes, or pre-paid, stored-value or gift card.
- (h) Cardholder (also referred to as "Card Member" or "Cardmember" in some Card Association materials) shall mean a person authorized to use a Card.
- (i) Chargeback shall mean a Transaction that Bank returns to Merchant pursuant to this Agreement.
- (j) Forced Sale shall mean a sales Transaction processed without an approved electronic Authorization number being obtained for the full amount of the sales Transaction at the time the Transaction is processed.
- (k) Full Recourse Transactions shall mean mail orders, telephone orders, e-commerce (Internet) orders, Pre-Authorized Recurring Order Transactions, and other "card not present" sales.
- (l) Issuer shall mean a member of an Card Association that enters into a contractual relationship with a Cardholder for the issuance of one or more Cards
- (m) Merchant Statement shall mean an itemized monthly statement of all charges and credits to the Operating Account (as that term is defined in Section 9 of this Agreement).
- (n) Fees shall mean the rates, fees, network fees, and/or assessments charged by the Card Associations, JetPay and the Bank as set forth in Schedule A. The Card Associations charge JetPay and Bank these fees in order to facilitate a Transaction. These "Fees" include interchange and assessments for Visa, MasterCard and Discover along with all associated fees in their operating rules and Discount Rate, Network Fee, for American Express as outlined in their operating rules and regulations, JetPay may pass through other fees and or fines directly related to the card type, and how the card was submitted i.e.; swiped or keyed entered, cross boarder fees etc. Complete

processing fees of Card Transactions that may be charged from time to time by Card Associations, JetPay or Bank can be found at the JetPay website at: www.jetpay.com

- (o) Bank fees as applicable and stated in "Schedule A".
- (p) Normal Transaction shall mean a Transaction in which the Card is swiped through a terminal, register or other device, capturing the Card information encoded on the Card's magnetic strip or chip.
- (q) Pre-Authorized Recurring Order Transactions shall mean Transactions that have been pre-authorized by the Cardholder and for which the goods or services are to be delivered or performed in the future by Merchant without having to obtain approval from the Cardholder each time.
- (r) Qualified transactions shall mean: (i) retail Transactions in which the Card is swiped or chip read; (ii) Card Association telephone or mail transactions with Address Verification; or (iii) transactions that are part of a special registered program approved by the Card Associations.
- (s) Services shall mean the transaction processing services provided by Bank or JetPay under this Agreement.
- (t) Transaction shall mean the acceptance of a Card or information embossed on the Card for payment for goods sold and/or leased or services provided to Cardholders by Merchant and receipt of payment from Bank or JetPay, whether the Transaction is approved, declined, or processed as a Forced Sale. The term "Transaction" also includes credits, errors, returns disputes, and adjustments.
- (u) PCI DDS Compliance shall mean The PCI Data Security Standard represents a common set of industry tools and measurements to help ensure the safe handling of sensitive information. Created by aligning Visa's Account Information Security (AIS)/Cardholder Information Security (CISP) programs with MasterCard's Site Data Protection (SDP) program, the standard provides an actionable framework for developing a robust account data security process - including preventing, detecting and reacting to security.
- (v) Data Breach Coverage shall mean a new and unique indemnification program designed specifically to meet the expenses resulting from a suspected or actual breach of payment data.
- (w) Payment Application shall refer to software and/or hardware that are used to facilitate a payment transaction. This shall include but not be limited to payment terminals, gateways, hospitality management surplus, virtual terminal, and retail POS systems.
- (x) PA-DSS shall mean the certification of a Payment Application as within PCI DDS compliance standards as listed by the PCI Security Standards as listed by the PCI Security Council currently available at https://www.pcisecuritystandards.org/security_standards/pci_pa_dss.shtml.

3. Merchant agrees to participate in program. Merchant agrees to participate in the card processing services program established by Bank and JetPay.

4. JetPay to provide services to Merchant. During the term of this Agreement, subject to the terms and conditions of this Agreement, JetPay agrees to provide technical documentation and support in order to allow Merchant to accept and process Transactions. JetPay shall provide technical support and customer support for all Transactions, including, without limitation, Authorization, Settlement, Chargeback processing and reporting, twenty-four hours each day, seven days each week

(Settlement in conjunction with non-bank holidays and weekends) during the term of this Agreement. JetPay agrees to provide Merchant with the Services on Schedule A as amended from time to time by JetPay, during the term of this Agreement, subject to the terms and conditions of this Agreement.

5. Independent Contractor. In the performance of its duties hereunder, JetPay shall be an independent contractor, and not an employee or agent of Bank.

6. Compliance with Card Association Operating Rules. The terms of the Card Association Operating Rules form a part of and are incorporated into the Merchant Agreement. Merchant agrees to comply with the Card Association Operating Rules, as the same may be amended from time to time. The Card Association Operating Rules may change with little or no advance notice to Merchant and Merchant will be bound by all such changes. In the event the provisions of this Merchant Agreement conflicts with the provisions of the Card Association Operating Rules, the Card Association Operating Rules for the particular Card would govern.

7. Term. This Agreement shall become effective when all parties sign the Merchant Application form to which this Agreement is attached and, unless sooner terminated, shall remain in effect for a term of three (3) years. This Agreement shall renew automatically for successive terms of three (3) years each, unless any party provides written notice of termination to the other parties at least ninety (90) days prior to the end of the then-current term. Prior to termination and regardless of the circumstances for termination, Merchant grants JetPay a right of first refusal in connection with any proposal made to Merchant by any other merchant services provider to provide a product or service that is the same or substantially similar to any product or service offered by Bank or JetPay and which proposal Merchant wishes to accept. Merchant shall promptly notify JetPay, in writing, of any such proposal and if Merchant fails to provide such notice, JetPay shall have the option to charge merchant for liquidated damages (LD), as specified in Section 37 of this Merchant Agreement. The notice from Merchant shall reasonably and sufficiently describe both the price and the non-price terms of the products and services to be offered pursuant to the proposal. Within thirty (30) days from the date JetPay received written notice from Merchant, JetPay may elect to exercise its right of first refusal by offering the same or substantially similar product or service on the same or more favorable price and non-price terms as that of the other merchant services provider and so notifying Merchant in writing. In the event JetPay fails to exercise its right of first refusal with respect to any such proposal, Merchant may accept that proposal, provided, however, that JetPay's failure to exercise its right of first refusal in any one instance shall not preclude or otherwise void or affect JetPay's right of first refusal with respect to any other proposal. All existing obligations, warranties, indemnities and agreements with respect to Transactions entered into before such termination shall remain in full force and effect, and Merchant shall remain liable for all obligations to Cardholders and Bank incurred while this Agreement was in effect.

8. Merchant Operating Account. Prior to accepting any Cards, Merchant shall establish a demand deposit account at Bank, or at a financial institution approved by Bank and JetPay ("Operating Account"), through which fees, charges and credits due in accordance with this Agreement may be processed. Merchant irrevocably authorizes Bank or JetPay to debit all amounts Merchant owes Bank or JetPay hereunder from the Operating Account, whether maintained at Bank or another financial institution, at times deemed appropriate by Bank or JetPay, through the ACH Banking Network or by a manual debit of the Operating Account. Merchant waives any claims for loss or damage arising out of any such charges or debits to the Operating Account against any other financial institution where the Operating Account is maintained.

9. Reserve Account. Upon, or at any time after, execution of this Agreement, Bank or JetPay may establish a reserve account at Bank or any other financial institution designated by Bank or JetPay "Reserve Account", for all future indebtedness of Merchant to Bank or JetPay that may arise out of or relate to the obligations of Merchant under this Agreement, including, but not limited to, Card

Association fees, Chargebacks and processing fees, in such amount as Bank or JetPay from time to time may determine in its sole discretion. Bank or JetPay may fund the Reserve Account by deduction from payments due Merchant or a charge against Merchant's Operating Account or against any of Merchant's accounts at Bank. The initial amount of the reserve account along with other terms and conditions is provided for in Schedule B. The Reserve Account will be maintained for a minimum of six months after the date on which this Agreement terminates or until such time as Bank or JetPay determines that the release of the funds to Merchant is prudent, in the best interest of Bank and JetPay, and commercially reasonable, and that Merchant's account with Bank and JetPay is fully resolved. Upon expiration of this six-month period, any balance remaining in the Reserve Account will be paid to Merchant. Bank or JetPay will inform Merchant in writing of any charges debited to the Reserve Account during this six-month period.

10. Fees. Merchant agrees and shall pay Bank and JetPay all fees specified on Schedule A, as amended by Bank or JetPay from time to time.

11. Billing. All amounts Merchant owes Bank or JetPay may be charged to the Operating Account or Reserve Account, recouped by adjustment to any credits due to Merchant, or set off against any account or property Bank or JetPay holds for or on behalf of Merchant.

12. Security Interest. As security for the performance by Merchant of all of its obligations under this Agreement, Merchant hereby grants to Bank and JetPay a security interest in the funds held in the Operating Account and in the Reserve Account. Merchant will execute and deliver to Bank and JetPay such documents, in form satisfactory to Bank and JetPay, as Bank and JetPay may reasonably request in order to perfect Bank's or JetPay's security interest in the Operating Account and Reserve Account, and will pay all costs and expenses of filing the same or of filing this Agreement in all public filing offices, where filing is deemed by Bank and JetPay to be necessary or desirable. Bank and JetPay is authorized to file financing statements relating to the Operating Account and the Reserve Account without Merchant's signature where authorized by law.

13. Power of Attorney. Merchant appoints Bank and JetPay, as its attorney-in-fact to execute such documents as is necessary or desirable to accomplish perfection of any security interests. This appointment is coupled with an interest and shall be irrevocable as long as Merchant owes any amount to Bank or JetPay.

14. Equipment. In processing Transactions, Merchant shall use only equipment or software programs provided or approved by the Authorization Center or JetPay ("equipment") and related equipment installed or approved by JetPay, and the following additional terms:

- (a) The equipment shall be suitable for processing the Services;
- (b) Merchant will provide, at Merchant's expense, suitable electric power and telephone services and will pay for any alterations to Merchant's premises required to properly locate Merchant's equipment;
- (c) If Merchant is using equipment, Merchant acknowledges receipt of a copy of the equipment User's Guide. Merchant will use and operate the equipment only in accordance with the equipment User's Guide; and
- (d) Bank or JetPay will have no liability to Merchant if any installation is delayed or cannot be completed. JetPay will not have liability to Merchant if any installation is delayed or cannot be completed for reasons not caused by the act or neglect of JetPay. At no time will JetPay liability exceed the amount of fees collected or reasonably expected to be collected from merchant for this delay period.

15. Documenting Transactions. Merchant shall submit the following information to JetPay and Bank or their designee in connection with Transaction processing:

- (a) The DBA name of Merchant (if any), name of Merchant and Merchant's address;
- (b) Merchant's customer service telephone number;
- (c) Merchant's Internet address (if applicable);
- (d) The Merchant Number assigned to Merchant by Bank;
- (e) Merchant must retain enough information to identify a transaction and be able to reverse it upon request.
- (f) The name, address and telephone number of Cardholder; and
- (g) Such additional information from time to time may be required by Bank or JetPay and/or the relevant Issuer.

Merchant shall not submit a Transaction to Bank or JetPay (electronically or otherwise) until Merchant has performed its obligations to the Cardholder in connection with the Transaction or obtained Cardholder's consent for a Pre-Authorized Recurring Order Transaction. Merchant shall not transmit any Transaction to Bank that Merchant knows or should have known to be fraudulent or not authorized by the Cardholder. Merchant is responsible for its employees' actions. Merchant may transmit a Transaction that effects a prepayment of services or full prepayment of custom-ordered merchandise, manufactured to a Cardholder's specifications, if Merchant advises Cardholder of the immediate billing at the time of the Transaction and within time limits established by the Associations.

16. Authorization for Transactions. Merchant shall obtain Authorization for Transactions as follows:

- (a) Electronically Transmitted Transaction. Merchant shall submit each Normal Transaction for Authorization to the Authorization Center using the equipment. The Authorization Center shall authorize or decline a Normal Transaction transmitted for Authorization and shall capture and process for Merchant the information relating to the Normal Transaction. If equipment is inoperable at the time of an Authorization request, the Transaction may be authorized by using the appropriate dial-up facility. In that case, the Transaction shall be entered as a Forced Sale Transaction, provided the approval number is also entered, and Merchant shall be subject to [an additional voice or audio response unit "ARU" Authorization Fee as outlined on Schedule A.
- (b) Full Recourse Transactions. The following additional requirements apply to Full Recourse Transactions:

(1) All Full Recourse Transactions are at Merchant's risk. As to each Full Recourse Transaction, Merchant warrants to Bank and JetPay that the person whose name is submitted to Bank and JetPay as Cardholder either made or authorized another to make the purchase. Upon breach of this warranty, Bank or JetPay may charge back the Transaction to Merchant. If Bank or JetPay charges back the Transaction to Merchant: (i) Merchant shall pay Bank and/or JetPay the amount of the Transaction, any Chargeback fee set forth on Schedule A, plus any Card Association fine or

assessment; and (ii) Bank or JetPay may charge all such amounts to the Operating Account or Reserve Account without prior notice to Merchant;

(2) All Full Recourse Transactions must be electronically authorized through the Authorization Center and, in addition to the information required in Section 16 of this Agreement, each such request for Authorization also shall include: (i) an Authorization code, if required; (ii) the Cardholder's address and Address Verification results; and (iii) in lieu of the Cardholder's signature, a notation of (A) mail order (MO), (B) telephone order (TO), (C) e-commerce order (EO), or (D) pre-authorized order (PO) on the signature line;

(3) If Merchant accepts a Pre-Authorized Recurring Order Transaction, the Cardholder shall execute and deliver to Merchant a written request for this pre-authorization. This written request shall be maintained by Merchant and made available upon request to Bank. All annual billings must be reaffirmed at least once each year. Merchant shall not deliver goods or perform services covered by a pre authorization order after receiving notification from the Cardholder that the pre-authorization is canceled or from Bank that the Card covering the pre-authorization is not to be honored; and

(4) Merchant shall verify Cardholder's address from the Association network. For telephone or mail order sales, Merchant shall transmit a ticket/invoice number and shall do an Address Verification to qualify for the Qualified Transaction discount rate.

17. Prohibited Transactions. Merchant shall not do any of the following with respect to any Transaction: Merchant shall comply with all bylaws, rules, regulations, policies, and/or guidelines of the Card Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement.

- (a) Establish a minimum or maximum dollar Transaction amount;
- (b) Obtain multiple Authorizations for amounts less than the total sale amount;
- (c) Obtain Authorization for purposes of setting aside Cardholder's credit line for use in future sales;
- (d) Extend credit for or defer the time of payment of the total cash price in any Transaction;
- (e) Honor a Card except in a Transaction where a total cash price is due and payable;
- (f) Make any special charge to or extract any special agreement or security from any Cardholder in connection with any Transaction;
- (g) Transmit or accept for payment any Transaction that was not originated directly between merchant and a Cardholder for the sale or lease of goods or the performance of services of the type indicated in the Merchant Application form to which this Agreement is attached;
- (h) Honor or accept a Card as payment for any legal services or expenses arising out of or related to:
 - (i) the defense of any crime other than a traffic violation;
 - (ii) any domestic relations matter where such services or expenses are furnished to a person whose name is not embossed on a Card; or
 - (iii) any bankruptcy, insolvency, compromise, composition or other process affecting Cardholder's creditors;
- (i) Use Merchant's own Card, or one to which Merchant has access, to process a Transaction for the purpose of obtaining credit for Merchant's own benefit;

- (j) Redeposit a previously charged Transaction, regardless of whether the Cardholder consents;
- (k) Initiate a Transaction credit without a balance in the Operating Account equal to the credit;
- (l) Use the equipment or any data received thereon for any other purpose other than for determining whether or not Merchant should accept checks or Cards in connection with a current sale or lease of goods or services;
- (m) Use the equipment or any data received thereon for credit inquiry purposes or any other purpose not authorized by this Agreement;
- (n) Draw or convey any inference concerning a person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living when any Card or check is processed as non-accepted;
- (o) Disclose any information obtained through the equipment to any person except for necessary disclosures to affected Cardholders, Bank and/or the Issuer;
- (p) Add any tax to Transactions unless applicable law expressly requires that Merchant be permitted to impose a tax. Any tax, if allowed, must be included in the Transaction amount and not collected separately;
- (q) Disburse funds in the form of travelers checks, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from Merchant;
- (r) Disburse funds in the form of cash;
- (s) Accept a Card to collect or refinance an existing debt;
- (t) Issue a transaction credit in respect of goods or services acquired in a cash transaction which are returned; or
- (u) Make any cash refund to a Cardholder who has made a purchase with a Card. All transaction credits will be issued to the same Card account number as the sale.
- (v) Merchant may not accept a Card for an unlawful Internet gambling transaction.

Merchant will pay all Card Association fines, fees, penalties and all other assessments or indebtedness levied by Card Associations and/or regulatory agencies to Bank, which are attributable, at the Bank's discretion, to Merchant's transaction processing or business.

18. Prohibition of Furnishing Account Information. Merchant shall not, without the Cardholder's consent, sell, purchase, provide or exchange Card account number information in the form of Transaction documents, carbon copies of imprinted Transaction documents, mailing lists, tapes, journal rolls or other media obtained by reason of a Card to any third party.

19. Daily Reconciliation of Transactions.

- (a) Electronically Transmitted Transactions. Transactions will be settled on a daily basis when applicable. (Excluding Sundays and holidays) Bank and/or JetPay shall deliver payment to Merchant within forty-eight (48) hours provided bank and/or JetPay receives funds from the card associations by a credit to the Operating Account of the merchant. This credit will be reduced, if necessary, by: (i) the sum of all Cardholder charges denied, refused or charged back; (ii) all refunds processed on

account of Cardholders during said time period; (iii) the fees and charges, including Chargebacks, Merchant owes Bank or JetPay hereunder; (iv) all taxes, penalties, charges and other items incurred by Bank that are reimbursable pursuant to this Agreement; and (v) all applicable rates, fees and charges described on Schedule A.,

- (b) Reconciliation of Transactions. Merchant shall reconcile each settled Transaction within fifteen (15) days after the date on which such Transaction is submitted to Bank for payment, and shall notify Bank and JetPay immediately in writing of any discrepancies or errors Merchant notes as a result of such reconciliation. In any case, Bank and/or JetPay are not responsible for any downgrades assessed in merchant fees. When asked JetPay will work with Merchant to help transactions qualify at their best rate. Neither Bank nor JetPay shall have any responsibility or liability for Transaction-related errors or omissions that are brought to their attention more than thirty (30) days after the date on which the Transaction to which such error or omission relates is first presented to Bank for settlement.
- (c) Provisional Credit. Any credits to the Operating Account are provisional only and subject to revocation by Bank until such time that the Transaction is final and no longer subject to Chargeback by the Issuer, Cardholder or Associations. Bank may withhold payment for a Transaction to Merchant, for any reason, until such time as the Transaction has been verified as legitimate by the relevant Issuer or Bank and/or JetPay receive adequate supporting documentation from Merchant to authenticate the Transaction and mitigate Chargeback risk.

20. Adjustments and Returns. Merchant will maintain a fair exchange and return policy and make adjustments with respect to goods and services sold and/or leased to its customers whenever appropriate. If goods are returned, or services are terminated or canceled, or any price is adjusted, Merchant will prepare and transmit a credit or return Transaction, either electronically or by paper, for the amount of the adjustment as a deduction from the total amount of Transactions transmitted that day. If the amount of credit or return Transactions exceeds the amount of sales Transactions, Merchant shall pay Bank the excess. Merchant shall make no cash refunds on Transactions and shall handle all credit adjustments as provided in this Section 21. If no refund or return will be given, Cardholder must be advised in writing that the sale is a "final sale" and "no returns" are permitted at the time of the Transaction. Cardholder also must be advised in writing of any policy of Merchant that provides for no-cash refunds and in-store credit only. Merchant shall follow Association reservation/no-show policies. Merchant shall notify Cardholders in writing of this policy on all advance reservations. Merchant also shall notify Cardholders at the time of the reservation of the exact number of days required for reservation deposit refunds.

21. Chargebacks. The acceptance by Bank or JetPay of any Transaction processed in accordance with the terms of this Agreement shall be with full recourse to Merchant if Merchant disagrees with Bank's or JetPay's decision to charge back a Transaction, Merchant must so notify Bank and JetPay in writing within ten (10) days of the Chargeback, and provide documentation that the dispute has been resolved to Cardholder's satisfaction or proof that a credit has been issued.

Without limiting the generality of any other provision of this Agreement, if Bank or JetPay, if JetPay has indemnified Bank, takes legal action against Merchant for any Chargebacks or any amounts due Bank or JetPay hereunder, Merchant shall pay the costs and attorneys' fees incurred by Bank and/or JetPay, whether suit is commenced or not.

22. Merchant Statement. At least once per month, Bank or JetPay shall provide Merchant with a statement (the "Merchant Statement"). All information appearing on the Merchant Statement shall be deemed accurate and affirmed by Merchant unless Merchant objects by written notice specifying the particular item in dispute within thirty (30) days of the date of the Merchant Statement.

23. Retention of Original Sales Information. Merchant shall retain the information required by Sections 16 and 17(a) for seven (7) years from the date of the Transaction. At the request of Bank, Merchant shall provide such information to Bank or JetPay, as directed by Bank or JetPay, within five (5) days of receipt of a request from Bank or JetPay. Failure to meet such timeframe or non-delivery of any item or delivery of an illegible copy of an item requested by an Issuer shall constitute a waiver by Merchant of any claims and may result in an irrevocable Chargeback for the full amount of the Transaction.

24. Recovery of Cards. Merchant will use its best efforts to reasonably and peaceably recover and retain any Card for which Merchant receives notification of cancellation, restrictions, theft or counterfeiting. This notice may be given: (i) electronically through the equipment; (ii) by the Authorization Center through any means; or (iii) by listing on any canceled Card or restricted Card list. Merchant shall also take reasonable steps to recover a Card which it has reasonable grounds to believe is counterfeit, fraudulent or stolen.

25. Customer Complaints. Merchant shall respond promptly to inquiries from Cardholders and shall resolve any disputes amicably. If unresolved disputes occur with a frequency unacceptable to Bank or JetPay, Bank and JetPay may terminate this Agreement. Bank and JetPay reserve the right to charge Merchant reasonable fees and reimbursement on an account of excessive Cardholder inquiries, refunds or Chargebacks. Merchant agrees to maintain the following information in writing with respect to each claim or defense asserted by a Cardholder for which Merchant has received notice:

- (a) The Cardholder's name;
- (b) The Card account number;
- (c) The date and time the Cardholder asserted the claim or defense;
- (d) The nature of the claim or defense; and
- (e) The action that Merchant took in an attempt to resolve the dispute.

Upon request, Merchant shall furnish Bank and JetPay with this information in writing within ten (10) days.

26. Confidentiality. Merchant shall treat all information received in connection with this Agreement as confidential. Merchant shall prevent the disclosure of this information including JetPay Merchant Statements, Schedule A and/or B for review to any competitor of JetPay except for necessary disclosures to affected Cardholders, to Bank, to JetPay and to Issuers.

27. Card Associations' and Issuers' Requirements. Merchant shall comply with all bylaws, rules, regulations, policies and/or guidelines of the Card Associations and any Issuer whose Cards are used to process Transactions in accordance with this Agreement. Merchant will display prominently at its place of business Approved Card Associations emblems and other promotional material and literature provided by Bank and JetPay directly or through JetPay. Subject to the prior written consent of Bank and/or JetPay and upon such conditions as authorized by Bank or JetPay, Merchant may use Card service marks or design marks in its own advertisement and promotional materials.

28. Compliance with Applicable Law. Merchant represents and warrants that it has obtained all

necessary regulatory approvals, certificates and licenses to sell any product or provide any service it intends to offer, and that it is in compliance with the Telephone Disclosure and Dispute Resolution Act and the regulations of the Federal Trade Commission and the Federal Communications Commission. Merchant shall comply with all present and future federal, state and local laws and regulations pertaining to Transactions, including, without limitation, the Federal Fair Credit Reporting Act, the Federal Truth-in-Lending Act, the Electronic Fund Transfers Act and the Federal Equal Credit Opportunity Act, as amended.

29. Taxes. Each party hereto shall report its income and pay its own taxes to any applicable jurisdiction. If Bank or JetPay are required to pay any taxes, interests, fines or penalties owed by Merchant, said amount shall become immediately due and payable by Merchant to Bank or JetPay. If excise, sale or use taxes are imposed on the Transactions, Merchant shall be responsible for the collection and payment thereof. Bank or JetPay shall be entitled to recover of any of said taxes paid by it on behalf of Merchant from Merchant immediately after payment.

30. Limitation of Liability. In addition to all other limitations on the liability of Bank and JetPay contained in this Agreement, neither Bank nor JetPay shall be liable to Merchant or Merchant's customers or any other person for any of the following:

- (a) Any loss or liability resulting from the denial of credit to any person or Merchant's retention of any Card or any attempt to do so;
- (b) Any loss caused by a Transaction downgrade resulting from defective or faulty equipment regardless if owned by Bank, JetPay or Merchant;
- (c) The unavailability of Services caused by the termination of contracts with computer hardware vendors, processors or installers, whether terminated by Bank, JetPay or any other person for any reason; or
- (d) Interruption or termination of any Services caused by any reason except for failure of JetPay to repair or replace equipment at Merchant's expense.

At no time will JETPAY'S liability exceed the amount of fees collected or reasonably expected to be collected from merchant for this delay period.

NEITHER BANK NOR JETPAY SHALL BE LIABLE FOR ANY LOST PROFITS, PUNITIVE, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES TO MERCHANT OR TO ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY OF THE SERVICES TO BE PERFORMED BY BANK OR JETPAY PURSUANT TO THIS AGREEMENT. MERCHANT ACKNOWLEDGES THAT BANK HAS PROVIDED NO WARRANTIES, EITHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY EQUIPMENT AND THAT BANK HAS NO LIABILITY WITH RESPECT TO ANY EQUIPMENT. BANK MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES IT PROVIDES HEREUNDER. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK'S OR JETPAY'S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK'S AND JETPAY'S LIABILITY SHALL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE OR SUPPLYING SUCH OMISSIONS IN THE WORK PRODUCT IN WHICH THEY HAVE OCCURRED.

31. Limitation on Damages. In no case shall Merchant be entitled to recover damages from JetPay or Bank that exceed the fees retained by Bank and JetPay pursuant to this Agreement during the

Three month period immediately prior to the event giving rise to the claim for damages.

32. Indemnification. Merchant agrees to indemnify and hold Bank and JetPay harmless from any and all losses, claims, damages, liabilities and expenses, including attorneys' fees and costs (whether or not an attorney is an employee of Bank or Bank's affiliates, JetPay or affiliates of JetPay) arising out of any of the following:

- (a) Merchant's failure to comply with this Agreement;
- (b) Any act or omission of Merchant;
- (c) Merchant's failure to comply with the equipment's User's Guide;
- (d) Merchant's failure to comply with any bylaw, rule, regulation, guideline or policy of any Card Association or Issuer;
- (e) Merchant's failure to comply with any applicable law, rule or regulation;
- (f) Any dispute concerning the quality, condition or delivery of any merchandise or the quality of performance of any service;
- (g) The fraud or dishonesty of Merchant or Merchant's employees, licensees, successors, agents and/or assigns;
- (h) Merchant's selection of an Internet service provider or other telecommunication services provider;
- (i) The theft of or damage or destruction to any equipment; or
- (j) Full Recourse Transactions, unauthorized Transactions and prohibited Transactions.

33. Credit Investigation and Bank or JetPay Auditing. Bank or JetPay may audit, from time to time, Merchant's compliance with the terms of this Agreement. Merchant shall provide all information requested by Bank and JetPay to complete the audit. Merchant authorizes parties contacted by Bank or JetPay to release the credit information requested by Bank or JetPay, and Merchant agrees to provide Bank and JetPay a separate authorization for release of credit information, if requested. Merchant shall deliver to Bank and JetPay such information as Bank or JetPay may reasonably request from time to time, including without limitation, financial statements and information pertaining to Merchant's financial condition. Such information shall be true, complete and accurate. [Without limiting the generality of the foregoing, Merchant shall provide to Bank and JetPay its balance sheet and income statements not less frequently than every three calendar months during the term of this Agreement.]

34. Termination of Agreement by Bank and JetPay. Bank or JetPay may terminate this Agreement upon at least thirty (30) days' prior written notice to the other parties. In addition, Bank or JetPay may terminate this Agreement without notice to Merchant under any of the below listed circumstances. Any such notice of termination by Bank is effective upon mailing.

- (a) Any information concerning Merchant obtained by Bank or JetPay is unsatisfactory to Bank or JetPay in their sole discretion;
- (b) Any act of fraud or dishonesty is committed by Merchant, its employees and/or agents, or JetPay or Bank believes in good faith that Merchant, its employees and/or agents have committed, are committing or are planning to commit any acts of fraud or misrepresentation;
- (c) Chargebacks are excessive in the opinion of Bank or JetPay;
- (d) Breach of this Agreement by Merchant;

- (e) Any representation or warranty made by Merchant in this Agreement is not true and correct;
- (f) Merchant files a petition under any bankruptcy or insolvency law;
- (g) Merchant fails to maintain sufficient funds in the Operating Account to cover the amounts due to Bank or JetPay hereunder;
- (h) Merchant's percentage of error Transactions or retrieval requests is excessive in the opinion of Bank or JetPay;
- (i) Any insurance policy obtained by Bank, JetPay or Merchant relating to Transactions and/or Chargebacks is cancelled or terminated for any reason;'
- (j) Merchant fails to maintain PCI DSS compliance, or is not using a compliant Payment Application per card association mandates.
- (k) Merchant fails to maintain an active policy indicating PCI breach insurance.
- (l) Merchant fails to provide financial statements suitable to Bank or JetPay on request; or
- (m) JetPay does not or cannot perform its duties under this Agreement and Bank and JetPay determines that it is not feasible to provide to Merchant the Services contemplated by this Agreement. Bank or JetPay is not obligated to provide replacement Services if JetPay does not or cannot perform.
- (n) If any circumstances arise regarding Merchant or its business that create harm or loss of goodwill to any Card Association.

Bank or JetPay may selectively terminate one or more of Merchant's approved locations without terminating this entire Agreement. In the event of termination, all obligations of Merchant incurred or existing under this Agreement prior to termination shall survive the termination. Merchant's obligations with respect to any Transaction shall be deemed incurred and existing on the transaction date of such Transaction.

35. Termination of Agreement by Merchant. Merchant may terminate this Agreement upon at least thirty (30) days' prior written notice to the other parties if Bank or JetPay amends Schedule A pursuant to Section 39 to increase the rates, fees or charges Merchant pays hereunder, except for fees or rates that result from a pass through from a Card Association or from Government taxes.

36. Setoff. In addition to any other legal or equitable remedy available to it in accordance with this Agreement or by law, Bank and/or JetPay may set off any amounts due to Bank and/or JetPay under this Agreement against any property of Merchant in the possession or control of Bank or JetPay.

37. Exclusivity –Merchant shall submit, on an annual basis, not less than one-hundred percent (100%) of Merchant's total Transactions to Bank, unless Bank or JetPay indicates to Merchant that it cannot or will not process that number of Transactions for Merchant. Additionally, Merchant shall provide to Bank and JetPay the name and address of each other entity that Merchant elects to use to process Transactions, and copies of monthly statements from each such entity, in order to allow Bank and JetPay to verify compliance by Merchant with the foregoing requirement. In the event Merchant fails to submit to Bank and JetPay at least one-hundred percent (100%) of the total number of Transactions processed for or on behalf of Merchant during any twelve-month period during the term of this Agreement, Merchant: (i) acknowledges and agrees that the actual damages sustained by Bank or JetPay as a result of such failure would be difficult, if not impossible, to calculate with precision; and (ii) agrees to pay JetPay, as liquidated damages for such failure, an amount calculated as follows: Five hundred fifty dollars (\$550.00) or formula below, whichever is

greater.

- $LD = [(TT \times 0.75)] \times 0.02$; where:
- LD = the liquidated damages to be paid by Merchant;
- TT = the total gross dollar volume of Transactions processed for Merchant during such previous twelve-month period of active processing; and

The obligations of Merchant under this Section 38 shall survive any termination or expiration of this Agreement.

38. Amendments to this Agreement From time to time Bank or JetPay may amend this Agreement as follows:

- (a) Amendment to Cards and/or Services. Bank or JetPay may amend or delete Cards or Services listed in Schedule A by notifying Merchant in writing of any such amendment. All provisions of this Agreement shall apply to Cards or Services added to this Agreement. Bank and JetPay shall notify Merchant of the fees to be charged for processing the additional Cards and Services. Acceptance by Merchant of a new approved Card as payment for a Transaction or use of a new Service after Bank or JetPay has sent Merchant notice of an amendment shall constitute Merchant's agreement to the amendment and the fees or charges related to these additions.
- (b) Amendment to Fees and Charges. From time to time, Bank or JetPay may change all rates, fees and charges set forth on Schedule A or B. Bank or JetPay will provide written notice to Merchant of all such amendments. Bank or JetPay may change the rates, fees and charges without prior written notice if Merchant's sales volume or average Transaction amount does not meet Merchant's projections contained in the Merchant Application form to which this Agreement is attached. If notice is required, Bank or JetPay will give written notice on the Merchant Statement or by sending separate notice by mail. All new rates, fees, and charges will become effective for the month immediately following the month in which the notice appeared on the Merchant Statement or was sent by mail, unless Merchant terminates this Agreement in accordance with Section 36.
- (c) Amendments to all other Provisions. Bank or JetPay may amend this Agreement in any manner other than as described in Section 39(a) or 39(b) above simply by providing written notice of such amendment to Merchant, and such amendment shall become effective on the latter of: (i) the date on which such written notice is received by Merchant; or (ii) a date specified by Bank or JetPay in such written notice.

39. Assignment. This Agreement may not be assigned by Merchant without the prior written consent of Bank and JetPay. Bank or JetPay may assign this Agreement without limitation. Assignment of this Agreement by Bank shall relieve Bank of any further obligations under this Agreement.

40. Financial Accommodations. Bank, JetPay and Merchant intend this Agreement to be construed as a contract to extend financial accommodations for the benefit of Merchant.

41. Waiver. To the extent that Merchant becomes a debtor under any chapter of title 11 of the United States Code and such event does not result in the termination of this Agreement, Merchant hereby unconditionally and absolutely waives any right or ability that Merchant may otherwise have had to oppose, defend against or otherwise challenge any motion filed by Bank or JetPay for relief from the automatic stay of 11 U.S.C. § 362(a) to enforce any of Bank's or JetPay's rights or claims under this Agreement.

42. Cooperation. In their dealings with one another, each party agrees to act reasonably, in good faith, and to fully cooperate with each other in order to facilitate and accomplish the transactions contemplated hereby. Merchant agrees to allow Jet Pay to use their name in proposals, brochures, banners, and press releases, which may be used to promote Jet Pay.

43. Entire Agreement. This Agreement, together with the Schedules attached hereto, supersedes any other agreement, whether written or oral, that may have been made or entered into by any party (or by any officer or officers of any party) relating to the matters covered herein and constitutes the entire agreement of the parties hereto.

44. Severability. If any provisions of this Agreement shall be held, or deemed to be, or shall in fact be, inoperative or unenforceable as applied in any particular situation, such circumstance shall not have the effect of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses or sections herein contained shall not affect the remaining portions of this Agreement or any part hereof.

45. Notices. Except for notices provided by Bank or JetPay to Merchant on the Merchant Statement, all notices, requests, demands or other instruments which may or are required to be given by any party hereunder shall be in writing and each shall be deemed to have been properly given when (i) served personally on an officer of the party to whom such notice is to be given, (ii) upon expiration of a period of three (3) Business Days from and after the date of mailing thereof when mailed postage prepaid by registered or certified mail, requesting return receipt, or (iii) upon delivery by a nationally recognized overnight delivery service, addressed as follows:

If to BANK:

Address listed on Acquirer Discloser
With a Copy to:
JETPAY

If to JETPAY:

JETPAY:
ATTN: Risk Manager
3361 Boyington Dr. Suite 180
Carrollton TX 75006

If to MERCHANT:

Address listed on Merchant Application

Any party may change the address to which subsequent notices are to be sent by notice to the others given as previously mentioned.

46. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Texas, without regard to internal principles of conflict of laws, and federal law.

47. Captions. Captions in this Agreement are for convenience of reference only and are not to be considered as defining or limiting in any way the scope or intent of the provisions of this Agreement.

48. No Waiver. Any delay, waiver or omission by Bank or JetPay to exercise any right or power arising from any breach or default of the other party in any of the terms, provisions or covenants of this Agreement shall not be construed to be a waiver of any subsequent breach or default of the same or any other terms, provisions or covenants on the part of the other party. All remedies afforded by this Agreement for a breach hereof shall be cumulative.

49. Force Majeure. The parties shall be excused from performing any of their respective obligations under this Agreement which are prevented or delayed by any occurrence not within their respective control including but not limited to strikes or other labor matters, destruction of or damage to any building, natural disasters, accidents, riots or any regulation, rule, law, ordinance or order of any federal, state or local government authority.

50. ACH Processing. When requested by Merchant, JetPay will also provide ACH processing services at the rates specified in Schedule A. Merchant agrees that information supplied in this application may be used to establish a separate ACH account. If this service is requested, Merchant understands that a personal credit review may be deemed necessary and authorizes such an action. Merchant agrees that Bank and JetPay will deduct processing fees from the Operating Account or Reserve Account on a daily basis unless a monthly basis is specified on Schedule A. Merchant also agrees to pay Bank or JetPay the amount of any fees, charges or penalties assessed against Bank or JetPay. Merchant agrees to abide by all National Automated Clearing House Association (NACHA) rules and regulations governing ACH processing and use of their networks.

51. Honoring Cards.

(a) Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to American Express, Visa, MasterCard and/or Discover Network rules and/or regulations requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchant may not (i) indicate or imply that the Card Associations endorses any Merchant goods or services, (ii) refer to a Card Association in stating eligibility for Merchant's products, services or membership, or (iii) use any marks, symbols or logos owned by any Card Association for any purpose other than those permitted in the Card Association Operating Rules.

52. Important Merchant Responsibilities.

- (a) Ensure compliance with payment card industry data security standard (PCI DSS) requirements.
- (b) Maintain fraud and chargebacks below Card Association thresholds.
- (c) Maintain an active data breach insurance policy with at least fifty thousand dollars (\$50,000) in coverage per incident.
- (d) Review and understand the terms of the Merchant Agreement.
- (e) Comply with all Card Association Operating Rules.
- (f) Review the JetPay web site for changes in rules, regulations and or rates. Follow all card acceptance procedures.
- (g) The responsibilities listed above do not supersede the terms and conditions of this Merchant Agreement, and are provided to ensure the Merchant understands their important obligations. The Card Associations are the ultimate authority whereas the Merchant must operate within the card acceptance procedures. Any questions should be directed in writing to JetPay