

Obopay Merchant/Organization Application (Required Fields)



Business or Organization Information

1. Corporate or Legal Name _____
2. DBA Name (if different from Legal Name) _____
3. Federal Tax ID# _____
4. Description of Product or Service _____
5. Years in Business Under Current Ownership/Management _____
6. Physical Address Street _____
7. Physical Address City, State, ZIP _____
8. Mailing Address Street _____
9. Mailing Address City, State, ZIP _____
10. Contact Name _____
11. Contact Title _____
12. Email Address _____
13. Website Address _____
14. Business Phone# _____
15. Fax# _____
16. Ownership Type (Check One):
 - a. Government
 - b. Non-profit
 - c. Sole Proprietorship
 - d. Partnership
 - e. LLC
 - f. Corporation-Private
 - g. Corporation-Public
17. Sales Profile:
 - a. Expected Average Ticket (\$) _____
 - b. Expected Maximum Ticket (\$) _____
 - c. Number of Transactions Per Day _____
 - d. Monthly Revenue _____

Owner Information

1. Principal #1:
 - a. First, Middle Initial, Last _____
 - b. Title _____
 - c. Ownership % _____
 - d. Social Security Number _____
 - e. Driver's License # _____
 - f. Driver's License State _____
 - g. Date of Birth _____
 - h. Home Street Address _____
 - i. City, State, ZIP _____

2. Principal #2:

- a. First, Middle Initial, Last _____
- b. Title _____
- c. Ownership % _____
- d. Social Security Number _____
- e. Driver's License # _____
- f. Driver's License State _____
- g. Date of Birth _____
- h. Home Street Address _____
- i. City, State, ZIP _____

Merchant Acceptance:

By executing this Merchant Application on behalf of the merchant described above ("Merchant"), the undersigned individual(s) represent(s), warrant(s), and acknowledges(s) that: (i) All information contained in this Merchant Application ("Application") is true, correct and complete as of the date of this Application; (ii) If the Merchant is a corporation, limited liability company, or partnership, the individual(s) executing this Application have the requisite legal power and authority to complete and submit this Application on behalf of the Merchant and to make and provide the acknowledgements, authorizations and agreements set forth herein on behalf of the Merchant and individually; (iii) Obopay, Inc. is authorized to investigate, either through its own agents or through credit bureaus/agencies, the credit and criminal background of the Merchant and each person listed on this Application; (iv) This Application and Agreement shall not take effect until Merchant has been approved by Obopay; and (v) The undersigned has read and understood the terms and conditions of this Application and Agreement and agrees on behalf of the merchant to be bound by such terms and conditions.

- 1. Authorized Signature #1 _____
- 2. Printed Name _____
- 3. Title _____
- 4. Date _____
- 5. Authorized Signature #2 _____
- 6. Printed Name _____
- 7. Title _____
- 8. Date _____
- 9. Signature of Authorized Obopay Representative _____
- 10. Printed Name _____
- 11. Title _____
- 12. Date _____

CONTINUING PERSONAL GUARANTY PROVISION – PERSONAL GUARANTOR

By signing below, each individual or entity ("Guarantor") jointly and severally (if there is more than one Guarantor) and unconditionally guarantees to Obopay the prompt payment and full and complete performance of all obligations of the Merchant identified above under the Merchant Application Agreement, as amended from time to time, including, without limitation, all promises and covenants of the Merchant, and all amounts payable by the Merchant under the Merchant Application and Agreement, including, without limitation, charges, interest, costs and other expenses, such as attorney's fees and court costs. This means, among other things, that Obopay can demand performance or payment from any Guarantor if the Merchant fails to perform any obligation or pay what the Merchant owes under the Agreement. Each Guarantor agrees that his or her liability under this guaranty will not be limited or canceled because: (1) the Merchant

Agreement cannot be enforced against the Merchant for any reason, including, without limitation, bankruptcy proceedings; (2) Obopay agrees to changes or modifications to the Merchant Agreement, with or without notice to Guarantor; (3) Obopay releases any other Guarantor or the Merchant from any obligation under the Merchant Agreement; (4) any law, regulation, or order of any public authority affects the rights of Obopay or Merchant under the Merchant Application and Agreement; and/or (5) anything else happens that may affect the rights of Obopay against the Merchant or any other Guarantor. Each Guarantor further agrees that: (a) Obopay may delay enforcing any of its rights under this guaranty without losing such rights and hereby waives any applicable Statute of Limitations; (b) Obopay can demand payment from such Guarantor without first seeking payment from the Merchant or any other Guarantor or from any security held by Obopay; and (c) such Guarantor will pay all court costs, attorney's fees, and collection costs incurred by Obopay in connection with the enforcement of the Merchant Application and Agreement or this Guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court. If the Merchant is a corporation or limited liability company, this Guaranty must be executed by a principal or affiliate of Merchant.

1. Authorized Signature #1 _____
2. Printed Name _____
3. Title _____
4. Date _____
5. Authorized Signature #2 _____
6. Printed Name _____
7. Title _____
8. Date _____

Exhibit D

MERCHANT SERVICES AGREEMENT (Developer)

1. Definitions

- (a) “Association” means any network through which funds may be transferred by an Obopay User to an Obopay Account.
- (b) “Linked Account” means a deposit account maintained by Merchant and linked to the Merchant Account.
- (c) “Merchant” means a Developer, for which a Merchant Account has been opened.
- (d) “MSA” means this Merchant Services Agreement.
- (e) “Obopay User” means a person with an Obopay Account that allows use of the Obopay Services.
- (g) “Obopay Merchant Website” means www.obopay.com/merchant.
- (h) Other capitalized terms in this MSA have the meanings set forth below or in the Agreement.

2. Merchant Account

- (a) Obopay will establish a Merchant Account for Merchant. Merchant will use the Merchant Account solely to accept payment from Merchant’s customers using the Obopay Service (a “Payment”). A Merchant Account represents Merchant’s funds that have been placed in Obopay’s custody. Funds in a Merchant Account are deposited in a bank account with a bank of Obopay’s choosing. These deposits are held for the benefit of the Merchant but are subject to terms and conditions defined in this MSA. Merchant assigns to Obopay any interest, dividends, or other earnings on the funds held in the Merchant Account, and Merchant agrees that Obopay may keep any benefits provided by a financial institution that holds these funds.
- (b) Merchant represents at all times that this MSA is in effect that (i) Merchant is located in the United States and has a valid mailing address and email address; (ii) the Linked Account is a deposit account at an FDIC-insured depository institution located in the United States; and (iii) the Linked Account is titled in the name of Merchant, and Merchant has dominion and control over the Linked Account.
- (c) Merchant agrees that it will use the Merchant Account solely to receive Payments from its customers for the purchase of goods and services in the ordinary course of Merchant’s *bona fide* and lawful business. Merchant agrees that it will **never** use the Merchant Account to accept or receive payments in connection with (i) gambling activities, (ii) goods or services of a pornographic nature, or (iii) illegal activities. Merchant will use the Merchant Account in compliance with Obopay’s Acceptable Use Policy.
- (d) The Merchant Account may not be used for personal, family, or household purposes.

3. Rights of Obopay

- (a) Obopay may terminate the Merchant Account or refuse to accept or process any transaction that appears, in the sole discretion of Obopay, to involve any illegal or improper purpose. “Improper purpose” shall be determined by Obopay, but includes without limitation structuring a transaction or assisting any other person to structure a transaction as a means to move money from a person’s credit card account to that person’s deposit account.
- (b) Obopay may communicate with Merchant electronically, by email (to the address designated by Merchant) and through the Obopay Website. Notices will be deemed to be received by Merchant 24 hours after they are posted or emailed. Merchant agrees to keep its contact information (including contact name, street address, telephone number, and email address) current at all times.
- (c) As between Merchant and Obopay, Obopay has sole control over the relationship between the payor and Obopay, and the terms of the Obopay Service. Merchant has no rights with respect to, nor control over, the relationship between Obopay and a payor. Without limiting the foregoing, Obopay may charge a fee, in an amount determined by Obopay, to a customer making a Payment.
- (d) Obopay’s service under this MSA is strictly limited to executing Payment instructions. Obopay is not responsible for any aspect of the underlying transaction for which a Payment was made. Obopay is not

responsible for the resolution of any dispute between parties to a transaction. Obopay does not guaranty the identity or legitimacy of any payor.

- (e) Obopay may audit Merchant and Merchant's compliance with this MSA, including through on-site visits to Merchant's places of business and examination of Merchant's books and records (including electronic records). Obopay will provide reasonable advance notice of such an audit, and will structure the audit in a manner to reasonably minimize any impact on Merchant's business.

4. Merchant's Agreements

- (a) Merchant may not accept Payments for any transaction that represents the collection, refinancing, or transfer of an existing obligation from the payor to Merchant.
- (b) Merchant must prominently disclose its identity to customers at all points of interaction with customers, so as to enable customer to identify Merchant.
- (c) Merchant must (1) keep transaction information for at least six months from the date of the respective transaction; (2) retain copies of all such data for eighteen months from the date of the respective transaction; and (3) furnish the same to Obopay upon request. The transaction information retained by Merchant shall include: (i) the date and time of the transaction, (ii) an identification of the goods or services sold, and whether the transaction is a sale or credit, and (iii) identification of the amount of the transaction.
- (d) Merchant is solely responsible for calculating and collecting all federal, state, and local sales tax in connection with Payments as well as other taxes, expenses, fees and charges imposed by a governmental entity arising in connection with Payments ("Taxes"). Merchant is solely responsible for remitting such Taxes to the appropriate governmental agency and any required reporting in connection therewith. Merchant shall not add any Taxes to a transaction amount unless permitted by applicable law. Any permitted Tax amount must be charged in a manner permitted by law.
- (e) Merchant agrees that it will not impose a surcharge or transaction fee on customers for making Payments. If Merchant offers a discount to customers for using a particular payment method, Merchant must clearly disclose such discount as separate from the base price of goods and services, and must offer such discount to those who make Payments. Merchant shall not establish a minimum or maximum dollar amount for transactions that applies exclusively (or differently) for those customers choosing to make Payments. Merchant may not accept Payments except for amounts then due and owing to Merchant and may not, for example, structure transactions or Payments in order to avoid limitations on transaction amounts. Merchant may not make any special charge or tax, or extract any special agreement or security from any customer making a Payment unless expressly required by applicable law.
- (f) Merchant must maintain a reasonable and lawful policy for the return of goods and services, and may not impose a more restrictive policy with respect to transactions that involve Payments. Merchant may not process a refund in an amount greater than the original Payment to which the refund relates. Merchant may not request a refund of a Payment if the amount exceeds the available amount in the Merchant Account. Merchant shall prominently disclose its return policy at all points of purchase, including online.
- (g) Merchant agrees to provide a reasonable means for its customers to contact Merchant for the prompt resolution of customer service disputes, including disputes over Payments. If Merchant has a dispute with a payor regarding a transaction for which a Payment was made, Merchant should contact the payor directly to resolve the problem. For example, if Merchant is involved in a dispute as to an amount owed, the quantity or quality of goods or services sold, whether or not the goods or services conform to an order or to any representation or warranty, whether or not goods or services have been shipped, received or performed, or any other aspect of the relationship between Merchant and a payor, Merchant agrees to pursue any such claim directly with the payor. Merchant should also notify Obopay customer service at www.obopay.com/support. If Obopay receives complaints about a Payment, the payor's or Merchant's access to Obopay may be suspended or terminated, among other things. Merchant agrees that Obopay will **not** be responsible or liable in any manner for any claims which Merchant may have, or any claims made against Merchant by any person, arising out of any dispute Merchant may have with a payor.

- (h) Merchant agrees to cooperate with Obopay to resolve any inquiry or dispute Obopay receives in connection with a Payment, including by providing all information requested by Obopay in connection with the Payment at issue. Merchant agrees to comply with all applicable Association rules, policies and procedures regarding such disputes and inquiries, including any obligation to provide documentation.
- (i) Merchant may request a transfer of funds from the Merchant Account to the Linked Deposit (a "Drawdown"). When Merchant requests a Drawdown, Obopay has no obligation to process the Drawdown unless Merchant has sufficient available funds. If Merchant does not have sufficient available funds, Obopay may reject the Drawdown request without liability to Merchant or any other person. Merchant is responsible if Obopay makes a requested Drawdown and, for any reason, Obopay is unable to collect the funds from the Merchant Account. In addition, the Obopay's making of any Drawdown without sufficient funds available shall not create any obligation on the part of Obopay to make any such transfer in the future.
- (j) Merchant will provide and keep current the routing and account number of the Linked Account. Merchant authorizes Obopay to transfer funds payable hereunder to and from the Linked Account via Automated Clearinghouse ("ACH") transfer. Obopay may also initiate credit and debit transfers to correct any errors, and for the purpose of any Chargeback or other reversal or adjustment as provided in Section 6. All transfers must comply with applicable law. This authorization may be revoked only by written notice from Merchant to Obopay, in such a time and manner as to give Obopay and the depository institution holding the Linked Account sufficient time to act upon the notice, and only if the Merchant provides a replacement authorization, acceptable to Obopay, to permit transfers to and from an account that is sufficient to meet Merchant's obligations under this Agreement.
- (k) If the Merchant Account balance becomes negative for any reason, Merchant promises to pay the amount of any negative balance in the Merchant Account immediately. Merchant authorizes Obopay to charge the Linked Deposit in the amount of any such negative balance that may be created, and agrees to pay any collection expenses, court costs and attorney's fees incurred by Obopay. Merchant agrees to hold Obopay harmless from any losses, costs, expenses or damages it may incur in connection with collecting any Payment or negative balance in the Merchant Account or in defending any of the foregoing actions, including court costs and attorney's fees. Merchant may be reported to a collection agency or credit bureau if Merchant does not pay any transaction in accordance with this MSA.
- (l) Use of the password established for the Merchant Account is equivalent to Merchant's signature. Obopay is entitled to rely on any instruction using the password. Merchant agrees that the password protection used by Obopay is a commercially reasonable method of providing security against unauthorized requests, and Merchant agrees to be bound by any requests processed in this manner. Tell Obopay AT ONCE if the security of the password may have been compromised.
- (m) Merchant agrees to indemnify and hold Obopay and its shareholders, subsidiaries, affiliates, directors, officers, employees, agents, suppliers and subcontractors harmless from any claim, demand, chargeback, or Payment reversal, including but not limited to reasonable attorney's fees, made by any third party arising out of or in connection with (i) any breach by Merchant of its representations, warranties or agreements under this MSA, (ii) any act or omission by Merchant which violates any applicable law or which violates any rules or regulations of any Association, (iii) any negligent act or omission or intentionally wrongful conduct of Merchant in any way related to this MSA, (iv) claims by any purchaser of Merchant's goods or services, whether related to the quality or delivery of goods, services or otherwise; or (v) Merchant's use of a Merchant Account; except for instances where any claim or demand is clearly due to gross negligence by Obopay.
- (n) Merchant agrees to pay to Obopay the fees set forth in Exhibit C in the Agreement, in accordance with the schedule in Exhibit C.
- (o) Merchant agrees to comply at all times with the Obopay Acceptable Use Policy. Merchant shall comply with the applicable provisions of the Obopay Terms and Conditions that apply to use of Obopay accounts.

5. Funds Availability

- (a) Funds from a Payment will be made available to Merchant in the Merchant Account in accordance with the terms of Exhibit C to the Agreement. However, Obopay may delay availability in its discretion, including without limitation in each of the following circumstances:
 - (i) Obopay suspects fraudulent or illegal activity, or a violation of this MSA;
 - (ii) The Merchant Account is subject to excessive chargebacks, reversals, or customer complaints; or
 - (iii) Obopay has the right to terminate this MSA, or reasonably suspects that Merchant is or will shortly become unable to meet its obligations under this MSA.
- (b) Obopay may also require Merchant to maintain a segregated, restricted deposit account to which Merchant will not have withdrawal privileges, dominion, or control (“Reserve Account”) at a financial institution determined by Obopay. If Merchant is required to establish and maintain a Reserve Account, Obopay will transfer all amounts due to Merchant under this MSA into the Reserve Account in such amount determined by Obopay in its sole discretion, but not in excess of ten (10) times Merchant’s average daily volume of payments. Merchant agrees to pledge and grant to Obopay a security interest in any Reserve Account that Merchant is required to establish and all money in the Reserve Account and proceeds thereof, as security for prompt payment in full of all Merchant’s obligations under this MSA. Merchant authorizes Obopay to exercise a right of set-off against funds in the Merchant Account, the Reserve Account or any other funds or payment due and owing to Merchant under this MSA. Merchant agrees to take any steps necessary to ensure the attachment, perfection or protection of Obopay’s security interest in the Reserve Account. Further, Merchant authorizes Obopay to withhold any amounts due and owing to Merchant under this MSA for so long as Merchant is in default of any of its obligations under this MSA.

6. Reversals and Chargebacks.

- (a) Obopay does not generally permit payors to cancel or reverse Payments. However, Association rules regarding chargeback, reversal, corrections, or other matters (collectively, “Chargebacks”) may apply to the funding transfers that a payor use to fund his or her Obopay account. Merchant expressly acknowledges that Obopay may reverse a Payment as a result of a Chargeback.
- (b) Obopay reserves the right to decide how to respond to, and whether to contest, any Chargeback. The Association, not Obopay, will resolve any Chargebacks, and Merchant is bound by any such resolution.
- (c) Merchant assumes all liability and risk in receiving a Payment from a payor, including but not limited to any liability or risk that (i) the payor improperly funded or directed the Payment, (ii) Merchant may have to return the Payment to the payor for any reason, (iii) Merchant may later be legally required to turn the Payment over to a court or another person, (iv) the Payment may have been illegally made or (v) the Payment, or any transaction used to fund the Payment, is subject to Chargeback or otherwise disputed. Merchant agrees that it will not hold Obopay responsible or liable for any losses or damages suffered by Merchant in receiving any Payments.
- (d) ALL CREDITING OF PAYMENTS IS PROVISIONAL, EVEN IF TRANSFERRED TO THE LINKED DEPOSIT, FOR THE DURATION OF ANY CHARGEBACK OR OTHER ERROR RESOLUTION PERIOD IMPOSED UNDER APPLICABLE LAW OR THE RULES OF ANY ASSOCIATION THAT MAY APPLY TO A FUNDING TRANSFER. If a payor makes a claim that a Payment, or a funding transaction, the proceeds of which were used to fund a Payment, was unauthorized, or any such Payment or funding transaction is subject to Chargeback or otherwise disputed, Merchant agrees that Obopay may debit the Payment from the Merchant Account or the Linked Deposit and/or hold the funds pending resolution of the claim. Obopay will notify Merchant if it reverses a Payment credited to Merchant or imposes a hold on the Merchant Account. Obopay may act based on (i) direct contact from a payor, (ii) information received through an Association, or (iii) reversal of a funding transaction to the payor’s Obopay Account.

7. Reporting

Obopay will make available to Merchant reporting information on transactions and the Merchant Account at the Obopay Merchant Website. Obopay will provide the reports described on Exhibit C to the Agreement.

8. Contact Information

Obopay customer support (www.obopay.com/support) is available from 8am to 6pm (PST) and can be reached at 1-888-862-6729. Merchant agrees to contact Obopay as soon as possible if Merchant believes that there is an error with respect to a Payment or other matter.

9. Merchant Information

- (a) Merchant agrees to furnish Obopay in a timely manner with normal and customary information about Merchant and its business when requested by Obopay. Obopay will use this information as part of its Merchant underwriting process.
- (b) Merchant agrees that Obopay will conduct an underwriting process before agreeing to provide a Merchant Account and the other services described in this Agreement. The process may include a telephonic or in-person meeting with Merchant. Obopay may obtain a credit report on Merchant, and may obtain or verify any other information about Merchant in connection with the relationship under this MSA.
- (c) Merchant represents, warrants and covenants, as applicable, that all information provided to Obopay in connection with this MSA, including but not limited to the Linked Deposit information and all data entered in connection with any Payment or other transaction, is and, at all times during the term of this MSA, will be complete and accurate in all respects. Obopay is entitled to rely on any information provided and Merchant agrees to update its information if it changes. Obopay also reserves the right to take steps to verify the information Merchant provides, although Obopay is not required to do so. Obopay may make one or more deposits or credits to the Linked Deposit in order to verify that account. **IF MERCHANT PROVIDES FALSE INFORMATION OR IF OBOPAY IS UNABLE TO VERIFY THE INFORMATION PROVIDED, THE MERCHANT ACCOUNT MAY BE SUSPENDED OR TERMINATED, AND ANY PENDING PAYMENTS MAY BE CANCELLED. IN ADDITION, MERCHANT MAY BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES.**
- (d) Merchant represents and warrants that: it is duly formed, validly existing and in good standing under the laws of the state of its formation and is authorized to do business in each state in which the nature of its activities make such authorization necessary or required; it has all requisite power and authority to execute, deliver and perform its obligations under this MSA; the execution, delivery and performance of this MSA by Merchant does not conflict with, violate or contravene such Merchant's articles of incorporation, by-laws or other chartering or governing document, or any agreement, contract, lease or obligation to which Merchant is a party or by which Merchant is bound; the person executing this MSA for such party has all requisite power to act on its behalf for purposes of executing this MSA; this MSA, when executed, will be valid and enforceable in accordance with its terms against Merchant; no approval, authorization or consent of any governmental or regulatory authorities is required to be obtained or made by Merchant to enter into and perform its obligations under this MSA.

10. Termination

- (a) Obopay may, without liability to Merchant, terminate or suspend access to the Merchant Account or specific transactions, or terminate or suspend this MSA, (i) at any time without cause upon thirty (30) days prior written notice to Merchant and (ii) at any time without notice (except as required by law) for cause, including without limitation, if: (a) Merchant becomes subject to, or the subject of a voluntary or involuntary bankruptcy, insolvency or receivership proceeding; (b) Merchant is closed for business, (c) any substantial part of Merchant's property becomes subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, (d) any event occurs that Obopay determines in its sole discretion, may increase its exposure for chargebacks or other disputes or otherwise presents a financial or security risk to it or may damage its public image, reputation or goodwill, (e) Obopay determines, in its reasonable exercise of discretion, that Merchant is unable to pay its debts as they become due; (f) the Merchant Account has a negative balance; (g) Merchant uses the Merchant Account, directly or indirectly, for any unlawful or improper purpose; (h) Merchant provides incorrect or false

information about Merchant or its accounts; (i) Merchant uses or attempts to use the Merchant Account for tampering, hacking, modifying or otherwise corrupting the security or functionality of Obopay or any other website; (j) Obopay receives conflicting claims regarding ownership of, or the right to withdraw funds from, the Merchant Account; (k) Obopay receives a garnishment, levy or other legal process that affects the Merchant Account; (l) Merchant has breached a term or condition of this MSA, or any representation or warranty that Merchant made under this MSA is false; (m) Obopay determines that the Merchant Account is inactive; (n) Obopay believes that any transaction in the Merchant Account may be fraudulent or impermissible or otherwise expose Merchant, any other person, or Obopay to risk of loss; or (o) Merchant becomes listed in any file maintained by any Association of high-risk merchants, or if an Association notifies Obopay that it is no longer willing to accept Merchant's Payments.

- (b) If Obopay closes the Merchant Account without cause, Obopay will cease to process Payments made to the Merchant Account no earlier than thirty (30) days after notice to Merchant of Obopay's intent to terminate this MSA. If Obopay closes the Merchant Account for cause, Obopay may immediately cease to process Payments made to the Merchant Account.
- (c) Merchant must provide Obopay thirty (30) days prior written notice of Merchant's desire to close the Merchant Account. Within thirty (30) days of Obopay's receipt of such notice, Merchant will cease to accept Payments made to the Merchant Account.
- (d) Merchant shall continue to maintain the balance of the Merchant Account for an additional one hundred twenty (120) days after the cessation of processing under any of the foregoing provisions ("Termination Period") for the purpose of settling Chargebacks and other charges to the Merchant Account. This MSA shall continue to apply for the duration of the Termination Period. Obopay may extend the Termination Period if in its sole discretion it determines that the Merchant Account may be subject to any charges, Chargebacks or other liabilities after the expiration of the Termination Period. During the Termination Period, Merchant agrees to maintain in the Merchant Account funds in an amount and for a period of time reasonably specified by Obopay to cover any Chargebacks and other charges to the Merchant Account. Merchant may not make any withdrawals from the Merchant Account during the entire Termination Period or any extension thereof.
- (e) After the Termination Period, Obopay may continue to hold proceeds of the Merchant Account if there are any unresolved charges, Chargebacks, or other liabilities. If Merchant has no such outstanding obligations at the end of the Termination Period, Obopay may credit any remaining balance in the Merchant Account to the Linked Deposit. Termination of this MSA, and the crediting of any amounts to the Linked Deposit, will not affect Merchant's liability related to acts or omissions prior to termination, including Merchant's liability for any overdraft in the Merchant Account, or the Chargeback of any Payment.

11. Limitations of Liability/DISCLAIMER OF WARRANTIES.

- (a) Obopay is not liable for any loss resulting from a cause outside its direct control, including the failure of electronic or mechanical equipment or communication lines, telephone or other interconnection problems, computer viruses, "hacking," unauthorized access, theft, operator error, severe weather, earthquakes, natural disasters, strikes or other labor problems, wars, acts of terrorism, or government restrictions, or for any information lost due to malfunction or loss of any e-mail systems.
- (b) **DISCLAIMER OF WARRANTIES. MERCHANT EXPRESSLY AGREES AND UNDERSTANDS THAT THE SERVICES AND MERCHANT ACCOUNT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, OBOPAY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO MERCHANT.**
- (c) **MERCHANT EXPRESSLY UNDERSTANDS AND AGREES THAT OBOPAY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR**

EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES, EVEN IF OBOPAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Without limiting the foregoing, (i) in the event of a claim that Obopay has failed to deliver a Payment to the Merchant, Obopay's liability shall be limited to the amount of the Payment, and (ii) in the event of any other claim, Obopay's liability shall be limited to the aggregate amount of fees paid by the payor and Merchant (if any) to Obopay in connection with a Payment associated with such claim.

12. Miscellaneous.

- (a) This MSA may be modified or amended by Obopay from time to time and any such modification or amendment shall become effective ten (10) business days from the date such notice is sent or upon the date specified in the notice, whichever is later; provided, however, that Obopay shall provide additional notice to Merchant if such notice is required by applicable law. Merchant may terminate use of the Merchant Account if Merchant does not agree with any modification or amendment. If Merchant uses the Merchant Account or accepts a Payment after notice of an amendment or modification is made available, Merchant will be deemed to have accepted that amendment or modification.
- (b) Merchant may not assign this MSA or any interest in the Merchant Account. Obopay may assign or delegate its rights and responsibilities under this MSA without notice to Merchant.
- (c) This MSA is governed by, and shall be construed in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules.
- (d) If any provision of this MSA is found by a court of competent jurisdiction to be invalid, the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this MSA remain in full force and effect. To the extent any statute or law to the contrary may be modified hereby, any claim or cause of action arising out of or related to the use of the Obopay service, the Merchant Account or this MSA must be filed within one (1) year after such claim or cause of action arose or it will be forever barred.

13. Arbitration.

- (a) In this Arbitration section: "you" and "your" mean Merchant, as well as any person claiming through Merchant; "we," "us," and "our" means Obopay and its parents, subsidiaries, affiliates, predecessors, successors, and assigns, as well as their respective officers, directors, and employees; and "Claim" means any dispute, claim, or controversy (whether based on contract, tort, intentional tort, constitution, statute, ordinance, common law, or equity, whether pre-existing, present, or future, and whether seeking monetary, injunctive, declaratory, or any other relief) arising from or relating to this MSA or the relationship between you and us, or arising from or relating to this MSA, the Merchant Account, or Payments, and includes claims that are brought as counterclaims, cross claims, third party claims, or otherwise and disputes about the validity or enforceability of this MSA or the validity or enforceability of this Arbitration section.
- (b) Any Claim between you and us shall be resolved, upon the election of either you or us, by binding arbitration administered by the American Arbitration Association ("AAA") or the National Arbitration Forum ("NAF"), under its rules applicable to consumer disputes ("Rules"). You can obtain the Rules and other information about initiating arbitration by contacting the AAA at 335 Madison Avenue, New York, NY 10017, or at www.adr.org, or the NAF at P.O. Box 50191, Minneapolis, MN 55405, or at www.adrforum.com. Our address for serving any arbitration demand or claim is General Counsel, 275 Shoreline Drive, Suite 600, Redwood City, CA 94065. If you file a Claim, you can chose either the AAA or the NAF as Administrator; if we file a Claim, we will make the initial selection but you can require us to use either the AAA or the NAF by providing us written notice within 30 days of your receipt of notice of the Claim. Claims will be arbitrated by a single, neutral arbitrator, who shall be a retired judge or a lawyer with at least ten years experience.
- (c) Each party shall bear its own attorney's, expert's and witness fees, and all costs and fees of arbitration, unless otherwise provided by applicable law.

- (d) Any in-person arbitration hearing will be held in San Jose, California, or in such other location as the parties may mutually agree. The arbitrator shall apply applicable substantive law consistent with the Federal Arbitration Act, 9 U.S.C. § 1-16, and, if requested by either party, provide written reasoned findings of fact and conclusions of law. The arbitrator shall have the power to award any relief authorized under applicable law. The arbitrator's award shall be final, except for any appeal that may be permitted under the Federal Arbitration Act. Judgment on any award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction thereof. Neither you nor we shall have the right to participate as a representative or member of any class of claimants in arbitration, and you and we further agree that claims of third parties shall not be joined in any arbitration between you and us, without the express written consent of both you and us. The validity and effect of this paragraph shall be determined exclusively by a court, and not by the Administrator or any arbitrator. The arbitrator shall have not power to arbitrate any Claims on a class action basis or Claims brought in a purported representative capacity on behalf of the general public, other Users, or other persons similarly situated.
- (e) If any portion of this Arbitration section is deemed invalid or unenforceable for any reason, it shall not invalidate the remaining portions of this provision. However, if the section precluding class actions is deemed invalid or unenforceable in whole or in part, then this entire Arbitration section shall be deemed invalid and unenforceable. The terms of this Arbitration section will prevail if there is any conflict between the Rules and this provision.
- (f) THE PARTIES ACKNOWLEDGE AND AGREE THAT, EXCEPT AS EXPRESSLY PROVIDED IN THIS RESOLUTION OF DISPUTES PROVISION, THEY ARE WAIVING ALL RIGHTS TO A TRIAL BY COURT OR JURY AS A MEANS OF RESOLVING ANY DISPUTES ARISING OUT OF OR RELATING TO THIS MSA. THEY ACKNOWLEDGE THAT ARBITRATION WILL LIMIT THEIR LEGAL RIGHTS, INCLUDING THE RIGHTS TO PARTICIPATE IN A CLASS ACTION, THE RIGHT TO A JURY TRIAL, THE RIGHT TO CONDUCT FULL DISCOVERY, AND THE RIGHT TO APPEAL (EXCEPT AS PERMITTED UNDER THE FEDERAL ARBITRATION ACT).
- (g) The parties acknowledge and agree that this arbitration agreement is made pursuant to a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act. This Arbitration section shall survive the termination of this MSA.