

## BlueSnap, Inc. US Reseller Merchant Terms & Conditions

- 1 Definitions.** All defined terms in this Agreement will have the meaning assigned to them below or in this Agreement and will apply both to their singular and plural forms, as the context may require. All references to “*Exhibit*” are to the Exhibits which are attached and incorporated hereto.
- 1.1 Acquirer is a third-party entity, such as a credit card network processor or bank, that receives and processes End-User Customer payment information and remit payment funds in accordance with and subject to certain policies, procedures and standards, and/or an acquiring bank that screens and accepts sales drafts and completes financial settlement for the respective sale transaction on behalf of BlueSnap or Merchant.
  - 1.2 Acquirer Agreement is an agreement between the Merchant and an Acquirer enabling the Merchant to act as a merchant or sub-merchant in transactions that are processed through the relevant Acquirer.
  - 1.3 BlueSnap Merchant ID refers to BlueSnap’s account(s) at recognized Acquirer(s) and used by BlueSnap to process payment for Products.
  - 1.4 BlueSnap Privacy Policy means the privacy policy displayed on BlueSnap’s website, as updated from time to time.
  - 1.5 Card Association means a party that administers card schemes including but not limited to Mastercard, Visa, American Express, JCB and Discover Network.
  - 1.6 Card Association Rules means rules, standards, regulations, practices, interpretations of any Card Association or related bodies, including but not limited to the PCI Security Standards Council.
  - 1.7 End-User Customers means third parties who place orders for and provide payment information for Products through BlueSnap Payment Services.
  - 1.8 Intellectual Property is all rights, privileges and priorities provided under applicable supranational, national, federal, state or local law, rule, regulation, statute, ordinance, order, judgment, decree, permit, franchise, license, or other government restriction or requirement of any kind relating to intellectual property, whether registered or unregistered, in any country, including without limitation: (a) all (i) patents and patent applications (including any patent that in the future may issue in connection therewith and all divisions, continuations, continuations-in-part, extensions, additions, registrations, confirmations, reexaminations, supplementary protection certificates, renewals or reissues thereto or thereof), (ii) copyrights and copyrightable works, including reports, software, databases and related items, and (iii) trademarks, service marks, trade names, brand names, product names, corporate names, logos and trade dress, the goodwill of any business symbolized thereby, and all common-law rights relating thereto; and (b) all registrations, applications, recordings, rights of enforcement, rights of recovery based on past infringement and any and all claims of action related thereto and licenses or other similar agreements related to the foregoing.
  - 1.9 Merchant is the party providing goods and services (“Products”) to be marketed and sold through BlueSnap.

- 1.10 Merchant of record is the party formally recorded as conducting the payment transaction with an End-User Customer
- 1.11 Services Provider is the provider of certain payment services and payment gateway services that facilitate the payment for Products sold by BlueSnap.
- 1.12 Services or BlueSnap Services mean current and future payment services, payment gateway services and e-commerce services of BlueSnap, including but not limited to Third Party Referrer program as set forth in the Exhibits, and BlueSnap APIs and Customizations.
- 1.13 Territory means worldwide.

## **2 Status as Services Provider**

### Services.

- 2.1 Relationship. Other than as set forth herein, BlueSnap will not enter into any contracts or commitments in the name of, or on behalf of, Merchant. The parties shall be independent contractors.

## **3 Services**

### 3.1 Services Framework.

- 3.1.1 Merchant will utilize the Services. Merchant shall have all required contact and other identifying information on its website for purposes of informing End-User Customers of complaint, warranty and refund rights.
- 3.1.2 As part of performing Services under this Agreement, BlueSnap may conduct fraud checks. Merchant acknowledges and agrees that such fraud checks may delay transactions and payment collection from End-User Customers. In the event an End-User Customer seeks to cancel an order due to such delay, BlueSnap will not be liable to the Merchant for such cancellation.
- 3.1.3 Merchant accepts that the BlueSnap Services are limited for use by Merchant and may not be resold, shared or offered to third parties.
- 3.1.4 Merchant agrees and declares that it is contracting with BlueSnap in the course of a business and not as a consumer.

### 3.2 Other.

- 3.2.1 The BlueSnap Services shall include functionality to manage and issue returns of refunds to End-User Customers (“Refunds”) which may be managed and issued by Merchant through the BlueSnap system.
- 3.2.2 Merchant shall at all times be deemed bound to the terms and conditions to which BlueSnap is bound with respect to its relations with Card Associations, PCI, the Electronic Payments Association (NACHA), and Automatic Clearing House (ACH) and relevant European Union financial service regulators, in the event that such terms and conditions affect the Services BlueSnap provides to Merchant, including but not limited to proof of data security, type of products that may be sold, geographic or volume limits on transactions, acquirers that must be used.

- 3.2.3 Changes in law, accepted industry practice, Card Association Rules, ACH or NACHA rules, EU and international financial services regulations, Merchant sales volumes, Products and/or sales territories may compel BlueSnap to modify the basis on which the Services are offered or refrain from offering certain elements of the Services to the Merchant.
- 3.2.4 BlueSnap may from time to time add or offer additional or premium functionality, services or payment types to the Services (“Enhanced Services”) which are optional and/or subject to additional fees which shall be clearly published by BlueSnap. If Merchant opts to use such Enhanced Services, this Agreement shall be deemed amended without a writing to include same and Merchant shall be deemed to agree to and further agrees to pay the additional fees for such Enhanced Services. BlueSnap may deduct the relevant additional fees from Merchant’s account.
- 3.2.5 BlueSnap may provide and license to Merchant for purposes of this Agreement BlueSnap Customizations in accordance with Exhibit 2 (BlueSnap Customizations – Statement of Works and Professional Services Agreement) and payment thereof shall in accordance with the payment provisions set out in the Statement of Work or this Agreement.
- 3.2.6 In the event that Merchant’s ‘BuyNow’ transaction pages come under interruption caused by third parties, BlueSnap shall be entitled to immediately suspend service to Merchant until such interruption ceases. BlueSnap shall endeavor to the extent possible to provide Merchant with advance notification of any such suspension of service. BlueSnap shall not be liable to Merchant for any loss of transactions or other loss or damage caused by such interruption of service.

#### **4 Merchant Obligations**

- 4.1 Product Obligations. Merchant is primarily responsible for the promotion, marketing and support of the Products. Merchant’s promotional and support materials will accurately describe the Products and their use in all material respects. Merchant also will provide commercially reasonable post-distribution support to End-User Customers and post customer service information prominently on its website. Merchant will be responsible for providing and solely liable for the content of all technical and product information for End-User Customers for the Products. Merchant will be responsible for ensuring that all Products match the versions and descriptions of the Products as marketed by the Merchant as applicable. Merchant is primarily responsible to provide warranty, maintenance, technical or product support services for the Products. Merchant is primarily responsible to End-User Customer for any liabilities related to Merchant’s fulfillment of Product orders, EULAs entered into by End-User Customer, or use of Products by End-User Customer. As regards End-User Customers BlueSnap shall assume such liability for Products in accordance with relevant law.
- 4.2 Disclosure of Refund Policies. Merchant shall, during the transaction for which a Refund may be sought, make known to End-User Customer by informing on checkout its Refund policy and procedures, including any RMA (Return Merchandize Authorization) required and fees assessed. Merchant is responsible for any charges or costs incurred by reason of Refund, such as shipping fees.

Merchant’s Refund policy shall be in compliance with all relevant Card Association rules, FTC and European Union requirements and there shall be no differentiation in the treatment of refunds between various credit card schemes.

- 4.3 Invoicing to End-User Customers. Where an invoice is required to be delivered in the name of the Merchant, Merchant shall ensure that a legitimate electronic version is either issued promptly in its name or immediately made available to End-User Customer through the Services.
- 4.4 Precedence. In the event of any inconsistency between this Agreement and the standards and regulations issued and as revised from time to time by any relevant Card Association or Acquirer, such standards and regulations shall take precedence over this Agreement. The standards and regulations of the Card Associations, such as Mastercard, Visa and American Express, are expressly included, details of which may be accessed at the websites for each. In the event of any disparity or conflict between the provisions of this Agreement and any additional agreement(s) as referred to in Exhibit 1 of the Agreement, such additional agreement(s) shall override and take precedence over this Agreement, however, as between the parties themselves, this Agreement shall take precedence.
- 4.5 Standards. Card Association Rules for Merchant's credit card acceptance policies and procedures may require Merchant to make changes to its Web site and general practices to ensure that they are in compliance with credit card company standards including guarding the use of their marks. Merchant shall permit BlueSnap to monitor its general activity and use of such marks.
- 4.6 Payment and Currency Conversion. Should the currency of payment require exchange conversion, Merchant authorizes such funds to be passed to a currency conversion service that may then forward the payment funds in the converted currency directly to Merchant. Such placement of funds with the currency conversion service shall be deemed in full satisfaction of BlueSnap's obligations to Merchant with regard to payment.
- 4.7 Additional Acceptances. Merchant acknowledges and agrees:
- 4.7.1 To comply with all applicable credit card company standards, Card Association Rules, FTC regulations, best practices and guidelines, and PCI standards and requirements as amended from time to time.
- 4.7.2 That the relevant credit card company is the sole and exclusive owner of its marks.
- 4.7.3 Not to contest the ownership of any relevant credit card company marks.
- 4.7.4 To accept the responsibility to continue to review and be bound by Card Association Rules as published on the card company websites including relevant best practices and guidelines in order to determine whether any amendments or changes have occurred.
- 4.7.5 To accept that Card Associations have the right to enforce such provisions against BlueSnap and the Merchant including the right to prohibit Merchant from engaging in any conduct that any Card Association in its sole discretion deems likely to injure or cause risk of injury to it or its reputation or that may adversely affect the integrity of the credit card interchange system or confidential information as defined in the Card Association Rules. Merchant further agrees not to take any action that could interfere with or prevent the exercise of such right by any Card Association.
- 4.7.6 That Card Associations, Acquiring Banks, credit card companies may terminate or suspend at their own discretion and without notice or penalty, Merchant's participation in the Services and/or Merchant's use of credit company marks.

- 4.7.7 That the practices, rules, terms and conditions of the payment industry and Card Association Rules are under constant evolvement and development and that the provision of the Services is strictly conditional on the Merchant agreeing to be bound thereby.
- 4.7.8 That with respect to any security obligations including PCI requirements, BlueSnap shall **not** be liable to Merchant, End-Customer User or any other party for any malicious, intentional or unintentional loss, disruption, corruption, redirection, interception or interruption of any transaction or flow of data including End-User Personal Data that occurs outside the scope BlueSnap Services.
- 4.7.9 That certain payment methods offered by certain Service Providers may not be regulated by Card Associations or legislation. Merchant accepts that BlueSnap shall not be responsible for any shortfall or payment of sums due from such Services Providers to Merchant in respect of their default, non-performance or insolvency.
- 4.8 Prohibited Items. Merchant shall comply with BlueSnap's list of prohibited items as set forth on its website; any account found in BlueSnap's sole discretion to be in contravention of this list or as otherwise prohibited by any relevant Acquirer may be terminated or its account suspended immediately without notice by BlueSnap. Such list may be updated and revised by BlueSnap from time to time, upon notice given by email and/or as published on the BlueSnap website. If following the revision of such list BlueSnap is no longer able to support the sale of Products, it may immediately terminate this agreement or suspend the Merchant's account upon giving written notice.
- 4.9 Site-Rating Authorities. Merchant will make commercially reasonable efforts to avoid linking to websites and services that are denoted as posing high risk by reputable site-rating authorities, including McAfee, Symantec and Google. In the event of such linking, Merchant shall take prompt action to have such links removed.
- 4.10 Minors. Merchant will make commercially reasonable efforts to not solicit as potential End-User Customers individuals who are less than 18 years old. BlueSnap reserves the right to refuse the Services in transactions with minors.
- 4.11 General Business Information. Merchant shall maintain and make available at all times to BlueSnap and End-User Customers including through its main web site accurate details of its full geographic addresses, business names, including complete telephone and email contact details, customer support details together with its delivery, refund and privacy policies and all such other information that may be required by law and/or Card Association rules.
- 4.12 Marketing Practices. Merchant will comply with US state and federal anti-spam laws, including the CANSPAM Act, EU Directive 2002/58/EC as subsequently amended covering privacy and protection of personal data, the EU Cookie Directive 2009/136/EC, and relevant equivalent foreign legislation. Merchant shall also comply with BlueSnap's privacy policy as set forth in the BlueSnap website, as may be amended from time to time.
- 4.13 Amendments. Merchant is responsible to regularly monitor the BlueSnap website or Merchant's account on the BlueSnap console for notice of changes to the BlueSnap Services and fees. Merchant shall be notified in advance of such changes in BlueSnap Services and fees. Fees may be updated and revised by BlueSnap upon 30 days' notice as provided herein or added/revised without prior notice in the event that regulatory or governmental requirements materially increase BlueSnap's costs, including but not limited to charges based on device, product class, network, network carrier, payment method, price, currency, quantity, Acquirer, geographic location and

cross-border fees, or pursuant to Section 3.2.4. By continuing to use the BlueSnap Service or not notifying BlueSnap in writing of any objection within thirty (30) days thereafter, Merchant will be deemed to have accepted such changes and/or additions. Except if changes are necessitated by the Card Associations or regulatory or other governing bodies including amendment of governing law or regulation. Merchant shall, for thirty (30) days after the publishing of the aforesaid notice, have the option to terminate this Agreement without penalty but remaining subject to the surviving provisions of this Agreement including but not limited to payment of fees owed, maintaining a Rolling Reserve, liability for Chargebacks for itself and any affiliates (if authorized by BlueSnap), Refunds and Fines from Card Associations and/or other governing bodies.

- 4.14 Safeguarding Access. Merchant accepts full responsibility for safeguarding the log in and password information relating to Merchant account and accepts any fiduciary duties that may result from such access. Merchant agrees that Merchant is fully and solely responsible for the use of the BlueSnap Services by Merchant users.
- 4.15 Disclosure of Information and Investigations. Merchant shall provide full and unrestricted disclosure within 48 hours with respect to any written request by BlueSnap relating to the investigation of any single or mass refund request, Chargeback, suspected fraud matter, unauthorized or unlawful transaction, money laundering and/or criminal offence, or any documentation or information required by any relevant Acquirer. Such disclosure shall include but not be limited to the identity of any contracting parties, transaction records, bank records and other financial information relating thereto, and Merchant shall provide such further disclosure and assistance as may be reasonably be required by BlueSnap and/or its processors, acquirers and any relevant law enforcement authorities in order to properly investigate such matters.
- 4.16 Credit Card Transactions.
- 4.16.1 Merchant and BlueSnap accept that it shall not set any surcharges of its own for accepting any credit card transactions.
- 4.16.2 Merchant and BlueSnap accept that prior authorization must be obtained for recurring charge orders.
- 4.16.3 Credit Card transactions passed by Merchant shall represent a bona fide sale or rental of merchandise or services that have not previously been submitted.
- 4.16.4 Merchant and BlueSnap shall not pass any transaction that it has notice or knowledge of being fraudulent or unauthorized, or intercept any transaction data.
- 4.16.5 Merchant and BlueSnap shall not add any improper or invalid tax to a transaction, nor make any alteration to the transaction information without the authorization of the respective cardholder, or provide incomplete or misleading information relating to a transaction.
- 4.16.6 Save as permitted by Card Association Rules, Merchant and BlueSnap shall not charge for products that unless they have already been shipped or provided.
- 4.16.7 Unauthorized, irregular, fraudulent charges, or charges made on a non-Valid card, or excessive charges beyond stated price, payment for undelivered products or charges issued through hacking are not collectible and shall remain the full responsibility of Merchant and BlueSnap shall be fully indemnified by Merchant in respect thereof.

- 4.16.8 Unless required by law, Merchant shall not process any transactions or receive any payments on behalf of another party, or redirect any payments to another party.
- 4.17 EChecks. ECheck transactions may only be submitted and processed if supported by prior authorization from account holder. Such authorization must be securely stored.
- 4.18 Financial and Security Audits. Merchant shall allow BlueSnap and/or any relevant Acquirer to conduct financial and/or security audits upon 7 days written notice or 24 hours notice in the case of suspected fraud, unlawful or prohibited transactions, security concerns or security breach. Such audits shall include the right to examine all relevant accounts, books, financial data, bank records, customer details, and contact creditors, clients and partners, and security policies and records, server hosts, security certificates and server records and out-sourced arrangements. Merchant shall promptly provide access to all necessary documentation, and give full cooperation and disclosure as required to complete such audits.

Merchant shall at all times maintain sufficiently robust security practices to secure End-User Customer data, and provide details of its security policies upon written request and cooperate with BlueSnap in the event of any major payment security incidents including data breach. Security measures should be periodically tested to ensure their effectiveness and Merchant shall comply with any reasonable requirement made by BlueSnap or any relevant Acquirer concerning security measures. BlueSnap may decline to process transactions in the event that it has concerns over security issues relating to the Merchant and may terminate this Agreement if it believes that the Merchant does not have sufficient security measures in place to protect payment data and End Customer Information.

- 4.19 3D Secure. Certain transactions may require the use of ‘3D Secure’ or similar robust authentication and verification services. Merchant acknowledges and accepts that failure to accept such services may result in rejection of transaction or higher charges being levied by in respect of such transactions, the cost of which may be charged to and deductible from Merchant.

## 5 Payments and Fees

- 5.1.1 **“Holdbacks”** are sums that BlueSnap may in its sole discretion without prior notice hold in reserve against Merchant’s account during exposure or potential exposure to high frequency of refunds or Chargebacks or following significant variations in monthly sales volume, so as to ensure there are sufficient funds held in Merchant’s account to meet potential Refund and Chargeback requests. Should BlueSnap be subject to, or have reasonable cause to believe that it may be exposed to any negative Merchant account balance, or any claims, fines, penalties, non-compliance charges or additional fees levied by any Acquirer, Card Association or legal authority due to Merchant’s acts or omissions, or as a result of default, fraud, money laundering, illegal, unauthorized or improper actions of Merchant and/or Merchant’s customers, BlueSnap may in its sole discretion and without prior notice holdback in reserve additional sums for such period as it deems necessary to secure and make whole its financial position.
- 5.1.2 **“Rolling Reserve”** – BlueSnap may in its sole discretion set a six-month Rolling Reserve from each payment due to Merchant to meet potential Refunds and Chargeback requests. Such reserve may be increased in period and amount where BlueSnap determines there to be a significant risk of exposure, or in order to be at a level and coterminous with such reserve period set by Acquirers used to process Merchant’s transactions through BlueSnap. A Rolling Reserve may also be imposed for any business category deemed by BlueSnap or any relevant Acquirer to be of a high than usual risk, such as travel and events.

- 5.1.3 Should there be insufficient funds in Merchant's account at any time to provide any required Holdback or Rolling Reserve, BlueSnap shall be entitled to issue a written demand for the required funds. If within 48 hours, Merchant fails to provide such funds or a provide BlueSnap with a form of guarantee for payment that is acceptable to BlueSnap, then BlueSnap may immediately suspend Merchant's account or terminate this agreement.
- 5.1.4 BlueSnap may place Merchant into BlueSnap's Excessive Chargeback Management Program or under a Card Association's excessive chargeback requirements program if in BlueSnap's or Acquirer's sole discretion there is undue commercial risk or excessive volume of Chargebacks. Merchant shall be liable in respect of all charges relating to such programs and for any fees, assessments, penalties or fines levied by the Acquirer or Card Association in relation to said excessive chargebacks.
- 5.2 Customer Fees. In the course of performing Services, BlueSnap may charge End-User Customers fees as referred to in Schedule 1 'Pricing and Fees' of the Master Agreement. Such fees will not affect the sums due to the Merchant, may not be set off by Merchant against sums owed to BlueSnap, and BlueSnap will not be required to account for such fees to the Merchant.
- 5.3 Right of Set Off and Invoice. BlueSnap may issue and invoice for and recover from Merchant or setoff against current or future amounts due BlueSnap under this Agreement, payments that are charged back or disputed by End-User Customers, and also in respect of any fines, penalties, non-compliance charges and/or fees imposed on BlueSnap by any relevant authority or Acquirer due to Merchant's act, default or omission, including sums chargeable in relation to any BlueSnap or Card Association Excessive Chargeback Management Program. BlueSnap shall not be liable if any such End-User Customer continues to make use of the Product(s). BlueSnap shall provide information and assistance as reasonably requested by the Merchant to pursue the unauthorized use of such Product(s). BlueSnap shall be entitled to issue an invoice for any shortfall of funds in the Merchant's account.
- 5.4 Held Funds. Should BlueSnap hold funds that are due to Merchant under this Agreement that it is unable to deliver because Merchant has not provided its current contact information or Merchant's account has become inactive or dormant but not terminated, it is agreed that BlueSnap may assess account maintenance, inactivity or dormant account fees as applicable until any balance is eliminated or Merchant makes contact to obtain the balance remaining at the time of contact less any applicable deductions, all subject ultimately to requirements of law.
- 5.5 Interest on Negative Account Balance. BlueSnap may charge interest at the rate of 2% per annum above the standard deposit interest rate of the Wells Fargo Bank or the legal maximum permissible interest rate, on any negative balance on the Merchant's account.

## 6 Intellectual Property

### 6.1 Licenses.

- 6.1.1 Subject to the terms and conditions of this Agreement, BlueSnap hereby grants Merchant a non-exclusive, non-transferable, non-sub licensable license to use BlueSnap Customizations indicated in Exhibit 2 in the Territory;
- 6.1.2 Subject to the terms and conditions of this Agreement, BlueSnap hereby grants Merchant a non-exclusive, non-transferable, non-sub-licensable license, during the Term, to use BlueSnap's trademarks (the "**BlueSnap Trademarks**") in the Territory solely in connection with Services and as approved by BlueSnap. All goodwill resulting from

Merchant's use of the BlueSnap Trademarks will inure solely to the benefit of BlueSnap. Except for the limited license granted herein, nothing herein shall grant to Merchant any right, title or interest in the BlueSnap Trademarks.

- 6.1.3 Subject to the terms and conditions of this Agreement, Merchant hereby grants BlueSnap a non-exclusive license, during the Term, to use Merchant's trademarks (the "**Merchant Trademarks**") solely for the performance of Services by BlueSnap in accordance with this Agreement. All goodwill resulting from BlueSnap's use of the Merchant Trademarks will inure solely to the benefit of Merchant. Except for the limited license granted herein, nothing herein shall grant to BlueSnap any right, title or interest in the Merchant Trademarks.

## 6.2 Ownership.

- 6.2.1 BlueSnap retains all right, title and interest, including all Intellectual Property rights relating to the Services (and any derivative works or enhancements of any of the following), including to all software, technology, data, databases, information, content, materials, guidelines and documentation, including any custom works and designs provided by BlueSnap to Merchant hereunder. Merchant does not acquire any right, title or interest therein, except for the limited license expressly set forth in the Agreement. Merchant agrees not to modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Services.

- 6.2.2 Merchant retains all Intellectual Property rights in and to the Products.

- 6.2.3 Any rights not expressly granted in this Agreement are reserved and withheld.

- 6.3 Customer Data. As between Merchant and BlueSnap, all End-User Customer information received by BlueSnap in performing Services hereunder ("**End-User Customer Information**") shall be deemed to be owned by BlueSnap. BlueSnap hereby grants Merchant a non-exclusive, non-transferable limited license to use End-User Customer Information as provided in transaction reports solely in the aggregate form for internal analysis and reporting purposes. Merchant may not use any personally identifiable information included in such End-User Customer Information for any unlawful or improper purpose and shall indemnify and hold BlueSnap harmless from any claim for damages and costs related to Merchant's use or storage of such End User Customer Information.

Merchant shall follow all relevant Card Association rules relating to security of transaction data and shall not disclose or divulge any End-User Customer Information obtained in connection with any credit card transaction except as required by Card Association Rules or law.

Whenever End-User Customer Information comprising card data is transmitted, processed or managed through the BlueSnap Services, BlueSnap shall be responsible for the proper security of such data in accordance with all relevant PCI-DSS requirements as in force at the time. Likewise Merchant shall be responsible for the proper security of any such End-User Customer Information that it receives in accordance with all relevant PCI-DSS requirements as in force at the time.

## 7 Additional Covenants

### 7.1 Data Privacy and Security.

7.1.1 With respect to any End-User Customer Information received, accessible, or accessed by Merchant, Merchant will comply with applicable law regarding the use of non-public personal information and the requirements of BlueSnap's Privacy Policy as amended from time to time. Further, Merchant (i) will not use any End-User Customer Information for any other purpose other than those contemplated hereunder, (ii) has and will maintain reasonable and appropriate measures to protect the security and confidentiality of such End-User Customer Information, and (iii) will not, directly or through an affiliate, disclose or permit the disclosure of any End-User Customer Information to any other person that is not an affiliate or service provider, or an employee or agent of any such party with a demonstrable need to know such End User Customer Confidential Information in order to fulfill the obligations hereunder.

Merchant shall take all available steps and precautions to prevent fraud, theft and/or misappropriation of End-User Customer Information.

7.1.2 Subject to each Merchant's obligations of confidentiality or a duty to restrict dissemination of proprietary information arising from third party relationships or as otherwise imposed by law, Merchant will promptly notify BlueSnap as soon as commercially reasonable upon learning of any suspected or actual security breach, unauthorized disclosure, compromise of privacy involving End-User Customers' Information or the actual loss or theft of any such personal information ("**Security Incident**").

7.2 Compliance With Laws. Merchant must comply with all applicable laws and regulations including, but not limited to, relating to export control laws and economic sanctions, including the International Emergency Powers Act, the Office of Foreign Assets Control Act (OFAC), and the Arms Export Control Act, US ITAR and European Union list of persons, groups and entities subject to EU financial sanctions, including the UK HM Treasury Consolidated List of Financial Sanctions Targets.

7.3 Fraud and Criminal Activity. In the event, BlueSnap reasonably believes that Merchant and/or its customers is attempting to engage, or is engaging in manipulative, fraudulent, illegal or criminal activities using the Services, BlueSnap may in its sole and absolute discretion (i) withhold payments to the Merchant pending further investigation by BlueSnap, (ii) suspend its licenses and services under this Agreement, (iii) terminate the Agreement, and/or (iv) set up any appropriate Holdbacks or Rolling Reserves as it deems necessary and utilizing any such Holdbacks or Rolling reserves to satisfy any chargebacks, chargeback fees, refunds, fines, assessments or penalties. Merchant will be solely liable for any such fraudulent, illegal or criminal activity and BlueSnap shall not be required to pay any sums to Merchant in respect to such activities. BlueSnap reserves the right to make investigation as it determines and to inform the relevant authorities and Acquirers.

## 8 Representations and Warranties

8.1 Mutual. Each party hereby represents, warrants and covenants to the other party for the duration of the Term that:

8.1.1 Its obligations under this Agreement are valid, binding and enforceable in accordance with the terms and conditions set forth herein;

- 8.1.2 It has the full legal right and authority to enter into and implement this Agreement in all respects, and the execution and performance of this Agreement does not violate, or conflict with any other contract or agreement to which it is a party, or by which it is bound, and that the person accepting the terms of this Agreement has complete authority to bind it to this Agreement; and
  - 8.1.3 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization with corporate power and authority adequate for executing, delivering, and performing its obligations under this Agreement.
  - 8.1.4 Merchant warrants that it has the intellectual and proprietary rights to grant BlueSnap a license to resell the Products and that it has the rights to use the BlueSnap Services for such purpose, and further warrants that the resale, copying, storage, distribution and delivery of the Products by BlueSnap does not infringe, violate or abuse the intellectual property rights of any third party and that the Products may be sold to End-User Customers purchasing through BlueSnap.
- 8.2 By BlueSnap. (a) BlueSnap hereby represents, warrants and covenants to Merchant for the duration of the Term that it has the right to perform the services stated herein. (b) BlueSnap represents and warrants that it has the appropriate license, right, title or interest to all BlueSnap Trademarks and other Intellectual Property provided by BlueSnap or on BlueSnap's behalf. (c) BlueSnap hereby represents, warrants and covenants to Merchant for the duration of the Term that to the best of BlueSnap's knowledge, the Services do not and will not infringe upon any intellectual property rights of any third party.
- 8.3 By Merchant.
- 8.3.1 Merchant represents and warrants that it has the appropriate license, right, title or interest to all Merchant Trademarks and other Intellectual Property provided by Merchant or on Merchant's behalf.
  - 8.3.2 Merchant hereby represents, warrants and covenants to BlueSnap for the duration of the Term that: (i) to the best of Merchant's knowledge, the Products do not and will not infringe upon any intellectual property rights of any third party and that it has the right to permit BlueSnap to sell the Products through the Services; (ii) any digital files uploaded onto or used via the Services have been tested and are free of any virus, Trojan, malware, spyware, keylogger, adware or any other malicious script or programming function that may cause harm, slowdown, interruption or malfunction to any computer system; (iii) the Products are not illegal and do not contravene the BlueSnap list of prohibited items, as may be amended from time to time and do not violate any export/import control laws over national borders including EU and US legislation relating to data encryption technology; and (iv) it has taken commercially reasonable steps to ensure the security of End-User Customer Information controlled by or provided to Merchant ("**Merchant-Controlled Personal Information**") and ensure its protection from intrusion (electronic or physical) or disclosure of such information to unauthorized third parties and that Merchant shall remain in compliance with all US federal and state laws, EU laws, and regulations related to the security and storage of such Merchant-Controlled Personal Information.
  - 8.3.3 When required under applicable law as applies to the business relationship hereunder, BlueSnap shall charge, collect and pay taxes to the appropriate authorities. To the extent that Merchant may be required under applicable law to charge, collect and pay taxes, Merchant warrants and agrees that it shall at its own cost complete and maintain all

necessary tax registration requirements in any territory for which it is required to charge, collect, pay over or remit any U.S. sales tax, European Union VAT and other international sales taxes, and furthermore that it shall retain for the period required by applicable tax authorities, proof of remittance to each respective tax authority of any tax sum if collected by BlueSnap on Merchant's behalf and thereafter passed to Merchant as the responsible party for payment to a tax authority.

8.3.4 Merchant warrants that the contact and identifying particulars relating to name, location, address, email, phone, bank accounts, ownership, stakeholders, corporate officers, business names, Products, billing descriptors and customer contact information are true and correct, and that Merchant may be contacted by Customers at the address(es) given for such purpose. Merchant shall keep such information updated and correct during the course of this Agreement. Merchant shall furthermore pass transactions in its own name when using Merchant MID and only in respect of authorized products.

8.3.5 Merchant warrants it (or Merchant users and third parties authorized by Merchant and BlueSnap) shall (i) not engage in any fraud or scam practices; (ii) not use the BlueSnap Services to sell Products in breach of the Intellectual Property rights of any third party; (iii) not engage in any behavior in breach of the Controlling the Assault of Non-Solicited Pornography and Marketing Act ("CANSPAM Act") or any other laws including European Union legislation and regulations designed to prevent illegal marketing, Internet fraud, thefts or communications of an improper or illegal nature, and (iv) not publish any misleading information relating to the Products provided to be transacted through the BlueSnap Services. Merchant furthermore understands that such breach of the above or otherwise unlawful activities may cause serious harm to and adversely affect the reputation and business of BlueSnap, and that Merchant shall be liable in respect of any loss and damage arising from such activities.

8.3.6 Merchant warrants that it shall be fully PCI compliant if it stores any credit card data and agrees not to capture and/hold any payment information unless expressly permitted under PCI standards.

8.4 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES ARE PROVIDED ON AN "AS IS" "AS AVAILABLE" AND "WITH ALL FAULTS" BASIS. TO THE EXTENT PERMITTED BY LAW, BLUESNAP DISCLAIMS ALL IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT. BLUESNAP MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES AS TO THE USEFULNESS, QUALITY, SUITABILITY, OR COMPLETENESS OF THE SERVICES OR THAT THEY WILL BE ERROR-FREE, UNINTERRUPTED OR FREE FROM DEFECT.

## 9 Indemnification

9.1 By BlueSnap. BlueSnap will defend, indemnify and hold Merchant and its affiliates, directors, officers, employees, and agents harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings made or brought by a third party ("*Claim(s)*") against Merchant alleging that the use of the Services as contemplated hereunder infringes the intellectual property rights of a third party; provided that for the above Merchant (a) promptly gives written notice of the Claim to BlueSnap; (b) gives BlueSnap sole control of the defense and settlement of the Claim; and (c) provides to BlueSnap, at BlueSnap's cost, all reasonable assistance requested by BlueSnap. The foregoing indemnity will

not apply to any third party claim that arises solely from Merchant's use, operation or combination of the Services with non BlueSnap programs, data or equipment, modifications or alterations not made or authorized by BlueSnap, or Merchant's breach of this Agreement or willful misconduct. In the event that BlueSnap determines that the Services or any component of the Services might infringe the intellectual property rights of a third party, BlueSnap will have the right, at BlueSnap's option and expense, to: (i) procure for Merchant, at no cost to Merchant, the rights necessary to continue exercising such rights; or (ii) replace or modify the infringing portion of the Services so that it no longer infringes or misappropriates the third party's rights, provided the replacement has substantially equivalent functionality, or (iii) terminate this Agreement. The provisions of this Section 9.1 state the sole, exclusive and entire liability of BlueSnap, and the sole, exclusive and entire remedy of Merchant, with respect to any claim of patent, copyright, trade secret, trademark or other Intellectual Property infringement by the Services.

- 9.2 By Merchant. Merchant will defend, indemnify and hold BlueSnap and its affiliates, directors, officers, employees, and agents harmless against any Claims against BlueSnap arising out of (i) Merchant's breach of this Agreement regarding the Products(s) or Services hereunder, including but not limited to breach of Sections 8.3 and 13, the Products' description, fitness, merchantability, and safety, (ii) Product warranties (iii) Claims related to End-User Customer use of the Products; and (iv) any Claim involving misuse or loss of End-User Customer Information by Merchant including loss due to security breach; and (v) any Claim relating to any taxes chargeable or payable on the transaction; and (vi) in respect of any Claim, penalty, fine or loss relating to any improper, unauthorized, illegal, and/or fraudulent transactions; and (vii) act of negligence, any third party claim in respect of Intellectual Property, or title to the Products, actions in breach of Card Association rules, provided that for the above, BlueSnap (a) promptly gives written notice of the Claim to Merchant; (b) gives Merchant sole control of the defense and settlement of the Claim; and (c) provides to Merchant, at Merchant's cost, all reasonable assistance requested by Merchant. Such indemnity shall include all reasonable legal fees and costs of investigation.

## **10 Limitation of Liability**

- 10.1 LIMITATION OF LIABILITY. (i) IN NO EVENT WILL BLUESNAP'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED FEES ACTUALLY PAID TO BLUESNAP BY THE MERCHANT UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRECEDING THE INCIDENT(S) GIVING RISE TO LIABILITY.

(ii) BLUESNAP DOES NOT ASSUME ANY LIABILITY FOR MERCHANT'S FAILURE TO PERFORM IN ACCORDANCE WITH THIS AGREEMENT OR ANY RESULTS CAUSED BY MERCHANT'S ACTS, OMISSIONS OR NEGLIGENCE, OR A SUBCONTRACTOR OR AN AGENT OF MERCHANT OR AN EMPLOYEE OF MERCHANT OR ANY OF MERCHANT'S AGENTS OR SUBCONTRACTORS, NOR SHALL BLUESNAP HAVE ANY LIABILITY FOR CLAIMS OF THIRD PARTIES, INCLUDING, BUT NOT LIMITED TO, CLAIMS OF THIRD PARTIES ARISING OUT OF OR RESULTING FROM, OR IN CONNECTION WITH, MERCHANT'S PRODUCTS, (EXCEPT AS MAY ARISE THROUGH BLUESNAP ACTING AS MERCHANT OF RECORD), DESCRIPTIONS, REPRESENTATIONS, MESSAGES, PROGRAMS, CALLER CONTRACTS, PROMOTIONS, ADVERTISING, INFRINGEMENT, OR ANY CLAIM FOR LIBEL OR SLANDER OR FOR MERCHANT'S VIOLATION OF COPYRIGHT, TRADEMARK, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

(iii) UNLESS THERE IS A SPECIFIC WRITTEN AGREEMENT OTHERWISE, MERCHANT ACKNOWLEDGES AND AGREES THAT THE RELATIONSHIP IN CONNECTION WITH THIS AGREEMENT IS WITH BLUESNAP AND NOT ACQUIRER, CARD SCHEME OR

BANK. ACCORDINGLY, MERCHANT SHALL SEEK NO RECOURSE AGAINST ACQUIRER CARD SCHEME OR BANK, AND NEITHER ACQUIRER, CARD SCHEME NOR BANK SHALL HAVE ANY LIABILITY WHATSOEVER TO MERCHANT, FOR ANY DIRECT OR INDIRECT DAMAGES ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO SERVICES PERFORMED HEREUNDER.

(iv) MERCHANT WAIVES ANY CLAIM AGAINST BLUESNAP, OTHER THAN FOR BLUESNAP'S BREACH OF THE TERMS OF THIS AGREEMENT, WITH REGARD TO ACCEPTANCE OR DENIAL OF ANY CARD PAYMENT BY AN ACQUIRING BANK OR USE OF ANY OTHER PAYMENT TYPE.

- 10.2 EXCLUSION OF DAMAGES. IN NO EVENT WILL BLUESNAP NOR MERCHANT HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY OTHER PARTY FOR ANY LOST PROFITS, LOSS OF BUSINESS, GOODWILL OR REVENUE, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BLUESNAP SHALL NOT HAVE ANY LIABILITY TO MERCHANT ARISING FROM DELAYS OR PROBLEMS CAUSED BY TELECOMMUNICATIONS CARRIERS OR THE BANKING SYSTEM.

## 11 Confidentiality

- 11.1 Definition of Confidential Information. As used herein, "**Confidential Information**" means all confidential and proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information will not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party. End-User Customer Information will be Confidential Information under this Agreement.
- 11.2 Confidentiality. The Receiving Party may not disclose or use any Confidential Information of the Disclosing Party for any purpose other than to exercise the rights granted to it or perform its obligations under the Agreement.
- 11.3 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it may do so; provided that it provides the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 11.4 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Agreement, the Disclosing Party will have the right, in addition to any other remedies available to it, to obtain injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.
- 11.5 Return of Confidential Information. Upon termination or expiration of this Agreement, the Receiving Party shall return all copies of the Disclosing Party's confidential information (with the

exception of 1 archival copy for the purpose of compliance with these obligations) or remove same from all media and destroy same.

11.6 Survival of Confidentiality. The obligations under this section shall continue for three (3) years from the termination/expiration of this Agreement.

11.7 Permitted Releases. Notwithstanding the foregoing, BlueSnap reserves the right to release information of Merchant to law enforcement and Card Associations upon request or if BlueSnap reasonably believes Client or any representative thereof was involved in violations of any law. BlueSnap also reserves the right to release information to legal and other professional advisers acting under a duty of confidentiality, and to access and use such information to undertake investigations in cases of suspected or actual fraud, criminal behavior, misrepresentation, security breach, and/or breach of Card Association Rules. Further, BlueSnap may use aggregated non-personally identifiable information for marketing statistics and similar uses.

## 12 Term

12.1 Term. Unless otherwise terminated pursuant to this section, this Agreement shall continue until terminated by one party serving upon the other advance written notice of **30 days notice** of such party's intention to terminate this Agreement. Such notice shall be given in accordance with the notification provisions Section 14.3.

12.2 Termination.

12.2.1 Either party may terminate this Agreement on written notice to the other party if (i) the other party materially breaches this Agreement and (ii) does not cure that breach within fourteen (14) days after receiving notice of such breach with termination effective as of the expiration of said fourteen days.

12.2.2 BlueSnap may terminate this Agreement immediately in respect of one or more of the following:

(i) if required by any relevant Acquirer, bank, financial institution connected with BlueSnap's transaction process, to terminate its services to Merchant or suspend the Merchant's account, or if BlueSnap has reasonable cause to believe any such party may make such request; or

(ii) in the event that BlueSnap has a reasonable suspicion that Merchant is in breach of Section 4, 7, 8, or any Card Association Rules, PCI standards, or requirements of any relevant Acquirer, or has a reasonable cause to suspect that Merchant has lost, misused or abused any End Customer Information or Confidential Information, or has engaged in any instance of spam or illegal marketing either directly or through a third party; has been the subject of a data security breach; or

(iii) Merchant has in BlueSnap's or any Acquirer's sole discretion, reached an excessive or unacceptable level of refunds, Chargebacks and/or reversals, or that Merchant's account status, account balance or pattern of business represents an unjustifiable risk to BlueSnap and/or any Acquirer; or

(iv) Merchant has in BlueSnap's or any Acquirer's sole discretion or reasonable belief committed any misrepresentation including but not limited to its Products, business,

ownership, directors, officers, financial standing, location, bank accounts, financial reports, credit record, credit report, and/or credit status; or

(v) Merchant has in BlueSnap's or any Acquirer's sole discretion or reasonable belief submitted or attempted to submit transactions in breach of this Agreement, and/or that are prohibited, suspicious, wrongful, fraudulent, unlawful unauthorized, or may be related to money laundering, fraud, scam, or other illegal operations; or

(vi) Merchant fails to promptly provide information requested by BlueSnap or any Acquirer concerning the investigation of any Chargeback, refund, fraudulent or suspicious acts or transaction, or fails to permit upon request the proper audit, inspection or submission of relevant business records and financial data or the running of a security audit.

(vii) Merchant does not have sufficient title or ownership rights in the Products to enable BlueSnap to sell as Reseller.

Furthermore in case of any such circumstance, BlueSnap may immediately suspend further transaction services with respect to the Merchant.

- 12.2.3 BlueSnap may terminate this Agreement on fourteen (14) days written notice if BlueSnap no longer supports a product category and/or MCC.
- 12.2.4 Either party may terminate this Agreement immediately upon written notice to the other party if: (i) a party becomes insolvent or stops paying its obligations in the ordinary course of business; (ii) a party makes an assignment for the benefit of creditors; (iii) a party files or becomes subject to a filing for reorganization, receivership or bankruptcy under the insolvency or bankruptcy laws of any country having jurisdiction of a party (as it is now or may be hereafter constituted, including a declaration of insolvency); or (iv) a party is dissolved, liquidated, or wound-up or otherwise ceases or compelled to cease business.
- 12.2.5 This agreement may be terminated immediately in the event that (i) BlueSnap is deregistered by a Credit Card company or ceases to be an accepted customer to at least one Credit Card company or there ceases to be at least one Acquirer servicing BlueSnap that is recognized by one or more Credit Card companies; or (ii) due to changes in any relevant Acquirer's operating standards, data requirements, regulations, integration methods, technical or security requirements it is no longer commercially viable for BlueSnap to provide Services to Merchant, or BlueSnap is no longer able to act as Reseller in respect of the Products; or (iii) is unable to satisfy the requirements of any relevant tax authority as Reseller of the Products with respect to calculation, charge, payment and accounting of tax including but not limited to European VAT.
- 12.2.6 BlueSnap may terminate this agreement immediately and without prior notice or penalty if (i) in its sole discretion such termination is necessary for BlueSnap to comply with its obligations under any applicable law, rule or regulation, or order of a court of law, including but not limited to money laundering obligations, Card Association Rules, Office of Foreign Assets Control regulations, if in the discretion of one or more Credit Card companies or acquiring banks Merchant has acted in a fraudulent or otherwise wrongful manner; or (ii) in its sole discretion the level of business risk or value posed by Merchant is no longer acceptable.

- 12.3 Effect of Termination. Upon termination of this Agreement for any reason, (i) all licenses shall terminate, (ii) Merchant will cease using the Services (including removal of any links to BlueSnap's websites), (iii) each party shall cease to use the other party's Intellectual Property, (iv) BlueSnap will deduct all fees and other sums due and owing at the time of termination and remit the outstanding Merchant Balance on the 15<sup>th</sup> (fifteenth) of the month following six (6) months after termination to allow for clearance of any Refunds and Chargebacks provided that Merchant has had two (2) consecutive months of no Refunds or Chargebacks; BlueSnap may in its sole discretion holdback whatever sums it deems necessary as a termination reserve for the greater of 12 months or so as to be coterminous with the relevant Acquirer's reserve requirements for BlueSnap, from the date of termination to ensure that there are sufficient sums in the Merchant's account to meet all financial and legal obligations relating thereto; and (v) Merchant will continue to be financially responsible for any additional Refunds and Chargebacks up to and after such applicable period in (iv); and (vi) where appropriate or required BlueSnap may report a Merchant and its offices to the Card Association terminated merchant files list.

In all circumstances that this agreement is terminated by BlueSnap as provided by this Agreement or Merchant is suspended thereunder, BlueSnap shall not be liable to Merchant in respect of any claim relating to loss of business or effect upon Merchant's credit rating.

### 13 Taxes

- 13.1 Taxes. All applicable taxes, levies, imposts or the like, including but not limited to any applicable sales taxes, value added taxes, withholding taxes and any other taxes levied on sales transactions involving End-User Customers and/or the flow of settlement funds to Merchant are the ultimate responsibility and liability of Merchant, and shall if necessary be calculated by Merchant when setting its pricing and payable by Merchant directly to the appropriate authorities. BlueSnap shall be entitled to set off in full or in part any amounts paid or payable by it to such authorities or from any sums withheld on behalf of such authorities with respect to the Merchant.

BlueSnap is not obligated to determine whether taxes apply and unless otherwise provided herein, is not responsible to collect, report or remit tax to any appropriate authority.

- 13.2 Withholdings by End-User Customer or Merchant. In the event that pursuant to any law or regulation, tax is required to be withheld, or stands to be deductible at source from any payment made or payable to BlueSnap by Merchant or from its End-User Customer, Merchant or End-User Customer may withhold or permit the deduction of said tax at the rate set forth in the certification issued by any such applicable tax authority at the rate determined by said law or regulation. In the event that Merchant or End-User Customer is required to withhold or allow the deduction of any such taxes, the amount paid to BlueSnap shall be increased to the extent necessary to yield to BlueSnap (after withholding or deduction of such taxes) a net amount equal to such sum BlueSnap would have received had no such withholding or deduction been made.

- 13.3 Value Added Tax. Notwithstanding the above in accordance with appropriate tax laws, BlueSnap may collect European Union ("EU") VAT when electronic products are sold End-User Customers located in the EU on behalf of the Merchant. End-User Customers that are businesses will be able to waive said VAT charges by providing a valid VAT ID. These taxes will be submitted by BlueSnap to the appropriate EU authorities on behalf of the Merchant. It is Merchant's responsibility to properly mark Products electronically delivered only or not within the BlueSnap Services. In the event that Merchant incorrectly marks Products, then Merchant shall be directly liable for payment of any tax due, including legal fees and interest, and shall be liable to fully indemnify BlueSnap without limit for any losses, fines, penalties, charges or legal fees arising.

## 14 Miscellaneous

- 14.1 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement. Further, Merchant is not a third party beneficiary to any agreement between BlueSnap and an Acquirer.
- 14.2 Non-Circumvention. Merchant shall not, during the Term and for six (6) months following expiration, circumvent this Agreement by processing transactions for payment from End-User Customers via Payment Acquirer(s) of BlueSnap.
- 14.3 Notices. All notices under this Agreement including but not limited to relating to the term, its extension or termination or any alleged breach of this Agreement, indemnity claim or notification relating to any taxation matter are required to be in writing and will be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing by first class U.S. mail to an address within the continental United States; (iii) the business day after sending by confirmed facsimile; (iv) the business day after sending by email or (v) pursuant to Section 14.3.1. Notices to BlueSnap are to be addressed to: 800 South Street, Suite 640, Waltham, MA 02453. Notices to Merchant will be addressed to the address first stated in this Agreement or such subsequent address as Merchant delivers to BlueSnap in writing.
- 14.3.1 Merchant agrees that BlueSnap may communicate with Merchant via electronic notices, notices on its website, [www.bluesnap.com](http://www.bluesnap.com), and/or the current administrative e-mail address that BlueSnap has on file for the Merchant. Merchant affirmatively consents to receive notices electronically from BlueSnap and agrees that BlueSnap may provide all communications and transactions related to the Services and Merchant's account, including without limitation any ancillary agreements related to the Services, amendments or changes to such agreements, Card Association Rules, or any disclosures, notices, transaction information, statements, policies (including without limitation notices about the BlueSnap Privacy Policy), responses to claims, and other customer communications that BlueSnap may be required to provide to Merchant by law (collectively, "**Communications**") in electronic format. All such Communications will be deemed to be in "writing" and received by Merchant when sent. Merchant shall be responsible for printing, storing, and maintaining its own records of such Communications. Where appropriate Merchant shall send its responses to such notices to BlueSnap at the designated e-mail address(es) set out in the Services or through the applicable submission forms if provided. BlueSnap reserves the right to discontinue or modify how Communications are provided and shall give Merchant prior notice of any change. Merchant's continued consent is required to use the Services.
- 14.4 Publicity. Merchant consents to BlueSnap's use, subject to Section 6.1.3, of Merchant's logo on BlueSnap's website, list of customers and to a press release concerning Merchant's use of BlueSnap Services as well as use of Merchant's name for other marketing of BlueSnap's Services.
- 14.5 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right. A waiver shall only be effective in writing executed by the party granting the waiver. Other than as expressly stated herein, any remedies provided in this Agreement are in addition to, and not exclusive of, any other remedies of a party at law or in equity.
- 14.6 Force Majeure. BlueSnap will be under no liability to Merchant for, and is excused from, any failure to deliver or perform or for delay in delivery or performance due to causes beyond its control, including, but not limited to, governmental actions, fire, work stoppages, shortages, war, terrorism, civil disturbances, transportation problems, interruptions of power or communications,

Internet service provider or hosting facility failures or delays involving third party hardware or software systems, denial of service attacks, acts of third parties outside of BlueSnap's control, natural disasters or significant changes in the ability of BlueSnap to offer the Services in terms of the scope and/or price set out herein as a result of changes in law, or in policy of Card Associations and/or Acquirers, and/or governmental authorities.

- 14.7 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.
- 14.8 Amendment of Agreement. Subject to Section 4.13 and Schedule 1 'Pricing and Fees' of the Master Agreement, any amendment of the terms of this Agreement by BlueSnap may be upon thirty (30) days prior written notice, provided that Merchant shall, if not in agreement with such amendment, have the option to terminate this Agreement in writing within said thirty (30) day period or shall be deemed to have accepted such amendment.
- 14.9 Arbitration. Except as set forth below, all disputes between the parties arising from this Agreement, including disputes as to the validity or existence of this Agreement shall be referred to and finally determined by arbitration of one arbitrator, conducted in the English language in Boston, Massachusetts, and in accordance with the Expedited Arbitration Rules of the World Intellectual Property Organization ("WIPO"). The proceedings shall be secret and the award shall be final and binding on the parties, and each party consents to the award being enforced by order of any court of competent jurisdiction. The parties agree to waive any right to jury proceedings. Nothing in the forgoing shall be construed as preventing BlueSnap from bringing suit in a court of competent jurisdiction should Merchant commit a fraudulent or other intentional act in violation of this Agreement or as preventing BlueSnap from seeking equitable relief from a court of competent jurisdiction.
- 14.10 Governing Law. This Agreement and any matter arising out of or related to it is to be governed, interpreted, construed and enforced solely and exclusively in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of laws rules. BlueSnap and Merchant hereby submit to the exclusive jurisdiction of courts located in Suffolk County, Commonwealth of Massachusetts, USA. MERCHANT WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION TO ENFORCE OR DEFEND ANY RIGHT UNDER THIS AGREEMENT OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR TO BE DELIVERED IN CONNECTION WITH THIS AGREEMENT OR ARISING FROM ANY RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREE THAT ANY ACTION WILL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.
- 14.11 Survival. Any terms of this Agreement that expressly or by their nature extend beyond the termination of Services remain in effect until fulfilled or according to the applicable provision and apply to both parties' successors and assignees. The following provisions will survive the expiration or termination of this Agreement: (Definitions), (Services), (Ownership), (Customer Data), (Disclaimers), (Indemnification), (Limitation of Liability), (Confidentiality), (Effect of Termination), and (Miscellaneous).
- 14.12 Signature and Counterparts. This Agreement may be executed by facsimile and in counterparts, which taken together will form one legal instrument, or by electronic signature or acceptance which the parties agree shall duly bind them.

14.13 Non-Solicitation. Merchant agrees that during the term of this Agreement and for six months thereafter, it shall not directly or indirectly solicit or endeavor to employ or entice away, any person who has been employed by BlueSnap during such period, whether for itself or on behalf of any other party.

## EXHIBIT 1

### ACQUIRER AGREEMENT(S) AND ADDITIONAL PROVISIONS

The provision of the BlueSnap Services is conditional on the following Acquirer Agreement(s) and supporting documentation being in full force and effect if applicable:

Acquirer Agreement(s) for Sub-Merchants  
Merchant Application  
PCI Self Assessment Questionnaire A

## EXHIBIT 2

### BLUESNAP CUSTOMIZATIONS

The following terms and conditions shall apply to all Statements of Work between the parties and be deemed to be incorporated into each Statement of Work:

If there is a conflict between the terms and conditions of the Master Agreement and the terms within any Statement of Work, the terms and conditions of the Statement of Work will prevail. Otherwise, all provisions of the Master Agreement shall be applicable hereto.

### TERMS AND CONDITIONS

1. **Customization Work.** BlueSnap will perform for Merchant the customizations listed in the Statement of Work ("Customizations") on a Time and Expenses basis, unless otherwise set forth herein and Merchant will pay BlueSnap for the Customizations in accordance with the Statement of Work.
2. **Invoicing and Expenses.** (a) If not otherwise specified in the Statement of Work, BlueSnap will invoice monthly, with a closing invoice issued upon completion of the Customizations. Each invoice is due within fifteen (15) days of the invoice date. Amounts payable to BlueSnap under the Statement of Work are payable in full without deduction. All amounts are specified and payable in U.S. dollars.  
  
(b) Payments not made within fifteen (15) days of the invoice date may be deducted from settlements due to Merchant in the Master Agreement or, if insufficient, amounts still owing shall bear interest at the rate of 1.5% per month, or the highest rate allowed by law, whichever is less, commencing as of the date of invoice, until fully paid. Merchant agrees to pay BlueSnap's reasonable costs, expenses and attorney's fees for collection.  
  
(c) Except as otherwise specified in the Statement of Work, Merchant will reimburse BlueSnap for all reasonable and direct out-of-pocket expenses incurred in the performance of the Customizations. Merchant will also reimburse BlueSnap for any other expenses incurred at the request of Merchant.
3. **Merchant Rights and Obligations.** (a) Merchant will have the right to use the work Customizations under the terms of the Statement of Work. Unless specifically set forth in the Statement of Work, the Customizations hereunder shall not be deemed a work for hire and shall be owned by BlueSnap. In no event will the Statement of Work be deemed to expand or otherwise modify any rights or restrictions contained in the Master Agreement between the parties.  
  
(b) Merchant will provide BlueSnap with assistance, cooperation, information and data, and appropriate access as necessary for BlueSnap to provide the Customizations.  
  
(c) Work provided by BlueSnap shall be used by Merchant as intended and not for any illegal or improper purpose.

4. **Assigned Personnel.** Neither BlueSnap nor its employees or contractors will be deemed employees of Merchant.

5. **Termination.** (a) The Statement of Work will continue in effect and be operative as to any attached schedule but automatically terminate as of (i) fifteen (15) days following written notice by either party to the other party of any material breach of the Statement of Work by the other party (including failure to make any payment when due) that is not corrected within such fifteen (15) days; or (ii) at any time on thirty (30) days' prior written notice to the other party. Notwithstanding subsection (ii), if the Statement of Work is terminated pursuant to said subsection, any additional Statement of Work or Customizations then in effect shall continue and be completed and paid for unless otherwise mutually agreed by the parties.

(b) Upon termination of the Statement of Work, Merchant will pay BlueSnap for all Customizations performed and expenses incurred up through the date of such termination. The provisions of Sections 2 and 6-9 will survive any termination of the Statement of Work.

6. **Limited Warranty and Indemnification.** (a) BlueSnap warrants to Merchant that the Customizations will be performed in a professional and workmanlike manner. If, within ten (10) days after the completion of any defined portion or segment of the Customizations, Merchant notifies BlueSnap that such portion or segment of the Customizations was not performed in conformance with such warranty, BlueSnap will re-perform or correct such portion or segment of the Customizations so that it conforms to such warranty. The foregoing states BlueSnap's sole liability and Merchant's sole remedy in the event of a breach of this Section.

(b) EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION, ALL OTHER WARRANTIES ARE DISCLAIMED. BLUESNAP MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY SPECIFIC OR GENERAL PURPOSE, OR NON-INFRINGEMENT.

7. **Limitation of Liability.** BLUESNAP WILL NOT BE LIABLE (UNDER ANY LEGAL THEORY) FOR DAMAGES OR OTHER AMOUNTS THAT EXCEED THE AMOUNT OF THE FEES PAID OR PAYABLE BY MERCHANT FOR THE CUSTOMIZATIONS GIVING RISE TO SUCH LIABILITY. IN ANY EVENT, BLUESNAP IS NOT LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGE, OR LOST PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY AND DISCLAIMERS OF DAMAGES APPLY REGARDLESS OF THE FORM IN WHICH AN ACTION (LEGAL, EQUITABLE OR OTHERWISE) MAY BE BROUGHT, WHETHER IN CONTRACT, TORT OR OTHERWISE.

8. **Estimates.** Except as expressly specified in a particular Statement of Work, no estimates given by BlueSnap, including estimates regarding time of completion or costs, will have binding legal effect on either party. Without limiting the foregoing, no such estimate is to be construed as a promise, guaranty or warranty by BlueSnap, and no such estimates will be deemed to change the Statement of Work into a fixed price contract or otherwise amend or affect the Statement of Work or the interpretation thereof unless specifically stated. Quoted fees apply only to work under and within the scope of the Statement of Work. Customizations additional or outside the scope, or Customizations provided after any deadline due to Merchant delays, shall be provided at the then-current BlueSnap professional services rates.

9. **General.** (a) The Statement of Work (i) supersedes and merges in full all prior and contemporaneous proposals, discussions between the parties relating to the subject matter hereof, and (ii) constitutes the entire agreement between the parties with respect to the subject matter hereof. The parties may modify or supplement the Statement of Work only by a written document signed by an authorized representative of each party. Each party acknowledges and agrees that there are no covenants, conditions, or other understandings or agreements, oral written or otherwise, relating to the subject matter of the Statement of Work, other than as set forth herein, and that (in entering into the Statement of Work, including any Statement of Work) each party is not (and will not be) relying on any representation or warranty made by or on behalf of the other party other than as expressly set forth in the Statement of Work. If Merchant issues, in connection with the Statement of Work, a purchase order or other ordering document, the terms and conditions of which are in addition to or inconsistent with the terms and conditions of the

Statement of Work, the terms and conditions of such purchase order or other ordering document will not be binding on BlueSnap and will not modify the Statement of Work.

(b) Except for Merchant's payment obligations hereunder, neither party will be liable for delays in any of its performance hereunder due to causes beyond its reasonable control, including but not limited to acts of God, strikes, or inability to obtain labor or materials on time.

(c) Merchant may not (and has no right to) assign or otherwise transfer (whether voluntarily, by operation of law, or otherwise), in whole or in part, the Statement of Work or any of its rights or obligations under the Statement of Work, to any person or entity, without BlueSnap's prior written consent. Any such prohibited assignment is void. In the event that Merchant merges with or is acquired by another entity, any work under a Schedule then in effect shall either be completed and/or paid in full.

### **EXHIBIT 3**

#### **Third Party Referrers**

These additional definitions shall apply to this Appendix:

‘Royalty Payment’ – Payments designated by a Merchant to be paid as a royalty through the BlueSnap Services to a third party in respect of qualifying transactions.

‘Royalty Recipients’ – Recipients of Royalty Payments.

1.1. Upon the express consent of BlueSnap, and if not in contravention of Card Association or Acquirer rules, Merchant may develop relationships with Third Party Referrers to promote on its behalf through BlueSnap. When engaging in such relationships, Merchant does so at its own risk and is solely responsible for checking the integrity of Third Party Referrers and their products. Save as required by law or Card Association requirements BlueSnap does not evaluate the background of such Third Party Referrers and their presence within the BlueSnap system does not indicate their trustworthiness or quality of product or service.

A Merchant shall not act as a Third Party Referrer in respect of any other BlueSnap Merchant or other BlueSnap Merchant’s products.

BlueSnap may in its sole discretion cease providing such Third Party Referrer features to Merchants and Third Party Referrers at any time upon written notice. Upon such cessation, the relevant provisions in this Agreement relating to Holdbacks and Reserve shall apply.

1.2. Merchant shall be responsible for the acts of its Third Party Referrers and BlueSnap is entitled to hold Merchant and Third Party Referrer jointly and severally liable for the acts of each of them. Should BlueSnap determine, in its reasonable opinion, that Merchant and Third Party Referrers are acting in concert in a manner that violates the terms of this Agreement, the BlueSnap acceptable use or privacy policies, BlueSnap may terminate this Agreement upon written notice to the Merchant.

1.3. In the event of any shortfalls in accounting to, from or between Merchant, Royalty Recipients and Third Party Referrers following cancellation, refund or Chargeback, BlueSnap may claim, or deduct, such shortfalls from monies held on account for behalf of the Merchant, Royalty Recipients and the appropriate Third Party Referrer, whether said monies are held by BlueSnap under this Agreement or other agreements with the same entity(ies).

1.4. Should BlueSnap deem it necessary to suspend or cease providing the BlueSnap Services to a party with whom the Merchant has a referral relationship, Merchant shall be responsible for resetting its Products within the BlueSnap System to reflect the resulting changes.

1.5. BlueSnap shall not be liable in any way for any claims resulting from Merchant’s relationship with Royalty Recipients and Third Party Referrers including liabilities or claims of negligence, breach of contract, misrepresentation, fraud or other misbehavior of one of these entities.

1.6. The parties to a Royalty Payment and/or Third Party Referrer relationship shall indemnify and hold BlueSnap, its directors, officers, agents, employees and representatives harmless from any claim or action against BlueSnap or its directors, officers, agents, employees and representatives, arising from such relationship.

1.7. The following sub-paragraph provisions shall apply to any party, engaging in Third Party Referrer sale transactions or the giving or receiving of a Royalty Payment:

**1.7.1 Acceptance of Third Party Referrers and Set Up of Royalty Payments**

Third Party Referrers may be required to undergo acceptance and risk clearance processes with respect to the Merchant and/or BlueSnap. Third Party Referrers may apply to promote the Products of the Merchant through the BlueSnap Services by pressing the "MARKETPLACE" button or equivalent, searching for the desired products, and pressing the "PROMOTE THIS PRODUCT" button or equivalent after having reviewed Products. If a Third Party Referrer's application is approved by the Merchant, then (i) BlueSnap will notify Third Party Referrer by any means authorized by this Agreement, or by posting on the BlueSnap website (ii) Third Party Referrer and the Merchant will be deemed to have agreed to enter into a separate agreement with each other (the "**Referrer Agreement**") and (iii) Third Party Referrer will be approved for the Merchant and the relevant Product(s).

Merchant may opt to set up a Royalty Payment in the BlueSnap Services enabling a third party to receive a fixed sum or percentage payment on qualifying transactions. BlueSnap shall at all times have the absolute discretion whether or not to offer such functionality to Merchant and may cease to offer such service on 7 days' written notice.

**1.7.2. Third Party Referrer Marketing Efforts**

Third Party Referrer may market Merchant's Products subject to any applicable restrictions in the Merchant Agreement. Third Party Referrer may post links on its website or as otherwise permitted. If Merchant has any other advertising, marketing or promotional materials ("**Collateral Materials**") that may be used within the Marketplace Program, then Third Party Referrer may utilize these Collateral Materials when marketing Merchant's products. Notwithstanding the foregoing, Merchant may impose restrictions and guidelines on how Third Party Referrer may utilize Links or Collateral Materials by specifying such restrictions and guidelines in the Special Terms and/or Merchant Agreement. Third Party Referrers shall only use BuyNow links provided by Merchant.

**1.7.3. Third Party Referrer Information Provided to Merchant**

Third Party Referrers shall grant BlueSnap permission to provide Merchant with the non-personally identifiable demographic information concerning Third Party Referrer's website visitors, as well as Third Party Referrer's contact and basic account information such as Third Party Referrer's email address(es), mailing address, URL, telephone and fax number to the extent known by BlueSnap through the BlueSnap Sales Services.

**1.7.4. Payment Obligations to Third Party Referrer and Royalty Recipients**

Any compensation paid to Third Party Referrer or Royalty Recipient by BlueSnap shall be designated as being paid on behalf of the Merchant. BlueSnap's payment of compensation to a Third Party Referrer or Royalty Recipient does not create any obligations by BlueSnap to continue making payments; BlueSnap has no liability for same. If at any time the Merchant's funds in BlueSnap's possession are insufficient to satisfy any of Merchant's compensation obligations to Third Party Referrer or Royalty Recipient, or if BlueSnap does not make payment of earned compensation to Third Party Referrer or Royalty Recipient for any other reason, then Third Party Referrer's/and/or Royalty Recipient's sole and exclusive remedy shall be to assert a claim directly against the Merchant and Merchant shall indemnify and hold BlueSnap harmless against any such claims, damages and costs.

**1.7.5. Effect of Chargebacks, Refunds and Deductions**

Where Merchant requires compensation to be based on net receipts, it is understood that Chargebacks, Refunds or Deductions may occur after the month in which the respective Third Party Referrer has received compensation. In this event BlueSnap will compute these Chargebacks, Refunds or Deductions as charges against any future compensation owed to Third Party Referrer or Royalty Recipient, or deduct them from any balances in the Third Party Referrer's or Royalty Recipient's account with BlueSnap. Third Party Referrer will be liable for any outstanding negative balances that arise out of Chargebacks related to Third Party Referrer's sales. To the extent that the balances in the Third Party Referrer's or Royalty Recipient's account with BlueSnap under this Agreement are insufficient to cover the Chargebacks, Refunds or Deductions, BlueSnap is entitled to deduct the Chargebacks, Refunds or Deductions from sums held on account of the Third Party Referrer or Royalty Recipient under other agreements with BlueSnap. Merchant remains responsible at all times for Chargebacks, Refunds, Deductions or fines or penalties relating to its Third Party Referrer including any sums levied on BlueSnap or Merchant by Acquirer or Card Association.

BlueSnap may in its sole discretion suspend or terminate service to any Third Party Referrer or Royalty Recipient at any time on written notice without cause.

#### **1.7.6. Timing and Method of Compensation**

BlueSnap will calculate the compensation owed to Third Party Referrer and/or Royalty Recipient by Merchant, and thereafter pay such compensation to Third Party Referrer and/or Royalty Recipient conditioned on the Merchant having deposited sufficient funds with BlueSnap for such purpose (the "**Merchant Funds**"). Unless otherwise agreed to by BlueSnap in writing, Third Party Referrer and Royalty Recipient's first compensation shall be paid by the fifteenth day of the following month, except if the fifteenth day shall fall on a weekend, in which case distribution shall be on the next business day following Third Party Referrer's first non-refunded sale. Payment shall be made on a monthly basis via ACH payment unless otherwise specified.

#### **1.7.7. Minimum Monthly Compensation**

To the extent that the total amount of compensation owed to Third Party Referrer in any one month is less than one hundred (\$100) dollars, BlueSnap shall withhold the payment of compensation for that month until the total compensation reaches the one hundred (\$100) dollar minimum in a subsequent month.

#### **1.7.8. Third Party Referrer Transaction Fee to BlueSnap**

Third Party Referrer shall be charged a two (\$2.00) dollars (USD) Third Party Referrer fee by BlueSnap for each payment out made to Third Party Referrer by BlueSnap. This payout fee is in addition to any other applicable fees associated with the Third Party Referrer's chosen payment method.

#### **1.7.9. Effect of Third Party Referrer Termination**

Upon termination, all applicable rights, authorizations, licenses and sublicenses that were granted to Third Party Referrer by Merchant and/or BlueSnap will terminate, and Third Party Referrer will promptly cease use of any and all Links and Collateral Materials and any applicable references to the identities of Merchant, BlueSnap and Products. Merchant shall be responsible, at its sole expense, for making certain that Third Party Referrer ceases such use. Third Party Referrer will receive compensation regarding such terminated Merchant Products which accrued prior, but not after, the date of such termination.

Upon termination of services to Merchant or Third Party Referrer, BlueSnap shall be entitled to set Holdbacks and Reserves as it deems fit in accordance with this Agreement.

#### **1.7.10. Governing Rules**

BlueSnap may develop rules to govern the division of payments received and commissions, compensation, notifications, dispersal of Customer data information, refund and Chargebacks for such Third Party Referrer relationships. If the Merchant engages in such relationships it shall be bound by such rules, which shall be made available through the BlueSnap website.

1.7.11. When Merchant is setting Third Party Referrer Fee Rates for Third Party Referrers, the maximum rate shall be 75% of the set Product price. This limit shall also take into account the total allocated amount for Royalty Payments on the same contract. Third Party Referrer Fee Rates mean the commission fee that Merchant agrees to pay to Third Party Referrer or group of Third Party Referrers upon the completion of a BlueSnap sales transaction.

**1.7.12. Disputes**

In the event of disputes arising from or relating to this Agreement, the decision of BlueSnap's management officers as to resolution shall be final.

1.7.13 In accordance with Card Association requirements, Merchant shall ensure that Merchant's web site and that of any related Third Party Referrer together with any invoice issued by Merchant shall identify the ultimate merchant in respect of the relevant transaction.