

Merchant Agreement

This Merchant Agreement is entered into by Tabapay, Inc., a Delaware corporation ("**ISO**"), and the entity agreeing to this Agreement as the Merchant ("**Merchant**") as of the date of ISO's acceptance of the Merchant Application (the "**Effective Date**"). ISO and Merchant are referred to in this Agreement as the "**Parties**". ISO is an agent of Evolve Bank & Trust, an Arkansas state chartered bank ("**Bank**"). By entering into this Merchant Agreement, including the Merchant Application and any associated addenda, exhibits and attachments as amended from time to time (together, the "**Agreement**"), Merchant agrees to comply with and be subject to the Rules. Merchant acknowledges that it has sole responsibility to obtain the Rules and updates thereto. Any violations of the Rules by Merchant will constitute a material breach of this Agreement.

Merchant must complete and submit a Merchant information disclosure form, signed by Merchant, and titled Merchant Application (the "**Merchant Application**"). If the Merchant Application is approved as communicated electronically by ISO, then this Agreement shall be deemed to be signed by ISO as of the Effective Date without any further action by ISO. This Agreement will be effective upon the Effective Date (as defined above).

Recitals

WHEREAS, Merchant is in the business of selling goods or providing services to its customers. Merchant has entered into a written agreement with eTip Inc. ("**Company**") to receive the technology and software solution services provided by Company, including Transaction acceptance.

WHEREAS, ISO and Company have entered into that certain Platform Funds Processing Agreement (the "**Funds Agreement**").

WHEREAS, ISO is in the business of processing Transactions, among other transactions comprising the Services, for Bank and pursuant to instructions received from Merchant.

WHEREAS, Bank (i) provides Transaction sponsorship for Merchant into the Card Networks; and, (ii) conducts Settlement for Merchant's Transactions.

WHEREAS, to better serve its customers, Merchant has requested, and ISO has agreed to permit, Merchant's use of the Services through the establishment of the program ("**Program**") described in this Agreement and as specified in the Merchant Application. The Merchant Application is incorporated into this Agreement by this reference.

Agreement

1. DEFINITIONS

"Applicable Law" means all applicable laws, codes, statutes, ordinances, rules, regulations, regulatory bulletins, authoritative interpretations or guidance by, or any binding memorandum of understanding, cease-and-desist order, consent order, legal settlement, written agreement or other agreement with, or enforcement order of, any Governmental Authority applicable to Merchant, ISO or Bank.

"Authorization" means an affirmative response by or on behalf of a Card Issuer that the amount of a purchase Transaction is within the Cardholder's available purchasing limit.

"Business Day" means any day other than: (i) Saturday or Sunday; (ii) a day on which Bank is authorized by law or executive order to be closed (and on which Bank or ISO is in fact closed); or (iii) a day on which the Federal Reserve Bank is closed.

"Card" means (i) a valid credit, debit or prepaid debit card in the form issued under license from Visa U.S.A. Inc., Visa International, Inc., MasterCard International Incorporated or Discover Network; or (ii) any other valid credit, debit or prepaid debit card accepted by Merchant and facilitated by Bank and ISO.

"Card Issuer" means the financial institution or company that has provided a Card to the Cardholder.

"Card Network" means VISA, Mastercard, Discover, STAR, NYCE, PULSE, Maestro, Accel, CULIANCE and other networks that route Transactions to Card Issuers, as such list may be added to or shortened from time to time by ISO at its sole discretion. American Express is a Card Network under this agreement, except Bank does not provide American Express Transaction sponsorship for Merchant. Merchant must agree to the separate American Express amendment, <https://www.tabapay.net/optblue/tabapay/AmexOptBlueAddendum.pdf>, to accept American Express Cards.

"Cardholder" means the person who purports to be the person in whose name the Card is issued.

"Chargeback" means the procedure by which the value of a Transaction (or disputed portion thereof) is returned by Bank to a Card Issuer.

"Custodial Account" means one or more Bank-owned and controlled account at Bank held "for the benefit of" the Merchants for the crediting and debiting of Transaction proceeds pursuant to this Agreement and the applicable Merchant Agreements and Disbursement Agreements.

"Governmental Authority" means any federal, state, foreign, local or other governmental department, commission, board, bureau, administrative or regulatory agency, or instrumentality, or any political subdivision thereof, or any court, commission, arbitrator, mediator or similar dispute resolution party.

"Receipt" means an electronic receipt or confirmation provided to the Cardholder subsequent to a Transaction.

"Representatives" means a Party's employees, directors, officers, service providers and agents.

"Reversal" means the reversing of a completed Transaction.

"Rules" means all rules and regulations, as amended from time to time, of the Card Networks and all Applicable Law.

"Sensitive Data" means any Cardholder's account number, security code, and expiration date.

"Services" means the processing services, including Transactions, address verifications, Reversals, Voids, Authorizations, Chargeback processing, Program setup, periodic reports, and ongoing Program support provided by Bank and ISO under this Agreement.

"Settlement" means each Business Day, Bank, using ISO reports, crediting the Custodial Account after receiving proceeds for purchase Transactions from the Card Networks.

"Transaction" means the exchange of goods or services from Merchant to a Cardholder in exchange for payment through the use of a Card and includes Reversals and Chargebacks.

“Void” means the elimination of a prior Authorization.

2. MERCHANT COVENANTS AND AGREEMENTS

2.1. Company Services.

(a) Merchant agrees to use the technology, mobile application and software services provided by Company (collectively, the “*Company Services*”) solely pursuant to the Program for the processing of all Transactions submitted for processing under this Agreement. Merchant shall not use special services or software provided by any other third party to assist Merchant in processing Transactions, including Authorizations or accounting functions. Merchant acknowledges and agrees that the Company Services are provided solely by Company pursuant to a separate written agreement between Merchant and Company. Merchant agrees to indemnify, defend and hold harmless Bank, ISO and their respective Representatives from any losses or claims arising out of or related to the Company Services.

(b) Merchant agrees to provide instructions to Company regarding the settlement of Transactions and subsequent disbursement of funds in accordance with this Agreement. Any instructions provided by Merchant to Company may be relied on by ISO and Bank (without the need for further verification) for purposes of processing Transactions and providing the Services hereunder. In no event shall ISO or Bank be liable to Merchant for inaccurate or erroneous information (i) provided by Merchant to Company or (ii) received by ISO or Bank from Company.

2.2. Compliance with Applicable Law and Rules.

(a) Merchant represents, warrants and covenants that it is and will remain throughout the Term of this Agreement in full compliance with Applicable Law and the Rules. Merchant will be solely responsible for conforming its policies and procedures to the Rules. Merchant will consult legal counsel regarding such compliance. If any Governmental Authority, including, but not limited to, the Federal Trade Commission, files a complaint against Merchant related to any activities of Merchant under this Agreement, Merchant will be responsible to Bank and ISO for any third-party fines and fees, and legal fees incurred by Bank or ISO in connection with such complaint.

(b) Merchant will report to ISO any inquiry, investigation, notice or other correspondence that Merchant receives from any Governmental Authority regarding Merchant’s alleged violation of Applicable Law, within five days of Merchant’s receipt thereof.

(c) Merchant will comply with the Rules regarding use of the Card Network marks, acceptance of Cards, risk management and Transaction processing.

(d) Merchant will not knowingly submit any Transaction that is illegal or that Merchant should have known was illegal.

(e) Merchant will not bill or collect from any Cardholder, for any purchase Transaction, from any Card unless a Chargeback has been exercised, Merchant has fully paid the amount of such Chargeback, and Merchant otherwise has the right to do so.

(f) Merchant will not accept or request any fraudulent Transaction and may not present for processing or credit, directly or indirectly, a Transaction that originates from any source other than Merchant’s legitimate customers. Merchant warrants that each Transaction is the result of a bona fide direct purchase of goods or services by the Cardholder in the total amount stated on any Receipt.

2.3. American Express. As demonstrated by Merchant’s acceptance of its first American Express Card for payment, Merchant accepts and agrees to the separate American Express optBlue amendment for acceptance of American Express Cards <https://www.tabapay.net/optblue/tabapay/AmexOptBlueAddendum.pdf>.

2.4. Settlement. Merchant authorizes Bank and ISO to initiate credit entries to and debit entries from the Custodial Account in connection with Transactions under this Agreement based on instructions received from Company. Bank will deposit all purchase Transactions to the Custodial Account on a basis net of any returns, Chargebacks and Reversals (together, “*Settlement Funds*”). Merchant’s Settlement Funds will be distributed to Merchant in accordance with the Company Services Agreement. Merchant understands that, prior to crediting the Custodial Account, Settlement Funds are not insured by the FDIC. Merchant will indemnify and hold ISO and Bank harmless for any action taken by ISO or Bank with respect to the Custodial Account under this Section 2.4.

2.5. Sensitive Data.

(a) Merchant represents, warrants, and covenants that it and its third-party service providers are and will remain throughout the Term of this Agreement in compliance with the Rules, the Payment Card Industry Data Security Standard (“*PCI DSS*”), the Account Information Security (“*AIS*”) instituted by Visa, the Discover Information Security & Compliance Program (“*DISC*”), American Express Data Security Requirements (“*DSR*”), and the Mastercard Site Data Protection Program (“*SDP*”) instituted by MasterCard, each as in effect and as may be amended, supplemented, or replaced. Merchant will cause all of its service providers, subcontractors and agents that accept, store, process or transmit Sensitive Data on behalf of Merchant to comply with the Rules, PCI DSS, AIS, DSR, DISC, and SDP requirements at all times. Merchant will report any non-compliance to ISO upon discovery thereof. Merchant will pay any fines and penalties that may be assessed by the Card Networks as a result of such Party’s or its respective Representatives’ or service providers’ noncompliance with the requirements of the Rules, PCI DSS, AIS, DSR, DISC, and SDP, or by its failure to accurately validate its compliance with those requirements. Merchant is required to comply with and hereby appoints Company to complete, sign, and deliver to ISO an attestation of Merchant’s compliance with PCI DSS, AIS, DSR, DISC, and SDP prior to commencing the Services, and annually thereafter.

(b) Each Party will be responsible to the other Parties for any third-party fines and fees, and legal fees required for the non-breaching Parties to complete their responsibilities relative to any data breach, including the cost of notifying affected Cardholders. Merchant acknowledges and understands that it may be prohibited from participating in Card Network programs if it is determined that Merchant does not comply with the foregoing obligations of this Section 2.5.

3. REPRESENTATIONS AND WARRANTIES

3.1. Representations, Warranties and Covenants of Merchant. Merchant represents, warrants and covenants to Bank and ISO at the time of execution and on an ongoing basis during the Term of this Agreement as follows: (a) all information contained in the Merchant Application or any other documents Merchant delivers to Bank or ISO is true and complete in all material respects; (b) Merchant has the power to execute, deliver, and perform this Agreement. This Agreement is duly authorized and does not and will not violate Applicable Law or conflict with any other agreement to which Merchant is subject; (c) Merchant has all licenses required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; and (d) there is no circumstance existing or, to Merchant’s knowledge, threatened that would substantially impair its right to carry on its business as now conducted or materially and adversely affect its financial condition or operations.

3.2. Representations and Warranties of ISO. ISO represents and warrants to Merchant at the time of execution and during the Term of this Agreement that: (a) it has the power to execute, deliver, and perform this Agreement, and this Agreement is duly authorized and does not and will not violate any provision of Applicable Law or conflict with any other agreement to which ISO is subject; (b) it has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; (c) there is no circumstance, to its knowledge, threatened by or against or affecting it that would substantially impair its right to carry on its business as now conducted or materially and adversely affecting its financial condition or operations; (d) it is compliant with PCI DSS, AIS, DSR, DISC, and SDP; and, (e) ISO will promptly and accurately process Transaction instruction upon receiving from Merchant according to Card Network technical specifications.

4. TERMINATION AND EFFECT OF TERMINATION

4.1. Term and Termination.

(a) The initial term of this Agreement will be for one year beginning on the Effective Date (the **“Initial Term”**) and will automatically renew for subsequent one-year terms (each, a **“Renewal Term,”** together with the Initial Term, the **“Term”**) unless a Party provides written notice to the other Parties of its decision not to renew at least ninety (90) days before the expiration of the then-current Term (the Initial Term or the current Renewal Term, as applicable).

(b) This Agreement may be terminated:

(i) by Merchant or ISO with thirty (30) days’ prior notice with or without cause;

(ii) immediately by ISO upon written notice of the occurrence of any of the following: (A) Merchant has experienced a material adverse change in its financial condition; (B) Merchant or any of its Representatives has been involved in a fraudulent Transaction; (C) Bank is served with legal process seeking to attach or garnish any of Merchant’s funds or property in Bank’s possession, and Merchant does not satisfy or appeal the legal process within fifteen (15) days of such service; (D) Merchant becomes insolvent, is placed in receivership, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts or seeks relief or has a petition filed against it under any provision of the Federal Bankruptcy Code or

(iii) by any Party if: (A) any Rule is amended such that the continued performance of this Agreement would cause such Party to be in breach of those Rules, or (B) the continued performance of this Agreement will cause harm or loss of goodwill to any Card Network, any Card Network requires Bank or ISO to limit or terminate this Agreement, or any Card Network is no longer willing to accept Transactions from Merchant.

(c) This Agreement will automatically terminate if the Funds Agreement between ISO and Company terminates or ISO’s sponsorship agreement with Bank terminates, for any reason.

5. LIMITATION OF LIABILITY

5.1. Limitation of Liability.

(a) IN NO CASE WILL MERCHANT OR ANY THIRD PARTY BE ENTITLED TO RECOVER DAMAGES FROM BANK FOR ANY REASON. To the extent the foregoing provision is unenforceable in an applicable jurisdiction, Bank’s liability will be limited to the portion of the Transaction fees received by Bank for Merchant’s Transactions that are processed under this Agreement for the one-calendar-month period immediately preceding the date of occurrence of the event giving rise to the claim for damages.

(b) The liability, if any, of ISO under this Agreement, whether to Merchant or to any other person, will not exceed in the aggregate, the difference between (i) the Purchase Fees and the Disbursement Fees, minus the Cost, as set forth in the Fee Schedule attached to the Funds Agreement (**“Transaction Fees”**), that are received by ISO for Merchant’s Transactions that are processed under this Agreement (regardless of whether such fees are paid by Company or Merchant to ISO) during the twelve-calendar-month period immediately preceding the date of the Transaction out of which the liability arose, and (ii) assessments, Chargebacks, Reversals and offsets authorized under this Agreement against such Transaction Fees that arose during such twelve-month period; provided that the foregoing limitation of liability will not apply to losses caused by fraud by ISO or Bank.

(c) NO PARTY SHALL HAVE ANY LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES (INCLUDING LOSS OF PROFITS OR BUSINESS OPPORTUNITIES) REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED, OR IS AWARE, THAT SUCH DAMAGES HAVE BEEN OR MAY BE INCURRED.

5.2. Warranty Disclaimers. NEITHER BANK NOR ISO MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE SERVICES THEY PROVIDE HEREUNDER. BANK AND ISO EXPRESSLY DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SHOULD THERE BE ERRORS, OMISSIONS, INTERRUPTIONS OR DELAYS RESULTING FROM BANK’S OR ISO’S PERFORMANCE OR FAILURE TO PERFORM OF ANY KIND, BANK’S AND ISO’S LIABILITY WILL BE LIMITED TO CORRECTING SUCH ERRORS IF COMMERCIALY REASONABLE.

6. INDEMNIFICATION. Merchant will indemnify, defend and hold harmless Bank, ISO and their Representatives from any losses arising out of or related to: (a) any claim relating to a dispute between Merchant and a Cardholder or a customer of Merchant, or any claim regarding a completed Transaction that is made by anyone by way of defense, dispute, offset, counterclaim or affirmative action; (b) Merchant’s breach of any representation, warranty, obligation or term of or under this Agreement, including the Merchant Application; (c) Merchant’s failure to comply with the Rules or violation of Applicable Law; (d) a breach of the security of Merchant’s system safeguarding Cardholder information or Merchant’s failure to comply with PCI DSS, AIS, DSR, DISC or SDP; (e) Merchant’s negligence or willful misconduct in the performance of its obligations under this Agreement; (f) fraud by Merchant, its Representatives or any Cardholder; (g) a breach of Merchant’s systems that exposes Sensitive Data; (h) Merchant’s use of the Company Services; and (i) all third-party claims arising from the foregoing.

7. CONFIDENTIALITY. No Party will disclose or make confidential information of another Party available to third parties (other than to a Party’s Representatives who are under a written obligation to the receiving Party regarding confidentiality at least as restrictive as the obligations set forth in this Section) without the other Parties’ written permission. No Party will use confidential information of another Party except as permitted under this Agreement. Merchant hereby gives its written permission for Bank and ISO to disclose detailed information about Transactions, individually and in the aggregate, and other information relating to Merchant to third parties that, in Bank’s and ISO’s reasonable discretion, require the information to facilitate the Services described in this Agreement and who are subject to confidentiality restrictions that are at least as great as those set forth in this Agreement, or as requested by Governmental Authorities or pursuant to Applicable Law. ISO and Bank may produce records in accordance with a subpoena.

8. MISCELLANEOUS

8.1. Notices. All notices and other communications required or permitted under this Agreement will be deemed delivered when delivered via overnight carrier or certified mail, addressed as follows: (A) If to ISO or Bank: TabaPay, 450 Cambridge Avenue, Palo Alto, CA 94306; or (B) if to Merchant, at the address on the Merchant Application.

8.2. Modifications to Agreement. All amendments or modifications to this Agreement must be in writing and signed by all Parties, except that ISO may amend any provision of this Agreement as reasonably necessary to conform to any changes in, or to correct any failure of this Agreement to conform to, the Rules, Bank regulatory requirements, or Applicable Law by providing written notice to Merchant of the amendment at least thirty (30) days before the effective date of the amendment. Merchant may terminate this Agreement upon receiving such notice, but otherwise consents to such amendments after thirty (30) days’ notice. Amendments due to changes to any Applicable Law, Rule or judicial decision may become effective on such shorter period of time as ISO may specify if necessary to comply with the Applicable Law, Rule or decision.

8.3. General. If any provision of this Agreement is deemed illegal or unenforceable, the invalidity of that provision will not affect any of the remaining provisions. This Agreement will be binding upon and inure to the benefit of the Parties’ respective heirs, personal representatives, successors and assigns. This Agreement, including the Merchant Application expresses the entire understanding of the Parties with respect to their subject matter and, except as provided in this Agreement, may

be modified only in writing executed by all Parties and constitutes a fully integrated document. This Agreement may not be assigned by Merchant, directly or by operation of law, without the prior written consent of the other Party. This Agreement will be governed and construed under the laws of the State of California without reference to its conflict of laws provisions. All claims or controversies between the Parties related to this Agreement, which are not otherwise settled by agreement of Parties, will be submitted to and decided by binding arbitration as set forth in Section 8.4. Failure by a Party to enforce one or more of the provisions of this Agreement will not constitute a waiver of the right to enforce the same or other provision in the future. A waiver of rights must be signed by the waiving Party. Each Party will be released from liability for any loss, delay or failure in its performance of any of its obligations under this Agreement to the extent that such loss, delay or failure is caused by fire, flood, explosion, accident, war, strike, embargo, pandemic, governmental requirements, civil and military authority, civil unrest, data trespass, inability to secure materials or labor, or any other event or circumstance that is beyond such Party's reasonable control. References to the singular include the plural, and vice versa. The word "including" or "includes" shall be deemed to be followed by the words "without limitation."

8.4. Arbitration Agreement for Claims. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination or the scope or applicability of this Agreement to arbitrate, will be determined by arbitration in San Jose, California before one arbitrator reasonably acceptable to both Parties with expertise relevant to the Dispute. If the Parties cannot agree upon an arbitrator, an arbitrator will be selected in accordance with the JAMS Rules. The arbitration will be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules (together, the "**JAMS Rules**"). Judgment on the award may be entered in any court having jurisdiction. This clause will not preclude the Parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. No Claim will be arbitrated on a class or purported representative basis or on behalf of the general public or other persons allegedly similarly situated. This Section 8.4 is made pursuant to a transaction involving interstate commerce and is governed by the Federal Arbitration Act (the "**FAA**"). The arbitrator will apply California procedural law and applicable statutes of limitations and honor claims of privilege recognized by law. The arbitrator's decision will be final and binding, except for any rights of appeal provided by the FAA. The arbitration proceeding and all information submitted, relating to or presented in connection with or during the proceeding, will be deemed confidential information not to be disclosed to any person not a Party to the arbitration.