

## BlueSnap 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 or other third party providing acquiring services, 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 own account(s) at recognized Acquirer(s) and used by BlueSnap to process payment for Products in respect of certain payment transactions conducted through the BlueSnap Services where BlueSnap shall process the transaction through BlueSnap’s Merchant ID on behalf of Merchant.
- 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 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 ID refers to, or to the use of, the Merchant’s own account(s) at recognized Acquirer(s) used by the Merchant in respect of payment transactions.
- 1.10 Services Provider is the provider of certain payment services and payment gateway services that facilitate the payment for Products sold by Merchant.

- 1.11 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.
- 1.12 Territory means the applicable region (as defined by the Card Associations) in which Merchant is processing transactions under this Agreement.

## 2 Status as Services Provider

### 2.1 Services.

In consideration of the Merchant fulfilling its obligations under this Agreement BlueSnap shall supply the Services set out herein.

Merchant agrees that BlueSnap in providing the Services hereunder through the Merchant ID does not act as a principal but acts as a facilitator on behalf of such Merchant to enable Merchant to enter into Card payments with its End-User Customers. The Merchant further agrees to allow BlueSnap to act as a facilitator on behalf of such Merchant for the purpose of processing transactions for authorization and payment.

Where BlueSnap provides the Services as a merchant of record, it is agreed that the MOR Terms set forth in Exhibit 3 shall be applicable to said transactions under the BlueSnap Merchant ID.

- 2.2 Relationship. BlueSnap will not enter into any contracts or commitments in the name of, or on behalf of, Merchant. As a Services Provider, BlueSnap shall not take possession or control of any Products but shall only render payment services. 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”) that shall 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, Canadian, Australian and other applicable Territory 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, US, EU or Canadian or other applicable Territory 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”) that are optional and/or subject to additional fees which shall be clearly published by BlueSnap. If Merchant opts to accept and use such Enhanced Services, this Agreement shall be deemed amended 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 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 solely 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 solely responsible to provide warranty, maintenance, technical or product support services for the Products. Merchant is solely 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.
- 4.2 Disclosure of Refund Policies. Merchant shall, during the transaction for which a Refund may be sought, make known to End-User Customer clearly in writing during the checkout process before the End-User submits a transaction Merchant’s 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, Canadian, and European Union and applicable Territory 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 Exhibits 1 to 6 of this 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 Settlement and Currency Conversion. Merchant authorizes BlueSnap to receive funds from Acquirers on Merchant's behalf for settlement to the Merchant and that BlueSnap acts as Merchant's agent with respect to settlement of funds. Should the currency of settlement require exchange conversion, Merchant authorizes such funds to be passed to a currency conversion service that may then forward the settlement 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 settlement.
- 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 evolution 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.
- 4.7.10 Merchant acknowledges that the relationship arising from this Agreement is between Merchant and BlueSnap and that in no event is any third-party beneficiary status created in any Merchant-affiliated party, or vendor of any marketplace operated by Merchant (“Marketplace Vendor”) notwithstanding any agreement between Merchant and BlueSnap or direction by Merchant to BlueSnap as to allocation of payment of settlement funds or any agreement by Merchant as to allocation or payment of fees with its affiliate(s) or Marketplace Vendor(s). Merchant will defend, indemnify and hold BlueSnap and its affiliates, directors, officers, employees, and agents harmless against any Claims (as defined in Section 9 hereof) against BlueSnap arising out of any relationship between Merchant and affiliate or Marketplace Vendor.
- 4.7.11 Merchant accepts and acknowledges that Acquirer(s) are expressly authorized and instructed by Merchant to make payment to a bank account owned by BlueSnap, and that by payment of any remittance by Acquirer to such bank account, Acquirer is fulfilling its obligations to transfer remittances totaling such sum to Merchant and that Acquirer shall have no further liability in respect of that sum to Merchant.
- 4.7.12 Merchant is solely responsible for obtaining the consent of End-User Customers with respect to transmission and storage of personal information (as defined by the jurisdiction of the End-User) and recurring billing transactions and it is Merchant’s duty to advise End-User Customers that BlueSnap passes data records containing personal information outside the European Union in accordance with BlueSnap’s privacy policy. Merchant shall obtain in writing the End-User’s/cardholder’s consent to storage and use of his/her Visa and/or Mastercard information for the purpose of future merchant-initiated or cardholder-initiated transactions as required under the Card Rules and the data protection/privacy regulations of the applicable jurisdiction.
- 4.7.13 Merchant shall not hold nor store any CVV or magnetic card strip information under any circumstances.
- 4.7.14 Merchant agrees that for determination of its compliance with its obligations under this Agreement and any Acquirer agreement that the Acquirer may have access to Merchant’s information and systems for purposes of audit.
- 4.7.15 Should Merchant seek to provide any wallet services as defined by the Card Association Rules, it shall first notify BlueSnap in writing, and shall not transmit any such transactions until it has been registered with relevant Card Association(s) and Acquirer(s), provided BlueSnap with written proof thereof, including compliance with any related PCI requirements. Furthermore, Merchant shall obtain and record the consent of all End-Customer Users for the use of any credit or debit card for staged wallet services, and ensure that all transactions are in accordance with Card Association Rules and all Acquirer requirements, including as required the transmission of the appropriate merchant verification value (MVV).

4.7.16 American Express. The provisions of Exhibit 2 shall apply with respect to all transactions involving American Express.

- 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. Furthermore, BlueSnap shall not be liable to Merchant for any claims, loss or damage caused by any high risk designation applied by such site-rating authorities to any BlueSnap-managed web domain as a result of the act, behavior or omission of any third-party Merchant.
- 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, email contact details, and 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 and equivalent EU, Canadian and international legislation. Merchant shall also comply with and be bound by 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 without written consent of Merchant upon 60 days notice as provided herein, or added/revised without prior notice. By continuing to use the BlueSnap Service or not notifying BlueSnap in writing of any objection within 60 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, in the event that Merchant does object to any aforesaid change, unless BlueSnap agrees in writing otherwise, this Agreement shall terminate upon the expiration of the aforesaid 60 day period but remain 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 Responsible Party. Merchant will hold itself out as the sole responsible party vis-a-vis End-User Customers in relation to the Merchant Products and/or their functionality, and Merchant will in no manner represent that BlueSnap is a guarantor or responsible party for those products, or otherwise involve BlueSnap in an End User Customer or other third party dispute relating to the transaction, delivery or functionality of a product.

- 4.15 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.
- 4.16 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.
- 4.17 Credit Card Transactions.
- 4.17.1 Except where allowed by Card Association Rule and/or law, Merchant accepts that it shall not set any surcharges of its own for accepting any credit card transactions other than allowed by Card Rules or law.
- 4.17.2 Merchant accepts that prior authorization must be obtained for recurring charge orders.
- 4.17.3 Credit Card transactions passed by Merchant shall represent a bona fide sale or rental of merchandise or services that have not previously been submitted.
- 4.17.4 Merchant shall not pass any transaction that it has notice or knowledge of being fraudulent or unauthorized, or intercept any transaction data.
- 4.17.5 Merchant 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.
- 4.17.6 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.
- 4.17.7 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.
- 4.18 EChecks. ECheck transactions may only be submitted and processed if supported by prior authorization from account holder. Such authorization must be securely stored.
- 4.19 Financial, Compliance and Security Audits. Merchant shall allow BlueSnap and/or any relevant Acquirer to conduct financial, compliance, and/or security audits upon 7 days written notice or 24 hours notice including but not limited to 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.

4.20 Authentication. Certain transactions may require the use of robust authentication and verification services including measures as may be required by the European Banking Authority or other applicable regulators. Merchant acknowledges and accepts that failure to accept such services may result in rejection of transactions 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, breach or termination of this Agreement, 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 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.

5.1.5 Merchant acknowledges and accepts an Acquirer may also in its sole discretion set or require a reserve to be held in respect of the Merchant’s account upon such terms as it sees fit and Merchant consents to any such reserve being imposed.

5.2 Right of Set Off, Debit and Invoice. BlueSnap may in its sole discretion, with or without invoice, setoff against Merchant funds or sums in BlueSnap’s possession and/or future Merchant funds or sums coming into the possession of BlueSnap under this Agreement, (i) fees, expenses and other amounts owed or due to BlueSnap under this Agreement, (ii) payments that are charged back or disputed by End-User Customers, (iii) third party fees



incurred in the course of providing the BlueSnap Services, and also (iv) 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. If Merchant has more than one account with BlueSnap, Merchant consents to BlueSnap setting off amounts or sums of one account against amounts or sums owed by another account.

If the amount of Merchant's funds held by BlueSnap is insufficient to meet Merchant's obligations or cover BlueSnap's financial exposure regarding the Merchant's account, to the extent permitted by law, BlueSnap may obtain collection of all sums due from Merchant to BlueSnap including sums required by way of refunds, Chargebacks, Holdbacks or Rolling Reserves by debiting such sums directly from any bank accounts used or registered by Merchant for payment from BlueSnap ("Bank Accounts"). Merchant consents to and authorizes BlueSnap to initiate a debit of its Bank Accounts in such circumstances, and shall provide the necessary signed mandates and authorizations upon demand to permit such deduction(s). Merchant's failure to discharge such amounts on demand shall be a material breach of this Agreement and Merchant will be liable for BlueSnap's costs of collection in addition to the sum owed including without limitation, attorneys' fees, expenses, costs of any arbitration process or court fees, and collection charges.

Merchant further agrees that BlueSnap may set off and/or net out fees to Acquirers or third parties used by BlueSnap to process Merchant's transactions.

- 5.3 BlueSnap shall not be liable if any End-User Customer continues to make use of the Product(s) following any refund, cancellation of Chargeback. BlueSnap shall provide information and assistance as reasonably requested by the Merchant to pursue the unauthorized use of such Product(s).
- 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 1.5% per annum 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, 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.
- 6.1.2 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. Merchant may not use any personally identifiable information included in End-User Customer information received by BlueSnap in performing Services hereunder (“**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.

Merchant shall be in compliance with all relevant PCI-DSS requirements and upon written request to provide BlueSnap with up-to-date copies of applicable PCI Self Assessment Questionnaires, Attestation of Compliance documentation, and results of PCI-related network and penetration tests.

## 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. Merchant agrees to the data protection provisions set forth in the exhibits to these BlueSnap Merchant Terms And Conditions. 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, and (iv) will not use any End-User Customer Confidential Information in breach of the European Union’s data privacy requirements relating to EU-based customers.

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 of its legal domicile and places of business 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, Canadian and European Union lists of persons, groups and entities subject to 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, (v) initiate any appropriate debit of Merchant's Bank Accounts. 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.
- 8.2 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 by entering into this Agreement it is not in breach or contravention of any other agreement, contractual, legal or regulatory obligation.
- 8.3.2 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.
- 8.3.3 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 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 but not limited to US, Canadian and EU 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, Canadian and EU laws, and regulations related to the security and storage of such Merchant-Controlled Personal Information.
- 8.3.4 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, Canadian taxes, European Union VAT and other international sales or VAT or equivalent 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.
- 8.3.5 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.
- 8.3.6 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 Canadian and 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.

8.3.7 Merchant warrants that it shall be fully PCI compliant if it stores any credit card data and agrees not to capture and/or 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, (ii) Product warranties, description, fitness, merchantability, and safety (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 including any breach of PCI-DSS requirements, and/or any Claim relating to breaches of privacy legislation; 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, 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 ASSOCIATION OR BANK. ACCORDINGLY, MERCHANT SHALL SEEK NO RECOURSE AGAINST ACQUIRER, CARD ASSOCIATION OR BANK, AND NEITHER ACQUIRER, CARD ASSOCIATION 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 ACQUIRER, CARD ASSOCIATION OR BANK HAVE ANY LIABILITY TO THE OTHER PARTIES 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 **60 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. If Merchant has contracted with BlueSnap Payment Services Limited Merchant may serve advance written notice of 30 days in respect of termination.
- 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 including as applicable the provisions of Exhibit 2, 4-6 and 9 or any other Acquirer or third party agreement appended as an exhibit hereto if applicable to Merchant, 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.

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.

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. Merchant shall be responsible for any VAT or similar tax payable in respect of BlueSnap fees charged to Merchant.

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. From time to time in accordance with appropriate tax laws, BlueSnap may elect to 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 in the name of BlueSnap or the Merchant as may be appropriate. 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, 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 6.1.2, of Merchant’s name and logo on BlueSnap’s website, list of customers, interviews and to press releases 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, malware intrusion, hacking 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 4.14, Exhibit 1 and Schedule 1 'Pricing and Fees' of the Master Agreement, any amendment of the terms of this Agreement by BlueSnap may be upon sixty (60) 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 sixty (60) 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 arbitrator shall apply the law of the Commonwealth of Massachusetts, USA with respect to BlueSnap Inc, and the laws of England and Wales with respect to BlueSnap Payment Services Limited or in the case of any other BlueSnap Party, the laws of the jurisdiction in which that BlueSnap Party is incorporated. 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 it so see fit to do so, or 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. In so far as section 14.9 shall not be applicable with respect to BlueSnap Inc., 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 law of the Commonwealth of Massachusetts without regard to its conflicts of laws rules. BlueSnap Inc., and Merchant hereby submit to the exclusive jurisdiction of state and federal courts located in Suffolk County, Commonwealth of Massachusetts, USA. With respect to BlueSnap Payment Services Limited, 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 England and Wales without regard to its conflict of laws rules. BlueSnap Payment Services Limited, and Merchant hereby submit to the exclusive jurisdiction of the courts located in England. With respect to BlueSnap Enterprise Canada Inc, 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 British Columbia without regard to its conflict of laws rules. BlueSnap Enterprise Canada Inc, and Merchant hereby submit to the exclusive jurisdiction of the courts located in

Vancouver, British Columbia, Canada. With respect to BlueSnap Australia Pty Limited 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 New South Wales, without regard to its conflict of laws rules. BlueSnap Australia Pty Limited and Merchant hereby submit to the exclusive jurisdiction of the courts located in Sydney, New South Wales, Australia. With respect to any other BlueSnap entity which may expressly be a party to the Agreement, 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 jurisdiction of that BlueSnap entity without regard to its conflict of laws rules. In so far as section 14.9 shall not be applicable, the parties hereby submit to the exclusive jurisdiction of the courts located in the jurisdiction of that BlueSnap entity.

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 being executed and in full force and effect if applicable:

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

## **EXHIBIT 2**

### **AMERICAN EXPRESS ("AMEX")**

Merchant agrees to comply with the American Express Merchant Operating Guide requirements, which are incorporated into this Agreement by reference as if they were fully set forth in the Agreement as applicable for the geographic region(s) where Merchant is located, and also the American Express Data Security Operating Policy.

The American Express Merchant Operating Guide may be viewed at:  
[www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide).

The American Express Data Security Operating Policy may be viewed at:  
[www.americanexpress.com/datasecurity](http://www.americanexpress.com/datasecurity).

Additionally, Merchant shall accept Cards in accordance with the terms of the BlueSnap Merchant Agreement and agrees to the following:

- (1) In the event that Merchant's Estimated Annual Charge Volume becomes \$1,000,000 USD or greater, Merchant will become a direct Card-accepting Merchant under the standard AMEX acceptance program and will be bound by AMEX Card acceptance agreement; however BlueSnap shall continue to be the processor under the BlueSnap Merchant Agreement unless Merchant is otherwise notified;
- (2) Merchant warrants that it does not hold third party beneficiary rights to any agreements between BlueSnap and AMEX and at no time will attempt to enforce any such agreements against AMEX; and
- (3) Merchant confers on AMEX third party beneficiary rights, but not obligations, to the Merchant's agreement with BlueSnap that will fully provide AMEX with the ability to enforce the terms of the Merchant Agreement against the Merchant and protect the AMEX brand.
- (4) AMEX may use the information supplied in the Merchant application to screen and/or monitor the Merchant in connection with Card marketing and administrative purposes.
- (5) Merchant specifically authorizes BlueSnap to submit Transactions to and receive settlement from AMEX on behalf of Merchant. Merchant further gives BlueSnap consent to disclose transaction data, merchant data, personal information and other data about Merchant to AMEX and its affiliates, agents, subcontractors, and employees; that AMEX can use such information to perform its responsibilities in connection with the program, to perform under the relevant agreements, operate, promote the AMEX network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communication purposes.
- (6) Merchant agrees to ensure data quality and that the transaction data and customer information is processed promptly, accurately and completely, and complies with the AMEX technical specifications.
- (7) Merchants may opt-out of marketing by AMEX by sending a written request to BlueSnap. Opting-out of marketing messages will not preclude Merchant from receiving important transactional or relationship communications from AMEX.
- (8) Merchant may opt out of accepting AMEX cards at any time without directly or indirectly affecting its right to accept other payment products.
- (9) Merchant shall not bill or collect for any purchase or payment on the AMEX card unless chargeback has been exercised, the Merchant has fully paid for such charge, and Merchant has the right to so bill or collect.
- (10) Merchant shall report all instances of a data incident immediately to BlueSnap after discovery.
- (11) Except as otherwise provided Merchant has no right to use any AMEX intellectual property, licensed marks including logos, without the express written consent of AMEX. Merchant shall upon termination by AMEX or of this Agreement remove AMEX licensed marks from Merchant's website and wherever else they are displayed by Merchant.

The following additional provisions shall apply to Merchant's use of AMEX Australia:

- (12) When promoting payment methods Merchant shall give AMEX equal representation and shall display permitted AMEX licensed marks, signage, decals and logs or other identification. Such licensed marks shall be removed on termination of the BlueSnap Merchant Agreement.
- (13) Merchant shall comply with all applicable laws, rules and regulations relating to the conduct of its business, and comply with all obligations in relation to Cardmember disputes, transaction processing, authorization, submission and protecting of Cardmember information;
- (14) Merchant must not discourage any AMEX Cardmembers from using AMEX Cards. If Merchant surcharges AMEX Cardmembers such surcharge must not exceed any surcharge applied to any other type of credit card. Merchant must not discourage any AMEX Cardmembers from using AMEX Cards.
- (15) Merchant's refund policies must be disclosed to AMEX Cardmembers at the time of purchase

and in compliance with applicable law. Refund policies for purchases on AMEX cards must be at least as favorable as for other payment methods.

(16) AMEX liability shall be limited as provided in the American Express Merchant Operating Guide and any other AMEX governing rules.

(17) Merchant shall be bound by any industry-specific requirements that are notified by AMEX.

(18) Merchant website shall not contain any libelous, defamatory, obscene, pornographic, racist or profane material or any other information or content that may cause harm to any individuals or to the AMEX brand.

### **EXHIBIT 3**

#### **BlueSnap Party As Merchant of Record (Additional Terms and Conditions)**

Subject to the terms and conditions of this Agreement, in the Territory during the Term by means of the BlueSnap Merchant ID, BlueSnap will process transactions for payment from End-User Customers for Products from BlueSnap as Merchant of Record.

Merchant is the party providing goods and services (“Products”) to be marketed and sold through BlueSnap. Merchant of Record is the party formally recorded as conducting the payment transaction with an End-User Customer

Where BlueSnap provides the Services through the BlueSnap Merchant ID, it is agreed that BlueSnap has license from the Merchant to perform such sales transactions through the BlueSnap Merchant ID. BlueSnap Merchant ID refers to BlueSnap’s account(s) at recognized Acquirer(s) and used by BlueSnap to process payment for Products.

Merchant gives BlueSnap a worldwide non-exclusive, royalty-free and non-transferable license to market and be the merchant for Merchant’s Products to End-User Customers and where appropriate to permit Merchant’s or BlueSnap’s delivery of digital titles and/or relevant license keys and/or product activation codes to End-User Customers through the Internet and/or other networks. In marketing Product transactions through BlueSnap, Merchant shall identify BlueSnap as a reseller or Merchant of the Products, and shall not remove or cause to be removed from the BlueSnap System any written statement identifying BlueSnap as the online merchant. BlueSnap shall be the Merchant with respect to such transactions to End-User Customers, and shall be responsible for delivering an electronic invoice/receipt to End-User Customers in the name of BlueSnap.

BlueSnap takes ownership of Products sold, and for which payments are processed, under this Agreement and takes primary responsibility, with assistance from the provider of the Products, for said Products. The End-User Customer is informed at time of sale of BlueSnap as Merchant of record.

Merchant warrants that it has all right, title and license in Products to permit BlueSnap the right of processing the transaction with BlueSnap as the merchant of record. In the event that Merchant breaches this warranty, BlueSnap may immediately suspend or terminate Services for Merchant.

Merchant shall comply with all applicable European Union, UK, and country where merchant is registered/located, laws and regulations as from time to time in force regarding data protection, consumer rights, ecommerce, provision of services, consumer rights, protection and contracts. Merchant is further referred to the best practices information published by BlueSnap for guidance purposes on its web site relating to such EU and UK provisions. Merchant agrees to the data protection provisions set forth in the exhibits to these BlueSnap Merchant Terms And Conditions.

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 provision of warranty, maintenance, technical or product support services and liability for Products in accordance with relevant

law. When required under applicable law as applies to the business relationship hereunder, BlueSnap shall charge, collect and pay taxes to the appropriate authorities; otherwise the Merchant shall have sole responsibility and liability to collect and remit taxes. To the extent that Merchant is required under applicable law to charge, collect and pay taxes, said taxes shall be paid by Merchant directly to the appropriate authorities.

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), 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.

## EXHIBIT 4

### FURTHER TERMS APPLICABLE TO US MERCHANTS

Acquirers are:

US:	Fifth Third Bank (Vantiv) 906 Main Street Cincinnati OH 800-972-3030	Santander Bank NA 75 State Street Boston, MA 02109 877-768-2265
	Wells Fargo Bank, NA Concord, CA 94524	Bank of America, N.A. 1231 Durrett Lane, Louisville, KY 40213 800-430-7161

### Applicable To Merchant Boarded With Vantiv As Acquirer

This MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS (“Agreement”) is made among VANTIV, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384 and its designated Acquirer Member Bank (collectively “Acquirer”) and BlueSnap Merchant (“Sub-merchant”) in connection with the agreement between Sub-merchant and Bluesnap, Inc. (“Provider”). Acquirer will provide Sub-merchant with certain payment processing services (“Services”) in accordance with the terms of this Agreement. In consideration of Sub-merchant’s receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. (“MasterCard”), VISA U.S.A. Inc. (“VISA”), Discover (“Discover”), and certain similar entities (collectively, “Associations”), Sub-merchant is required to comply with the Operating Regulations (defined below) as they pertain to applicable credit and debit card payments. In addition, if Sub-merchant meets certain requirements under the Operating Regulations or an Association or the Operating Regulations otherwise require, Sub-merchant may be required to enter into a direct relationship with an entity that is a member of the Associations. By executing this Agreement, Sub-merchant has fulfilled such requirement. However, Acquirer understands that Sub-merchant may have contracted with Provider to obtain certain processing services and that Provider may have agreed to be responsible to Sub-merchant for all or part of Sub-merchant’s obligations contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

1. **Certain Sub-merchant Responsibilities.** Sub-merchant agrees to comply, and to cause third parties acting as Sub-merchant’s agent (“Agents”) to comply, with the Association’s and other payment network’s by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations or payment networks (collectively "Operating Regulations"). Sub-merchant may review the VISA, MasterCard, and Discover websites for a copy of the Visa, MasterCard and Discover regulations. The websites are: <http://usa.visa.com/merchants/> and <http://www.mastercard.com/us/merchant/> and <http://www.discovernetwork.com/merchants/>. Sub-merchant also agrees to comply with all applicable state, federal, and local laws, rules, and regulations (“Laws”). Without limiting the foregoing, Sub-merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the Bank Secrecy Act, the US Treasury’s Office of Foreign Assets Control (OFAC) and the Federal Trade Commission. For purposes of this section, Agents include, but are not limited to, Sub-merchant’s software providers and/or equipment providers.

If appropriately indicated in Sub-merchant’s agreement with Provider, Sub-merchant may be a limited-acceptance merchant, which means that Sub-merchant has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. Acquirer has no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to limited acceptance.



Sub-merchant, and not Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale. Sub-merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Sub-merchant to cardholders, and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than Sub-merchant, or for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities.

Sub-merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: i) the minimum transaction amount does not differentiate between card issuers; ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand; and iii) the minimum transaction amount does not exceed ten dollars (or any higher amount established by the Federal Reserve). Sub-merchant may set a maximum transaction amount to accept a card that provides access to a credit account, under the following conditions: Sub-merchant is a i) department, agency or instrumentality of the U.S. government; ii) corporation owned or controlled by the U.S. government; or iii) Sub-merchant whose primary business is reflected by one of the following MCCs: 8220, 8244, 8249 –Schools, Trade or Vocational; and the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

2. **Sub-merchant Prohibitions.** Sub-merchant must not i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed, ii) add any tax to transactions, unless applicable law expressly requires that a Sub-merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-merchant, v) disburse funds in the form of cash unless Sub-merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Sub-merchant), or Sub-merchant is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sub-merchant, irrespective of cardholder approval, vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable, or ix) submit a transaction that represents collection of a dishonored check. Sub-merchant further agrees that, under no circumstance, will Sub-merchant store cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Sub-merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.
3. **Settlement.** Upon receipt of Sub-merchant's sales data for card transactions, Acquirer will process Sub-merchant's sales data to facilitate the funds transfer between the various Associations and Sub-merchant. After Acquirer receives credit for such sales data, subject to the terms set forth herein, Acquirer will fund Sub-merchant, either directly to the Sub-merchant-Owned Designated Account or through Provider to an account designated by Provider ("Provider Designated Account"), at Acquirer's discretion, for such card transactions. Sub-merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to Sub-merchant, and that any dispute regarding the receipt or amount of settlement shall be between Provider and Sub-merchant. Acquirer will debit the Provider Designated Account for funds owed to Acquirer as a result of the Services provided hereunder, provided that Acquirer may also debit Sub-merchant's designated demand deposit account ("Sub-merchant-Owned Designated Account") upon receipt of such account information from Sub-merchant or Provider, or if Acquirer deposits settlement funds into the Sub-merchant-Owned Designated Account. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-merchant or Provider.
4. **Term and Termination.** This Agreement shall be binding upon Sub-merchant upon Sub-merchant's execution. The term of this Agreement shall begin, and the terms of the Agreement shall be deemed

accepted and binding upon Acquirer, on the date Acquirer accepts this Agreement by issuing a merchant identification number, and shall be coterminous with Provider's agreement with Sub-merchant.

Notwithstanding the foregoing, Acquirer may immediately cease providing Services and/or terminate this Agreement without notice if (i) Sub-merchant or Provider fails to pay any amount to Acquirer when due, (ii) in Acquirer's opinion, provision of a service to Sub-merchant or Provider may be a violation of the Operating Regulations or any Laws, (iii) Acquirer believes that Sub-merchant has violated or is likely to violate the Operating Regulations or the Laws, (iv) Acquire determines Sub-merchant poses a financial or regulatory risk to Acquirer or an Association, (v) Acquirer's agreement with Provider terminates, (vi) any Association deregisters Provider, (vii) Acquirer ceases to be a member of the Associations or fails to have the required licenses, or (viii) Acquirer is required to do so by any of the Associations.

5. **Limits of Liability.** Sub-merchant agrees to provide Acquirer, via a communication with Provider, with written notice of any alleged breach by Acquirer of this Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by Sub-merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Sub-merchant's sole and exclusive remedy for any and all claims against Acquirer arising out of or in any way related to the transactions contemplated herein shall be termination of this Agreement. In the event that Sub-merchant has any claim arising in connection with the Services, rights, and/or obligations defined in this Agreement, Sub-merchant shall proceed against Provider and not against Acquirer, unless otherwise specifically set forth in the Operating Regulations. In no event shall Acquirer have any liability to Sub-merchant with respect to this Agreement or the Services. Sub-merchant acknowledges Acquirer is only providing this Agreement to assist in Provider's processing relationship with Sub-merchant, that Acquirer is not liable for any action or failure to act by Provider, and that Acquirer shall have no liability whatsoever in connection with any products or services provided to Sub-merchant by Provider. If Provider is unable to provide its services to Sub-merchant in connection with this Agreement and Acquirer elects to provide those services directly, Sub-merchant acknowledges and agrees that the provisions of this Agreement will no longer apply and the terms of Acquirer's then current Bank Card Merchant Agreement, which would be provided to Sub-merchant, will govern Acquirer's relationship with Sub-merchant. If Provider subsequently provides its services to Sub-merchant in connection with this Agreement, Acquirer will cease to provide such services after receipt of notice from Provider and this Agreement will govern Acquirer's relationship with Sub-merchant.

6. **Miscellaneous.** This Agreement is entered into, governed by, and construed pursuant to the laws of the State of Ohio without regard to conflicts of law provisions. This Agreement may not be assigned by Sub-merchant without the prior written consent of Acquirer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Agreement is for the benefit of, and may be enforced only by, Acquirer and Sub-merchant and is not for the benefit of, and may not be enforced by, any other party. Acquirer may amend this Agreement upon notice to Sub-merchant in accordance with Acquirer's standard operating procedure. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if such provision is not contained in the Agreement "Member Bank" as used in this Agreement shall mean a member of VISA, MasterCard and/or Discover, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, Member Bank shall be Fifth Third Bank, an Ohio Banking Corporation, located in Cincinnati, OH 45263. The Member Bank is a party to this Agreement. The Member Bank may be changed, and its rights and obligations assigned to another party by Acquirer at any time without notice to Sub-merchant.

## **Applicable To Merchant Boarded With Santander Bank NA As Acquirer**

### **SUB-MERCHANT PROCESSING AGREEMENT**

BlueSnap, Inc. (“Payment Facilitator”) and Santander Bank, N.A. (“Bank”) collectively “we”, us” or “our” will provide Merchant (“Sub-Merchant”, “you” or “your”) with certain Card processing services. Capitalized terms used in this Agreement are referred to in Appendix 1.

By entering into this Sub-Merchant Processing Agreement (the “Agreement”), you agree to comply with the (1) Card Organization Rules as they pertain to Card information you receive through the Payment Facilitator service and (2) Your Card Acceptance Guide.

#### ***Acceptance of Cards***

You agree to comply with Your Card Acceptance Guide and all Card Organization Rules, as such may be changed from time to time. You understand that we may be required to modify Your Card Acceptance Guide and the Agreement from time to time in order to comply with requirements imposed by the Card Organizations.

In offering payment options to your customers, you may elect any one of the following options: (1) Accept all types of Visa and MasterCard cards, including consumer credit and debit/check cards, and commercial credit and debit/check cards; (2) Accept only Visa and MasterCard credit cards and commercial cards (If you select this option, you must accept all consumer credit cards (but not consumer debit/check cards) and all commercial card products, including business debit/check cards); or (3) Accept only Visa and MasterCard consumer debit/check cards (If you select this option, you must accept all consumer debit/check card products (but not business debit/check cards) and refuse to accept any kind of credit cards). The acceptance options above apply only to domestic transactions.

If you choose to limit the types of Visa and MasterCard cards you accept, you must display appropriate signage to indicate acceptance of the limited acceptance category you have selected (that is, accept only debit/check card products or only credit and commercial products).

For recurring transactions, you must obtain a written request or similar authentication from your customer for the goods and/or services to be charged to the customer’s account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made.

#### ***Settlement***

Upon our receipt of the Transaction Data for Card transactions, we will process the Transaction Data to facilitate the funds transfer from the various Card Organizations for the Card sales. After we receive credit for such Transaction Data, subject to our other rights under this Agreement, we will provide provisional credit to your Settlement Account.

You must not submit transactions for payment until the goods are delivered shipped, or the services are performed. If the Cardholder disputes being charged for merchandise or services before receiving them, a Chargeback may result.

#### ***Chargebacks***

Chargebacks can be received for a number of reasons. The following are some of the most common reasons for Chargebacks: (1) a refund is not issued to a customer upon the return or non-delivery of goods or services; (2) an authorization/approval code was required and not obtained; (3) the transaction was allegedly fraudulent; (4) the customer disputes the Card sale or the signature on the sale documentation, or claims that the sale is subject to a set-off, defense or counterclaim; or (5) The customer refuses to make payment for a Card sale because in the customer's good faith opinion, a claim or complaint has not been resolved, or has been resolved but in an unsatisfactory manner.

## ***Fees***

You agree to pay Payment Facilitator the fees associated with the provision of the services contemplated hereunder as reserved in your agreement with Payment Facilitator.

## ***Reserve***

You acknowledge that in addition to any other rights afforded us hereunder, we may establish a reserve account to satisfy your obligations or potential obligations under this Agreement (the "Reserve Account"), which may be funded by: (i) demand and receive immediate payment for such amounts; (ii) debit the account identified in the Settlement Account; (iii) withhold your settlement payments until all amounts are paid, (iv) delay presentation of your refunds until you make a payment to us of a sufficient amount to cover the Reserve Account; and (v) pursue any remedies we may have at law or in equity.

The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, fines, returns and unshipped merchandise and/or unfulfilled services. We may (but are not required to) apply funds in the Reserve Account toward, and may set off any funds that would otherwise be payable to you against, the satisfaction of any amounts which are or become due from you pursuant to this Agreement. The Reserve Account will not bear interest, and you will have no right or interest in the funds in the Reserve Account; provided that upon satisfaction of all of your obligations under this Agreement, we will pay to you any funds then remaining in the Reserve Account. Any funds in the Reserve Account may be commingled with other funds, and need not be maintained in a separate account. Effective upon our establishment of a Reserve Account, you irrevocably grant to us a security interest in any and all funds, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents that we may reasonably request to perfect and confirm the security interest and right of setoff set forth in this Agreement. The parties' rights and obligations under this Section shall survive termination of this Agreement.

## ***Financial Information***

Upon request, you will provide us with financial statements. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.

## ***Data Security and Privacy***

You represent to us that you do not have access to Card information (such as the cardholder's account number, expiration date, and CVV2) and you will not request access to such Card information from us. In the event that you receive such Card information in connection with the processing services provided under this Agreement, you agree that you will not use it for any fraudulent purpose or in violation of any Card Organization Rules, including but not limited to Payment Card Industry Data Security Standards ("PCI DSS") or applicable law. If at any time you believe that Card information has been compromised, you must notify us promptly and assist in providing notification to the proper parties. You must ensure your compliance and that of any third party service provider utilized by you, with all security standards and guidelines that are applicable to you and published from time to time by Visa, MasterCard or any other Card Organization, including, without limitation, the Visa U.S.A. Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection ("SDP"), and (where applicable), the PCI Security Standards Council, Visa, and MasterCard PA-DSS ("Payment Application Data Security Standards") (collectively, the "Security Guidelines"). If any Card Organization requires an audit of you due to a data security compromise event or suspected event, you agree to cooperate with such audit. You may not use any Card information other than for the sole purpose of completing the transaction authorized by the customer for which the information was provided to you, or as specifically allowed by Card Organization Rules, Your Card Acceptance Guide or required by law.

### ***Term; Events of Default***

This Agreement shall be in effect upon signing by of each document by all parties and shall remain effective through the initial term of 1 year and shall thereafter automatically continue until terminated by either party upon the provision of thirty (30) days notice to the other party.

If any of the following events shall occur (each an “Event of Default”):

- (i) a material adverse change in your business, financial condition, business procedures, prospects, products or services;
- (ii) or any assignment or transfer of voting control of you or your parent;
- (iii) or a sale of all or a substantial portion of your assets; or
- (iv) irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by us, of any Card Organization, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or
- (v) any of your conditions, covenants, obligations or representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or
- (vi) you shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- (vii) a violation by you of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury or your breach, as determined by Servicers, of your requirement to comply with all applicable laws.

then, upon the occurrence of (1) an Event of Default specified in subsections (iv), (v), (vi), or (vii) we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days’ notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us are intended to survive termination of this Agreement.

If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement.

The Card Organizations often maintain lists of merchants who have had their merchant agreements or Card acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Card Organizations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by the Card Organizations. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

In the event we provide notice to you of an increase in the fees for Services, you may terminate this Agreement without further cause or penalty by providing us 30 days advance written notice of termination. You must terminate within 30 days after we provide notice of the fee increase. However, maintaining your account with us or your continued use of our Services after the effective date of any increase shall be deemed acceptance of the increased fees for Services, throughout the term of this Agreement.

We may terminate this Agreement at any time and for any or no reason upon the provision of thirty (30) days prior notice. We may also temporarily suspend or delay payments to you during our investigation of any issue and/or designate an amount of funds that we must maintain in order to protect us against the risk of, among other things, existing, potential, or anticipated Chargebacks arising under this Agreement or other amounts that may be owing to us under this Agreement.

#### ***Warranties; Exclusion of Consequential Damages; Limitation on Liability***

This Agreement and any addenda is an agreement for services and except as expressly provided in this Agreement, and any addenda, we and our affiliates disclaim all representations or warranties, express or implied, made to merchant or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise (regardless of any course of dealing, custom or usage of trade) of any services or any goods provided incidental to the Services provided under this Agreement.

Notwithstanding anything in this in this Agreement and any addenda to the contrary, in no event shall we or our affiliates be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.

Notwithstanding anything in this Agreement and any addenda to the contrary, we and our affiliates' cumulative liability, in the aggregate (inclusive of any and all claims made by Sub-Merchant against us and/or our affiliates, whether related or unrelated) for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Agreement any addenda) and regardless of the form of action or legal theory shall not exceed the lesser of (i) \$100,000; or (ii) the amount of fees received by us pursuant to any addenda attached and incorporated herein for services performed in the immediately preceding 12 months.

#### ***Confidentiality***

Each party acknowledges and agrees that the other may be providing to it and that it may become aware of the confidential and proprietary information of the other party, including but not limited to, the terms of this Agreement, financial information and other information related to each party's business operations. Each party agrees that it will maintain the confidentiality of such information and neither party shall disclose any such information to any other person or entity (other than to those of its employees, agents, contractors, representatives and affiliates to whom disclosure is reasonably necessary in furtherance of the performance of this Agreement). Notwithstanding the foregoing, the requirements of non-disclosure shall not apply to any information which: (a) at the time of disclosure is already in the possession of the receiving party; (b) is independently developed by the receiving party without reliance

on the disclosed confidential or proprietary information; (c) is or becomes publicly available through no wrongdoing of the receiving party or (d) becomes available to receiving party on a non-confidential basis from a person, other than the disclosing party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the receiving party. Furthermore, this section shall not prohibit the receiving party from making legally required disclosures pursuant to subpoena, court order or the order of any other authority having jurisdiction; provided that receiving party shall provide disclosing party with prompt notice, unless prohibited by law or court order, thereof so that disclosing party may seek an appropriate protective order or other remedy. If in the absence of a protective order or other remedy or waiver of the terms of this section, if receiving party determines in its sole discretion that it is required by law, regulation, legal process or regulatory authority to disclose any such confidential or proprietary information, receiving party may disclose such information upon written notice to disclosing party unless prohibited by law or court order.

### ***Visa and MasterCard Disclosure***

Member Bank Name: Santander Bank, N.A.

Bank mailing address: 75 State Street, Boston, MA 02109

Bank Phone Number: 877-768-2265

### **Important Member Bank Responsibilities**

- (a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a merchant.
- (b) The Bank must be a principal (signer) to the Sub-Merchant Agreement.
- (c) The Bank is responsible for educating Sub-Merchants on pertinent Visa and MasterCard Rules with which Sub-Merchants must comply; but this information may be provided to you by Payment Facilitator.
- (d) The Bank is responsible for and must provide settlement funds to the Payment Facilitator, for distribution to the Sub-Merchant.
- (e) The Bank is responsible for all funds held in reserve that are derived from settlement.

### **Important Sub-Merchant Responsibilities**

- (a) In the event Sub-Merchant obtains Card Information, ensure compliance with Cardholder data security and storage requirements.
- (b) Review and understand the terms of the Agreement.

### **Miscellaneous**

***Compliance with Laws.*** Each party agrees to comply with all laws, regulations and Card Organization Rules applicable to it and each are responsible for their own costs and compliance of such.

***Force Majeure.*** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused directly or indirectly by a force majeure event. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

***Notices.*** All notices and other communications required or permitted hereunder (other than those

involving normal operational matters relating to the Services) shall be in writing, if to Sub-Merchant, at your address appearing on the first page of this Agreement or by any electronic means, including but not limited to the e-mail address you have provided to us, if to Payment Facilitator at 800 South Street, Suite 640, Waltham, MA 02453 and if to Bank, to the address provided above. Notice shall be deemed to have been given, if sent by mail or courier, when received and if sent by facsimile machine, when the confirmation copy is actually received. Notice given in any other manner, including by electronic means, shall be effective when delivered.

**Indemnification.** The parties agree to indemnify each other from and against any losses, actions, causes of action, claims, demands, costs, liabilities, expenses, damages, sanctions fines, legal fees or penalties arising from: (i) a party's misrepresentation or breach of warranty, covenant, or any provision under this Agreement; or (ii) a party's employees'/agents' fraud, gross negligence, willful misconduct or failure to comply with this Agreement and the Card Organization Rules.

**Publicity.** No party shall make any press release or other public disclosure concerning the terms and conditions of this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).

**Entire Agreement; Waiver.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. Except as provided in this Agreement, this Agreement can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

**Severability.** The parties intend every provision of this Agreement and any addenda to be severable. If any part of this Agreement and any addenda are not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

## **Appendix 1 Definitions**

**"Affiliate"** is an entity that, directly or indirectly, (i) owns or controls a party to this agreement or (ii) is under common ownership or control with a party to this agreement.

**"Card"** is an account, or evidence of an account, authorized and established between a customer and a Card Organization, or representatives or members of a Card Organization that is accepted from customers. Cards include, but are not limited to, other Card brands and debit cards, electronic gift cards, authorized account or access numbers, paper certificates, credit accounts and the like.

**"Card Organization"** is any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide ("MasterCard"), Visa U.S.A., Inc. ("Visa"), DFS Services LLC ("Discover Network") and any applicable debit networks.

**"Card Organization Rules"** are the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization.

**"Chargeback"** is a Card transaction dispute (or disputed portion) that is returned to us by the Issuer. Sub-Merchant is responsible for payment to Payment Facilitator for all Chargebacks.

**"Your Card Acceptance Guide"** mean our operating rules and regulations, attached hereto and incorporated herein by reference, as may be changed by us from time to time.

**Reserve Account"** means an account established and funded at our request or on your behalf, pursuant to the Reserve section of the Agreement.



**“Retrieval Request”** is a request for information by a customer or Card Organization relating to a claim or complaint concerning a Transaction.

**“Settlement Account”** is an account or account(s) at a financial institution designated by Sub-Merchant as the account to be debited and credited by Payment Facilitator or Bank for Card transactions, fees, Chargebacks and other amounts due under the Agreement or in connection with the Agreement.

**“Transaction”** is a transaction conducted between a customer and Sub-Merchant utilizing a Card in which consideration is exchanged between the customer and Sub-Merchant.

**“Transaction Data”** is the written or electronic record of a Transaction.

## Applicable To Merchant Boarded With Wells Fargo Bank, NA

### SUB-MERCHANT PROCESSING AGREEMENT

Bluesnap Inc. (“Payment Facilitator”), with offices located at 800 South Street, Suite 640, Waltham, MA 02453, First Data Merchant Services LLC (“Provider”), and Wells Fargo Bank, N.A. (“Bank”) (Payment Facilitator, Provider and Bank collectively “we”, us” or “our”) will provide Merchant and (“Sub-Merchant”, “you” or “your”) with certain Card processing services. Capitalized terms used in this Agreement are referred to in [Appendix 1](#).

By entering into this Sub-Merchant Processing Agreement (the “Agreement”), you agree to comply with the (1) Card Organization Rules as they pertain to Card information you receive through the Payment Facilitator service and (2) Your Card Acceptance Guide.

#### **Acceptance of Cards**

You agree to comply with Your Card Acceptance Guide and all Card Organization Rules, as such may be changed from time to time. You understand that we may be required to modify Your Card Acceptance Guide and the Agreement from time to time in order to comply with requirements imposed by the Card Organizations.

In offering payment options to your customers, you may elect any one of the following options: (1) Accept all types of Visa and MasterCard cards, including consumer credit and debit/check cards, and commercial credit and debit/check cards; (2) Accept only Visa and MasterCard credit cards and commercial cards (If you select this option, you must accept all consumer credit cards (but not consumer debit/check cards) and all commercial card products, including business debit/check cards); or (3) Accept only Visa and MasterCard consumer debit/check cards (If you select this option, you must accept all consumer debit/check card products (but not business debit/check cards) and refuse to accept any kind of credit cards). The acceptance options above apply only to domestic transactions.

If you choose to limit the types of Visa and MasterCard cards you accept, you must display appropriate signage to indicate acceptance of the limited acceptance category you have selected (that is, accept only debit/check card products or only credit and commercial products).

For recurring transactions, you must obtain a written request or similar authentication from your customer for the goods and/or services to be charged to the customer’s account, specifying the frequency of the recurring charge and the duration of time during which such charges may be made.

#### **Settlement**

Upon our receipt of the Transaction Data for Card transactions, we will process the Transaction Data to facilitate the funds transfer from the various Card Organizations for the Card sales. After we receive credit for such Transaction Data, subject to our other rights under this Agreement, we will provide provisional credit to your Settlement Account.

You must not submit transactions for payment until the goods are delivered shipped, or the services are performed. If the Cardholder disputes being charged for merchandise or services before receiving them, a Chargeback may result.

#### **Chargebacks**

Chargebacks can be received for a number of reasons. The following are some of the most common reasons for Chargebacks: (1) a refund is not issued to a customer upon the return or non-delivery of goods or services; (2) an authorization/approval code was required and not obtained; (3) the transaction was allegedly fraudulent; (4) the customer disputes the Card sale or the signature on the sale documentation, or claims that the sale is subject to a set-off, defense or counterclaim; or (5) The customer refuses to make payment for a Card sale because in the customer's good faith opinion, a claim or complaint has not been resolved, or has been resolved but in an unsatisfactory manner.

#### **Fees**

Pursuant to [Appendix 2](#), you agree to pay Payment Facilitator the fees associated with the provision of the services contemplated hereunder.

### **Reserve**

You acknowledge that in addition to any other rights afforded us hereunder, we may establish a reserve account to satisfy your obligations or potential obligations under this Agreement (the "Reserve Account"), which may be funded by: (i) demand and receive immediate payment for such amounts; (ii) debit the account identified in the Settlement Account; (iii) withhold your settlement payments until all amounts are paid, (iv) delay presentation of your refunds until you make a payment to us of a sufficient amount to cover the Reserve Account; and (v) pursue any remedies we may have at law or in equity.

The Reserve Account will contain sufficient funds to cover any unbilled processing costs plus our estimated exposure based on reasonable criteria for Chargebacks, fines, returns and unshipped merchandise and/or unfulfilled services. We may (but are not required to) apply funds in the Reserve Account toward, and may set off any funds that would otherwise be payable to you against, the satisfaction of any amounts which are or become due from you pursuant to this Agreement. The Reserve Account will not bear interest, and you will have no right or interest in the funds in the Reserve Account; provided that upon satisfaction of all of your obligations under this Agreement, we will pay to you any funds then remaining in the Reserve Account. Any funds in the Reserve Account may be commingled with other funds, and need not be maintained in a separate account. Effective upon our establishment of a Reserve Account, you irrevocably grant to us a security interest in any and all funds, together with the proceeds thereof, that may at any time be in our possession and would otherwise be payable to you pursuant to the terms of this Agreement. You agree to execute and deliver to us such instruments and documents that we may reasonably request to perfect and confirm the security interest and right of setoff set forth in this Agreement. The parties' rights and obligations under this Section shall survive termination of this Agreement.

### **Financial Information**

Upon request, you will provide us with financial statements. Such financial statements shall be prepared in accordance with generally accepted accounting principles. You will also provide other information concerning your business and your compliance with the terms and provisions of this Agreement as we may reasonably request.

### **Data Security and Privacy**

You represent to us that you do not have access to Card information (such as the cardholder's account number, expiration date, and CVV2) and you will not request access to such Card information from us. In the event that you receive such Card information in connection with the processing services provided under this Agreement, you agree that you will not use it for any fraudulent purpose or in violation of any Card Organization Rules, including but not limited to Payment Card Industry Data Security Standards ("PCI DSS") or applicable law. If at any time you believe that Card information has been compromised, you must notify us promptly and assist in providing notification to the proper parties. You must ensure your compliance and that of any third party service provider utilized by you, with all security standards and guidelines that are applicable to you and published from time to time by Visa, MasterCard or any other Card Organization, including, without limitation, the Visa U.S.A. Cardholder Information Security Program ("CISP"), the MasterCard Site Data Protection ("SDP"), and (where applicable), the PCI Security Standards Council, Visa, and MasterCard PA-DSS ("Payment Application Data Security Standards") (collectively, the "Security Guidelines"). If any Card Organization requires an audit of you due to a data security compromise event or suspected event, you agree to cooperate with such audit. You may not use any Card information other than for the sole purpose of completing the transaction authorized by the customer for which the information was provided to you, or as specifically allowed by Card Organization Rules, Your Card Acceptance Guide or required by law.

### **Term; Events of Default**

This Agreement shall be in effect upon signing by of each document by all parties and shall remain effective through the initial term of three (3) years and shall thereafter automatically continue until terminated by either party upon the provision of thirty (30) days notice to the other party.

If any of the following events shall occur (each an "Event of Default"):

- (i) a material adverse change in your business, financial condition, business procedures, prospects, products or services; or
- (ii) any assignment or transfer of voting control of you or your parent; or
- (iii) a sale of all or a substantial portion of your assets; or
- (iv) irregular Card sales by you, excessive Chargebacks, noncompliance with any applicable data security standards, as determined by us, of any Card Organization, or any other entity, or an actual or suspected data security breach, or any other circumstances which, in our sole discretion, may increase our exposure for your Chargebacks or otherwise present a financial or security risk to us; or
- (v) any of your conditions, covenants, obligations or representations or warranties in this Agreement are breached in any material respect or are incorrect in any material respect when made or deemed to be made; or
- (vi) you shall file a petition or have a petition filed by another party under the Bankruptcy Code or any other laws relating to bankruptcy, insolvency or similar arrangement for adjustment of debts; consent to or fail to contest in a timely and appropriate manner any petition filed against you in an involuntary case under such laws; apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of a substantial part of its property; or make a general assignment for the benefit of creditors; or take any corporate action for the purpose of authorizing any of the foregoing; or
- (vii) a violation by you of any applicable law or Card Organization Rule or our reasonable belief that termination of this Agreement or suspension of services is necessary to comply with any law including without limitation the rules and regulations promulgated by the Office of Foreign Assets Control of the US Department of the Treasury or your breach, as determined by Servicers, of your requirement to comply with all applicable laws.

then, upon the occurrence of (1) an Event of Default specified in subsections (iv), (vi), (vii), or (viii) we may consider this Agreement to be terminated immediately, without notice, and all amounts payable hereunder shall be immediately due and payable in full without demand or other notice of any kind, all of which are expressly waived by you, and (2) any other Event of Default, this Agreement may be terminated by us giving not less than 10 days' notice to you, and upon such notice all amounts payable hereunder shall be due and payable on demand.

Neither the expiration nor termination of this Agreement shall terminate the obligations and rights of the parties pursuant to provisions of this Agreement which by their terms are intended to survive or be perpetual or irrevocable. Such provisions shall survive the expiration or termination of this Agreement. All obligations by you to pay or reimburse us for any obligations associated with transactions you have submitted to us are intended to survive termination of this Agreement.

If any Event of Default shall have occurred and regardless of whether such Event of Default has been cured, we may, in our sole discretion, exercise all of our rights and remedies under applicable law, and this Agreement.

The Card Organizations often maintain lists of merchants who have had their merchant agreements or Card acceptance rights terminated for cause. If this Agreement is terminated for cause, you acknowledge that we may be required to report your business name and the names and other information regarding its principals to the Card Organizations for inclusion on such list(s). You expressly agree and consent to such reporting if you are terminated as a result of the occurrence of an Event of Default or for any reason specified as cause by the Card Organizations. Furthermore, you agree to waive and hold us harmless from and against any and all claims which you may have as a result of such reporting.

In the event we provide notice to you of an increase in the fees for Services, you may terminate this Agreement without further cause or penalty by providing us 30 days advance written notice of termination. You must terminate within 30 days after we provide notice of the fee increase. However, maintaining your account with us or your continued use of our Services after the effective date of any increase shall be deemed acceptance of the increased fees for Services, throughout the term of this Agreement.

We may terminate this Agreement at any time and for any or no reason upon the provision of thirty (30) days prior notice. We may also temporarily suspend or delay payments to you during our investigation of any issue and/or designate an amount of funds that we must maintain in order to protect us against the risk of, among other things, existing, potential, or anticipated Chargebacks arising under this Agreement or other amounts that may be owing to us under this Agreement.

#### **Warranties; Exclusion of Consequential Damages; Limitation on Liability**

This Agreement and any addenda is an agreement for services and except as expressly provided in this Agreement, and any addenda, we and our affiliates disclaim all representations or warranties, express or implied, made to merchant or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise (regardless of any course of dealing, custom or usage of trade) of any services or any goods provided incidental to the Services provided under this Agreement.

Notwithstanding anything in this Agreement and any addenda to the contrary, in no event shall we or our affiliates be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.

Notwithstanding anything in this Agreement and any addenda to the contrary, we and our affiliates' cumulative liability, in the aggregate (inclusive of any and all claims made by Sub-Merchant against us and/or our affiliates, whether related or unrelated) for all losses, claims, suits, controversies, breaches, or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Agreement any addenda) and regardless of the form of action or legal theory shall not exceed the lesser of (i) \$100,000; or (ii) the amount of fees received by us pursuant to any addenda attached and incorporated herein for services performed in the immediately preceding 12 months.

#### **Confidentiality**

Each party acknowledges and agrees that the other may be providing to it and that it may become aware of the confidential and proprietary information of the other party, including but not limited to, the terms of this Agreement, financial information and other information related to each party's business operations. Each party agrees that it will maintain the confidentiality of such information and neither party shall disclose any such information to any other person or entity (other than to those of its employees, agents, contractors, representatives and Affiliates to whom disclosure is reasonably necessary in furtherance of the performance of this Agreement). Notwithstanding the foregoing, the requirements of non-disclosure shall not apply to any information which: (a) at the time of disclosure is already in the possession of the receiving party; (b) is independently developed by the receiving party without reliance on the disclosed confidential or proprietary information; (c) is or becomes publicly available through no wrongdoing of the receiving party or (d) becomes available to receiving party on a non-confidential basis from a person, other than the disclosing party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the receiving party. Furthermore, this section shall not prohibit the receiving party from making legally required disclosures pursuant to subpoena, court order or the order of any other authority having jurisdiction; provided that receiving party shall provide disclosing party with prompt notice, unless prohibited by law or court order, thereof so that disclosing party may seek an appropriate protective order or other remedy. If in the absence of a protective order or other remedy or waiver of the terms of this section, if receiving party determines in its sole discretion that it is required by law, regulation, legal process or regulatory authority to disclose any such confidential or proprietary information, receiving party may disclose such information upon written notice to disclosing party unless prohibited by law or court order.

### Visa and MasterCard Disclosure

Member Bank Name: Wells Fargo Bank, N.A.  
Bank mailing address: P.O. Box 6079, Concord, CA 94524  
Bank Phone Number: \_\_\_\_\_

#### Important Member Bank Responsibilities

- (a) The Bank is the only entity approved to extend acceptance of Visa and MasterCard products directly to a merchant.
- (b) The Bank must be a principal (signer) to the Sub-Merchant Agreement.
- (c) The Bank is responsible for educating Sub-Merchants on pertinent Visa and MasterCard Rules with which Sub-Merchants must comply; but this information may be provided to you by Payment Facilitator.
- (d) The Bank is responsible for and must provide settlement funds to the Payment Facilitator, for distribution to the Sub-Merchant.
- (e) The Bank is responsible for all funds held in reserve that are derived from settlement.

#### Important Sub-Merchant Responsibilities

- (a) In the event Sub-Merchant obtains Card Information, ensure compliance with Cardholder data security and storage requirements.
- (b) Maintain fraud and chargebacks below Card Organization thresholds.
- (c) Review and understand the terms of the Agreement.
- (d) Comply with Card Organization Rules.
- (e) Retain a signed copy of this Disclosures Page.

### Miscellaneous

**Compliance with Laws.** Each party agrees to comply with all laws, regulations and Card Organization Rules applicable to it and each are responsible for their own costs and compliance of such.

**Force Majeure.** No party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused directly or indirectly by a force majeure event. In any such event, the non-performing party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable.

**Notices.** All notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) shall be in writing, if to Sub-Merchant, at your address appearing on the first page of this Agreement or by any electronic means, including but not limited to the e-mail address you have provided to us, if to Payment Facilitator at 800 South Street, Suite 640, Waltham, MA 02453 and if to Bank, to the address provided above. Notice shall be deemed to have been given, if sent by mail or courier, when received and if sent by facsimile machine, when the confirmation copy is actually received. Notice given in any other manner, including by electronic means, shall be effective when delivered.

**Indemnification.** The parties agree to indemnify each other from and against any losses, actions, causes of action, claims, demands, costs, liabilities, expenses, damages, sanctions fines, legal fees or penalties arising from: (i) a party's misrepresentation or breach of warranty, covenant, or any provision under this Agreement; or (ii) a party's employees/agents' fraud, gross negligence, willful misconduct or failure to comply with this Agreement and the Card Organization Rules.

**Publicity.** No party shall make any press release or other public disclosure concerning the terms and conditions of this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld).

**Entire Agreement; Waiver.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, and supersedes any previous agreements and understandings. Except as provided in this Agreement, this Agreement can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of the same or another term or condition.

**Severability.** The parties intend every provision of this Agreement and any addenda to be severable. If any part of this Agreement and any addenda are not enforceable, the remaining provisions shall remain valid and enforceable. In such case, the parties will in good faith modify or substitute a provision consistent with their original intent. If any remedy fails of its essential purpose, then all other provisions, including the limitations on liability and exclusion of damages, will remain fully effective.

### **Appendix 1**

#### Definitions

"**Affiliate**" is an entity that, directly or indirectly, (i) owns or controls a party to this agreement or (ii) is under common ownership or control with a party to this agreement.

"**Card**" is an account, or evidence of an account, authorized and established between a customer and a Card Organization, or representatives or

members of a Card Organization that is accepted from customers. Cards include, but are not limited to, other Card brands and debit cards, electronic gift cards, authorized account or access numbers, paper certificates, credit accounts and the like.

**“Card Organization”** is any entity formed to administer and promote Cards, including without limitation MasterCard Worldwide (“MasterCard”), Visa U.S.A., Inc. (“Visa”), DFS Services LLC (“Discover Network”) and any applicable debit networks.

**“Card Organization Rules”** are the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization.

**“Chargeback”** is a Card transaction dispute (or disputed portion) that is returned to us by the Issuer. Sub-Merchant is responsible for payment to Payment Facilitator for all Chargebacks.

**“Your Card Acceptance Guide”** mean our operating rules and regulations, and incorporated herein by reference, as may be changed by us from time to time.

**“Reserve Account”** means an account established and funded at our request or on your behalf, pursuant to the Reserve section of the Agreement.

**“Retrieval Request”** is a request for information by a customer or Card Organization relating to a claim or complaint concerning a Transaction.

**“Settlement Account”** is an account or account(s) at a financial institution designated by Sub-Merchant as the account to be debited and credited by Payment Facilitator or Bank for Card transactions, fees, Chargebacks and other amounts due under the Agreement or in connection with the Agreement.

**“Transaction”** is a transaction conducted between a customer and Sub-Merchant utilizing a Card in which consideration is exchanged between the customer and Sub-Merchant.

**“Transaction Data”** is the written or electronic record of a Transaction.

## Appendix 2

### Fees

See Fees with Payment Facilitator

## **Applicable to Merchant Boarded With Bank of America Merchant Services as Acquirer (US only)**

This Sub-Merchant Processing Agreement (this “Agreement”) is entered into by and among BlueSnap, Inc. (“BlueSnap”), Banc of America Merchant Services, LLC (“BAMS”), Bank of America, N.A. (“Bank”), and the Merchant (“Sub-Merchant”) that has entered into the BlueSnap Agreement (defined below). BAMS and Bank collectively are herein referred to as “Servicers”.

### 1. **Definitions.**

**“Applicable Law”** means all federal, state and local statutes, ordinances, laws, regulations and executive, administrative and judicial orders applicable to this Agreement, the transactions or other matters contemplated under this Agreement (including, the rules and regulations promulgated by the Office of Foreign Assets Control of the U.S. Department of the Treasury), and all amendments thereto.

**“Card”** means a card, code, device, or other means allowing access to a credit, debit, prepaid, stored value, or similar account.

**“Cardholder”** means the individual who was issued a Card.

**“Card Organization”** means any entity formed to administer and promote Cards, including Visa U.S.A., Inc., MasterCard International Incorporated and DFS Services LLC, and any applicable debit networks.

**“Card Organization Rules”** means the rules, regulations, releases, interpretations and other requirements (whether contractual or otherwise) imposed or adopted by any Card Organization and related authorities, including, those of the PCI Security Standards Council, LLC and the National Automated Clearing House Association.

**“Chargeback”** means a Card transaction (or disputed portion thereof) that is returned to Servicers

by the Card issuer, the liability of which is the Sub-Merchant's responsibility.

**"Settlement Account"** means an account titled in the name of Sub-Merchant at a financial institution into which BlueSnap, or in certain instances pursuant to Section 4.3 herein, Servicers, will settle the Transaction funds.

## 2. **Services and Roles.**

2.1 Acquiring Services. Sub-Merchant and BlueSnap have entered into an agreement (the "BlueSnap Agreement") that allows BlueSnap, as a payment facilitator, to provide to Sub-Merchant authorization, processing, and settlement services relating to payment transactions made to Sub-Merchant by end-user customers ("Acquiring Services"). BlueSnap has entered into a separate agreement with Servicers ("Servicers Agreement") under which Servicers will provide similar acquiring services ("Servicer Services") to BlueSnap for BlueSnap to resell to BlueSnap's sub-merchants, including Sub-Merchant.

2.2 Applicability of Agreement. This Agreement applies to Sub-Merchant only to the extent that Servicer Services are performed by Servicers with respect to payment transactions initiated by Sub-Merchant under the BlueSnap Agreement ("Transactions"); this Agreement does not apply to any Transactions processed by other acquirers. This Agreement is intended to supplement, not replace, the BlueSnap Agreement. However, to the extent that there is a conflict between the terms and conditions in this Agreement and those in the BlueSnap Agreement that involves either or both Servicers, this Agreement will govern.

2.3 Bank. Bank is the member of the Card Organizations that sponsors BAMS' acquiring of card transactions accepted by BlueSnap and Sub-Merchant. Bank provides to BAMS and/or BlueSnap sponsorship and settlement of certain Transactions submitted in accordance with the terms and conditions of the Servicers Agreement and the Card Organization Rules. All other Servicer Services provided under the Servicers Agreement are provided by BAMS. Notwithstanding anything to the contrary contained herein, Bank will not have any obligation or liability of any nature in connection with services of any kind provided under or pursuant to the Servicers Agreement or otherwise other than those services referenced as being provided by Bank in this paragraph.

3. **Compliance.** At all times during the term of this Agreement, Sub-Merchant will comply with (i) the Card Organization Rules, including PCI DSS if applicable (as defined in Section 9.1), applicable to the Card types accepted by Sub-Merchant; and (ii) all Applicable Laws. Sub-Merchant will review the Card Organization Rules from time to time for changes, and is responsible for staying up to date with all applicable changes to the Card Organization Rules. Card Organization Rules are available on web sites maintained by the Card Organization, such as [http://www.usa.visa.com/merchants/operations/op\\_regulations.html](http://www.usa.visa.com/merchants/operations/op_regulations.html), and <http://www.mastercardmerchant.com>.

## 4. **Settlement; Chargebacks.**

4.1 Settlement. Upon Servicers' receipt of the Transaction data for Transactions, Servicers process the Transaction data to facilitate the funds transfer from the various Card Organizations for Card sales. After Servicers receive settlement funds from the Card Organizations for such Transactions, subject to other rights under this Sub-Merchant Agreement (e.g., set off rights), Servicers will, in their sole discretion, credit settlement funds either to BlueSnap, or directly to the Settlement Account on behalf of BlueSnap.

4.2 Settlement to BlueSnap. If Servicers settle to BlueSnap, BlueSnap will be responsible for sending settlement funds to Sub-Merchant in accordance with the BlueSnap Agreement. Servicers disclaim all responsibility and liability relating to settlement to Sub-Merchant as more fully described in Section 13 below.

4.3 Settlement to Sub-Merchant. Sub-Merchant and BlueSnap each acknowledge and agree that under certain circumstances, in their sole discretion Servicers shall have the right but not the

obligation to send settlement funds on behalf of and for BlueSnap directly to the Settlement Account (e.g., at Sub-Merchant's request, or as a result or in anticipation of increased settlement risk to Servicers associated with settlement to BlueSnap). If Servicers elect to exercise such right:

- (1) Servicers will notify Sub-Merchant of such election;
- (2) Sub-Merchant will designate, in writing, and maintain at a financial institution acceptable to Servicers, a Settlement Account for the purposes of settling transactions submitted to Servicers by BlueSnap. Sub-Merchant shall provide Servicers with all information requested by Servicers to effectuate such settlement (e.g., Settlement Account number and bank routing number);
- (3) Servicers will settle with Sub-Merchant for each transaction submitted to SERVICERS by BlueSnap relating to Sub-Merchant after Servicers receive payment for that transaction from the related Card Organization, subject to the terms of this Agreement.
- (4) Servicers shall have all rights to hold back, set off, withhold, or deduct from the settlement funds amounts that Sub-Merchant may owe to Services under this Agreement (e.g., impending Data Compromise Losses);
- (5) Servicers shall have all rights to hold back, set off, withhold, or deduct from the settlement funds any amounts that Sub-Merchant may owe to BlueSnap under the BlueSnap Agreement, and to remit such amounts to BlueSnap unless and to the extent that BlueSnap and Servicers agree otherwise;
- (6) Servicers shall have all rights to hold back, set off, withhold, or deduct from the settlement funds (and Sub-Merchant authorizes Servicers to debit from the Settlement Account) all Chargebacks, credits, and refunds relating to Transactions, amounts used to fund a Reserve hereunder, and fees, fines, penalties, or assessments imposed or on Servicers by Card Organizations or another third party arising out of acts or omissions by Sub-Merchant;
- (7) Servicers disclaim all responsibility and liability relating to settlement to Sub-Merchant as more fully described in Section 13 below.

4.4 **Chargebacks.** Sub-Merchant shall not submit Transactions for payment until the goods are delivered shipped or the services are performed, unless otherwise allowed by Card Organization Rules or Applicable Law. If the Cardholder disputes charges for merchandise or services before receiving them, a Chargeback may result. Chargebacks can occur for a number of reasons. The following are some of the most common reasons for chargebacks: (1) a refund is not issued to a Cardholder upon the return or non-delivery of goods or services; (2) an authorization/approval code was required and not obtained; (3) the Transaction was allegedly fraudulent; (4) the Cardholder disputes the Card sale or the signature on the sale documentation, or claims that the sale is subject to a set-off, defense or counterclaim; or (5) The Cardholder refuses to make payment for a Card sale because in the Cardholder's good faith opinion, a claim or complaint has not been resolved, or has been resolved but in an unsatisfactory manner.

5. **Reporting; Customer Support.** BlueSnap (not Servicers) will be responsible for providing to Sub-Merchant all Transaction reporting and customer support in connection with the Acquiring Services, including all disputes arising under this Agreement. Sub-Merchant shall raise any and all disputes under this Agreement with BlueSnap and not Servicers.

6. **Fees.** All fees for Acquiring Services rendered to Sub-Merchant under the BlueSnap Agreement shall be paid by Sub-Merchant to BlueSnap in accordance with the BlueSnap Agreement, provided that if Servicers settle directly to Sub-Merchant Servicers may deduct such amounts from settlement and remit to BlueSnap in accordance with Section 4.3 above.

7. **Term; Termination.**

7.1 Term. This Agreement shall be effective as of the later of (i) the effective date of the BlueSnap Agreement, or (ii) the date on which Sub-Merchant is boarded on Servicers' processing platform and given a merchant identification number. This Agreement shall remain effective until terminated as set forth herein.

7.2 Termination. This Agreement shall terminate upon the termination or expiration of the BlueSnap Agreement. In addition, either Servicer may terminate this Agreement upon notice to Sub-Merchant and BlueSnap for any other reason, with or without cause. Notwithstanding the foregoing, all provisions of this Agreement shall survive such termination only so long as, and to the extent that, Servicers continue to provide Acquiring Services to Sub-Merchant (1) relating to transactions submitted to Servicers prior to such termination or expiration (including but not limited to any trailing chargeback activity); and/or (2) pending the execution of a separate merchant agreement between Servicers and Sub-Merchant.

7.3 Card Organization Reporting. If this Agreement is terminated for cause, Sub-Merchant acknowledges that Servicers may be required under the Card Organization Rules to report Sub-Merchant's business name and the names and other identification of its principals to the Card Organizations. Sub-Merchant expressly agrees and consents to such reporting in the event Sub-Merchant is terminated for cause or for any reason specified by the Card Organization(s) as cause. Furthermore, Sub-Merchant agrees to waive and hold Servicers harmless from and against any and all claims which it may have as a result of such reporting.

## 8. **Reserve**

8.1 In addition to BlueSnap's holdback and rolling reserve rights in the BlueSnap Agreement, if Servicers have elected to settle directly to Sub-Merchant in accordance with Section 4.3 above, Servicers may at any time, including upon termination of this Agreement, require Sub-Merchant to fund a cash reserve ("**Reserve**") in an amount that reflects Servicers' assessment of their reasonably anticipated risk relating to Sub-Merchant, as they may determine (and may increase or decrease) in their discretion from time-to-time. For the avoidance of doubt, such risk may relate to amounts for which Sub-Merchant may be directly liable to Servicers under this Agreement (e.g., anticipated Data Compromise Losses, Card Organization fines, etc.), or amounts for which BlueSnap may be liable to Servicers that relate to Sub-Merchant. Servicers may fund the Reserve by holding back Transaction proceeds, debiting the Settlement Account, or making a demand of payment from Sub-Merchant. The Reserve is not a segregated fund that the Sub-Merchant may claim to own. Servicers will pay to the Sub-Merchant any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to the Sub-Merchant's Transactions have expired (as provided for under the Card Organization Rules).

8.2 The obligations due to the Sub-Merchant from the Reserve will not accrue interest unless required by Applicable Laws.

8.3 BlueSnap will notify the Sub-Merchant if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

8.4 Servicers may set off from the Reserve any obligations that the Sub-Merchant owes to Servicers under this Agreement, or any obligations that BlueSnap owes to Servicers that are related to Sub-Merchant. However, Servicers will not set off from the Reserve obligations that Sub-Merchant owes to BlueSnap under the BlueSnap Agreement.

8.5 Although Sub-Merchant acknowledges that the Reserve is a general obligation of Servicers, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of Sub-Merchant that is held by the Bank or BAMS, Sub-Merchant grants and acknowledges that the Bank and First Data have a security interest in the Reserve and, at Servicers' request, will provide documentation to reflect this security interest.

## 9. **Data Security.**



9.1 No Card Information. Sub-Merchant represents that it does not have access to Card information (such as the cardholder's account number, expiration date, and CVV2) and will not request access to such Card information from Servicers. In the event Sub-Merchant receives such Card information in connection with the Acquiring Services provided hereunder, Sub-Merchant shall promptly notify Servicers, and agrees not to use it for any fraudulent purpose or in violation of any Card Organization Rules, including but not limited to Payment Card Industry Data Security Standards (PCI DSS) or Applicable Law.

9.2 Third Party Service Providers. Sub-Merchant represents that it does not and will not during the term of this Agreement without Servicers' prior written consent, use any third party service provider other than BlueSnap in connection with the handling, storage, processing, or transmission of any Transaction data or Cardholder data relating to Transactions processed by Servicers under this Agreement.

9.3 Data Compromise Event. If, notwithstanding the above representations, at any time Sub-Merchant has reason to believe that Card information or Transaction information in its possession or control, or in the possession or control of its agent, representative, or third party service provider, has been compromised, lost, disclosed, or stolen (a "Data Compromise Event"), Sub-Merchant will (i) notify Servicers promptly and assist in providing notification to the proper parties, (ii) not alter or destroy any related records, (iii) maintain complete and accurate documentation regarding any modifications made to the records, and (iv) share with Servicers information related to Sub-Merchant's or any Card Organization's investigation related to any actual or suspected Compromised Data Event (including forensic reports and systems audits), and Servicers may share that information with Card Organizations. Further, Sub-Merchant will indemnify Servicers for any Losses arising from a Data Compromise Event in accordance with Section 14 below.

9.4 Cooperation. If any Card Organization requires an audit of Sub-Merchant due to an actual or suspected Data Compromise Event, Sub-Merchant will cooperate with such audit. Sub-Merchant may not use any Card information other than for the sole purpose of completing the Transaction authorized by the Cardholder for which the information was provided, or as specifically allowed by Card Organization Rules or required by Applicable Law.

10. **Provision of Information; Audit.** Sub-Merchant will promptly provide to Servicers any financial or other information reasonably requested by Servicers and/or Card Organizations to (i) perform credit, risk, security, qualification, and other reviews or monitoring relating to the Servicer Services, Transactions and Transaction activity, settlement directly to Sub-Merchant, or the financial condition of Sub-Merchant, including but not limited to anti-money laundering, know-your-customer, and sanctions screens; (ii) establish a merchant ID for Sub-Merchant; (iii) ensure compliance with this Agreement, the Card Organization Rules, and Applicable Law; (iv) remediate any violation of Card Association Rules or Applicable Law or breach of this Agreement. Sub-Merchant authorizes Servicers to obtain information from third parties when performing credit, risk, security, qualification, and other reviews. Servicers or their designees may perform a reasonable audit of Sub-Merchant's records related to its performance under this Agreement with seven (7) days' advance written notice to Sub-Merchant (or 24 hours' notice in the case of suspected fraud, unlawful or prohibited Transactions, security concerns or security breach), and at Servicers' expense.

11. **Notice of Material Change.** Sub-Merchant will provide Servicers with reasonable advance notice of any material change in the nature of Sub-Merchant's business (including any change in control or merger, any liquidation, any transfer or sale of all or substantially all of its assets, or any change to Sub-Merchant's operations that would materially affect the products or services sold, the procedures for payments acceptance, or the fulfillment of obligations to a Cardholder).

12. **Disclaimer of Warranties.** **EXCEPT AS EXPRESSLY PROVIDED HEREIN, SERVICERS DISCLAIM ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO BLUESNAP, SUB-MERCHANT OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, NONINFRINGEMENT,**

**FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM OR USAGE OF TRADE) OF ANY SERVICES OR ANY GOODS PROVIDED INCIDENTAL TO THE SERVICES PROVIDED UNDER THIS AGREEMENT.**

13. **Limitation of Liability.** Sub-Merchant acknowledges that Servicers are only entering into this Agreement to assist BlueSnap in BlueSnap's processing relationship with Sub-Merchant. Therefore, to the extent allowed by Applicable Law: (i) if Sub-Merchant has any claim arising in connection with any of the above, Sub-Merchant's sole and exclusive remedy shall be to proceed against BlueSnap and not against either Servicer; (ii) in no event shall either Servicer have any liability to Sub-Merchant with respect to this Agreement or the Acquiring Services, including but not limited to any claim relating to an action or failure to act by BlueSnap or Servicers' or BlueSnap's settlement (or failure to settle) to the Settlement Account. To the extent the Card Organization Rules prohibit Servicers from disclaiming liability as provided in this Section, Servicers' liability shall be limited to that explicitly required by the Card Organization Rules and only applicable where and to the extent that such Card Organizations have the authority to enforce such rules.

14. **Indemnification.** Sub-Merchant will indemnify and hold harmless Servicers (including their respective affiliates, directors, officers, managers, and employees) for any and all losses, damages, costs, fines, penalties, assessments, and expenses (including issuer reimbursements) (together, "Losses") assessed against them by a third party (including Card Organizations), or awarded against them due to a third party claim, which arises from (i) Sub-Merchant's or its third party service provider's gross negligence, willful misconduct, or breach of this Agreement, or (ii) any Data Compromise Event.

15. **Assignment.** Each Servicer may, in whole or in part, assign or transfer this Agreement or delegate or subcontract its respective rights, duties, or obligations under this Merchant Agreement without Sub-Merchant's or BlueSnap's consent. Sub-Merchant further acknowledges that another financial institution may be substituted for Bank with respect to Bank's obligations hereunder.

16. **Confidentiality**

16.1 Confidentiality. No party will disclose non-public information about another party's business (including the terms of this Merchant Agreement, technical specifications, customer lists, or information relating to a party's operational, strategic, or financial matters) received or obtained by such party during the term of this Agreement (together, Confidential Information). Confidential Information does not include information that: (1) is or subsequently becomes publicly available (through no fault of the recipient); (2) the recipient lawfully possesses before its disclosure; (3) is independently developed without reliance on the discloser's Confidential Information; or (4) is received from a third party that is not obligated to keep it confidential. Each party will implement and maintain reasonable safeguards to protect the other party's Confidential Information.

16.2 Disclosure. The recipient may disclose another's party's Confidential Information: (1) to its directors, officers, personnel, and representatives (including those of its subsidiaries, affiliates, subcontractors or vendors) that need to know it in connection with the recipient's performance under this Merchant Agreement, and are bound by confidentiality obligations materially similar to those required under this Merchant Agreement; and (2) in response to a subpoena, court order, request from a regulator, or as required under applicable laws or Card Organization Rules. Nothing herein shall prohibit SERVICERS and their affiliates from using or disclosing aggregated, anonymized Cardholder data and Transaction data for Servicers' and their affiliates' reporting and internal analysis.

17. **IRS Reporting Information.** Pursuant to Section 6050W of the Internal Revenue Code, merchant acquiring entities (like Bank) and third-party settlement organizations are required to file an information return reflecting all payment card transactions and third-party network transactions occurring in a calendar year. Accordingly, Sub-Merchant will receive a form 1099-k reporting Sub-Merchant's gross transaction amounts for each calendar year. In addition, the Internal Revenue Code may require Servicers to undertake backup withholding if Sub-Merchant does not provide Bank with the correct name and TIN that Sub-Merchant uses when filing its income tax return that includes the transactions for Sub-Merchant's business.

18. **Choice of Law; Venue; Waiver of Jury Trial.** The parties agree that this Agreement will be governed by and construed in accordance with the laws respecting national banks and, to the extent not so covered, by the laws of the State of North Carolina without regard to conflicts of law provisions. Each party agrees that any action or proceeding relating to this Agreement shall be brought exclusively in any court of competent jurisdiction in State of North Carolina and the United States for the Western District of North Carolina, Charlotte Division, located in Charlotte, North Carolina, and for that purpose now irrevocably and unconditionally agrees and submits to the jurisdiction of such North Carolina courts and waives any objection to the venue of such courts whether based on inconvenience of forum or other grounds. The parties irrevocably waive any and all rights they may have to a trial by jury in any judicial proceeding relating to this Agreement. Sub-Merchant additionally agrees to waive personal service of process and consents that service of process upon Sub-Merchant may be made by certified or registered mail, return receipt requested, at the address provided in this Agreement.

19. **Notices.** All notices and other communications required or permitted hereunder (other than those involving normal operational matters relating to the Services) must be in writing and sent via mail to the addresses below. Such notices will be deemed to have been given when received.

19.1 Notice to BAMS will be sent to: Banc of America Merchant Services, LLC, Attention: Executive Vice President Operations, 150 North College Street, Mail Code NC1-028-15-01, Charlotte, NC 28255, with a copy to Banc of America Merchant Services, LLC, Attention: General Counsel's Office, 150 N. College Street, Mail Code NC1-028-15-01, Charlotte, NC 28255.

19.2 Notice to Bank will be sent to: Bank of America, N.A., 1231 Durrett Lane, Louisville, KY 40213, Attention: Operations Manager, with a copy to Bank of America, N.A., Legal Department-Merchant Services Group, Bank of America Plaza, 101 South Tryon Street, Mail Code: NC1-002-29-01, Charlotte, NC, 28255-0001.

19.3 Notice to BlueSnap will be sent to: 800 South Street, Suite 640, Waltham, MA 02453.

19.4 Notice to Sub-Merchant will be sent to: the address on file with BlueSnap.

20. **Publicity.** No party will make any press release or other public disclosure concerning the terms and conditions of this Agreement without the prior written consent of the other party.

21. **Entire Agreement; Waiver.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter discussed in this Agreement and supersedes any previous agreements and understandings. Except as provided in this Agreement, this Agreement can be changed only by a written agreement signed by all parties. A party's waiver of a breach of any term or condition of this Agreement will not be deemed a waiver of any subsequent breach of the same or another term or condition.

22. **Survival.** The following Sections will survive termination of this Agreement: 7.2, 7.3, 8-10, 12-14, 16-23.

23. **Card Organization Disclosure.**

Member Bank Information: Bank of America, N.A.

BANK's mailing address is 1231 Durrett Lane, Louisville, KY 40213, and its phone number is 800-430-7161.

- | Important BANK Responsibilities   | Important SUB-MERCHANT Responsibilities                                       |
|---|---|
| (a) BANK is the only entity approved to extend acceptance of Visa and MasterCard products directly to SUB-MERCHANT. | (a) Ensure compliance with Cardholder data security and storage requirements. |
| (b) BANK must be a principal (signer) to this Agreement.  | (b) Maintain fraud and Chargebacks below Card Organization thresholds.        |
| (c) BANK is responsible for educating SUB-  | (c) Review and understand the terms of this Agreement.                        |

- MERCHANT on pertinent Card Organization Rules with which SUB-MERCHANT must comply; but this information may be provided to SUB-MERCHANT by BAMS. (d) Comply with Card Organization Rules.
- (d) BANK is responsible for and must provide settlement funds to the SUB-MERCHANT in accordance with the terms of this Agreement.
- (e) BANK is responsible for all funds held in reserve that are derived from settlement.

**EXHIBIT 5  
FURTHER TERMS APPLICABLE TO NON-US and NON-CANADA MERCHANTS**

Acquirers are:

European Union:	Barclay’s Bank PLC 2 Churchill Place London, UK E14 5RP +44 845 755 5555	Privat Bank (Payvision) Odeonsplatz 18, D-80539 Munchen, Germany +49 89 540 442 200
	Payvision B.V Molenpad 2 1016 GM Amsterdam, Netherlands +31 20 794 2300	Deutsche Bank AG Taunusanlage 12 60325, Frankfurt Am Main, Germany +49 69 910 00
	First Data Europe Limited Janus House JH/1D Endeavour Drive Basildon, Essex, UK, SS14 3WF	First Data Merchant Services LLC, Attn: Executive VP – Operations, 5565 Glenridge Connector NE, Atlanta, Georgia 30342 <u>with a copy to:</u> First Data Merchant Services LLC, Attn: General Counsel’s Office, 6855 Pacific Street, AK-32, and Omaha, NE 68106
	First Data Merchant Solutions Australia Pty Limited Level 11 168 Walker Street North Sydney, NSW 2060	

**I. Applicable to Merchant Boarded with Payvision B.V. (EU Only)**

This MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS (the “**Agreement**”) is made among BlueSnap Payment Services Limited having its registered office at 800 South Street, Suite 640, Waltham MA 02453 (the “**Provider**”) and its designated Acquirer Member Bank, Payvision B.V. (the “**Acquirer**”) and Provider’s Merchant (the “**Sub-merchant**”) in connection with the agreement between the Sub-merchant and the Provider. Acquirer will provide Sub-merchant with certain payment processing services (the “**Services**”) in accordance with the terms of this Agreement. In consideration of the Sub-merchant’s receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard Europe S.A. (“**MasterCard**”), VISA Europe Ltd. (“**VISA**”) and certain similar entities (jointly referred to as the “**Card Organizations**” and each an “**Card Organization**”), Sub-merchant is required to comply with the Rules (as defined below) as they pertain to applicable credit and debit card payments. In addition, if Sub-merchant meets certain requirements under the Rules or a Card Organization or the Rules otherwise require, Sub-merchant may be required to enter into a direct

relationship with an entity that is a member of the Card Organizations. By executing this Agreement, the Sub-merchant has fulfilled such requirement. However, the Acquirer agrees and acknowledges that the Sub-merchant has contracted with the Provider to obtain certain processing services and that the Provider has agreed to be responsible to the Sub-merchant for all or part of the Sub-merchant's obligations contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

**1. Certain Sub-merchant Responsibilities.** The Sub-merchant agrees to comply, and to cause third parties acting as the Sub-merchant's agents (the "**Agents**") to comply, with the Card Organization's and other payment network's by-laws, Rules and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Card Organizations or payment networks (jointly referred to as the "**Rules**"). The Sub-merchant also agrees to comply with all applicable state, federal and local laws, rules and regulations (the "**Laws**"). Without limiting the foregoing, the Sub-merchant agrees that it will fully comply with any and all anti-money laundering laws and regulations, including but not limited to the Dutch Anti-Money Laundering Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*) and Sanction Act (*Sanctiewet*). For purposes of this section, the Agents include, but are not limited to, Sub-merchant's software providers and/or equipment providers.

If appropriately indicated in the Sub-merchant's agreement with the Provider, the Sub-merchant may be a limited-acceptance merchant, which means that the Sub-merchant has elected to accept only certain Visa and MasterCard card types (i.e. consumer credit, consumer debit and commercial cards) and must display appropriate signage to indicate the same. The Acquirer has no obligation other than those expressly provided under the Rules and applicable law as they may relate to limited acceptance. The Sub-merchant, and not the Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

The Sub-merchant shall only complete sales transactions produced as the direct result of bona fide sales made by the Sub-merchant to cardholders, and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than the Sub-merchant, or for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities.

The Sub-merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: (i) the minimum transaction amount does not differentiate between card issuers and (ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand. The Sub-merchant may set a maximum transaction amount to accept a card that provides access to a credit account, provided that the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

**2. Sub-merchant Prohibitions.** Sub-merchant must not (i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature or any other card account data in plain view when mailed, (ii) add any tax to transactions, unless applicable law expressly requires that the Sub-merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), (iii) request or use an account number for any purpose other than as payment for its goods or services, (iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-merchant, (v) disburse funds in the form of cash unless Sub-merchant is participating in a cash back service, (vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sub-merchant, irrespective of cardholder approval, (vii) accept a Visa consumer credit card or commercial Visa product issued by an issuer to collect or refinance an existing debt, (viii) accept a card to collect or refinance an existing debt that has been deemed

uncollectable, or (ix) submit a transaction that represents collection of a dishonored check. The Sub-merchant further agrees that, under no circumstance, will the Sub-merchant store cardholder data in violation of the Laws or the Rules including but not limited to the storage of track-2 data. Neither the Sub-merchant nor its Agents shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.

**3. Settlement.** Upon receipt of the Sub-merchant's sales data for card transactions, the Acquirer will process the Sub-merchant's sales data to facilitate the funds transfer between the various Card Organizations and the Sub-merchant. After the Acquirer receives credit for such sales data, subject to the terms set forth herein, the Acquirer will fund the Sub-merchant, either directly to the Sub-merchant-Owned Designated Account (as defined below) or through Provider to an account designated by Provider ("**Provider Designated Account**"), at Acquirer's discretion, for such card transactions. The Sub-merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to the Sub-merchant and that any dispute regarding the receipt or amount of settlement shall be between the Provider and the Sub-merchant. The Acquirer will debit the Provider Designated Account for funds the owed to Acquirer as a result of the Services provided hereunder, provided that the Acquirer may also debit the Sub-merchant's designated demand deposit account (the "**Sub-merchant-Owned Designated Account**") upon receipt of such account information from the Sub-merchant or the Provider, or if the Acquirer deposits settlement funds into the Sub-merchant-Owned Designated Account. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if the Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from either the Sub-merchant or the Provider.

**4. Term and Termination.** This Agreement shall be binding upon the Sub-merchant upon the Sub-merchant's execution. The term of this Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding upon the Acquirer, on the date the Acquirer accepts this Agreement by issuing a merchant identification number (MID), and shall be coterminous with the Provider's agreement with Sub-merchant.

Notwithstanding the foregoing, the Acquirer may immediately cease providing Services and/or terminate this Agreement without notice if (i) the Sub-merchant or the Provider fails to pay any amount to Acquirer when due, (ii) in the Acquirer's opinion provision of a service to the Sub-merchant or the Provider may be a violation of the Rules or any Laws, (iii) the Acquirer believes that the Sub-merchant has violated or is likely to violate the Rules or the Laws, (iv) the Acquirer determines the Sub-merchant poses a financial or regulatory risk to the Acquirer or a Card Organization, (v) the Acquirer's agreement with the Provider terminates, (vi) any Card Organization deregisters the Provider, (vii) the Acquirer ceases to be a member of the Card Organizations or fails to have the required licenses or (viii) the Acquirer is required to do so by any of the Card Organizations.

**5. Limits of Liability.** The Sub-merchant agrees to provide the Acquirer, via communication with the Provider, with a written notice of any alleged breach by the Acquirer of this Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by the Sub-merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Sub-merchant's sole and exclusive remedy for any and all claims against the Acquirer arising out of or in any way related to the transactions contemplated herein shall be termination of this Agreement. In the event that the Sub-merchant has any claim arising in connection with the Services, rights, and/or obligations defined in this Agreement, Sub-merchant shall proceed against the Provider and not against the Acquirer, unless otherwise specifically set forth in the Rules. In no event shall the Acquirer have any liability to the Sub-merchant with respect to this Agreement or the Services. The Sub-merchant acknowledges that (i) the Acquirer is only providing this Agreement to assist in Provider's

processing relationship with the Sub-merchant, (ii) the Acquirer is not liable for any action or failure to act by the Provider and (iii) the Acquirer shall have no liability whatsoever in connection with any products or services provided to the Sub-merchant by the Provider. If the Provider is unable to provide its services to the Sub-merchant in connection with this Agreement and the Acquirer elects to provide those services directly, the Sub-merchant acknowledges and agrees that the provisions of this Agreement will no longer apply and the terms of Acquirer's then current merchant agreement, which would be provided to the Sub-merchant, will govern the Acquirer's relationship with the Sub-merchant. If the Provider subsequently provides its services to the Sub-merchant in connection with this Agreement, the Acquirer will cease to provide such services after receipt of notice from the Provider and this Agreement will govern the Acquirer's relationship with the Sub-merchant.

**6. Miscellaneous.** This Agreement and/or any non-contractual obligations arising from or in connection with it are subject to the laws of the Netherlands, without regard to conflicts of law provisions, and any dispute arising thereof that cannot be solved amicably shall be settled before the competent court of Amsterdam, The Netherlands. This Agreement may not be assigned by the Sub-merchant without the prior written consent of the Acquirer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Agreement is for the benefit of, and may be enforced only by, the Acquirer and the Sub-merchant and is not for the benefit of, and may not be enforced by, any other party. The Acquirer may amend this Agreement upon notice to Sub-merchant in accordance with Acquirer's standard operating procedure. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if such provision is not contained in the Agreement. "**Acquirer**" as used in this Agreement shall mean a member of VISA and/or MasterCard, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, the Acquirer shall be Payvision B.V., a private limited liability company (*besloten vennootschap met beperkte aansprakelijkheid*) organised under the laws of The Netherlands, having a registered office at Molenpad 2, 1016 GM Amsterdam, The Netherlands. The Acquirer is a party to this Agreement. The acquirer may be changed, and its rights and obligations assigned to another party by the Acquirer at any time without notice to Sub-merchant.

## II. Applicable to Merchant Boarded with First Data (Non-US and Non-Canada only)

**Definitions.** For purposes of this Exhibit 5, the following words shall have the following means:

1. "Card" means all valid and current payment cards or form factors of a Card Organization used to initiate a payment Transactions and which is approved by Acquirer, notified to Merchant in writing from time to time and to which this Agreement applies.
2. "Card Not Present" means a payment Transaction where the Card or the Cardholder is not physically present at Your premises at the time of the Transaction, and includes E-Commerce Transactions and Mail/Telephone Transactions.
3. "Card Organization" means any entity formed to administer and promote Cards, such as Visa and MasterCard, or any other payment scheme or organization that governs the submission of Transactions, as agreed among the parties in writing from time to time.
4. "Card Organization Marks" means the names, logos, symbols and trademarks of the Card Organizations.
5. "Card Organization Rules" means the rules, regulations and operating instructions issued by particular Card Organizations, as may be varied and updated from time to time.
6. "Cardholder" means an individual, company, firm or other body to whom a Card has been issued at any time and who is authorized to use that Card.
7. "Chargebacks" means a demand by an Issuer or a Card Organization to be repaid a sum of

money by Acquirer in respect of a Transaction which has been previously subject to Settlement and for which Acquirer have been paid by the relevant Card Organization.

8. “Dynamic Currency Conversion” means a service to have funds equal to the value of the goods and/or services which a Cardholder wishes to acquire from BlueSnap converted from the currency of the country where BlueSnap is located to the currency of the country where a Card is issued.
9. “E-Commerce Transaction” means a non-face-to-face on-line Transaction using electronic media in which Card details are transmitted by a Cardholder to You via the internet, the extranet or any other public or private network.
10. “Interchange” means the contracts, agreements, rules, regulations and procedures governing the relationships between or among, or the actions in accordance with such contracts, agreements, rules, regulations and procedures by, any two or more entities in connection with Settlement and/or Transactions.
11. “Issuer” means an organization authorized by a Card Organization to issue Cards and whose name appears on the Card as the issuer of such Card or who enters into a contractual relationship with the Cardholder for the use of the Card.
12. “Mail/Telephone Transaction” means the processing of a Transaction arising from an order for goods and/or services made over the telephone or mail where the Card or the Cardholder is not physically present at the time of the Transaction. This often arises from mail or telephone requests for goods and/or services.
13. “Maximum Amount” means the maximum amount in annual Transaction volume of the Merchant (including the annual Transaction volume of any related entities) which is permitted by the applicable Card Organizations (which varies and is dependent Card Organization and the applicable Territory, for example, it is currently \$100,000 in the United States and \$1,000,000 for MasterCard in Australia), as amended from time to time
14. “Operating Guide” means the manual prepared by Us, containing operational procedures, instructions and other directives relating to Card Transactions, as may be amended from time-to-time.
15. “Recurring Transaction” means a Transaction which the Cardholder has agreed can be debited to their Cardholder’s account at agreed intervals or on agreed dates. The Transaction can be for a specific amount or for an amount due to Merchant for an ongoing service or provision of goods.
16. “Refund” means where you agree to make a refund to the Cardholder's Card of the whole or part of any sum authorized by a Cardholder to be debited to their Cardholder's Account.
17. “Retrieval Requests” means a request for documentation related to a Card Transaction such as a copy of a Sales Draft or other Transaction source documents.
18. “Sales Draft” means an electronic record which is created to evidence purchase of goods or services by a Cardholder from BlueSnap using a Card that is in compliance with the Card Organization Rules.
19. “Settlement” means the payment of amounts to be reimbursed by Acquirer to Merchant or by Merchant to Acquirer under this Agreement.
20. “Transaction” means any Card-Not-Present Transaction between a Cardholder and Merchant that complies with the requirements set out at Clause 8 below regarding the purchase or return of goods and/or services where the Cardholder Uses its Card to pay for goods and/or services that results in the generation of a transaction record for the provision of goods and/or services and/or Refunds



21. “Transaction Data” means all data relating to Transactions.

In the event that First Data and, in respect of a given Territory other than the United States, its bank, and/or First Data Europe Limited in the EU, or other financial institution which provides Card Organization sponsorship in that Territory to First Data in accordance with the Card Organization Rules (“Bank”) are the acquirer of a transaction of Merchant, the following provisions are required in full and without edit. They shall apply to all non-US transactions acquired by (i) First Data Global Services Limited and/or First Data Merchant Services Corporation, and/or acquired or boarded with FDMSA (“together, First Data”) which is the sponsored acquirer for various financial institutions (hereinafter, “Acquirer”), and shall be incorporated into this Merchant Agreement and the incorporated Terms and Conditions.

1. In the event of any inconsistency between any provision of the Merchant Agreement (including this Exhibit 5) between Merchant and BlueSnap and the Card Organization Rules, the Card Organization Rules will take precedence.

2. Additional Terms.

- A. The Merchant will not submit for payment, and bank nor BlueSnap will not accept from Merchant, any Transaction that Merchant knows or ought to have known to be illegal, fraudulent, not authorized by the Cardholder, not in compliance with applicable law or Card Organization Rules or subject to any claim, setoff, counterclaim, lien or other encumbrance, or that represents the refinancing of an existing obligation of the Cardholder or otherwise violates the Merchant’s Agreement with BlueSnap, or with respect to any Transaction prohibited by Acquirer (each, a "Prohibited Transaction");
- B. All Retrieval Requests, Cardholder disputes, and Chargebacks shall be handled between BlueSnap and the Merchant;
- C. No Refunds, credits, exchanges, or adjustments related to the Transaction shall be submitted by the Merchant to Acquirer, instead all such issues shall be handled by BlueSnap;
- D. On an ongoing basis, the Merchant must promptly provide BlueSnap with the current address of each of its offices of the contracting entity(ies) and any of its entities or subsidiaries processing transactions through BlueSnap, all “doing business as” (DBA) names used by the Merchant, and a complete description of goods sold and services provided to its customers, names and domiciles of the Merchant's principals, and any other information reasonably requested by Acquirer and/or BlueSnap from time to time;
- E. The Merchant authorizes BlueSnap, Acquirer and Bank to obtain financial and credit information regarding the Merchant;
- F. The Card Organizations may at any time, immediately and without advance notice, prohibit the Merchant from using any of the Card Organization Marks for any reason;
- G. The Card Organizations have the right to enforce any provision of the Card Organization Rules and to prohibit the Merchant from engaging in any conduct the Card Organizations deem could injure or could create a risk of injury to the Card Organizations, including injury to reputation, or that could adversely affect the integrity of the Interchange system, the Card Organizations, Confidential Information as defined in the Card Organization Rules, or both;
- H. The Merchant will not take any action that could interfere with or prevent the exercise of any rights by the Card Organizations;
- I. The Merchant acknowledges and agrees that its relationship in connection with the Merchant Agreement is with BlueSnap and not Acquirer or Bank, and that the Merchant may not seek recourse against Acquirer or Bank, and neither Acquirer nor Bank will have any obligation or

liability whatsoever to the Merchant under or in connection with the Merchant Agreement, including any damages arising out of or in connection to the Merchant Agreement;

- J. That BlueSnap can provide to Acquirer and Bank, and the Merchant agrees that Acquirer and Bank may use, for the purposes of fulfilling their obligations under this Agreement or as otherwise required, any information, whether confidential or otherwise, regarding the Merchant that they may, from time to time, request within seven (7) days of making such request;
- K. The Merchant shall co-operate with BlueSnap, Acquirer and Bank in respect of any issues arising out of Merchant's breach or potential breach of security in relation to the holding of confidential data, including engaging in paying for the cost associated with the forensic investigation;
- L. Acquirer and/or Bank may disclose information about the Merchant's business to associated companies, the police, Card Organizations, regulators, or any other investigating body for use in the prevention or detection of fraud or other criminal activity, or to any credit reference agency which is used as a source of information;
- M. The Merchant shall ensure that Transaction Data it submits for processing is accurate and complete and that each transaction represents a bona fide sale or purchase between it and the Cardholder not previously submitted;
- N. The Merchant shall notify BlueSnap immediately if it expects to exceed or exceeds the Maximum Amount.
- O. If the Maximum Amount is exceeded, to the extent requested by Acquirer, BlueSnap will cease processing, and the Merchant will cease submitting transactions to Acquirer, and/or BlueSnap and the Merchant shall enter into a merchant agreement with Acquirer on terms satisfactory to Acquirer and Bank;
- P. In the aforesaid event (item (O)) (i) if BlueSnap or Merchant fail to comply with such requirements, or Acquirer and/or FDMSA determine that they cannot make such payments under applicable law, or (ii) if Acquirer and/or FDMSA otherwise determines that any such payment by BlueSnap under the Merchant Agreement could constitute a risk, then Acquirer and/or FDMSA shall be entitled to provide direct funding to the Merchant.
- Q. The Merchant acknowledges that Card-Not-Present Transactions have a substantially higher incidence of Chargebacks, and the Merchant assumes all risks associated therewith;
- R. It is the responsibility of the Merchant to verify the identity of the user of the Card submitting a transaction and the Merchant assumes all associated risks (including fraud risks and Chargeback risks);
- S. Any Card Organization, Acquirer and Bank and their respective regulators and auditors may audit the Merchant's records relating to Transactions processed under Merchant Agreement. The Merchant shall provide all documentation, information or other inspection rights requested by the Card Organizations, Acquirer's or Bank's regulators or auditors or otherwise to enable Acquirer to comply with applicable law and the Card Organization Rules;
- T. As required by the Card Organizations, the Merchant must comply with PCI and it shall enable Acquirer and Bank (as required by the Card Organizations) to carry out an audit of the Merchant's systems to ensure the Merchant's compliance; and
- U. The Merchant will comply with all applicable laws, and the Merchant's ability to process transactions shall be automatically terminated if Merchant or any of its officers, directors, principals, partners, employee, agent, contractor or subcontractor authorized to act on behalf of Merchant becomes an OFAC prescribed person or equivalent under any official screening program in the relevant territory.

3. Termination. You acknowledge that BlueSnap may terminate the Merchant Agreement immediately if:

- A. Acquirer, Bank or the Card Organizations request BlueSnap to do so;
- B. Acquirer terminates the its agreement with BlueSnap for any reason or the Merchant Agreement;
- C. The Card Organizations de-register BlueSnap as a payment service provider and/or a master merchant or if Acquirer or Bank cease(s) to be a member of any Card Organization for any reason or if Acquirer fails to have a valid License with any Card Organization to use any Card Organization Mark accepted by the Merchant; in such circumstances the Merchant Agreement may be automatically terminated;
- D. The Merchant's activity is deemed, at BlueSnap's discretion or at the direction of Acquirer or the Card Organizations, to be fraudulent, otherwise wrongful or in violation of the Card Organization Rules or laws, or has the ability to bring the integrity or reputation of the Acquirer, or FDMSA, or Card Organizations into disrepute;
- E. Acquirer considers the percentage, number or amount of fraudulent Transactions submitted by the Merchant or the number of Chargebacks in relation to BlueSnap's business or the business of the Merchant, to be excessive;
- F. The Merchant submits for processing, transactions on behalf of any third party entity other than that agreed between the parties hereto;
- G. The Merchant materially alters its website content without BlueSnap's prior written consent or changes its business or alters its business model during the term of the Merchant Agreement or if there is a direct or indirect change of control of the Merchant or any parent company of the Merchant;
- H. For any other circumstance or event required by Card Organization Rules to be included as a termination event in the Merchant Agreement; or
- I. There is a significant change, or we suspect a significant change is impending (as determined by us) in the nature, level or control of your business or financial condition;
- J. For six (6) consecutive months the Merchant fails to submit any transactions;
- K. You fail to meet your obligations under clause 2(T) or (U) above;
- L. You obstruct any efforts for the Acquirer or FDMSA to comply with legal or regulatory obligations including with respect to Australia, under the Anti-Money Laundering and Counter Terrorism Financing Act 2006.

4. Changes to Merchant Website. As BlueSnap is responsible to the Card Organizations and Acquirer for the Card acceptance policies and procedures of the Merchant, BlueSnap may require any changes to Merchant's website or otherwise that BlueSnap, Acquirer deems necessary or appropriate to ensure that the Merchant remains in compliance with the Card Organization Rules governing the use of the Card Organization Marks.

5. Merchant Obligations. At all times during the term of the Merchant Agreement the Merchant acknowledges and agrees:

- A. to comply with all applicable Card Organization Rules, as amended from time to time and that all provisions required by the Card Organization Rules to be included in the Agreement between BlueSnap and Merchant (as the Rules may be updated from time to time) are so deemed incorporated by reference into the Agreement and such Rules take precedence in case of any

conflict with the Agreement;

- B. that the Card Organizations are the sole and exclusive owners of the Card Organization Marks;
  - C. not to contest the ownership of the Card Organization Marks for any reason;
  - D. to only submit transactions to BlueSnap that are in respect of goods and/or services provided by the Merchant to the Cardholder; and
  - E. that it has received and accessed the Operating Guide (as may be amended from time to time), the terms of which are incorporated into this Agreement, and the Merchant agrees to follow the procedures in the Operating Guide in connection with each Card Transaction.
  - F. to ensure that it prominently and unequivocally informs a Cardholder of the identity of the Merchant at all points of interaction, so that the Cardholder can readily distinguish the Merchant from any other third party, such as a supplier of products or services to the Merchant and will ensure that its website:
    - (i) prominently displays the name of the Merchant;
    - (ii) prominently identifies the name of the Merchant as displayed on the website as both the Merchant and as the name that will appear on the Cardholder statement; and
    - (iii) displays the Merchant name and information as prominently as any other information depicted on the website, other than the images of the products or the services being offered, in accordance with the Card Organization Rules.
6. Fair Acceptance. Merchant shall honor all valid and current Cards presented by Cardholders in accordance with the Card Organization Rules and the Merchant shall not:
- A. undertake Transactions for anything other than the genuine purchase of the goods and/or services that the Merchant supplies;
  - B. impose any minimum or maximum transaction values;
  - C. discriminate against the use of Cards in any way;
  - D. split a Transaction into two or more Transactions;
  - E. accept Transactions relating to goods and/or services which fall outside the description of the Merchant's business without prior written approval of BlueSnap;
  - F. accept a Transaction or present transaction data for processing which was not undertaken directly between the Merchant and the Cardholder;
  - G. accept or process Transactions in order to give Cardholders cash;
  - H. accept any Transaction using any Card issued in BlueSnap's or the Merchant's name, or related to the Acquirer bank account of BlueSnap, or of a partner in, or director or other officer of BlueSnap's business or the business of the Merchant, or of the spouse or any member of the immediate family or household of any such person;
  - I. submit Transaction data which Merchant knows or ought to have known is illegal or with respect to transactions that were previously subject to a Chargeback;
  - J. except in the situations expressly allowed for under the relevant Card Organization Rules, process a refund, price adjustment or other credit without having completed a previous Transaction with the same Cardholder on the same Card, or reimburse any refund in cash or by check, or accept money or a check from a Cardholder for the purpose of preparing the

same;

- K. refund Transactions to a Card which was not originally used to make such Transactions. Merchant must not, under any circumstances, accept money from a Cardholder in connection with processing a refund to the Cardholder's Account.
7. Merchant hereby acknowledges and agrees that Acquirer may retain or withhold settlement of any sums due to Merchant as a result of the Merchant's breach of its obligations under the Merchant Agreement.
8. Authorization
- A. Authorization Request. Merchant must seek, authorization at the time of, or prior to, submitting each Transaction.
  - B. Authorization Granted. If authorization is granted, Merchant shall (where relevant) record on the Transaction record the code number allocated to the authorization and such other information required by the Card Organizations.
  - C. Authorization Refused. If authorization is refused the Transaction must not proceed and the Merchant must not, seek authorization (for a Transaction on behalf of the same Cardholder) for any different amount. The Merchant shall be responsible for, and accept all Card Organizations assessed fines, fees or termination of Agreement or, for actions related to: (i) failure by Merchant to obtain an authorization code or comply with Card Organization Rules; (ii) Merchant's submission of a Transaction after receiving a decline (even if a subsequent authorization attempt results in an authorization code); or (iii) Merchant attempts to submit multiple/partial transactions or multiple authorizations and transactions.
  - D. No Guarantee of Payment. AUTHORIZATION OF A TRANSACTION DOES NOT GUARANTEE PAYMENT TO MERCHANT FOR A TRANSACTION NOR IS IT A GUARANTEE THAT IT WILL NOT BE SUBJECT TO A CHARGEBACK OR THAT MERCHANT WILL NOT BE SUBJECT TO A DEBIT IN RELATION TO THAT TRANSACTION. SHOULD A CARDHOLDER DENY HAVING PARTICIPATED IN A TRANSACTION, ACQUIRER MAY, AT ITS DISCRETION, WITHHOLD OR RETURN THE RELEVANT TRANSACTION/TRANSACTIONS AS UNPAID. Authorization indicates only the availability of credit at the time of authorization, and does not warrant that the person presenting the Card is the rightful Cardholder.
  - E. Disputes with the Card Organizations and Cardholders. Merchant shall at its own expense, provide Acquirer and Bank with all reasonable assistance to resolve any dispute arising under the Card Organization Rules. Acquirer and Bank shall, as against Merchant, have complete discretion to decide whether or not to resist or defend any claim made against Acquirer or Bank by any Card Organization or Cardholder, or whether to compromise any such claim, and the decision shall be binding on Merchant. Merchant also agrees that BlueSnap, Acquirer and Bank shall each have discretion to accept, dispute, compromise or otherwise deal with any claim made against Merchant and/or BlueSnap and Acquirer arising out of a transaction accepted by Merchant for loss or liability in respect thereof on Merchant's behalf.
  - F. Dispatching of Goods.
    - i. Acquirer and/or FDMSA cannot provide name and address verification as part of the normal authorization process. Where a Merchant is dispatching goods it is Merchant's responsibility to ensure that the address to which the goods are to be dispatched is verified by Merchant
    - ii. Merchant must advise the Cardholder of the time it will take to dispatch the goods and if, for any reason, it does not have the goods available for dispatch to the Cardholder within such advised time period, then the Cardholder must be notified of that fact and the order re-confirmed by the

Cardholder.

## 9. Acceptance of Transactions

- A. **General.** This Agreement applies to the type of Transactions authorized to be processed as part of Merchant's Merchant Application or subsequently upon Merchant's written request. Merchant acknowledges and agrees that, except as expressly agreed in writing by BlueSnap, Acquirer and Merchant, the BlueSnap Services will **not** be provided under this Agreement in support of any card-present Transactions.
- B. **Currency.**
- (i) All Transactions accepted by Merchant and processed through the BlueSnap Services must be in the agreed currencies unless BlueSnap has given prior consent in writing that payment in other currencies may be accepted.
  - (ii) Unless expressly authorized, Merchant is not permitted to undertake any Transactions that utilize Dynamic Currency Conversion.
- C. **Card Acceptance.** Merchant shall:
- (i) accept all valid and current Cards presented by Cardholders which are covered by this Agreement, in each case subject to and in accordance with the Acquirer Program Standards Guide and the Card Organization Rules;
  - (ii) provide its full range of goods and/or services to Cardholders at prices not greater than normal cash prices or as otherwise permitted by the Card Organizations;
  - (iii) submit all Transactions to BlueSnap and Acquirer for authorization in accordance with this Agreement or as otherwise instructed by BlueSnap;
  - (iv) not accept any Transaction (and not to present for processing any Transaction Data relating to any such Transaction) under this Agreement which has been previously charged back by the Cardholder and returned to BlueSnap and/or a Merchant; and
  - (v) Merchant assumes all responsibility for identification of the Cardholder and the validity of the Cards used for all Transactions.
- D. **Disclosure.** If Merchant indicates a price to a Cardholder which is not a price applicable to all methods of payment accepted by it then before the Merchant accepts the Transaction it must display a statement explaining any methods of payment to which the indicated price does not apply and the difference in price either as an amount or a percentage.
- E. **Transactions.**
- (i) **Own Risk.** Undertaking Transactions will be solely at Merchant's risk and Merchant will be liable for any losses which occur as a result of undertaking or submitting such Transactions. Merchant understands that it accepts such Transactions at its own risk.
  - (ii) **Withdrawal of Permission.** Acquirer or BlueSnap, may upon giving Merchant notice, withdraw permission for Merchant to accept, submit or process certain type of Transactions where there are, in the sole opinion, of Acquirer, unacceptable levels of Cardholder disputes resulting from Transactions which Merchant has submitted and/or Transactions which Merchant has submitted and which subsequently turn out to be fraudulent.
- F. **Recurring Transactions.** The following provisions will apply to Recurring Transactions:

- (i) **Own Risk.** Undertaking Recurring Transactions will be solely at Merchant's risk and Merchant will be liable for any losses that occur as a result of undertaking such transactions. Merchant understands that it accepts such Transactions at its own risk.
  - (ii) **Cardholder Consent.** In addition to seeking authorization for each Recurring Transaction, Merchant is required to obtain a prior approval from the relevant Cardholder for the goods and or services to be charged to its account periodically.
  - (iii) **No Completion of Recurring Transactions.** Merchant must not complete a Recurring Transaction after receiving: (i) cancellation from the Cardholder; (ii) notice from Acquirer or BlueSnap that Merchant may no longer process Recurring Transactions for the relevant Cards; or (iii) advice that the Card is not to be honored.
- G. **Future Delivery of Goods/Services.** Merchant shall not to accept any Transactions representing a deposit, partial payment or payment in respect of a future delivery of goods and/or services unless this is expressly permitted under this Agreement or has otherwise been agreed by BlueSnap in writing. Merchant must ensure that the acceptance, processing and submission of any such Transaction is made in accordance with the Card Organization Rules or as otherwise instructed by BlueSnap.
- H. **Cash Payments by and Cash Disbursements to Cardholders.** Merchant covenants that it:
- (i) will not submit any direct payments from Cardholders for charges of goods or services which have been included on a previous Sales Draft; (ii) will include taxes on Transactions in the amount charged and will not collect such amount in cash; and (iii) will not make any cash disbursements to a Cardholder as part of a Transaction except to the extent expressly authorized by this Agreement, the Program Standards, the Operating Guide and the Card Organization Rules.
10. **General Obligation Regarding Submission of Transactions.** Merchant shall only submit valid Transactions involving a bona fide Cardholder. Merchant must not submit any Transactions that Merchant knows, or should have known, to be fraudulent or not authorized by the Cardholder. In submitting Transactions Merchant represents and warrants (without limiting any other warranties under this Agreement) that: (i) the Transaction represents a bona fide sale/rental of merchandise or services not previously submitted; (ii) all statements and representations of fact contained in the Transaction are within Merchant's knowledge and are true and complete; (iii) the Transaction represents an obligation of the Cardholder for the amount of the Transaction; (iv) the amount charged for the Transaction is not subject to any dispute, setoff, or counterclaim; (v) the Transaction amount is only for the merchandise or services (including taxes, but without any surcharge) sold or rented and, except for any delayed delivery or advance deposit Transactions expressly authorized under this Agreement, the merchandise or service was actually delivered to or performed for the person entering into the Transaction simultaneously upon Merchant accepting and submitting the Transaction for processing and Settlement; (vi) the Transaction does not represent the refinancing of an existing obligation of the Cardholder (including any obligation otherwise owed to the Merchant by a Cardholder or arising from the dishonor of a personal check); (vii) Merchant has no knowledge or notice of any fact, circumstances or defense which would indicate that the Transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or enforcement of the Cardholder's obligation arising from such Transaction or relieve the Cardholder from liability with respect thereto; (viii) the Transaction submitted was entered into by the Merchant and the Cardholder; (ix) the Transaction is not a payment for a product or service that violates any law (either super-national, national or regional) applicable to any aspect of the Transaction; (x) the Transaction was made in accordance with this Agreement, the Card Organization Rules and applicable laws; (xi) the Transaction is not for a Cardholder's payment to an Issuer; and (xii) the Transaction does not arise from any Transactions between Merchant and Cardholder(s) who are owners, partners, guarantors, officers or employees of either thereof, respectively, other than genuine purchases, leases or rentals of goods or services

or other payments, all in the ordinary course of business. Merchant is responsible for ensuring the accuracy and completeness of all Transaction Data submitted.

## 11. Data Security

A. **Compliance.** Merchant shall comply with all security procedures of which BlueSnap may notify it from time to time, before completing any Transaction.

B. **Retention/Storage of Transaction Data.** Merchant shall retain all Transaction Data in the strictest confidence and in a secure environment where it can only be accessed by authorized members of staff, and shall ensure that any such details stored electronically are fully protected, correct, complete, not lost or damaged and can be reconstituted, in a complete and easily readable form. Merchant will take all reasonable precautions to ensure that Cardholder Information is not disclosed to any person or entity other than BlueSnap or Acquirer or misused by any person or entity.

C. **Retention of Transaction Records for Retrievals and Chargebacks.**

(a) Merchant shall retain in a secure place legible copies of all Transaction records and receipts, invoices, receipts or equivalent documents relating to each Transaction. For the purpose of compliance with the Card Organization Rules in relation to Chargebacks, all the above-mentioned documents must be kept in a safe, secure and confidential manner for eighteen (18) months from the date of the relevant transaction (or, if applicable, in the case of Recurring Transactions, eighteen (18) months from the date of the last transaction forming part of the Recurring Transaction).

(b) Merchant must not (i) retain or store any magnetic stripe or CVV2/CVC2 data after authorization for a Transaction has been received or (ii) sell, purchase, provide or exchange Cardholder Information or Transaction data to, from or with any third party without the Cardholder's consent, except as specifically required by applicable law, and only to the extent allowed by applicable law and the Card Organization Rules.

D. **Loss or Corruption of Transaction Data.**

(a) Acquirer and BlueSnap will not in any circumstances be liable in respect of the face value of any Transaction Data, or (other than if due to their own negligence or fraud) the costs of reconstituting such data, or for any other loss or damage arising on any loss or corruption of Transaction Data.

(b) If any loss or damage to the physical medium containing any Transaction Data occurs and is agreed, or shown to be due to BlueSnap's negligence, BlueSnap will reimburse Merchant the replacement value of the lost or damaged medium

(c) If any loss or corruption of Transaction Data of whatever nature arises as a result of an act or omission by Merchant or any agent or sub-contractor engaged by Merchant, then Merchant shall be jointly and severally liable under this Clause 10(D).

E. **PCI DSS.**

(a) PCI compliance validation is based on where Transaction Data is retained, stored or transmitted. Merchant hereby permits BlueSnap to provide Acquirer with all relevant information regarding the extent to which Merchant stores Transaction Data.

(b) Merchant and any agents, contractors and any third party partners engaged by Merchant, that store, process or transmit data, shall comply and maintain compliance with PCI, Visa "Account Information Security Program" and the MasterCard "Site Data Protection Program" and any other similar program as stipulated by the Card Organizations including any changes to those programs and standards which may occur from time to time. Merchant shall notify BlueSnap immediately if any data breach (including any unauthorized use or disclosure, or any loss, theft or compromise of



Cardholder Information or transaction data) may occur, is suspected to have occurred or has occurred. BlueSnap is permitted to immediately notify Acquirer of any such incident.

(c) Merchant acknowledges and agrees that:

(i) it is a requirement of the Card Organizations that Merchant, its agents, contractors and any third party partners who have an obligation to comply with PCI, comply with such obligations and maintain such compliance with PCI;

(ii) any failure by Merchant, its agents, contractors and any third party partners who have an obligation to comply with PCI and who fail to comply with PCI may lead to fines being raised by the Card Organizations;

(iii) any fines which Acquirer or BlueSnap may incur as a result of Merchant's non-compliance with this Clause 11(E) and the Card Organizations requirements for PCI shall be passed to Merchant and Merchant shall be wholly liable to pay such fines; and

(iv) Acquirer and/or BlueSnap may request details of the security systems applied by Merchant, or may carry out an inspection or audit of Merchant's systems, including computer systems. In the event that Acquirer or BlueSnap wish to carry out an inspection, Merchant will be given advance notice specifying the date and nature of the inspection.

F. If Merchant believes that it will be unable to meet any of the requirements as set out in this Clause 11(E), Merchant will immediately notify BlueSnap as soon as reasonably practicable. If Acquirer and/or BlueSnap so elect, Acquirer will work with BlueSnap and will liaise with the Card Organizations as reasonably necessary to try to extend the deadline for Merchant to comply with PCI.

G. Confidentiality. Since the documents constituting this Agreement contain certain information designed to help reduce the risk of fraud arising on transactions, Merchant must treat such documentation as confidential and keep it secure and not disclose it other than in accordance with this Agreement.

## 12. Transaction Settlement.

A. BlueSnap or Acquirer may deduct the value of any Chargebacks, Refunds, adjustments, applicable Interchange, assessments, fees, fines (including those imposed by the Card Organizations), rejected Transactions and suspended Transactions, amounts payable to third parties pursuant to instructions in accordance with the Card Organization Rules, other ad hoc charges, where such settlement funds are required to be genuinely reimbursed to Merchant in respect of transaction data that is provided to Acquirer, and any other amounts then due from Merchant.

B. **General Right to Withhold Settlement Funds.** In addition to any other rights or remedies Acquirer and/or BlueSnap may have against Merchant, Acquirer and BlueSnap each reserve the right to retain or withhold settlement of any sums due to Merchant if:

(i) Merchant fail to comply with the terms of this Agreement;

(ii) in the circumstances listed in Clause 11(C) hereof; or

(iii) termination event has occurred.

C. **Suspension.** BlueSnap may, with or without notice, or on direction of Acquirer, change processing or payment terms and/or suspend credits or other payments of any and all funds, money and amounts now due or which subsequently become due to Merchant pursuant to this Agreement if in good faith BlueSnap suspects: (i) that any Transaction is fraudulent or involves other criminal activity; (ii) that any Transaction was not in the ordinary course of Merchant's

business; or (iii) if the number and/or size of the Transaction(s) is significantly greater than expected; or (iv) if any of termination event has occurred; or (v) if BlueSnap suspects that any such termination event has, or is likely to occur. All payments so suspended may be retained by BlueSnap and/or Acquirer until they have satisfied itself that such transaction(s) is/are legitimate and no longer liable to be the subject of a Chargeback. No interest shall accrue in respect of any such amount that is so withheld.

### 13. Electronic Commerce Transactions

- A. **Use of Website.** Merchant warrants and represents that Merchant and Merchant's agents, subcontractors and employees do not and shall not use any website in any way which might jeopardize the integrity, confidentiality, or security of the Merchants or their agents' associated equipment, any computer system, servers or network used by Merchant to communicate with BlueSnap or with Cardholders or other computer systems including through disabling devices and unsolicited e-mails.
- B. **Website Content.** Merchant shall clearly display and maintain on its website the following information as required by the Card Organizations: (i) a complete and accurate description of all goods and/or services offered for sale; (ii) full details of their cancellation, delivery and returns policy; (iii) customer service contact details (iv) transaction currency; (v) export or legal restrictions, if known; (vi) data protection, privacy policy and security capabilities; (vii) security method for the transmission of payment data; (viii) information that the Cardholder is committing to a transaction before they select the "pay now" button, with an obvious option to cancel the payment at this point as an alternative to paying; (ix) the address of its permanent establishment and (x) any other information required by applicable laws, regulation or Card Organization Rules.
- C. Merchant will prominently and unequivocally inform the Cardholder of the identity of the Merchant at all points of interaction, so that the Cardholder can readily distinguish the Merchant from any other party, in particular, the Merchant must:
- (i) display the Merchant's name prominently;
  - (ii) identify prominently Merchant's name as displayed on the website as both the Merchant and as the name that will appear on the Cardholder statement; and
  - (iii) display Merchant's name information as prominently as any other information depicted on the website, other than images of the products or services being offered on sale.
- D. **Termination and Suspension.** Acquirer may direct BlueSnap to give immediate notice of termination if Acquirer or BlueSnap consider that in their respective opinion, which shall be final, the content of any Merchant website, or any of the goods and/or services offered on such website do not meet the standards required for Acquirer and/or BlueSnap to continue to offer Merchant facilities. Acquirer and/or BlueSnap may also stop accepting transactions immediately if any goods and/or services offered may adversely affect Acquirer's or the Card Organizations reputation(s).
- E. **Authentication.** Where required by the Card Organization, applicable laws or a governing body in the relevant Territory, BlueSnap reserves the right to require Merchant to undertake transactions using authentication programs. If, when so requested, Merchant fails to implement the required authentication program within a timescale acceptable to Acquirer and/or BlueSnap, then Merchant's right to process transactions may be terminated immediately.
- F. **Customer Service.** Merchant must provide customer service through its website if a Cardholder accesses its website directly.

### 14. Multi-Currency Merchants

Where Merchant wishes to raise Transactions in a currency other than currency of the applicable Territory or if BlueSnap submits any such Transactions without Acquirer's written agreement, the following Special Terms and Conditions apply.

- A. BlueSnap and/or Merchant may only undertake Transactions in currencies specified in Acquirer's Multicurrency Page if all such Transactions are presented to Acquirer utilising software approved by Acquirer.
- B. BlueSnap and/or Merchant are only permitted to undertake Transactions in one of the currencies on the Multicurrency Page or such other currencies as agreed by the parties from time to time.
- C. Merchant confirms that it will pay any transmission charges required by Acquirer to credit or debit funds to currency accounts domiciled outside of the applicable Territory.

## 15. Reserve

- A. In addition to BlueSnap's holdback and rolling reserve rights in the Agreement, the Acquirer may require the Merchant to fund a cash reserve (**Reserve**) in an amount determined by the Acquirer to reflect the Acquirer's assessment of risk, as they may determine in their discretion from time-to-time. The Reserve is established by holding back Transaction proceeds or debiting the settlement account in order to potentially offset any obligations that the Merchant may have to the Acquirer. The Reserve is not a segregated fund that the Merchant may claim to own. The Acquirer is obligated to pay to the Merchant any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to the Company's payment transactions have expired (as provided for under the Card Organization Rules).
- B. The obligation of the Acquirer to settle Card Transactions will be fully discharged upon the crediting of the Transaction proceeds to the Reserve.
- C. The obligations due to the Merchant from the Reserve will not accrue interest unless required by applicable laws.
- D. The Acquirer will notify the Merchant if a Reserve is established (including its amount) or if the amount of the Reserve is modified.
- E. The Acquirer may set off any obligations that the Merchant owes to the Acquirers from the Reserve.
- F. Although the Merchant acknowledges that the Reserve is a general obligation of the Acquirer, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of the Merchant that is held by the Acquirer, the Merchant grants and acknowledges that the Acquirer have a security interest in the Reserve and, at Acquirer request, will provide documentation to reflect this security interest.

## 16. Set-off

All funds that the Acquirer owes to the Merchant under this Agreement are subject to the Merchant's payment obligations under this Agreement. The Acquirer may set off amounts the Merchant owes to either or both of the Acquirer against any funds that either or both of the Acquirer owe to the Merchant.

## 17. Reporting.

If this Agreement is terminated for cause, Merchant acknowledge that Bank or Acquirer may be required to report your business name and the names and other identification of your principals to the Card Associations. Merchant expressly agree and consent to such reporting in the event Merchant is terminated as a result of the Acquirers or BlueSnap's termination for cause or for any reason specified by the Card Association(s) as cause. Furthermore, Merchant agrees to waive and hold us harmless from and against,

any and all claims which you may have as a result of such reporting.

**The following terms and conditions shall apply to Australia-based Merchants only:**

**18. Visa and MasterCard Disclosures and Acknowledgement**

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**Member Name:** First Data Merchant Solutions Australia Pty Ltd (**FDMSA**)

**Mailing address:** Level 11, 168 Walker Street North Sydney NSW 2060 Attn: Compliance Team

**E-Mail Address:** [CompanySecretary.ANZ@firstdata.com](mailto:CompanySecretary.ANZ@firstdata.com)

**BlueSnap Entity for Australia;** BlueSnap Australia Pty Limited

**Important Member Responsibilities**

- FDMSA is the only entity approved to extend acceptance of VISA and MasterCard products directly to a merchant.
- FDMSA must under certain conditions be a principal (signer) to the Merchant Agreement.
- FDMSA is responsible for educating Merchants on pertinent VISA and MasterCard Rules with which Merchants must comply; but this information may be provided to you by BlueSnap.
- FDMSA is responsible for and must provide settlement funds to the Merchant. FDMSA may use BlueSnap, for distribution of settlement funds to the Merchant.

**Important Merchant Responsibilities**

- In the event Merchant obtains card information, ensure compliance with cardholder information security and storage requirements.
- Review and understand the terms of the
- Agreement.
- Comply with Card Association Rules.
- Retain a signed copy of this Disclosures Page.

“**Territory**” means Australia

**19. Notices.** For purposed of this Territory, notices to Acquirer will be sent to:

First Data Merchant Services LLC,  
Attn: Executive Vice President – Operations,  
5565 Glenridge Connector NE, Atlanta, Georgia 30342];

with a copy to:

First Data Merchant Services LLC,  
Attn: General Counsel’s Office,  
6855 Pacific Street, AK-32, and Omaha, NE 68106  
Emailed notices to First Data will be sent to: [legalpapers@firstdata.com](mailto:legalpapers@firstdata.com)

**EXHIBIT 6**  
**FURTHER TERMS APPLICABLE TO CANADIAN MERCHANTS**

Acquirers are:

People's Bank  
1400-888 Dunsmuir Street  
Vancouver BC, V6C 3K4 Canada  
1-844-304-2083  
[merchantacquiring@peoplestrust.com](mailto:merchantacquiring@peoplestrust.com)

Home Trust  
145 King Street West, Suite 2400  
Toronto, Ontario M5H 1J8 Canada  
1-877-374-9444

Wells Fargo Bank, NA, Canadian Branch  
1200 Montego Way, Walnut Creek, CA 94598  
515-557-1397;  
and  
First Data Canada Ltd.,  
Attention: President, 2630 Skymark Ave.,  
Suite 400, Mississauga, Ontario, L4W 5A4

**I. Key Terms For Canadian Merchants**

<b>Date of Contract</b>	See Effective Date in first paragraph of Merchant Agreement Length of term: This Agreement is continuous. For any reason or no reason this Agreement may be terminated by either party with 60 days written notice.
<b>Acquirer</b>	People’s Trust 1400-888 Dunsmuir Street, Vancouver BC, V6C 3K4, phone: 1-844-304-2083; merchantacquiring@peoplestrust.com People’s Trust is a sponsoring bank of BlueSnap Enterprise Canada ULC into the payment card networks  Home Trust, 145 King Street West, Suite 2400, Toronto, Ontario M5H 1J8 Canada, phone: 1-877-374-9444; www.hometrusted.ca Home Trust is a sponsoring bank of BlueSnap Enterprise Canada ULC into the payment card networks  Wells Fargo Bank, NA, Canadian Branch, 1200 Montego Way, Walnut Creek, CA 94598 515-557-1397 Wells Fargo Bank is a sponsoring bank of BlueSnap Enterprise Canada ULC into the payment card networks; and First Data Canada Ltd,
<b>Cancellation Terms For Contracts And Any Applicable Penalties</b>	<b><u>Merchant’s right to cancel</u></b> Despite what the contract states on the merchant’s right to cancel, the merchant may cancel the contract without penalty in the event of: <ul style="list-style-type: none"> <li>• A fee increase, except one made in accordance with a pre-determined fee schedule in the contract;</li> <li>• The introduction of a new fee; or</li> <li>• A reduction in applicable interchange rates that is not fully passed on to the merchant.</li> </ul> To do so, the merchant must exercise this right within 90 days of the date of receiving notice of: <ul style="list-style-type: none"> <li>• the fee increase;</li> <li>• the introduction of a new fee; or</li> <li>• the reduction on the applicable interchange fees.</li> <li>• by sending notice to the acquirer to this effect to the person responsible for such matters under the contract for such matters.</li> </ul> <i>Termination for convenience</i> The Merchant may terminate the Agreement by providing sixty (60) days prior written notice.  <i>Termination for cause with immediate effect</i> The Merchant may terminate the Agreement with immediate effect if: <ul style="list-style-type: none"> <li>• Bluesnap materially breaches the Agreement and, if such breach can be remedied, BlueSnap fails to remedy the breach within thirty (30) days after having been given notice of such breach by the Merchant;</li> <li>• BlueSnap is declared bankrupt or is granted a suspension of payment</li> <li>• BlueSnap suspends or ceases its business.</li> </ul> <b><u>Contract renewal</u></b> The Agreement is continuous unless the Merchant terminates the Agreement by providing sixty (60) days prior written notice.
<b>Complaint handling procedures</b>	This information can be found at Sections 14.9 and 14.10 of the Agreement. Merchant can submit an issue to BlueSnap by email at <a href="mailto:merchants@bluesnap.com">merchants@bluesnap.com</a> . Any complaints concerning the Acquirer can be made at the contact information above. If satisfactory resolution is not obtained please contact your Acquirer
<b>Information about payment terminal</b>	N/A
<b>Contactless payments acceptance</b>	N/A
<b>Transaction return policy</b>	See transaction return policy on BlueSnap’s website at <a href="http://www.bluesnap.com">www.bluesnap.com</a>

<b>Payment Facilitator or Independent sales organization or referral agent (where applicable)</b>	<p>BlueSnap Enterprise Canada ULC having a registered office address at 2200 HSBC Building, 885 West Georgia Street, Vancouver, BC V6C 3E8, Canada.</p> <p>BlueSnap is a registered Payment facilitator of Peoples Trust and Acquirer.</p>
<b>Information about credit and debit card service providers (if different from the acquirer)</b>	<p>BlueSnap Enterprise Canada ULC having a registered office address at 2200 HSBC Building, 885 West Georgia Street, Vancouver, BC V6C 3E8, Canada.</p> <p>BlueSnap is a third party registered payment facilitator of Acquirer and is not an affiliate or subsidiary of Acquirer.</p>
<b>Code of Conduct</b>	<p>Please visit the Financial Consumer Agency of Canada’s website for more information on <u><a href="#">merchant rights under the Code of Conduct for the Credit and Debit Card Industry in Canada</a></u>. The Code of Conduct can be found at the following link:  <a href="http://www.fcac-acfc.gc.ca/Eng/forIndustry/publications/lawsReg/Pages/CodeofCo-Codedeco.aspx">http://www.fcac-acfc.gc.ca/Eng/forIndustry/publications/lawsReg/Pages/CodeofCo-Codedeco.aspx</a></p> <p>If you have a concern pertaining to the <i>Code of Conduct for the Credit and Debit Card Industry</i>, you may contact us.</p> <p>To assist us in reviewing your complaint, please provide the following, where applicable:</p> <ul style="list-style-type: none"> <li>• a summary of your concerns,</li> <li>• details, such as the name of the person you were dealing with, the date the concern occurred, date spoken to our representative,</li> <li>• copies of any supporting documentation (i.e. agreements, statements, correspondence)</li> </ul> <p>BlueSnap will provide a resolution within 30 days of receiving the merchant concern, along with:</p> <ul style="list-style-type: none"> <li>• A summary of the concern;</li> <li>• The final result of the investigation;</li> <li>• Explanation of the proposed resolution; and</li> <li>• Information on how to further escalate the dispute in the event of an unsatisfactory outcome, along with the appropriate form(s).</li> </ul> <p>If BlueSnap cannot provide a resolution within 30 days, you will be informed of the delay, reason for the delay, and the expected response time.</p> <p>If you believe or suspect that our actions or conduct is in breach of the Code or feel your concerns regarding our products or services have not been adequately addressed, you may report the issue directly to your acquirer of record to file a Code of Conduct Complaint.</p> <p><b><u>For Peoples Trust</u></b>  <b>Website:</b> <a href="http://www.peoplescardservices.com">www.peoplescardservices.com</a> to file a Code of Conduct Concern  <b>Telephone:</b> 1-844-304-2083</p> <p><b><u>For Home Trust</u></b>  <b>Website:</b> <a href="http://www.hometrusted.ca">www.hometrusted.ca</a> to file a Code of Conduct Concern  <b>Telephone:</b> 1-877-374-9444</p> <p><b><u>For Wells Fargo Bank</u></b>  <b>Website:</b> <a href="http://www.wellsfargo.com">www.wellsfargo.com</a> to file a Code of Conduct Concern  <b>Telephone:</b> 515-557-1397</p> <p><b><u>For First Data</u></b>  <b>Website:</b> <a href="http://www.firstdata.com/en_ca/home.html">www.firstdata.com/en_ca/home.html</a>  <a href="https://www.firstdata.com/en_ca/code-of-conduct/code-of-contact-complaint-form.html">https://www.firstdata.com/en_ca/code-of-conduct/code-of-contact-complaint-form.html</a> to file a Code of Conduct Concern</p>

<b>Account Statements</b>	Merchant will receive periodic payout statements and shall have access to electronic statements of account online at its account on BlueSnap console.
<b>Fees/Rates</b>	Fees and rates are listed in Merchant's BlueSnap console and as set out in Schedule 1, Pricing and Fees Schedule to your Merchant Agreement executed as a separate document. Fees breakdown disclosure shall be available to Merchant by separate document.

NOTE: The above terms supersede any directly conflicting terms in this Agreement.

- II. In the event a Canadian bank is the Acquirer of a transaction, the following provisions are required in full and without edit and shall apply to all transactions processed by that Acquirer and shall be incorporated into the Merchant Agreement:

Merchant's Refund policy shall be in compliance with all relevant Canadian law.

By using American Express ("AMEX") through BlueSnap, Merchant accepts and agrees to the set out on the URL entitled "BlueSnap American Express Terms v1.0 July 2015" on the BlueSnap website including all Canada-specific provisions therein, and as may from time to time be updated together with all relevant rules and regulations issued by AMEX.

Merchant warrants it will comply with national and provincial anti-spam laws, Canada's Anti Spam Law 2014 and also the CANSPAM (the Controlling the Assault of Non-Solicited Pornography and Marketing) Act and equivalent foreign legislation. Merchant shall comply with and have the rights under the Code of Conduct for the Credit and Debit Card Industry in Canada under each Card Association adopting the Code. The Code can be found at <http://www.fcac-acfc.gc.ca>. Merchant shall also comply with BlueSnap's privacy policy as set forth in the BlueSnap website, as may be amended from time to time.

In the event of a change in fees (other than an increase in chargeback fees due to entrance into BlueSnap's Excessive Chargeback Management Program) or the introduction of a new fee, Merchant shall be given 90 days prior notice by BlueSnap by notification on BlueSnap's website, the Merchant's account console or email, and Merchant may accept the change or terminate the contract without penalty within the notice period.

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 including The Personal Information Protection and Electronic Documents Act (PIPEDA) and relevant Canadian provincial legislation.

Merchant must comply with all applicable laws and regulations including, but not limited to, relating to export control laws and economic sanctions, including the Office of the Superintendent of Financial Institutions sanctions lists.

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 Canadian GST, HST, and/or PST tax.

Merchant agrees that BlueSnap and not the acquirer or processor will be responsible for settlement to the Merchant.

Merchant may accept credit cards from a payment network without requirement to accept debit cards from same network. Merchant may accept debit cards from a payment network without requirement to accept credit cards from same network.



Merchant may offer discounts for different payment methods and different networks. Merchant will have any such discount clearly marked at point of sale.

Merchant must not knowingly submit, and an Acquirer must not knowingly accept from a Merchant for submission into the payment system, any Transaction that is illegal or that the Merchant should have known was illegal, including, but not limited to:

- o Pornography
- o Money Laundering
- o Financing terrorist activities

Merchant must not deposit a Transaction receipt that does not result from an act between the Cardholder and the Merchant.

A Merchant must not require a Cardholder to complete a postcard or similar device that includes the Cardholder's Account Number, Card expiration date, signature, or any other Card account data in plain view when mailed.

Merchant must not request or use an Account Number for any purpose other than as payment for its goods or services

Merchant must not disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from the Merchant.

Merchant must not disburse funds in the form of cash, unless:

The Merchant is dispensing funds in the form of travelers cheque, TravelMoney cards, or foreign currency.

In this case, the Transaction amount is limited to the value of the travelers cheques, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Merchant., or the Merchant is participating in the Cash Back service

Merchant must not enter into interchange any Transaction Receipt for a Transaction that was previously charged back to the Acquirer and subsequently returned to the Merchant, irrespective of Cardholder approval. The merchant may pursue payment from the customer outside the system.

Merchant must not accept a Visa Consumer Credit Card or Commercial Visa Product, issues by a U.S. Issuer, to collect or refinance an existing debt.

Merchant must not accept a Card to collect or refinance an existing debit that has been deemed uncollectable by the Merchant providing the associated goods or services.

A Merchant must not enter into interchange a transaction that represents collection of a dishonored check.

Merchant must not add any tax to Transactions, unless applicable law expressly requires that a Merchant be permitted to impose a tax. Any tax amount, if allowed, must be included in the Transaction amount and not collected separately.

Merchant must not request or use an Account Number for any purpose other than as payment for its goods or services

Merchant must not disburse funds in the form of travelers cheques, if the sole purpose is to allow the Cardholder to make a cash purchase of goods or services from the Merchant.

Merchant must not disburse funds in the form of cash, unless:

The Merchant is dispensing funds in the form of travelers cheque, TravelMoney cards, or foreign currency.

In this case, the Transaction amount is limited to the value of the travelers cheques, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Merchant., or the Merchant is participating in the Cash Back service

Merchant must not enter into interchange any Transaction Receipt for a Transaction that was previously charged back to the Acquirer and subsequently returned to the Merchant, irrespective of Cardholder approval. The merchant may pursue payment from the customer outside the system.

Merchant must not accept a Visa Consumer Credit Card or Commercial Visa Product, issues by a U.S. Issuer, to collect or refinance an existing debt.

Merchant must not accept a Card to collect or refinance an existing debit that has been deemed uncollectable by the Merchant providing the associated goods or services.

A Merchant must not enter into interchange a transaction that represents collection of a dishonored check.

### III. Applicable To Merchants Boarded With Vantiv As Acquirer (Canada only)

This MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS (“Agreement”) is made among VANTIV, LLC, having its principal office at 8500 Governors Hill Drive, Symmes Township, OH 45249-1384 and its designated Acquirer Member Bank (collectively “Acquirer”) and BlueSnap Merchant (“Sub-merchant”) in connection with the agreement between Sub-merchant and Bluesnap, Inc. (“Provider”). Acquirer will provide Sub-merchant with certain payment processing services (“Services”) in accordance with the terms of this Agreement. In consideration of Sub-merchant’s receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard International Inc. (“MasterCard”), VISA International (“VISA”), and certain similar entities (collectively, “Associations), Sub-merchant is required to comply with the Operating Regulations (defined below) as they pertain to applicable credit and debit card payments. In addition, if Sub-merchant meets certain requirements under the Operating Regulations or an Association or the Operating Regulations otherwise require, Sub-merchant may be required to enter into a direct relationship with an entity that is a member of the Associations. By executing this Agreement, Sub-merchant has fulfilled such requirement. However, Acquirer understands that Sub-merchant may have contracted with Provider to obtain certain processing services and that Provider may have agreed to be responsible to Sub-merchant for all or part of Sub-merchant’s obligations contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

1. **Certain Sub-merchant Responsibilities.** Sub-merchant agrees to comply, and to cause third parties acting as Sub-merchant’s agent (“Agents”) to comply, with the Association’s and other payment network’s by-laws, operating regulations and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Associations or payment networks (collectively "Operating Regulations"). Sub-merchant may review the VISA and MasterCard websites for a copy of the Visa and MasterCard regulations. The websites are: <http://www.visa.ca/merchant/index.jsp> and <http://www.mastercard.com/ca/merchant/en/index.html>. Sub-merchant agrees that; (i) MasterCard and VISA are the sole and exclusive owners of their respective trademarks and may prohibit the sub-merchant from using those trademarks for any reason, (ii) Sub-merchant will not contest ownership of MasterCard and VISA trademarks for any reason and (iii) Sub-merchant will not take actions that could interfere with or prevent MasterCard’s and VISA’s exercise of their respective rights in their trademarks. Sub-merchant also agrees that MasterCard and VISA have the right to enforce any provision of the respective card brand standards and prohibit the

Sub-merchant or Provider from engaging in conduct that MasterCard and VISA deem could injure or create risk of injury to their respective brands.

Sub-merchant also agrees to comply with all applicable territorial, provincial, federal, and local laws, rules, and regulations and applicable voluntary codes of conduct (“Laws”). For purposes of this section, Agents include, but are not limited to, Sub-merchant’s software providers and/or equipment providers.

If appropriately indicated in Sub-merchant’s agreement with Provider, Sub-merchant may be a limited-acceptance merchant, which means that Sub-merchant has elected to accept only certain Visa and MasterCard card types (i.e., consumer credit, consumer debit, and commercial cards) and must display appropriate signage to indicate the same. Acquirer has no obligation other than those expressly provided under the Operating Regulations and applicable law as they may relate to limited acceptance. Sub-merchant, and not Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

Sub-merchant shall only complete sales transactions produced as the direct result of bona fide sales made by Sub-merchant to cardholders, and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than Sub-merchant, or for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities.

2. **Sub-merchant Prohibitions.** Sub-merchant must not i) require a cardholder to complete a postcard or similar device that includes the cardholder’s account number, card expiration date, signature, or any other card account data in plain view when mailed, ii) add any tax to transactions, unless applicable law expressly requires that a Sub-merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), iii) request or use an account number for any purpose other than as payment for its goods or services, iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-merchant, v) disburse funds in the form of cash unless Sub-merchant is dispensing funds in the form of travelers checks, TravelMoney cards, or foreign currency (in such case, the transaction amount is limited to the value of the travelers checks, TravelMoney cards, or foreign currency, plus any commission or fee charged by the Sub-merchant), or Sub-merchant is participating in a cash back service, vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sub-merchant, irrespective of cardholder approval, vii) accept a Visa consumer credit card or commercial Visa product issued by a U.S. issuer to collect or refinance an existing debt, viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable, ix) add any surcharges to transactions, unless applicable laws or regulations expressly require that a Merchant be permitted to impose a surcharge, any surcharge amount, if allowed, must be included in the transaction amount and not collected separately, or x) submit a transaction that represents collection of a dishonored check. Sub-merchant further agrees that, under no circumstance, will Sub-merchant store cardholder data in violation of the Laws or the Operating Regulations including but not limited to the storage of track-2 data. Neither Sub-merchant nor its Agent shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.
3. **Settlement.** Upon receipt of Sub-merchant’s sales data for card transactions, Acquirer will process Sub-merchant’s sales data to facilitate the funds transfer between the various Associations and Sub-merchant. After Acquirer receives credit for such sales data, subject to the terms set forth herein, Acquirer will fund Sub-merchant through Provider to an account designated by Provider (“Provider Designated Account”) for such card transactions. Sub-merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to Sub-merchant, and that any dispute regarding the receipt or amount of settlement shall be between Provider and Sub-merchant. Acquirer will debit the Provider Designated Account for funds owed to Acquirer as a result of the Services provided hereunder, provided that Acquirer may also debit Sub-merchant’s designated demand deposit account (“Sub-merchant-Owned Designated Account”) upon receipt of such account information from Sub-merchant or Provider, or if Acquirer deposits settlement funds into the Sub-merchant-Owned Designated Account. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason,

or if Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from Sub-merchant or Provider.

4. **Term and Termination.** This Agreement shall be binding upon Sub-merchant upon Sub-merchant's execution. The term of this Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding upon Acquirer, on the date Acquirer accepts this Agreement by issuing a merchant identification number, and shall be coterminous with Provider's agreement with Sub-merchant.

Notwithstanding the foregoing, Acquirer may immediately cease providing Services and/or terminate this Agreement without notice if (i) Sub-merchant or Provider fails to pay any amount to Acquirer when due, (ii) in Acquirer's opinion, provision of a service to Sub-merchant or Provider may be a violation of the Operating Regulations or any Laws, (iii) Acquirer believes that Sub-merchant has violated or is likely to violate the Operating Regulations or the Laws, (iv) Acquire determines Sub-merchant poses a financial or regulatory risk to Acquirer or an Association, (v) Acquirer's agreement with Provider terminates, (vi) any Association deregisters Provider, (vii) Acquirer ceases to be a member of the Associations or fails to have the required licenses, or (viii) Acquirer is required to do so by any of the Associations.

5. **Limits of Liability.** Sub-merchant agrees to provide Acquirer, via a communication with Provider, with written notice of any alleged breach by Acquirer of this Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by Sub-merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Sub-merchant's sole and exclusive remedy for any and all claims against Acquirer arising out of or in any way related to the transactions contemplated herein shall be termination of this Agreement. In no event shall Acquirer have any liability to Sub-merchant with respect to this Agreement or the Services. Sub-merchant acknowledges Acquirer is only providing this Agreement to assist in Provider's processing relationship with Sub-merchant, that Acquirer is not liable for any action or failure to act by Provider, and that Acquirer shall have no liability whatsoever in connection with any products or services provided to Sub-merchant by Provider. If Provider is unable to provide its services to Sub-merchant in connection with this Agreement and Acquirer elects to provide those services directly, Sub-merchant acknowledges and agrees that the provisions of this Agreement will no longer apply and the terms of Acquirer's then current Bank Card Merchant Agreement, which would be provided to Sub-merchant, will govern Acquirer's relationship with Sub-merchant. If Provider subsequently provides its services to Sub-merchant in connection with this Agreement, Acquirer will cease to provide such services after receipt of notice from Provider and this Agreement will govern Acquirer's relationship with Sub-merchant.

6. **Miscellaneous.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of Ontario and the laws of Canada applicable therein without regard to conflicts of law provisions. This Agreement may not be assigned by Sub-merchant without the prior written consent of Acquirer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Agreement is for the benefit of, and may be enforced only by, Acquirer and Sub-merchant and is not for the benefit of, and may not be enforced by, any other party. Acquirer may amend this Agreement upon notice to Sub-merchant in accordance with Acquirer's standard operating procedure. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if such provision is not contained in the Agreement "Member Bank" as used in this Agreement shall mean a member of VISA, MasterCard and/or other acceptance networks, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, Member Bank shall be Peoples Trust Company, located in Vancouver, British Columbia. The Member Bank is a party to this Agreement. The Member Bank may be changed, and its rights and

obligations assigned to another party by Acquirer at any time without notice to Sub-merchant. Any complaints with respect to Vantiv, LLC may be directed to Vantiv, LLC, Attn. Legal Department, 8500 Governors Hill Drive, Symmes Township, OH 45249. Any complaints with respect to Member Bank may be directed to Peoples Trust Company at 888 Dunsmuir Street, Vancouver, BC V6C 3K4. Pursuant to the Canadian Bank Act, any complaints not specifically related to this Agreement may be directed to the Financial Consumer Agency of Canada (“FCAC”) at 1-866-461-3222 (English), 1-866-461-2232 (French), fax 1-866-814-2224, or by mail to 6th Floor, Enterprise Building, 427 Laurier Ave, Ottawa, ON K1R 1B9 or through its website at [www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca). The parties hereby acknowledge that they have required these agreements and all related documents to be drawn up in the English language. Les parties reconnaissent avoir demandé que le présent contrat ainsi que les documents qui s’y rattachent soient rédigés en langue anglaise.

IV. Applicable To Merchants Boarded With Home Trust Company As Acquirer (Canada only)

This MERCHANT SERVICES AGREEMENT FOR SUB-MERCHANTS (the “Agreement”) is made among the applicable BlueSnap entity per the Merchant Agreement, having its registered office at the address set forth in the Merchant Agreement (the “Provider”) and its designated Acquirer Member Bank, Home Trust Company (the “Acquirer”) and Merchant having its registered office at the address set forth in the Merchant Agreement (the “**Sub-merchant**”) in connection with the agreement between the Sub-merchant and the Provider. Acquirer will provide Sub-merchant with certain payment processing services (the “**Services**”) in accordance with the terms of this Agreement. In consideration of the Sub-merchant’s receipt of credit or debit card funded payments, and participation in programs affiliated with MasterCard (“**MasterCard**”), VISA (“**VISA**”) and certain similar entities (jointly referred to as the “**Card Organizations**” and each an “**Card Organization**”), Sub-merchant is required to comply with the Rules (as defined below) as they pertain to applicable credit and debit card payments. In addition, if Sub-merchant meets certain requirements under the Rules or a Card Organization or the Rules otherwise require, Sub-merchant may be required to enter into a direct relationship with an entity that is a member of the Card Organizations. By executing this Agreement, the Sub-merchant has fulfilled such requirement. However, the Acquirer agrees and acknowledges that the Sub-merchant has contracted with the Provider to obtain certain processing services and that the Provider has agreed to be responsible to the Sub-merchant for all or part of the Sub-merchant’s obligations contained herein.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises contained herein, the parties agree as follows:

1. **Certain Sub-merchant Responsibilities.** The Sub-merchant agrees to comply, and to cause third parties acting as the Sub-merchant’s agents (the “Agents”) to comply, with the Card Organization’s and other payment network’s by-laws, Rules and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standard, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by the Card Organizations or payment networks (jointly referred to as the “Rules”). The Sub-merchant also agrees to comply with all applicable state, federal and local laws, rules and regulations (the “Laws”). Without limiting the foregoing, the Sub-merchant agrees that it will fully comply with any and all Canadian anti-money laundering laws and regulations. For purposes of this section, the Agents include, but are not limited to, Sub-merchant’s software providers and/or equipment providers.

If appropriately indicated in the Sub-merchant’s agreement with the Provider, the Sub-merchant may be a limited-acceptance merchant, which means that the Sub-merchant has elected to accept only certain Visa and MasterCard card types (i.e. consumer credit, consumer debit and commercial cards) and must display appropriate signage to indicate the same. The Acquirer has no obligation other than those expressly provided under the Rules and applicable law as they may relate to limited acceptance. The Sub-merchant, and not the Acquirer, will be solely responsible for the implementation of its decision for limited acceptance, including but not limited to policing the card type(s) accepted at the point of sale.

The Sub-merchant shall only complete sales transactions produced as the direct result of bona fide sales made by the Sub-merchant to cardholders, and is expressly prohibited from presenting sales transactions which are produced as a result of sales made by any person or entity other than the Sub-merchant, or for any purposes related to any illegal or prohibited activity, including but not limited to money-laundering or financing of terrorist activities.

The Sub-merchant may set a minimum transaction amount to accept a card that provides access to a credit account, under the following conditions: (i) the minimum transaction amount does not differentiate between card issuers and (ii) the minimum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand. The Sub-merchant may set a maximum transaction amount to accept a card that provides access to a credit account, provided that the maximum transaction amount does not differentiate between MasterCard, Visa, or any other acceptance brand.

2. **Sub-merchant Prohibitions.** Sub-merchant must not (i) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature or any other card account data in plain view when mailed, (ii) add any tax to transactions, unless applicable law expressly requires that the Sub-merchant impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately), (iii) request or use an account number for any purpose other than as payment for its goods or services, (iv) disburse funds in the form of travelers checks if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Sub-merchant, (v) disburse funds in the form of cash unless Sub-merchant is participating in a cash back service, (vi) submit any transaction receipt for a transaction that was previously charged back to the Acquirer and subsequently returned to Sub-merchant, irrespective of cardholder approval, (vii) accept a Visa consumer credit card or commercial Visa product issued by an issuer to collect or refinance an existing debt, (viii) accept a card to collect or refinance an existing debt that has been deemed uncollectable, or (ix) submit a transaction that represents collection of a dishonored check. The Sub-merchant further agrees that, under no circumstance, will the Sub-merchant store cardholder data in violation of the Laws or the Rules including but not limited to the storage of track-2 data. Neither the Sub-merchant nor its Agents shall retain or store magnetic-stripe data subsequent to the authorization of a sales transaction.
3. **Settlement.** Upon receipt of the Sub-merchant's sales data for card transactions, the Acquirer will process the Sub-merchant's sales data to facilitate the funds transfer between the various Card Organizations and the Sub-merchant. After the Acquirer receives credit for such sales data, subject to the terms set forth herein, the Acquirer will fund the Sub-merchant, either directly to the Sub-merchant-Owned Designated Account (as defined below) or through Provider to an account designated by Provider ("**Provider Designated Account**"), at Acquirer's discretion, for such card transactions. The Sub-merchant agrees that the deposit of funds to the Provider Designated Account shall discharge Acquirer of its settlement obligation to the Sub-merchant and that any dispute regarding the receipt or amount of settlement shall be between the Provider and the Sub-merchant. The Acquirer will debit the Provider Designated Account for funds the owed to Acquirer as a result of the Services provided hereunder, provided that the Acquirer may also debit the Sub-merchant's designated demand deposit account (the "**Sub-merchant-Owned Designated Account**") upon receipt of such account information from the Sub-merchant or the Provider, or if the Acquirer deposits settlement funds into the Sub-merchant-Owned Designated Account. Further, if a cardholder disputes a transaction, if a transaction is charged back for any reason, or if the Acquirer reasonably believes a transaction is unauthorized or otherwise unacceptable, the amount of such transaction may be charged back and debited from either the Sub-merchant or the Provider.
4. **Term and Termination.** This Agreement shall be binding upon the Sub-merchant upon the Sub-merchant's execution. The term of this Agreement shall begin, and the terms of the Agreement shall be deemed accepted and binding upon the Acquirer, on the date the Acquirer accepts this Agreement by issuing a merchant identification number (MID), and shall be coterminous with the Provider's agreement with Sub-merchant.

Notwithstanding the foregoing, the Acquirer may immediately cease providing Services and/or terminate this Agreement without notice if (i) the Sub-merchant or the Provider fails to pay any amount to Acquirer

when due, (ii) in the Acquirer's opinion provision of a service to the Sub-merchant or the Provider may be a violation of the Rules or any Laws, (iii) the Acquirer believes that the Sub-merchant has violated or is likely to violate the Rules or the Laws, (iv) the Acquirer determines the Sub-merchant poses a financial or regulatory risk to the Acquirer or a Card Organization, (v) the Acquirer's agreement with the Provider terminates, (vi) any Card Organization deregisters the Provider, (vii) the Acquirer ceases to be a member of the Card Organizations or fails to have the required licenses or (viii) the Acquirer is required to do so by any of the Card Organizations.

5. **Limits of Liability.** The Sub-merchant agrees to provide the Acquirer, via communication with the Provider, with a written notice of any alleged breach by the Acquirer of this Agreement, which notice will specifically detail such alleged breach, within thirty (30) days of the date on which the alleged breach first occurred. Failure to so provide notice shall be deemed an acceptance by the Sub-merchant and a waiver of any and all rights to dispute such breach.

EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, ACQUIRER DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

The Sub-merchant's sole and exclusive remedy for any and all claims against the Acquirer arising out of or in any way related to the transactions contemplated herein shall be termination of this Agreement. In the event that the Sub-merchant has any claim arising in connection with the Services, rights, and/or obligations defined in this Agreement, Sub-merchant shall proceed against the Provider and not against the Acquirer, unless otherwise specifically set forth in the Rules. In no event shall the Acquirer have any liability to the Sub-merchant with respect to this Agreement or the Services. The Sub-merchant acknowledges that (i) the Acquirer is only providing this Agreement to assist in Provider's processing relationship with the Sub-merchant, (ii) the Acquirer is not liable for any action or failure to act by the Provider and (iii) the Acquirer shall have no liability whatsoever in connection with any products or services provided to the Sub-merchant by the Provider. If the Provider is unable to provide its services to the Sub-merchant in connection with this Agreement and the Acquirer elects to provide those services directly, the Sub-merchant acknowledges and agrees that the provisions of this Agreement will no longer apply and the terms of Acquirer's then current merchant agreement, which would be provided to the Sub-merchant, will govern the Acquirer's relationship with the Sub-merchant. If the Provider subsequently provides its services to the Sub-merchant in connection with this Agreement, the Acquirer will cease to provide such services after receipt of notice from the Provider and this Agreement will govern the Acquirer's relationship with the Sub-merchant.

6. **Miscellaneous.** This Agreement and/or any non-contractual obligations arising from or in connection with it are subject to the laws of the Netherlands, without regard to conflicts of law provisions, and any dispute arising thereof that cannot be solved amicably shall be settled before the competent court of Amsterdam, The Netherlands. This Agreement may not be assigned by the Sub-merchant without the prior written consent of the Acquirer. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. This Agreement is for the benefit of, and may be enforced only by, the Acquirer and the Sub-merchant and is not for the benefit of, and may not be enforced by, any other party. The Acquirer may amend this Agreement upon notice to Sub-merchant in accordance with Acquirer's standard operating procedure. If any provision of this Agreement is determined to be illegal or invalid, such illegality or invalidity of that provision will not affect any of the remaining provisions and this Agreement will be construed as if such provision is not contained in the Agreement. "Acquirer" as used in this Agreement shall mean a member of VISA and/or MasterCard, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, the Acquirer shall be Home Trust Company organised under the laws of Canada, having a registered office at 145 King Street West, Suite 2400, Toronto, Ontario M5H 1J8 Canada, The Netherlands. The Acquirer is a party to this Agreement. The acquirer may be changed, and its rights and obligations assigned to another party by the Acquirer at any time without notice to Sub-merchant.

V. Applicable To Merchants Boarded With Wells Fargo Bank, N.A. As Acquirer (Canada only)

## WELLS FARGO BANK N.A. CANADIAN BRANCH AND FIRST DATA CANADA

### Visa and MasterCard Disclosures and Acknowledgement

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Member Bank Name: Wells Fargo Bank, N.A. Canadian Branch  
Bank mailing address: 1200 Montego Way, Walnut Creek, California 94598  
Bank Phone Number: 515-557-1397

#### Important Member Bank Responsibilities

- The Bank is the only entity approved to extend acceptance of VISA and MasterCard products directly to a merchant.
- The Bank must be a principal (signer) to the Merchant Agreement.
- The Bank is responsible for educating Merchants on pertinent VISA and MasterCard Rules with which Merchants must comply; but this information may be provided to you by BlueSnap or Processor.
- The Bank is responsible for and must provide settlement funds to the BlueSnap or Processor, for distribution to the Merchant or directly to the Merchant.
- The Bank is responsible for all funds held in reserve that are derived from settlement.

#### Important Merchant Responsibilities

- In the event Merchant obtains card information, ensure compliance with cardholder information security and storage requirements.
- Review and understand the terms of the Agreement.
- Comply with Card Association Rules.
- Retain a signed copy of this Disclosures Page.

### Background, Roles and Responsibilities

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**1. Background.** Merchant and BlueSnap entered into a BlueSnap Merchant Agreement (including the BlueSnap Merchant Terms and Conditions) (**Agreement**) that allows BlueSnap to act as a payment facilitator for authorization, processing, and settlement services (**Merchant Acquiring Services**). The Card Associations Rules require Wells Fargo Bank, N.A. Canadian Branch (**Bank**) to have a direct agreement with Merchant once the Merchant's annual transaction volume exceeds a certain amount. To facilitate this requirement, BlueSnap, Processor (defined below) and Bank (Processor and Bank, collectively referred to as **Acquirers**) have included additional terms and conditions in this Exhibit 6 that will become a part of the Agreement.

**1. BlueSnap.** BlueSnap will facilitate the provision of the Merchant Acquiring Services outlined in the Agreement, including, supporting chargebacks, reporting, status changes, and questions about the Merchant Acquiring Services.

**2. Processor. First Data Canada Ltd. (Processor),** and/or BlueSnap through a separate agreement between Processor and BlueSnap, will provide the Merchant Acquiring Services to Merchant.

**3. Bank.** Bank is the member of Visa and MasterCard that sponsors BlueSnap, Processor and Merchant's acceptance of Visa and MasterCard transactions. As between Bank and Processor and Bank and BlueSnap, only Bank is approved to extend acceptance of Visa and MasterCard transactions directly to Merchant. Bank is responsible for providing BlueSnap (as allowed by the Card Association Rules) or Merchant with settlement funds for Visa and MasterCard transactions. As the member of the Card Associations, Bank is responsible (either directly or through Processor or BlueSnap) for advising Merchant of the Card Association Rules that Merchant must follow. The Merchant Processing Services that you receive from any Card Association other than Visa and MasterCard are provided by BlueSnap and/or Processor and not by Bank.

### Additional Terms and Conditions

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#### 4. Reserve.

In addition to BlueSnap's holdback and rolling reserve rights in the Agreement, the Acquirers may require the Merchant to fund a cash reserve (**Reserve**) in an amount that reflects the Acquirers' assessment of risk, as they may determine in their discretion from time-to-time. The Reserve is a payment obligation of the Acquirers, established by holding back transaction proceeds or debiting the Settlement Account in order to potentially offset any obligations that the Merchant may have to the Acquirers. The Reserve is not a segregated fund that the Merchant may claim to own. The Acquirers are obligated to pay to the Merchant



any amounts remaining from the Reserve after all other then-current and contingent liabilities or obligations related to the Merchant's payment transactions have expired (as provided for under the Network Rules).

**4.1.** The obligations due to the Merchant from the Reserve will not accrue interest unless required by applicable laws.

**4.2.** The Acquirers will notify the Merchant if a Reserve is established (including its amount) or if the amount of the Reserve is modified.

**4.3.** The Acquirers may set off any obligations that the Merchant owes to the Acquirers from the Reserve.

**4.4.** Although the Merchant acknowledges that the Reserve is a general obligation of the Acquirers, and not a specifically identifiable fund, if any person claims that the Reserve is an asset of the Merchant that is held by the Acquirers, the Merchant grants and acknowledges that the Acquirers have a security interest in the Reserve and, at Acquirers request, will provide documentation to reflect this security interest.

**5. Set-off.** All funds that the Acquirers owe to the Merchant under this Agreement are subject to the Merchant's payment obligations under this Agreement. The Acquirers may set off amounts the Merchant owes to either or both of the Acquirers against any funds that either or both of the Acquirers owe to the Merchant.

**6. Assignment.** Acquirers may each, in whole or in part, assign or transfer the Agreement or this Exhibit 5 or delegate or subcontract its respective rights, duties, or obligations under the Agreement or this Exhibit 5 without Merchant or BlueSnap's consent. Merchant further acknowledge that another financial institution may be substituted for Bank with respect to Bank's obligation.

**7. Third Party Beneficiary to the Agreement.** In the **United States (Territory)** Processor and Bank are direct and intended third party beneficiaries to the Agreement, and may enforce their rights (i.e., confidentiality, indemnification, liability limitations, compliance, and data security, and third party fees) directly against Merchant without objection based on lack of privity or any similar claim.

**8. Termination.** In addition to the termination rights in the Agreement, Bank and/or Processor may terminate the Agreement without advance notice for any other reason, without cause.

**9. Reporting.** If this Agreement is terminated for cause, Merchant acknowledge that Bank or Processor may be required to report your business name and the names and other identification of your principals to the Card Associations. Merchant expressly agree and consent to such reporting in the event Merchant is terminated as a result of the Acquirers or BlueSnap's termination for cause or for any reason specified by the Card Association(s) as cause. Furthermore, Merchant agrees to waive and hold us harmless from and against, any and all claims which you may have as a result of such reporting.

**10. Arbitration.**

**10.1.** This arbitration provision will be broadly interpreted. If Merchant has a dispute with Processor or Bank that cannot be resolved informally, Merchant or Bank or Processor may elect to arbitrate that dispute in accordance with the terms of this arbitration provision rather than litigate the dispute in court. In arbitration, there is no judge or jury, and there is less discovery and appellate review than in court.

**10.2.** Notwithstanding Section 11.1, the parties agree that the following will not be subject to arbitration: (a) disputes relating to the scope, validity, or enforceability of this arbitration provision; (b) any claim filed by either party in which the amount in controversy is properly within the jurisdiction of a small claims court; and (c) any dispute related to the validity of any party's intellectual property rights.

**10.3.** If a party elect to resolve the dispute through arbitration pursuant to this arbitration provision, the party initiating the arbitration proceeding must open a case with the American Arbitration Association - Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043, 877-495-4185, [www.adr.org](http://www.adr.org).

**10.4.** A Claim that is not resolved directly between the parties within 90 days shall be resolved by arbitration as set out in this Section 10 and the National Arbitration Rules (the "Rules") of ADR Institute of Canada, Inc. (the "Administrator") or its successors or replacement Administrator. For a copy of the Rules, or for other information about the Administrator contact: ADR Institute, 234 Eglinton Avenue East, Suite 500, Toronto, Ontario M4P 1K5; e-mail [admin@adrCanada.ca](mailto:admin@adrCanada.ca). If a party chooses arbitration to resolve a Claim, neither party may commence litigation in court in respect of such Claim. If there is a conflict between this arbitration provision and the Rules, this arbitration provision will govern. If the Rules will not administer a proceeding under this arbitration provision as written, it cannot serve as the arbitration organization to resolve your Dispute. If this situation arises, the parties will agree on a substitute arbitration organization. If the parties are unable to agree, the parties will mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this arbitration provision as written. If there is a conflict between this arbitration provision and the rest of this Agreement, this arbitration provision will govern.

**10.5.** A single arbitrator will resolve the dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect your information and other confidential or proprietary information. If the claim alleged in the dispute is for \$10,000 or less, and the dispute is not excluded based on section 11.2 above, you may choose whether the arbitration will be conducted solely based on documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing

under the rules of the selected arbitration organization. The arbitrator will make any award in writing but need not provide a statement of reasons unless requested by a party. An award rendered by the arbitrator may be entered in any court having jurisdiction over the parties for purposes of enforcement.

**10.6.** If an award granted by the arbitrator exceeds \$50,000, either party can appeal that award to a three-arbitrator panel administered by the same arbitration organization by a written notice of appeal filed within thirty (30) days from the date of entry of the written arbitration award. The arbitration organization will then notify the other party that the award has been appealed. The members of the three-arbitrator panel will be selected according to the Rules. The three-arbitrator panel will issue its decision within one hundred and twenty (120) days of the date of the appealing party's notice of appeal. The decision of the three-arbitrator panel will be final and binding.

**10.7.** ALL PARTIES TO AN ARBITRATION MUST BE INDIVIDUALLY NAMED. THERE WILL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT, OR CONSOLIDATED BASIS OR ON A BASIS INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER CLIENTS, OR OTHER PERSONS.

**10.8.** The arbitrator may award injunctive or similar relief only in favor of the individually named party and only to the extent necessary to provide relief warranted by that individual party's claim. The arbitrator may not award injunctive relief applicable to any class or similarly situated individual or groups.

**10.9.** The arbitration will take place in the Province of Ontario.

**10.10.** Acquirers will pay arbitration filing fees and arbitrator's costs and expenses notified to Acquirers prior to the commencement of the arbitration. Merchant is responsible for all additional costs that you incur in the arbitration, including fees for attorneys or expert witnesses. If the arbitration is resolved in our favor, Merchant will reimburse us for the filing fees and costs paid to Merchant only up to the extent awardable in a judicial proceeding. If the arbitration is resolved in Merchant's favor Merchant will not be required to reimburse Acquirers for any of the fees and costs paid by Acquirers. Notwithstanding anything to the contrary in this arbitration provision, Acquirers will pay all fees and costs that Acquirers are required by law to pay.

**10.11.** IF MERCHANT DOES NOT WISH TO ARBITRATE DISPUTES, MERCHANT MUST NOTIFY ACQUIRERS IN WRITING WITHIN 30 DAYS OF THE DATE THAT MERCHANT FIRST RECEIVE THIS AGREEMENT BY WRITING MERCHANT'S NAME, ADDRESS AND ACCOUNT NUMBER AS WELL AS A CLEAR STATEMENT THAT MERCHANT DOES NOT WISH TO RESOLVE DISPUTES THROUGH ARBITRATION AND SENDING THAT NOTICE EITHER (a) BY E-MAIL TO ARBITRATIONOPTOUT@FIRSTDATA.COM; (b) BY FAX AT 402-916-2200; or (c) BY MAILING TO "ARBITRATION OPT OUT NOTICE, 3975 N.W. 120TH AVENUE, CORAL SPRINGS, FL 33065 (THESE FAX NUMBERS AND ADDRESSES ARE ONLY FOR SUBMITTING THE NOTICE DESCRIBED IN THIS SECTION). MERCHANT'S DECISION TO OPT OUT OF ARBITRATION WILL HAVE NO ADVERSE EFFECT ON YOUR ELATIONSHIP WITH ACQUIRERS OR THE SERVICES PROVIDED BYTHE ACQUIRERS.

**10.12.** If any part of Section 11.7 is found to be illegal or unenforceable, the entire arbitration provision will be unenforceable, and the dispute will be decided by a court. If any other clause in this arbitration provision is found to be illegal or unenforceable, that clause will be severed from this arbitration provision, and the remainder of this arbitration provision will be given full force and effect.

**10.13.** MERCHANT, PROCESSOR, BANK AND BLUESNAP EACH HAVE AGREED TO WAIVE THE RIGHT TO TRIAL BY JURY.

**11. Choice of Law.** If the parties elect to forgo arbitration, or if any dispute is decided by a court as allowed in Section 11.12, the parties acknowledge and agree that all disputes and this Agreement will be governed by the Province of Ontario law (exclusive of conflicts and choice of law rules calling for a different result).

**12. Notices.** For purposed of this Territory, notice to Processor will be sent to: First Data Canada Ltd., Attention: President, 2630 Skymark Ave., Suite 400, Mississauga, Ontario, L4W 5A4, with a copy to: First Data Merchant Services LLC, Attn: General Counsel's Office, 6855 Pacific Street, AK-32, and Omaha, NE 68106. Emailed notices to First Data will be sent to: [legalpapers@firstdata.com](mailto:legalpapers@firstdata.com); and notices to Bank as described on page 1 of this Exhibit 5

**13.** Any capitalized terms used in this Exhibit 5 and not specifically defined in this Exhibit 5, are given the meaning ascribed to them in the Agreement.

**14. English Language.** The parties hereby confirm their express wish that any documents and notices related thereto be drawn up in English and declare themselves to be satisfied therewith, the whole, however, without prejudice to any documents which may from time to time be drawn up in French and English. *Par les présentes, les parties confirment qu'elles souhaitent expressément que cette convention et tous les documents et avis connexe soient rédigés en anglais; elles s'en déclarent satisfaites sans préjudice, toutefois, à tout document ou avis qui pourrait, de temps à autre, être rédigé à la fois en français et en anglais.*

**15. Merchant's Termination Without Cause.** In the event Processor notifies Merchant of: (i) an increase in or any additional fees (subject to 90 days prior written notice); (ii) a material change to the terms the services none of which were previously negotiated and agreed to by the parties, Merchant understands that it may terminate the Agreement without further cause or penalty by providing Processor 30 days' written notice prior to the effective date of such modification. Merchant agrees that continued use of the services, after the effective date of any modification constitutes acceptance throughout the initial or any renewal term of the Agreement. Merchant agrees that upon delivery of its notice of termination, it will fund its Reserve Account as set forth in section 4.

**16. Pre-Notificaton Requirement.** You hereby waive the "Pre-notification/Confirmation" requirements set out in Appendix II of Rule H1 ("Pre-authorized Debits") of the Canadian Payments Association. The statements made in your Agreement are true. You acknowledge having read your Agreement, and agree to be bound by all provisions printed herein.

## **EXHIBIT 2**

### **FEES**

See Fees with Payment Facilitator

**EXHIBIT 7**  
**VISA Checkout Program Requirements (For Merchants Enrolled In Visa Checkout)**

To the extent a Merchant participates in the Visa Checkout Program, the following required terms apply:

- (i) Merchant's installation, configuration, and use of the Visa API and Visa Services shall conform to the specifications set forth in the applicable Visa Documentation made known to Merchant by BlueSnap;
- (ii) Merchant shall comply with all Laws and Rules, including the BSA, OFAC, AML, anti-bribery laws, laws regarding privacy and protection of consumer information, and as to Visa intellectual property all applicable export control requirements;
- (iii) Merchant shall display the Visa Trademarks in accordance with Visa Branding Requirements and with equal prominence to trademarks of any other payment methods offered on a Merchant site and with equal treatment in terms of website flow, terms, conditions, restrictions or fees;
- (iv) Merchant shall provide all reasonably necessary and required disclosures to and obtain all reasonably necessary and required consents from each End User Customer prior to transmitting such End User Customer information to Visa;
- (v) require the Merchant to maintain industry-required privacy and security policies and measures, including that Merchant and its service providers involved in processing, storing, transmitting, and/or handling any cardholder or transaction information maintain and observe all reasonable security measures to protect its Merchant systems and the data contained therein from unauthorized control, tampering, or any other unauthorized access, including compliance with the Payment Card Industry Data Security Standard;
- (vi) Visa is disclaimed from any liability to the Merchant for indirect, incidental, consequential, special or exemplary damages (whether or not the Merchant has been advised of the possibility of such damages); and
- (vii) Visa's aggregate liability for any direct damages, under any legal or equitable theory, shall be limited to an amount equal to the fees received by BlueSnap for provision of the Visa Services to the Merchant during the three-month period prior to the date the first cause of action arose.

**EXHIBIT 8**  
**For Merchants deploying Apple Pay**

**PLEASE READ THE FOLLOWING APPLE PAY PLATFORM WEB TERMS AND CONDITIONS FOR DIRECT MERCHANTS ("TERMS AND CONDITIONS") CAREFULLY BEFORE DOWNLOADING OR USING THE APPLE PAY WEB APIS OR APPLE PAY PLATFORM. THESE TERMS AND CONDITIONS CONSTITUTE A LEGAL AGREEMENT BETWEEN YOU AND APPLE.**

**Apple Pay Platform**  
**Web Terms and Conditions for Direct Merchants**

**Purpose**

These Terms and Conditions set forth the rights and obligations of Apple and You as they relate to Your use of the Apple Pay Platform to conduct transactions from or through Your Websites. These Terms and Conditions may be modified by Apple from time to time, and Your continued use of the Apple Pay Web APIs and Apple Pay Platform will be deemed acceptance of such updated Terms and Conditions.

## 1. Accepting these Terms and Conditions; Definitions

### 1.1 Acceptance

In order to use the Apple Pay Web APIs and Apple Pay Platform, You must first accept these Terms and Conditions. If You do not or cannot accept these Terms and Conditions, You are not permitted to use the Apple Pay Web APIs or Apple Pay Platform. Do not download or use the Apple Pay Web APIs or Apple Pay Platform in that case. You accept and agree to the terms of these Terms and Conditions on Your own behalf and/or on behalf of Your company, organization, educational institution, or agency, instrumentality, as its authorized legal representative, by enabling and/or using the Apple Pay function in your account with BlueSnap.

### 1.2 Definitions

Capitalized terms used in these Terms and Conditions and not otherwise defined in this Section 1.2 shall have the same meanings ascribed to such terms in the PLA.

“*Affiliates*” mean any other corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization or other business entity that controls, is controlled by, or is under common control with an entity, where “control” means that the entity possesses, directly or indirectly, the power to direct or cause the direction of the management policies of the other entity, whether through ownership of voting securities, an interest in registered capital, by contract, or otherwise.

“*Apple Marketing Guidelines*” mean the guidelines set forth at <http://www.apple.com/legal/trademark/guidelinesfor3rdparties.html> (or any successor URL), the Apple Pay Identity Guidelines for iOS Developers available at <https://developer.apple.com/apple-pay/Apple-Pay-Identity-Guidelines.pdf> (or any successor URL), the Apple Pay Merchant Marketing Guide as provided to You by Apple, plus any additional marketing and use guidelines provided by Apple in writing (including all amendments to any of the foregoing as may be furnished from time to time by Apple to You).

“*Apple Marks*” mean all trademarks, service marks, trade dress, logos, taglines, slogans, product names, any other similar intellectual property, registered or unregistered, directly or indirectly owned by or licensed to Apple anywhere in the world that are identified on Exhibit A attached hereto.

“*Apple Metrics*” mean any metrics (in any format or context) regarding the usage, performance, or transaction-level information relating to the Apple Pay Platform (including without limitation the number and dollar value of transactions completed from or through Websites).

“*Apple Pay Platform*” means the payment platform that utilizes Apple Technology to enable end-users to make payments using credit, debit, and prepaid cards and other physical, digital or virtual payment cards, credentials, or account access devices and access other related services using Apple Products designated by Apple or its Affiliates, as the same may be modified, rebranded or substituted from time to time by Apple.

“*Apple Pay Web APIs*” mean the application programming interface(s) published by Apple (including any updates to or subsequent versions thereof) that enable end-users to facilitate payment transactions using the Apple Pay Platform from a Website, and include other payment-related functionality as described in the Documentation.

“*Apple Pay Web Guidelines*” means the “Apple Pay on the Web: Acceptable Use Guidelines” set forth at <https://developer.apple.com/go/?id=apple-pay-guidelines> (or any successor URL), as the same may be updated from time to time.

“*Apple Product*” means any Technology, product or service distributed under an Apple Mark, or used internally by Apple or an Apple Affiliate.

“*Apple Technology*” means (a) the Apple Pay Web APIs, Apple Pay Platform, and any Updates that Apple may make available to You under these Terms and Conditions; or (b) any other Technology (and all Intellectual Property therein or thereto) that Apple or its Affiliates owned, conceived, reduced to practice, authored, or otherwise created or developed prior or subsequent to the Effective Date of these Terms and Conditions.

“*Applicable Laws*” mean all laws (including common law), legal or administrative codes, statutes, ordinances, regulations, judgments, writs, injunctions, rulings or orders, decrees and orders of any Governmental Authority.

**“Comparable Platform”** means any software that enables the use of personal electronic devices to make contactless, mobile or online transactions (including transactions involving or accessing loyalty, rewards and stored value features).

**“Documentation”** means any technical or other specifications or documentation that Apple may provide to You for use in connection with the Apple Pay Web APIs.

**“Effective Date”** means the date on which You accept these Terms and Conditions in accordance with Section 1.1.

**“Governmental Authority”** means any domestic or foreign, federal state or local government, any political subdivision thereof and any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, regardless of form, including any agency, bureau, court, tribunal, or other instrumentality, having jurisdiction over the applicable party and its respective Affiliates.

**“macOS”** means the macOS operating system software, including any successor versions thereof.

**“Merchant Marks”** mean all trademarks, service marks, trade dress, logos, taglines, slogans, product names, any other similar intellectual property, registered or unregistered, directly or indirectly owned by or licensed to You and Your Affiliates anywhere in the world.

**“Person”** means any individual, corporation, limited liability company, partnership, firm, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity.

**“Personal Data”** means any personally identifiable information, including without limitation any personal financial information, relating to or derived from Your use of the Apple Pay Platform and/or the Apple Pay Web APIs.

**“PLA”** means the Apple Developer Program License Agreement entered into between You and Apple, including all attachments, schedules, exhibits, and amendments thereto, under which You have the right to use the Apple Software and Services (as defined therein).

**“Platform Provider”** means any e-commerce or payments platform provider (a) engaged by You or Your Affiliates to facilitate acceptance of payment transactions from or through Your Websites pursuant to a separate written agreement between You and such provider (the “Provider Agreement”); and (b) has an active and valid Apple developer account with Apple.

**“Program”** has the meaning set forth in Section 3.

**“Public Software”** means any software that, as a condition of use, copying, modification or redistribution, (a) requires attribution, (b) requires such software and derivative works thereof to be disclosed or distributed in source code form, or (c) requires such software to be licensed for the purpose of making derivative works, or to be redistributed free of charge, commonly referred to as free or open source software, including but not limited to software licensed under the GNU General Public License, Lesser/Library GPL, Mozilla Public License, Common Public License, Common Development and Distribution License, Apache, MIT or BSD license.

**“Safari”** means Apple’s web browser product distributed under the name Safari (or any successor thereto).

**“Security Breach”** means any actual or suspected loss or unauthorized access, use, or disclosure of Personal Data in the possession, custody or control of You, Your Affiliates, or Your Platform Providers in connection with Your Websites.

**“Technology”** means any information, designs, drawings, specifications, schematics, software programs (including source and object codes), manuals and other documentation, data, databases, technical or business processes, methods of operation, or methods of production.

**“Unauthorized Transaction”** means any transaction initiated by a Person who is not authorized to make a transaction from or through a Website, including without limitation, any fraudulent transaction.

**“Updates”** means bug fixes, updates, upgrades, modifications, enhancements, supplements, and new releases or

versions of the Apple Pay Web APIs or Apple Pay Platform, or to any part thereof.

“**Website**” means an e-commerce website developed by or on behalf of You, under Your name, trademark or brand, that runs in Safari on macOS and integrates with the Apple Pay Platform using the Apple Pay Web APIs.

“**You**” and “**Your**” means and refers to the individual(s) or legal entity that has accepted these Terms and Conditions pursuant to Section 1.1 above and that is using the Apple Pay Web APIs and the Apple Pay Platform or otherwise exercising rights under these Terms and Conditions.

## **2. General Terms and Conditions**

Except as explicitly provided for in these Terms and Conditions, each party’s rights and obligations under these Terms and Conditions shall be governed by the PLA, the terms and

conditions of which are hereby incorporated herein by reference. In furtherance of the foregoing and not limitation: (a) Apple’s license, and Your use, of the Apple Pay Web APIs under these Terms and Conditions shall be subject to the terms and conditions of the PLA governing Apple Software, Apple SDKs and Apple Pay APIs; and (b) Your use of the Apple Pay Platform shall be subject to the terms and conditions of the PLA governing Apple Services. You acknowledge and agree that the software and services provided by Apple under these Terms and Conditions will be considered part of the Program (as referenced in the PLA), and that the Websites will be considered Covered Products under the PLA. In applying the terms and conditions of the PLA to these Terms and Conditions, all references to “this Agreement” as used in the PLA shall include these Terms and Conditions.

In the event of a direct conflict between the terms of the PLA and these Terms and Conditions, the terms of the PLA shall prevail except as explicitly set forth in these Terms and Conditions with respect to Apple Pay Web APIs, Websites, and the Apple Pay Platform (*provided, however*, that the PLA is not intended to prevent You from exercising any rights granted to You solely with respect to Apple Pay Web APIs, Websites, and the Apple Pay Platform in these Terms and Conditions in accordance with the terms and conditions set forth herein).

Notwithstanding the foregoing, You acknowledge and agree that a conflict between these Terms and Conditions and the PLA shall not exist where the PLA sets forth terms or conditions applicable to a subject matter that is not addressed by these Terms and Conditions.

**3. Program.** Subject to these Terms and Conditions, Apple shall make the Apple Pay Web APIs available to You to the extent required for You to facilitate payment transactions using the Apple Pay Platform from or through Your Websites (the “Program”).

## **4. Apple Pay Web APIs**

**4.1 Apple Pay Web APIs.** Your right to access and use the Apple Pay Web APIs is subject to these Terms and Conditions and the PLA. For purposes of applying the terms and conditions of the PLA to these Terms and Conditions, all references to “Apple Pay APIs” in the PLA shall mean the Apple Pay Web APIs, and all references to “Merchants” in the PLA shall mean You. Where applicable (including for the avoidance of doubt and without limitation Sections 3.2, 3.3.9, 3.3.10, 3.3.11, 3.3.42 and 3.3.43 of the PLA), all references to “Your Application” in the PLA shall mean “the Websites”, and all references to “iOS Product” or “Apple Watch” in the PLA shall also include “macOS Product”. For the avoidance of doubt, all references to the term “Apple Pay Payload” in the PLA shall include any customer data package passed through the Apple Pay Web APIs as part of a payment transaction (e.g., name, email, billing address, shipping address, and device account number), and all references to the term “Intermediary Party” in the PLA shall include Platform Provider.

**4.2 License Grant.** Subject to the terms and conditions of these Terms and Conditions, Apple hereby grants to You during the Term, a limited, non-exclusive, personal, revocable, non-sublicensable and non-transferable license to use and incorporate the Apple Pay Web APIs into Your Websites solely for the purpose of facilitating Apple Pay Platform transactions that are made from or through Your Websites.

**4.3 Use Restrictions.** In addition to the restrictions set forth in Section 2.6 of the PLA, the license granted pursuant to Section 4.2 above is expressly conditioned upon Your and Your Affiliates’ compliance with all of the following requirements:

- (a) You agree to comply with the Apple Pay Web Guidelines;

- (b) You agree not to use the ‘CanMakePaymentWithActiveCard’ API, except for the sole purpose of (i) displaying the “Apple Pay” button upstream; (ii) presenting the Apple Pay Platform as a default payment option or as a payment option in checkout when no other Comparable Platforms are available on the Websites; or
- (iii) enabling users to set up the Apple Pay Platform. In addition, on any webpage where a Comparable Platform is offered, You agree to call the ‘CanMakePayment’ API, and if a user has a device capable of supporting the Apple Pay Platform, then You agree to also offer the Apple Pay Platform as a payment option on the same webpage of such Websites;
- (c) Your Websites may collect donations for nonprofits only after You have received written approval. Any collection of such donations through Your Websites must be in compliance with all Applicable Laws (which may include providing a receipt), and must fulfill all applicable regulation or registration requirements, in the country or territory where You enable such donation to be made. If You are collecting donations on behalf of third party nonprofits, You are responsible for ensuring that such third party nonprofits are in compliance with the criteria provided to You, as the same may be updated from time to time (the “Nonprofit Criteria”). If any third party nonprofit fails to meet the Nonprofit Criteria, then You must immediately cease collecting donations on behalf of such non-compliant third party nonprofit.
- (d) Your Websites must:
- (i) not contain any malware, malicious or harmful code, or other internal component (e.g. computer viruses, trojan horses, “backdoors”), which could damage, destroy, or adversely affect Apple hardware, software or services, or other third party software, firmware, hardware, data, systems, services, or networks;
- (ii) not interfere with security, user interface, user experience, features or functionality of Safari, macOS, or other Apple Products; or
- (iii) not disable, override or otherwise interfere with any Apple-implemented system alerts, warnings, display panels, consent panels and the like, including, but not limited to, those that are intended to notify the user that the user's location data, address book data, calendar, photos, audio data, and/or reminders are being collected, transmitted, maintained, processed or used, or intended to obtain consent for such use;
- (e) if any Website includes any Public Software, You agree to comply with all licensing terms applicable to such Public Software. You agree not to use, or authorize the use of, any Public Software in the development of the Websites in such a way that would cause the non-Public Software portions of the Apple Pay Web APIs or Apple Pay Platform to be subject to any Public Software licensing terms or obligations;
- (f) if Apple makes available new versions of the Apple Pay Web APIs for any reason, including without limitation to address a security breach or security vulnerability regarding Personal Data, update the customer experience, or provide additional features or functionality, then You agree to update all of Your Websites to incorporate such new version within a reasonable time period; and
- (g) You agree not to disadvantage or discriminate against Apple relative to other Comparable Platforms with respect to the display and availability the Apple Pay Platform from or through the Websites. For the avoidance of doubt, the “Apple Pay” button must be displayed as a payment option on Your Websites on parity with any other Comparable Platform. In addition, You will not process or decline transactions, establish transaction, authentication, or other limits applicable to Websites, or implement, suspend, or discontinue Websites in a manner that discriminates against transactions on the basis of their participation in the Program.

If You or Your Affiliates breach any of the foregoing restrictions, You may be subject to prosecution and damages. All licenses not expressly granted in these Terms and Conditions are reserved and no other



licenses, immunity or rights, express or implied are granted by Apple, by implication, estoppel, or otherwise.

#### 4.4 Updates; No Support or Maintenance.

(a) Apple is not obligated to provide any maintenance, technical or other support for the Apple Pay Web APIs or Apple Pay Platform. Apple makes no guarantees to You in relation to the availability or uptime of the Apple Pay Web APIs or Apple Pay Platform, and Apple is not obligated to provide any maintenance, technical or other support related thereto.

(b) Apple does not guarantee the availability, accuracy, completeness, reliability, or timeliness of any data or information displayed in connection with the Apple Pay Platform. To the extent You choose to use the Apple Pay Platform with Your Websites, You are responsible for Your reliance on any such data or information. It is Your responsibility to maintain appropriate alternate backup of all content, information and data, including but not limited to any content that You may provide to Apple in connection with the Apple Pay Web APIs or Apple Pay Platform.

**5. Platform Providers.** Unless otherwise prohibited by Apple, You may employ or retain a Platform Provider to assist You in using and incorporating the Apple Pay Web APIs into Websites pursuant to these Terms and Conditions, provided that any such Platform Provider's use of the Apple Pay Web APIs or any materials associated therewith, including Personal Data, is done solely on Your behalf and for Your purposes, and only in accordance with a separate written agreement between Apple and such Platform Provider. In the event of any actions or inactions by the Platform Provider that would constitute a violation of these Terms and Conditions or otherwise cause any harm, Apple reserves the right to require You to cease using such Platform Provider. In connection with Your use of a Platform Provider, You authorize such Platform Provider to (a) provide to Apple and its Affiliates certain reports that may contain data related to Your participation in the Program; and (b) disclose to Apple and its Affiliates information related to You and Your Websites in connection with these Terms and Conditions or the Program, including without limitation information about Your Websites and metadata (such disclosures referred to herein as "Merchant Disclosures"). You grant Apple the right and license to use any information described in (a) and (b) above for purposes of Apple (i) performing its obligations and exercising its rights under these Terms and Conditions, and (ii) improving the Apple Pay Platform or Program. You agree that Apple's use of such Merchant Disclosures will not be subject to any confidentiality obligations. Except as otherwise expressly set forth herein, Apple will be free to use and disclose any Merchant Disclosures on an unrestricted basis without notifying or compensating You. In connection with Apple's exercise of any rights to suspend or terminate Your participation in the Program, You acknowledge and agree that Apple may request Your Platform Provider to suspend or terminate the Provider Agreement with respect to the provision of services in connection with the Program.

#### 6. Confidentiality.

**6.1 Information Deemed Apple Confidential.** Subject to the exclusions set forth in Section 9.1 of the PLA, You agree that Apple Metrics and any and all information related to the Apple Pay Platform that is obtained, generated or created by or on behalf of Apple will be deemed "Apple Confidential Information". You agree to protect Apple Confidential Information in strict compliance with Section 9.2 of the PLA.

**6.2 Apple Metrics.** You shall not disclose Apple Metrics without Apple's prior written consent, including disclosures of metrics that do not specifically reference the Apple Pay Platform but enable recipients to reasonably infer Apple Confidential Information from such metrics. Notwithstanding the foregoing, You may disclose overall mobile payments or other metrics that incorporate Apple Metrics where such Apple Metrics are not segregated or identified and cannot easily be discerned or inferred from the metrics shared by You.

**7. Data Protection & Security Breaches.** In addition to the terms and conditions set forth in Sections 3.3.9, 3.3.10 and 3.3.11 of the PLA, You shall implement administrative, technical, and physical safeguards designed to protect against reasonably anticipated threats or hazards to the security, integrity, or confidentiality of Personal Data. You shall encrypt all Personal Data in accordance with industry standards for secure key and protocol negotiation and key management prior to transmission. Upon discovering a Security Breach, You will (i) promptly notify Apple thereof, (ii) investigate, remediate, and mitigate the effects of the Security Breach, and (iii) provide Apple with assurances reasonably satisfactory to Apple that such Security Breach will not recur. Additionally, if

and to the extent any Security Breach or other unauthorized access, use, or disclosure of Personal Data occurs as a result of an act or omission of You, Your Affiliates, or Your Platform Providers, You will, at Your cost and expense, upon Apple's request, provide notices and/or undertake other related remedial measures (including notice, credit monitoring services, fraud insurance and the establishment of a call center to respond to customer inquiries) are reasonably warranted or required by law. In the event of legal proceedings, including but not limited to regulatory investigations or litigation, following or resulting from a Security Breach, You will provide Apple with reasonable assistance and support in responding to such proceedings.

## **8. Marketing; Publicity**

**8.1 Apple Marks.** Apple grants to You, during the Term, a personal, non-exclusive, non-sublicensable, non-transferable, worldwide, royalty free, license to use the Apple Marks solely in accordance with the Apple Marketing Guidelines and solely for the purpose of facilitating Apple Pay Platform transactions from or through Your Websites. You shall not use the Apple Marks in such a way as to suggest that Apple endorses or approves of Your Websites, or any products or services offered on Your Websites. All other rights in and regarding the Apple Marks, whether express or implied, are expressly reserved to Apple. In addition,

(a) You agree that the character and quality of all services offered on Your Websites in association with the Apple Marks shall comply with the Apple Marketing Guidelines, and that You will conduct Your business and operations associated with the Apple Marks in full compliance with all Applicable Laws and shall do nothing to bring disrepute to or in any manner impair or damage the Apple Marks or the goodwill associated therewith; and

(b) Apple reserves the right to review from time to time any and all Websites, and all other web pages, marketing and promotional materials, or other materials prepared or offered by You bearing the Apple Marks. In the event Apple reasonably determines that any use of the Apple Marks does not materially abide by the Apple Marketing Guidelines or is in violation of Applicable Laws, You agree that You will make the reasonable changes or revisions requested by Apple as soon as practicable.

**8.2 Merchant Marks.** You grant Apple and its Affiliates (and their agents and contractors acting on their behalf), during the Term, a personal, non-exclusive, non-sublicensable, non-transferable, worldwide, royalty-free, license to use, reproduce, and display the Merchant Marks as follows:

(a) in connection with the Program;

(b) in the marketing, advertising and promotion of the availability of the Apple Pay Platform in any medium, including the right to use screen shots of Your Websites and images of the Merchant Marks as they may be used in the Apple Pay Platform, including but not limited to use in instructional materials, training materials, marketing materials, and standard advertising in any medium; and

(c) in a publicly disclosed list of the Apple Pay Platform participants.

You shall be responsible for procuring all rights necessary for the presentation of any Merchant Marks.

**8.3 Ownership.** Apple retains its right, title and interest in the Apple Marks, and all associated goodwill. All goodwill arising from use of the Apple Marks by You or Your Affiliates will inure to the benefit of Apple. You and Your Affiliates will not adopt, use, or register any corporate name, trade name, trademark, domain name, service mark or trademark that includes or incorporates any Apple Marks or any term confusingly similar to an Apple Mark. You retain Your right, title and interest in the Merchant Marks, and all associated goodwill. All goodwill arising from use of the Merchant Marks by Apple and its Affiliates will inure to the benefit of You. Apple and its Affiliates will not adopt, use, or register any corporate name, trade name, trademark, domain name, service mark or trademark that includes or incorporates any Merchant Marks or any term confusingly similar to a Merchant Mark.

## **9. Term and Termination**

**9.1 Term.** These Terms and Conditions shall commence on the Effective Date and shall continue for so long as the PLA is in full force and effect (the "Term"), unless terminated earlier in accordance with Section 9.2.

**9.2 Termination.** In addition to the termination rights set forth in the PLA, Apple may suspend or terminate these Terms and Conditions immediately upon giving written notice to You:

- (a) if You or Your Affiliates fail to comply with any term of these Terms and Conditions other than those set forth below in this Section 9.2 and fail to cure such breach within thirty (30) days after becoming aware of or receiving notice of such breach;
- (b) if You or Your Affiliates fail to comply with the terms of Apple Pay Web Guidelines;
- or
- (c) in the event of a Security Breach that threatens to, or has had, a significant adverse effect on the Apple Pay Platform.

In addition, either party may terminate these Terms and Conditions for its convenience, for any reason or no reason, effective thirty (30) days after providing the other party with written notice of its intent to terminate.

**9.3 Effect of Termination.** Except as expressly permitted by Apple, upon the termination or expiration of these Terms and Conditions, You will immediately (a) cease all use of the Apple Pay Web APIs and Apple Pay Platform and erase and destroy all copies, full or partial, of the Apple Pay Web APIs in Your or Your Affiliates' possession or control; and (b) cease all use of the Apple Marks in connection with the Program.

**9.4 Survival.** All terms and provisions of these Terms and Conditions, including any and all attachments, exhibits, addendums, schedules and amendments hereto, which by their nature are intended to survive any termination or expiration of these Terms and Conditions, shall so survive, including the provisions of Sections 1, 2, 4.1, 6, 7, 8.3, 9.3, 9.4, 10, 11 and 12 hereof. Apple will not be liable for compensation, indemnity, or damages of any sort as a result of terminating these

Terms and Conditions in accordance with its terms, and termination of these Terms and Conditions will be without prejudice to any other right or remedy Apple may have, now or in the future.

**10. Compliance.** You shall comply with all Applicable Laws related to Your Websites and all goods or services offered through Your Websites.

**11. Indemnification.** For the avoidance of doubt, Your indemnification obligations under Section 10 of the PLA includes Losses incurred by an Apple Indemnified Party and arising from or related to any of the following: (a) You or Your Affiliates' activities under these Terms and Conditions, including but not limited to any end-user claims regarding Your Websites and/or goods or services offered through Your Websites, or (b) a Security Breach.

**12. Limitation of Liability; Disclaimers.**

**12.1 Transaction Verifications.** You or, if applicable, Your Platform Provider shall be solely responsible for verifying the validity of transactions completed using the Apple Pay Web APIs prior to the delivery of any goods or services to an end-user. Apple will not be liable for You or, if applicable, Your Platform Provider's failure to verify the validity of such transactions.

**12.2 No Apple Liability for Unauthorized Transactions.** You acknowledge that Apple has no responsibility to check that the Apple Pay Platform or the Program allow it to evidence that transactions made on the Apple Pay Platform from or through Your Websites have been duly authorized. Apple shall not be liable in any event for any Unauthorized Transactions made by end-users from or through Your Websites.

**12.3 Additional Liability Disclaimer.**

IN ADDITION TO THE LIMITATIONS OF LIABILITY AND DISCLAIMERS SET FORTH IN THE PLA, APPLE SHALL NOT BE LIABLE FOR ANY DAMAGES OR LOSSES ARISING FROM THE USE OF THE APPLE PAY WEB APIS OR THE APPLE PAY PLATFORM, INCLUDING, BUT NOT LIMITED TO, (I) ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, OR OTHER INTANGIBLE LOSS, (II) ANY CHANGES WHICH APPLE MAY MAKE TO THE APPLE PAY WEB APIS OR THE APPLE PAY PLATFORM, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE APPLE PAY WEB APIS OR THE APPLE PAY PLATFORM (OR ANY FEATURES WITHIN THE APPLE PAY PLATFORM), OR (III) THE DELETION OF, CORRUPTION OF, OR FAILURE TO PROVIDE ANY DATA

TRANSMITTED BY OR THROUGH YOUR USE OF THE APPLE PAY WEB APIS OR THE APPLE PAY PLATFORM. It is Your sole responsibility to maintain appropriate alternate backup of all of Your content, information and data.

**12.4 Entire Agreement.** These Terms and Conditions and the PLA constitute the entire agreement between the parties with respect to the Program and Your use of the Apple Pay Web APIs, and supersedes any prior or inconsistent agreements, negotiations, representations and promises, written or oral with respect to the subject matter hereof. Notwithstanding the foregoing, to the extent that You are provided with pre-release materials in connection with the Apple Pay Platform and such pre-release materials are subject to a separate license agreement, You agree that the license agreement accompanying such materials in addition to Section 6 of these Terms and Conditions shall also govern Your use of such materials. These Terms and Conditions may be amended in accordance with the terms of the PLA.

## Exhibit A

### Apple Marks

All use of the Apple Marks under these Terms and Conditions can be found at:  
<https://developer.apple.com/apple-pay/Apple-Pay-Identity-Guidelines.pdf>.

## EXHIBIT 9

### PAYMENT GATEWAY MERCHANT SERVICE AGREEMENT

(For Merchants using BlueSnap Services through an NMI (National Merchants LLC) Plug In)

Network Merchants LLC (NMI), hereinafter referred to as “Payment Gateway”, offers merchants various products and services relating to payment processing and other value-added services directly and through Third Party Service Providers. In order for you, on behalf of your company, to obtain or continue using the transaction processing services, payment gateway services and other value-added products and services, more fully described at <http://www.nmi.com> as such descriptions may be changed from time to time (the “Payment Gateway Services”), you must agree to and accept the terms and conditions of this agreement (the “Agreement”). This Agreement sets out the terms and conditions under which you may utilize the Payment Gateway Services. Please read this Agreement carefully. It is important that you understand that upon your acceptance of this Agreement, by continuing to use any of the Payment Gateway Services and/or by clicking on the “I AGREE” button at the end of this Agreement, it becomes a legally binding contract.

By continuing to use any of the Payment Gateway Services and/or by clicking on the “I AGREE” button you represent that you have reviewed and understand the Agreement and agree to be legally bound by all its terms and conditions (including the terms and conditions stated on web pages incorporated by reference herein). If you do not agree or are not willing to be bound by the terms and conditions of this Agreement, please do not click on the “I AGREE” button and do not seek to obtain or continue using the Payment Gateway Services.

NOW THEREFORE, you and/or your company, (“You” or “Your”) agree as follows:

#### 1. DEFINITIONS:

“Acquirer” or “Acquiring Bank” or “Acquiring Institution” means the financial institution supplying You with the ability to accept credit cards for payments. The financial institution will charge You fees for providing these services.

“ACH” or “Automated Clearing House” means an electronic network that allows the exchange and settlement of electronic payments between financial institutions.

“Affiliate Partner” means any third party through whom Payment Gateway may offer the Payment Gateway Services to You, including but not limited to an “ISO” or “Independent Sales Organization”, Merchant Service Provider (“MSP”), Value Added Reseller (“VAR”), Application Service Provider (“ASP”), Acquiring Bank and Financial Institution.

“API” or “Application Programming Interface” means an interface allowing integration with a programmable software package or platform.

“AVS” or “Address Verification Service” for the purposes of this agreement shall mean a response generated by the Issuing Bank to indicate the level of accuracy of a given address based on the billing address of the customer’s creditcard.

“Batch” means any bulk processing of Transactions, or a bulk settlement submitted to a Processor by Payment Gateway including credit card, ACH, or other related transactions.

“Card Association” for the purposes of this Agreement means a network of Issuing Banks and Acquiring Banks that process payment cards of a specific brand. Without limiting the foregoing definition, American Express, Discover Financial Services, JCB International, MasterCard International Inc., Visa Inc., Visa International Inc., and any other payment card company belong to the Card Association.

“Close Batch” means the process of sending a batch of transactions for settlement.

“Confidential Information” means any information, data, trade secrets, know-how, directly, or indirectly, in writing or orally or by inspection of samples, equipment or facilities, including but not limited to past, present and future research, products, product plans, services, services documentation (in whatever form or media provided) customers, customer lists, user data, revenue, markets, software developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration, marketing, marketing materials, financial or other business information, or the financial terms of this Agreement.

**“Discount Rate”** means the fee charged by Your financial institution to You for services associated with processing card transactions or fees charged by Payment Gateway to You for ACH or other payment methods.

**“Effective Date”** means the earlier of the date You agree to the terms and conditions of the Agreement by (i) clicking the “I AGREE” button associated with the Agreement; or (ii) by using Payment Gateway Services or (iii) acknowledging Your acceptance of the Agreement by any other method, including without limitation execution of a Merchant Account Application that incorporates the Agreement by reference.

**“Fee Schedule”** means a list of fees and charges that is accepted by You and paid by you to Payment Gateway.

**“Interchange Fee”** means the fee set by and collected by the Card Association from Your financial institution (Acquiring Bank) and paid to the issuing financial institution (Issuing Bank) to cover expenses incurred in billing the cardholder.

**“IP Address”** means an internet address usually represented in dotted decimal, e.g. “127.0.0.1”.

**“Issuing Bank”** means the financial institution that issues Card Association branded Payment Cards directly to consumers.

**“PCI DSS”** means Payment Card Industry Data Security Standard.

**“Privacy Policy”** means the then current Payment Gateway Privacy Policy which can be found on the internet at <https://www.nmi.com/privacy-policy>

**“Return Payment Fee”** is a fee charged to You by Payment Gateway on each occurrence when Payment Gateway is unable to collect fees on Your Account for any reason, including but not limited to insufficient funds, closed account, or any other negative response.

**“Third Party Service Provider”** for purposes of this Agreement means an entity that provides bank and/or merchant payment services including, but not limited to billing, reporting, customer service, authorization, and settlement services.

**“Trademark(s)”** means all common law or registered trademark(s), service mark(s), trade name(s) and trade dress rights and/or similar or related rights under any laws of any country or jurisdiction, including but not limited to the United States of America whether existing now or hereafter adopted.

**“Transaction(s)”** means any billable occurrence completed or submitted under Your Account including but not limited to sale, void, refund, credit, offline force, capture, authorization, validate, update or settlement regardless of whether approved or declined.

**“VAR” or “Value Added Reseller”** means any third-party vendor that enhances or modifies existing hardware or software, adding value to the services provided by the processor or acquirer.

**“Value Added Service(s)”** means the following Payment Gateway Services, including but not limited to: Customer Vault™, iSpyFraud™, CertifyPCI™, Advanced Transaction Routing Interface™ (ATRI™), and/or any other service or product offered by Payment Gateway now or in the future.

## **2.TERM:**

The term of the Agreement shall commence on the Effective Date and shall remain in full force and effect until terminated pursuant to Section 10.

## **3.LEGAL:**

By accepting the terms and conditions of this Agreement, You represent and warrant that (i) You have the legal authority to accept the terms and conditions of this Agreement on behalf of Your company and that such acceptance will be binding on Your company, (ii) all information You have provided to Payment Gateway is true and correct in all respects, and (iii) You will update Payment Gateway in writing with any changes to information You have previously supplied. In furtherance of Your representations, Payment Gateway reserves its right to refuse to provide You with any Payment Gateway Service and terminate this Agreement, with or without notice, if You have supplied any information which is misleading, untrue, inaccurate or incomplete.

## **4.USE OF PAYMENT GATEWAY SERVICES**

### **4.1Payment Gateway Grant**

(a) You are hereby granted a non-exclusive right to use the Payment Gateway Services during the Term hereof so long as You are current in paying all applicable fees as referenced in Section 8 and Section 9 hereof, subject to the restrictions contained herein and restrictions communicated to You in the future by Payment Gateway. Payment Gateway shall provide the Payment Gateway Services to You in all material respects in accordance with the terms and conditions of this

Agreement and Your rights are granted solely for the purposes contained herein and for no other purpose.

(b) Your use of the Payment Gateway Services shall be restricted to You. You shall not submit Data or Transaction data to Payment Gateway or otherwise process orders on behalf of any other entity or individual. Any attempt by You to use the Payment Gateway Services on behalf of another entity or individual may result in Your obligation to pay to Payment Gateway additional fees and charges and/or Payment Gateway may revoke Your right to use the Payment Gateway Services and terminate this Agreement.

(c) In connection with the exercise of Your rights and obligations under this Agreement including, without limitation, any related to individual privacy, You will comply, at Your own expense, with all applicable laws, regulations, rules, ordinances and orders of governmental authorities having jurisdiction. You shall not use the Payment Gateway Services in any manner, or in furtherance of any activity that may cause Payment Gateway to be subject to investigation, prosecution, or legal action.

(d) Payment Gateway reserves the right to amend, modify or change its policies, procedures, and guidelines and You shall comply with all then current policies, procedures, and guidelines of Payment Gateway governing the Payment Gateway Services.

## **5.DATA SECURITY, COLLECTION, TRANSFER AND RETENTION**

### **5.1Payment Gateway’s Duties**

a. You understand Payment Gateway will collect, retain, use and share information and data collected from You and your customers in accordance with Payment Gateway’s then current Privacy Policies. You hereby consent, as a condition of Your enrollment in and use of the Payment Gateway Services, to the collection, use, processing and transfer of personal data as described in Section 5 and Payment Gateway’s Privacy Policies.

(b) You understand that Payment Gateway may collect and hold personal or non-public information about You and Your customers, including but not limited to: Your name, address, telephone number, e-mail address, social security number and/or tax identification number and payment data as well as Your customers’ names, mailing & shipping addresses, email addresses, phone number, types of purchases and descriptions of purchases (“Data”) for the purpose of considering eligibility for the Payment Gateway Services and for the purpose of providing You and your customers with the Payment Gateway Services. You also understand and agree that Payment Gateway, its subsidiaries, Affiliate Partners, Third Party Service Providers, suppliers and/or their agents and/or contractors may transfer Data among themselves as necessary for the purpose of the provision and management of the Payment Gateway Services and that Payment Gateway may further transfer Data (i) with non-affiliated entities that assist Payment Gateway in providing products and services that You have requested; (ii) with companies that provide support services to Payment Gateway; (iii) with companies that provide marketing services on behalf of Payment Gateway; or (iv) as otherwise provided by law.

(c) You further understand that in evaluating Your eligibility for, provision of, administration and management of the Payment Gateway Services, as well as under circumstances described in the Privacy Policy that may be changed from time to time, that Payment Gateway may obtain various consumer reports regarding You from third parties, run a credit check or obtain other personal or credit information about You.

(d) You further understand that while Payment Gateway uses commercially reasonable efforts to safeguard Data and Transaction data transmitted while using Payment Gateway Services, Payment Gateway does not warrant that Data and Transaction data will be transported without unauthorized interception or modification or that Data or Transaction data will not be accessed or compromised by any unauthorized third parties.

(e) With respect to the Payment Gateway Services, at all times while this Agreement is in effect, Payment Gateway will maintain compliance with the Payment Card Industry Data Security Standard (PCI DSS).

### **5.2Your Duties**

(a) You agree that you will comply at all times with all applicable and then-current legal obligations and security measures including without limitation those issued by the United States Government, Federal, State and Municipal laws and ordinances, Card Association, the Federal Trade Commission, PCI DSS and any other governing body. You agree that you will comply with all Payment

Gateway security protocols, notices and safeguards in effect during the term of this Agreement. You warrant that You have taken such precautions as are necessary to ensure that Your data and Your customer data is protected and that Your electronic systems are secure from breach, intrusion or compromise by any unauthorized third parties. In the event that Your system is breached and an unauthorized third party has access to or has accessed Data or Transaction data, You shall notify the designated parties as required under any applicable laws or industry guidelines and shall immediately notify Payment Gateway of such breach and take such prompt action and precautions as necessary to prevent any continuous or additional breach.

(b) You are solely responsible for the security of data residing on server(s) owned or operated by You, Third Party Service Provider, or a third party designated by You (e.g., a web hosting company, processor, or other service provider), including credit card numbers and any other personal data. You shall comply with all applicable laws and regulations governing the collection, retention and use by You of credit card and other financial information and agree to provide notice to your customers on Your web site that discloses how and why personal and financial information is collected and used, including uses governed by this Agreement.

(c) You agree that You are solely responsible for verifying the accuracy and completeness of all Transactions submitted and processed by Payment Gateway associated with Your account and verifying that all corresponding funds are accurately processed. You acknowledge that the fees associated with any and all transactions processed through Your account are earned by Payment Gateway and shall not be reimbursed. You acknowledge that Payment Gateway shall not be liable for any improperly processed or unauthorized Transactions or illegal or fraudulent access to Your account, Data or Transaction data. Payment Gateway's liability for unauthorized Transactions or improperly processed Transactions solely attributable to the negligence of Payment Gateway is limited pursuant to Section 13.

(d) You agree not to use, disclose, sell or disseminate any card, cardholder or ACH information obtained in connection with a Transaction except for purposes of completing or settlement of a Transaction and/or resolving chargebacks, retrievals or similar issues involving a Transaction unless required to do so by court order or governmental agency request, subpoena or order.

(e) You agree that You are solely responsible for compiling and retaining permanent records of all Data and Transaction data for Your reference. Except as otherwise provided herein, Payment Gateway shall have no obligation to store, retain, report or otherwise provide any copies of or access to any records of Transactions or other Data collected or processed by Payment Gateway. You acknowledge that upon termination of this Agreement, Payment Gateway shall have no obligation to provide You with any Data or Transaction data. You agree that You shall use proper controls for and limit access to all Data or Transaction data. Prior to discard You shall render all Data or Transaction data unreadable and abide by any laws or regulations imposed on You for Data or Transaction data destruction and/or disposal.

### **5.3 Your User Name and Password**

(a) In connection with Your rights described in Section 4.1, Payment Gateway or Affiliate Partner will issue to You, or permit You to use a user name and password, to enable You and/or Your employees and agents to access Your gateway account and use the Payment Gateway Services. You will restrict access to such user name, password, and account to Your employees and agents as may be reasonably necessary and consistent with the purposes of this Agreement and will ensure that each such employee and agent accessing and using the account is aware of and otherwise complies with all applicable provisions of this Agreement and any recommendations and notices regarding such use and access.

(b) You are solely responsible for maintaining adequate security and control of any and all user names, passwords, or any other codes that are issued to You by Payment Gateway or Affiliate Partner or selected by You, for purposes of giving You access to the Payment Gateway Services. Payment Gateway shall be entitled to rely on information it receives from You and may assume that all such information was transmitted by or on behalf of You.

## **6. TRADEMARKS**

### **6.1 Trademark Use**

(a) Payment Gateway hereby grants to You the right to use, reproduce, publish, perform and display the Payment Gateway

Marks as follows: (a) on Your web site in connection with Your offering of Payment Gateway Services to Your customers; and (b) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to any of the Payment Gateway Services.

(b) You hereby grant to Payment Gateway, its Third Party Service Provider and its Affiliate Partners the right to use, reproduce, publish, perform and display Your Marks as follows: (a) in connection with the development, use, reproduction, modification, adaptation, publication, display and performance of the Payment Gateway Services offered and/or accessible through Your web site; and (b) in promotional and marketing materials and electronic and printed advertising, publicity, press releases, newsletters and mailings about or related to any of the Payment Gateway Services.

(c) For purposes of this Agreement, "Your Marks" means Your customary name and logo, and such other trademarks as You may from time to time notify Payment Gateway to be "Your Marks" within the meaning of this Agreement. For purposes of this Agreement, "Payment Gateway Marks" means Payment Gateway customary name and logo, and such other trademarks as Payment Gateway may from time to time notify You to be "Payment Gateway Marks" within the meaning of this Agreement.

### **6.2 Trademark Restrictions**

(a) Each party shall comply with all standards with respect to the other party's Trademarks which may be furnished by such party from time to time and all uses of the other party's Trademarks in proximity to the trade name, trademark, service name or service mark of any other person or entity shall be consistent with the standards furnished by the other party from time to time. Neither party shall create a combination mark consisting of one or more Trademarks of each party. All uses of the other party's Trademarks shall inure to the benefit of the party owning such Trademark. Each party hereby acknowledges and agrees that, as between the parties, the other party is the owner of the Trademarks identified as its Trademarks in any written notice provided to the other party pursuant to this Agreement. Either party may update or change the list of Trademarks usable by the other party hereunder at any time by written notice to the other party.

(b) Either party must include a statement of ownership when displaying or reproducing either parties trademark. The following statement is acceptable and shall be placed contiguous to the Trademark: "The trademark is the property of its respective owner."

(c) Except as otherwise provided herein, You shall not use, register or attempt to register any Payment Gateway Trademarks or marks or domain names that are confusingly similar to any of the Payment Gateway Trademarks, marks or Domain Name(s). Except as authorized in this agreement, You shall not take any actions inconsistent with Payment Gateway's ownership of Payment Gateway's Trademarks and any associated registrations or attack the validity thereof. You shall not use Payment Gateway's Trademarks in any manner that would indicate You are using such Payment Gateway Trademarks other than as a licensee nor assist any third party do any of the same.

## **7. INTELLECTUAL PROPERTY AND PROHIBITION AGAINST REVERSE ENGINEERING**

The parties agree that Payment Gateway owns and retains all right, title and interest in and to the Payment Gateway Services, Trademarks, copyrights, technology and any related technology utilized under or in connection with this Agreement, including but not limited to all intellectual property rights associated therewith. No title to or ownership of any of the foregoing is granted or otherwise transferred to You or any other entity or person under this Agreement. You shall not reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets for any of Payment Gateway Services or related technology.

## **8. PAYMENT TERMS**

### **8.1 Due Date and ACH Authorization**

(a) Payment Gateway fees shall begin on the Effective Date and You will be billed on the first business day of each month following the Effective Date for any and all amounts owing under this Agreement. If fees accrue to more than \$50.00 USD at anytime in any given month, Payment Gateway will bill You the full amount due on a more frequent basis at Payment Gateway's discretion.

(b) You must authorize Payment Gateway to initiate transaction entries to Your depositories account through ACH. This authority is to remain in full force and effect until i) Payment Gateway has received written notification from You of Your request for

termination in such time as to afford Payment Gateway and Your depository institution a commercially reasonable opportunity to acknowledge and respond to the request and ii) Payment Gateway has collected all fees due and owing under this agreement. If Payment Gateway is unable to collect amounts owing from your depository account, You hereby authorize Payment Gateway to charge Your credit card for any and all amounts owing to Payment Gateway under this Agreement. Entries initiated to or from Your depository account will be in accordance with the rules of the National Automated Clearing House Association (NACHA) and/or any other regulatory body or agency having jurisdiction over the subject matter hereof.

(c) You must promptly update Your account information with Payment Gateway or Affiliate Partner with current and accurate information. If You fail to provide Payment Gateway or Affiliate Partner with current and accurate depository account or credit card account information, Payment Gateway may immediately discontinue providing Payment Gateway Services to You, without liability, until such information is provided to Payment Gateway and/or terminate this Agreement. You acknowledge that any change in account information may not be effective until the month following the month in which Payment Gateway receives such notice. Termination of Your authorization shall result in termination of any and all Payment Gateway Services.

#### **8.2 Affiliate Partner Bills You**

In furtherance of Section 8.1, if You are billed by an Affiliate Partner for some or all of the Fees, You shall pay the Affiliate Partner in such manner as mutually agreed upon between You and such Affiliate Partner.

#### **9. FEES**

##### **9.1 Payment Gateway Service Fees**

(a) You shall pay to Payment Gateway the fees as set forth in the Fee Schedule provided to You by Payment Gateway and/or, if applicable Affiliate Partner. The Fee Schedule is hereby incorporated into the terms of this Agreement by reference.

(b) Notwithstanding the foregoing, if Your relationship with the Affiliate Partner that offered you the Payment Gateway Services expires or terminates and such Affiliate Partner was billing You for certain Fees, then You may continue using the Payment Gateway Services. If You elect to continue using the Payment Gateway Services, You acknowledge and agree that Payment Gateway may begin to bill You for such Fees in the amounts that the Affiliate Partner had been charging You. In accordance with Section 15.5 Payment Gateway may amend the Fee schedule after providing You with thirty (30) days notice.

##### **9.2 Other Fees and Charges**

(a) You shall incur a late fee in the amount set forth in the fee schedule if any amounts due to Payment Gateway under this Agreement are not paid on or before the tenth (10<sup>th</sup>) day following the date when due. In addition, You shall be subject to a finance charge equal to one and one-half percent (1.5%) per month or the highest rate allowable by law, whichever is less, determined and compounded daily from the date due until the date paid. Payment of such late fee(s) and finance charge(s) will not excuse or cure any breach or default for late payment. Payment Gateway may accept any check or payment from You without prejudice to its rights to recover the balance due or to pursue any other right or remedy. No endorsement or statement on any check or payment or any correspondence accompanying any check or payment or elsewhere will be construed as an accord or satisfaction.

(b) On each occurrence when Payment Gateway is unable to collect fees on Your Account for any reason, including but not limited to insufficient funds, closed account, or any other negative response, Payment Gateway may charge You a Return Payment Fee in the amount of \$25.00 USD, or as set forth in the fee schedule.

(c) If You have not paid all owing amounts after two (2) days when due, Payment Gateway may, in its sole discretion, discontinue providing You with Payment Gateway Services. If You have still not paid all owing amounts after thirty (30) days following the date the payment was due, then Payment Gateway may, in its sole discretion, immediately terminate this Agreement. Notwithstanding, if You subsequently pay in full all owing fees, including but not limited to late fees, finance charges and Return Payment Fees, and if Payment Gateway has not already terminated this Agreement, then Payment Gateway may elect to reactivate the Payment Gateway Services and charge You a Service Reactivation Fee in the amount set forth in the fee schedule.

(d) You agree to pay all costs and expenses of whatever nature, including attorneys' fees, incurred by or on behalf of Payment Gateway in connection with the collection of any unpaid charges and fees.

#### **10. TERMINATION**

##### **10.1 Termination by You**

(a) You may terminate this Agreement with or without cause, and for any reason, by providing Payment Gateway with at least thirty (30) days written notice of Your intent to terminate this Agreement.

(b) In the event You are billed by an Affiliate Partner in furtherance of Section 8.2 of this Agreement, you hereby authorize Affiliate Partner to terminate this Agreement on your behalf.

##### **10.2 Termination by Payment Gateway**

(a) Payment Gateway may terminate this Agreement and/or terminate Your use of Payment Gateway Services immediately, or at anytime, without advance notice and with or without cause, for any reason including without limitation to Your breach or default of any obligation set forth in this Agreement or if Payment Gateway determines, in its sole discretion, that Your business practices are detrimental to the achievement of Payment Gateway's business objectives.

(b) In such event, Payment Gateway shall provide You with a written or electronic notice of termination.

##### **10.3 Termination by Affiliate Partner or Third Party Service Provider**

(a) In the event You are billed by an Affiliate Partner in furtherance of Section 8.2, and if Payment Gateway receives notice from such Affiliate Partner that it has terminated or suspended its relationship with You, Payment Gateway may suspend and/or terminate Your right to use Payment Gateway Services and/or terminate this Agreement without notice and without liability.

(b) In the event Payment Gateway is notified by a Third Party Service Provider, court of competent jurisdiction, governmental body or authority, Acquiring Bank or the Card Association that You are no longer entitled to receive payment data for any reason whatsoever, Payment Gateway may suspend and/or terminate Payment Gateway Services and/or this Agreement without notice and without liability.

##### **10.4 Effect of Termination and Survival**

Upon termination of this Agreement for any reason whatsoever, all rights and interests under this Agreement shall be extinguished and shall be given no further force nor effect except that i) all accrued payment obligations hereunder shall survive such expiration or termination; and (ii) the rights and obligations of the parties under Sections 7, 10.4, 11, 12, 13, 14 and 15 shall survive termination.

#### **11. CONFIDENTIALITY AND NONDISCLOSURE**

##### **11.1 Use of Confidential Information**

(a) Each party that receives information (the "Receiving Party") from the other party (the "Disclosing Party") agrees to use reasonable best efforts to protect all non-public information, trade secrets and know-how of the Disclosing Party that is either designated as proprietary and/or confidential or that, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary and/or confidential ("Confidential Information"), and in any event, to take precautions at least as great as those taken to protect its own Confidential Information of a similar nature. Each party agrees that the terms and conditions of this Agreement will be Confidential Information, provided that each party may disclose the terms and conditions of this Agreement to its immediate legal and financial consultants in the ordinary course of its business.

(b) Each Party agrees not to divulge any confidential information, trade secrets or know how or any information derived therefrom to any third person or entity and shall only disclose Confidential Information to employees on a "need to know" basis who have executed a nondisclosure agreement with similar terms and obligations to this Agreement.

(c) Each Party shall not make any use whatsoever at anytime of such Confidential Information except as contemplated by this Agreement.

(d) Each Party shall not copy or reverse engineer any such Confidential Information.

##### **11.2 Exclusions**

The foregoing restrictions will not apply to any information that: (i) the Receiving Party can document it had in its possession prior to disclosure by the Disclosing Party, (ii) was in or entered the public domain through no fault of the Receiving Party, (iii) is

disclosed to the Receiving Party by a third party legally entitled to make such disclosure without violation of any obligation of confidentiality, (iv) is required to be disclosed by applicable laws or regulations (but in such event, only to the extent required to be disclosed), or (v) is independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party. Upon request of the other party, or in any event upon any termination or expiration of the Term, each party will return to the other all materials, in any medium, that contain, embody, reflect or reference all or any part of any Confidential Information of the other party. Each party acknowledges that breach of this provision by it would result in irreparable harm to the other party, for which money damages would be an insufficient remedy, and therefore that the other party will be entitled to seek injunctive relief to enforce the provisions of this Section 11.

## **12. REPRESENTATIONS AND WARRANTIES**

### **12.1 Mutual Representations and Warranties**

Each party represents and warrants to the other that (i) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms; (ii) the party's obligations under this Agreement do not violate any law or breach any other agreement to which such party is bound; (iii) it has all necessary right, power and ability to execute this Agreement and to perform its obligations therein; and (iv) no authorization or approval from any third party is required in connection with such party's execution, delivery or performance of this Agreement.

### **12.2 Your Representations and Warranties**

**a.** You represent and warrant that You are engaged in a lawful business that includes the sale of products and/or services, and are duly licensed to conduct such business under the laws of all jurisdictions in which You conduct business. You further represent and warrant that all statements made by You in this Agreement, or in any other document relating hereto by You or on Your behalf, are true, accurate and complete in all material respects. You hereby authorize Payment Gateway to investigate and confirm the information submitted by You herein. For this purpose, Payment Gateway may utilize credit bureau / reporting agencies and / or its own agents.

**(b)** You will comply with all applicable laws, regulations, rules, ordinances and orders of governmental authorities having jurisdiction. You will further comply with the Payment Card Industry Data Security Standard (PCI DSS), the Gramm-Leach-Bliley Act, the National Automated Clearing House Association (NACHA) and any other regulatory body or agency having jurisdiction over the subject matter hereof.

**(c)**

You will abide with all material terms of the then current policies, procedures, and guidelines of Payment Gateway governing the Payment Gateway Services.

### **12.3 Payment Gateway Representations and Warranties**

**(a)** Payment Gateway represents and warrants that the Payment Gateway Services provide to you hereunder will substantially conform to the specifications as set forth in the applicable Payment Gateway Service Level Agreement (SLA) as contained in Appendix A hereof and as may be amended from time to time in Payment Gateway's sole discretion. In addition to the exclusions contained in Appendix A, the SLA will not apply if (i) a defect has been caused by Your malfunctioning equipment or software, (ii) the Payment Gateway Services are used in material variation with this Agreement or the applicable documentation, or (iii) any of the Payment Gateway Services have been modified by any individual or entity other than Payment Gateway.

**(b)** You acknowledge that Payment Gateway Services are designed for use with certain third-party programs, including, without limitation, certain Internet browser software programs. You will look solely to the developers and manufacturers of such programs with regard to warranty, maintenance or other support regarding the same. Payment Gateway makes no warranty, express or implied, with regard to any such third-party software.

**(c)** You may not rely on the representation or warranty regarding Payment Gateway Services by any third party in contravention of the foregoing statements, including representations or warranties of any Third Party Service Provider or Affiliate Partner. In the event of a breach of the foregoing warranty, Payment Gateway shall use commercially reasonable efforts to repair, or at its option replace, the Payment Gateway Services. You acknowledge that Payment Gateway does not warrant that such efforts will be successful. If

Payment Gateway's efforts are not successful, You may terminate this Agreement in accordance with Section 10.1. THE FOREGOING SHALL CONSTITUTE YOUR SOLE REMEDY, AND PAYMENT GATEWAY'S SOLE LIABILITY, FOR INTERRUPTIONS, OUTAGES OR OTHER DELAYS IN PAYMENT GATEWAY'S SERVICES AND/OR VALUE-ADDED SERVICES. Payment Gateway does not warrant the services of any third party, including without limitation Third Party Service Providers, Affiliate Partners, VARS or the Card Association.

### **12.4 Payment Gateway Services "As Is" Disclaimer**

PAYMENT GATEWAY SERVICES ARE PROVIDED ON AN "AS IS" "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES. PAYMENT GATEWAY DOES NOT REPRESENT OR WARRANT THAT THE PAYMENT GATEWAY SERVICES WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ENTIRELY ERROR FREE. YOU MAY NOT RELY UPON ANY REPRESENTATION OR WARRANTY REGARDING THE PAYMENT GATEWAY SERVICES BY ANY THIRD PARTY IN CONTRAVENTION OF THE FOREGOING STATEMENTS, INCLUDING, BUT NOT LIMITED TO REPRESENTATIONS BY THIRD PARTY SERVICE PROVIDERS OR AFFILIATE PARTNERS, EXCEPT AS SET FORTH IN THE SERVICE LEVEL AGREEMENT CONTAINED IN APPENDIX A OF THIS AGREEMENT. PAYMENT GATEWAY SPECIFICALLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS WHETHER EXPRESS OR IMPLIED ARISING BY STATUTE, OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR TITLE WITH RESPECT TO THE PAYMENT GATEWAY SERVICES, OR OTHER SERVICES OR GOODS PROVIDED UNDER THIS AGREEMENT. YOU UNDERSTAND AND AGREE THAT PAYMENT GATEWAY SHALL BEAR NO RISK WITH RESPECT TO YOUR SALE OF PRODUCTS OR SERVICES, INCLUDING WITHOUT LIMITATION, ANY RISK ASSOCIATED WITH CREDIT CARD FRAUD, ACH FRAUD, CHECK FRAUD OR CHARGEBACKS.

### **12.5 Disputes**

The parties shall promptly investigate any disputes under this Agreement. If the disputed amount is less than five percent (5%) of the total fees invoiced by Payment Gateway for the relevant billing statement, the total amount invoiced shall be due and payable on or before the due date. If the amount in dispute is greater than five percent (5%) of the total fees invoiced by Payment Gateway for the relevant billing statement, the disputed amount may be withheld until the dispute is resolved. All disputes must be made in good faith and in writing within thirty (30) days of the billing statement date. Fees billed shall be deemed accepted where written objections are not lodged within thirty (30) days from the billing statement date.

## **13. LIMITATION OF LIABILITY**

### **13.1 Payment Gateway Disclaimers**

**(a)** GATEWAY EXPRESSLY DISCLAIMS ANY LIABILITY OR LOSS, HOWEVER OCCURRING INCLUDING NEGLIGENCE, WHICH ARISES FROM OR RELATED TO ANY UNAUTHORIZED ACCESS TO YOUR FACILITIES OR TO YOUR DATA OR PROGRAMS DUE TO ACCIDENT, ILLEGAL OR FRAUDULENT MEANS OR DEVICES USED BY ANY THIRD PARTY, OR OTHER CAUSES BEYOND PAYMENT GATEWAY'S REASONABLE CONTROL.

**(b)** PAYMENT GATEWAY EXPRESSLY DISCLAIMS ANY LIABILITY OR LOSS, HOWEVER OCCURRING INCLUDING NEGLIGENCE, ARISING FROM OR RELATED TO: (I) YOUR FAILURE TO PROPERLY ACTIVATE, INTEGRATE OR SECURE YOUR ACCOUNT(S); (II) FRAUDULENT TRANSACTIONS PROCESSED THROUGH YOUR ACCOUNT(S); (III) DISRUPTION OF PAYMENT GATEWAY SERVICES, SYSTEMS, SERVER OR WEB SITE BY ANY MEANS, INCLUDING WITHOUT LIMITATION, DDOS ATTACKS, SOFTWARE VIRUSES, TROJAN HORSES, WORMS, TIME BOMBS, OR ANY OTHER TECHNOLOGY; (IV) ACTIONS OR INACTIONS BY ANY THIRD PARTY, INCLUDING WITHOUT LIMITATION, A THIRD PARTY



SERVICE PROVIDER OR AFFILIATE PARTNER, OR ACQUIRING BANK; OR (V) UNAUTHORIZED ACCESS TO DATA, CUSTOMER DATA INCLUDING BUT NOT LIMITED TO, CREDIT CARD NUMBERS AND OTHER PERSONALLY IDENTIFIABLE INFORMATION, TRANSACTION DATA OR PERSONAL INFORMATION BELONGING TO PAYMENT GATEWAY, YOU OR ANY THIRD PARTY.

(c) PAYMENT GATEWAY EXPRESSLY DISCLAIMS ANY LIABILITY OR LOSS FOR THE LEGITIMACY OF ORDERS FORWARDED FROM YOU AND FOR ANY AND ALL CLAIMS OF LOSS AND/OR FRAUD INCURRED RESULTING FROM CONCLUSIONS DRAWN FROM THE DATA PROVIDED BY ANY SERVICES PROVIDED BY PAYMENT GATEWAY, OR ANY SYSTEM OR PROGRAM ASSOCIATED THEREWITH OR THE LIMITATION OF THE FUNCTIONING OF ANY PAYMENT GATEWAY SERVICES OR SOFTWARE, HARDWARE, OR EQUIPMENT ASSOCIATED THEREWITH WHETHER IT IS OWNED BY PAYMENT GATEWAY OR OFFERED THROUGH A THIRD PARTY SERVICE PROVIDER OR OTHER ENTITY.

### **13.2. Payment Gateway Limitation of Liability**

(a) UNDER NO CIRCUMSTANCES WILL PAYMENT GATEWAY OR ANY OF ITS PARENTS, AFFILIATES OR VENDORS, OR ANY OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS OF THE PARTIES, OR ITS PARENTS, AFFILIATES OR VENDORS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES HOWEVER OR WHENEVER ARISING, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST REVENUE, LOST PROFITS, ANTICIPATED PROFITS, LOST BUSINESS OR INJURY TO BUSINESS REPUTATION, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, UNDER ANY THEORY OF LIABILITY OR CAUSE OF ACTION WHETHER IN TORT, INCLUDING NEGLIGENCE, CONTRACT OR OTHERWISE, REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) PAYMENT GATEWAY'S TOTAL LIABILITY TO YOU, WHETHER ARISING IN TORT (INCLUDING NEGLIGENCE), CONTRACT OR OTHERWISE, UNDER THIS AGREEMENT OR WITH REGARD TO ANY PAYMENT GATEWAY PRODUCTS OR SERVICES, SHALL NOT EXCEED THE AGGREGATE COMPENSATION PAYMENT GATEWAY RECEIVED FOR PROVIDING THE PAYMENT GATEWAY SERVICES TO YOU DURING THE THIRTY (30) DAYS PRECEDING THE DATE ON WHICH THE CLAIM AROSE OR \$1,500.00 USD, WHICHEVER IS LESS.

## **14. INDEMNIFICATION**

### **14.1 Indemnification**

(a) Payment Gateway shall defend, indemnify and hold You and any of Your officers, directors, agents and employees harmless from and against any and all third party claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by You, arising out of or relating to any alleged infringement of a U.S. patent of any other entity or person by Payment Gateway.

(b) Payment Gateway's obligations in Section 14.1.a do not apply if Payment Gateway Services or portions or components thereof (a) are modified by persons or entities other than Payment Gateway if the alleged infringement relates to such modification; (b) are combined with other products, processes or materials not supplied or recommended by Payment Gateway where the alleged infringement relates to such combination, or (c) continue to be used after Payment Gateway has made a non-infringing version available to You (collectively, "Your Faults"). If Payment Gateway Services or any component thereof becomes, or in Payment Gateway's opinion is likely to become, the subject of a claim of infringement, then You shall permit Payment Gateway, at Payment Gateway's sole option and expense, either to (i) procure for You the right to continue using the Payment Gateway Services as permitted in this Agreement, or (ii) replace or modify the affected Payment Gateway Services or infringing component so that it becomes non-infringing. If, after using commercially reasonable efforts, Payment Gateway is unable to cure the infringement, either party may terminate this Agreement upon notice to the other, as provided in Section 10. Notwithstanding the above, Payment Gateway's total liability shall

not exceed the amount as stated in Section 13.2.b. THIS SECTION 14.1.b STATES THE ENTIRE LIABILITY OF PAYMENT GATEWAY TO YOU WITH RESPECT TO INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY PAYMENT GATEWAY SERVICES.

### **14.2 Indemnification by You**

You shall defend, indemnify, and hold harmless Payment Gateway and its Affiliate Partners, Third Party Service Providers, parents, and/or subsidiaries, and any of their officers, directors, agents and employees, from and against any and all claims, actions, proceedings, and suits and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including reasonable attorneys' fees and other litigation expenses) incurred by Payment Gateway, arising out of or relating to (a) any breach or alleged breach by You of any representation, warranty, or obligation of You set forth in this Agreement; (b) any damage or loss caused by negligence, fraud, dishonesty or willful misconduct by You or any of Your employees, agents or customers; (c) the reliability, accuracy, or legitimacy of payment data or purchase orders submitted by You to Payment Gateway; (d) payment card transactions submitted by You to Payment Gateway and rejected by Payment Gateway or an issuing bank; (e) any alleged infringement of a patent, copyright, trademark or other intellectual property right resulting from Your Fault; (f) claims by Your customers, including, without limitation, claims relating to the disclosure of consumer data; (g) any alleged or actual violation by You of any applicable laws, regulations or rules of (i) the Credit Card Associations; (ii) the Gramm Leach Bliley Act; (iii) or any regulatory body or agency having jurisdiction over the subject matter hereof; or (h) any violation of Payment Gateway's then current policies or guidelines. In the event You cause fines and/or penalties to be charged to Payment Gateway by the Credit Card Associations or any other entity, you agree to immediately reimburse Payment Gateway for said fines and penalties.

### **14.3 Indemnification Procedure**

The obligations of each party ("Indemnitor") under this Section 14 to defend, indemnify and hold harmless the other party ("Indemnitee") shall be subject to the following: (a) Indemnitee shall provide Indemnitor with prompt notice of the claim giving rise to such obligation; provided, however, that any failure or delay in giving such notice shall only relieve Indemnitor of its obligations under this section to the extent it reasonably demonstrates that its defense or settlement of the claim or suit was adversely affected thereby; (b) Indemnitor shall have control of the defense and of all negotiations for settlement of such claim or suit; and (c) Indemnitee shall cooperate with Indemnitor in the defense or settlement of any such claim or suit, provided that Indemnitee shall be reimbursed for all reasonable out-of-pocket expenses incurred in providing any cooperation requested by Indemnitor. Subject to clause (b) above, Indemnitee may participate in the defense of any such claim or suit at its own expense. Indemnitor shall not, without the consent of the Indemnitee, enter into any settlement that reasonably can be expected to require a material affirmative obligation of, result in any ongoing material liability to or materially prejudice Indemnitee in any way.

### **14.4 Exceptions**

If You are an agency or instrumentality of a state of the United States and are precluded by the law of Your state from entering into indemnification obligations, then the obligations under Sections 14.2 and 14.3 shall apply only to the extent permitted by such state law.

## **15. GENERAL PROVISIONS**

### **15.1 Non-exclusivity**

Each party acknowledges and agrees that the rights granted to the other party in this Agreement are non-exclusive, and that, without limiting the generality of the foregoing, nothing in this Agreement shall be deemed or construed to prohibit either party from participating in similar business arrangements as those described herein.

### **15.2 Notices**

All notices to You shall be given electronically, sent to the electronic mail address provided by or for You during registration for the Payment Gateway Services and/or posted in the Merchant Control Panel of Your Account. Any termination notice to Payment Gateway shall be given electronically by sending an e-mail to [support@nmi.com](mailto:support@nmi.com) from within the Merchant Control panel of Your account. All other notices to Payment Gateway shall be given

electronically to [support@nmi.com](mailto:support@nmi.com) with a written copy to Network Merchants LLC (NMI) Legal Department, 201 E. Main St., Roselle, IL 60172 or to 888-829-3631 (fax), Attention: General Counsel. Such written notice will be deemed given upon personal delivery, upon confirmation of receipt if sent by fax, or three (3) days after the date of mailing if sent by certified or registered mail, postage prepaid.

### **15.3 Relationship of the Parties**

The parties are independent contractors and nothing in this Agreement shall make them joint venturers, partners, employees, agents or other representatives of the other party. Neither party shall make any representation that suggests otherwise. You further recognize that if you contracted for the Payment Gateway Services with an Affiliate Partner or Third Party Service Provider, such provider is an authorized reseller of Payment Gateway only and is not a joint venturer, partner, or agent of Payment Gateway.

### **15.4 Assignment**

You will not have the right or the power to assign any of Your rights or delegate the performance of any of Your obligations under this Agreement without the prior written consent of Payment Gateway, including in the case of a merger. Payment Gateway will have the right to assign this Agreement to its successors and/or assigns, subsidiaries, affiliates, Affiliate Partners and/or Third Party Service Providers.

### **15.5 Amendment and/or Modifications**

No amendment, modification, or change to any provision of this Agreement, nor consent to any departure by either party therefrom, will in any event be effective unless the same will be in writing and signed by the other party, and then such consent will be effective only in the specific instance and for the specific purpose for which given. Notwithstanding the foregoing, Payment Gateway may amend this Agreement at any time upon written or electronic notice or post notice on its Web site located at <http://www.nmi.com> to You of not less than ten (10) days prior to the effective date of such amendment; provided that the addition or change of service fees, will become effective upon at least thirty (30) days' notice. If You do not agree to such amendments, your sole remedy is to immediately terminate this Agreement upon written notice to Payment Gateway.

### **15.6 Waiver**

The failure of any party to insist on or enforce strict performance of any provision of this Agreement or to exercise any right or remedy under this Agreement or applicable law will not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provision, right or remedy in that or any other instance; rather, the same will be and remain in full force and effect. Waiver by either party of a breach of any provision contained herein must be in writing, and no such waiver will be construed as a waiver of any other and/or succeeding breach of such provision or a waiver of the provision itself.

### **15.7 Dispute Resolution**

Any dispute or claim arising out of or relating to this Agreement, except claims involving intellectual property and claims for indemnification, will be resolved by binding arbitration. The arbitration of any dispute or claim shall be conducted in accordance with the American Arbitration Association ("AAA") rules, as modified by this Agreement, and will take place in Chicago, Illinois, unless the Parties mutually agree to hold the proceedings elsewhere. This Agreement evidences a transaction in interstate commerce and this arbitration provision will be interpreted and enforced in accordance with the Federal Arbitration Act and federal arbitration law. An arbitrator may not award relief in excess of or contrary to what this Agreement provides or order consolidation or arbitration on a class wide or representative basis, except that the arbitrator may award on an individual basis damages required by statute and may order injunctive or declaratory relief pursuant to an applicable consumer protection statute. Any arbitration shall be confidential, and neither Party may disclose the existence, content or results of any arbitration, except as may be required by law or for purposes of enforcement of the arbitration award. Judgment on any arbitration award may be entered in any court having proper jurisdiction. All administrative fees and expenses will be divided equally between the Parties, but each Party will bear the expense of its own counsel, experts, witnesses and preparation and presentation of evidence at the arbitration. IF FOR ANY REASON THIS ARBITRATION CLAUSE IS DEEMED INAPPLICABLE OR INVALID, THE PARTIES WAIVE, TO THE FULLEST EXTENT ALLOWED BY

LAW, ANY RIGHT TO PURSUE ANY CLAIMS ON A CLASS OR CONSOLIDATED BASIS OR IN A REPRESENTATIVE CAPACITY. No action, regardless of form, arising out of or in conjunction with the subject matter of this Agreement, except for claims involving intellectual property and claims for indemnification, may be brought by either Party more than one (1) year after the cause of action arose.

### **15.8 Severability; Headings**

If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision. Headings are used for convenience of reference only and in no way define, limit, construe or describe the scope or extent of any section, or in any way affect this Agreement.

### **15.9 Force Majeure**

Neither party will be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, interruptions in telecommunications, utility, Internet services or network provider services or other catastrophes or any other occurrences which are beyond such parties' reasonable control (each a "Force Majeure Event"), provided that the party delayed will provide the other party notice of any such delay or interruption as soon as reasonably practicable, will use commercially reasonable efforts to minimize any delays or interruptions resulting from the Force Majeure Event and in no event will any failure to pay any monetary sum due under this Agreement be excused for any Force Majeure Event.

### **15.10 Governing Law; Jurisdiction**

This Agreement and performance under it will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Illinois, without reference or giving effect to its conflicts of law principles. You hereby irrevocably consent to the personal jurisdiction of and venue in the state and federal courts located in DuPage County, Illinois with respect to any action, claim or proceeding arising out of or related to this Agreement and agree not to commence or prosecute any such action, claim or proceeding other than in such courts, except as otherwise provided in Section 15.7 above.

### **15.11 Entire Agreement**

This Agreement together with all of Payment Gateway's policies referenced herein sets forth the entire understanding and agreement of the parties, and supersedes any and all prior or contemporaneous oral or written agreements or understandings between the parties, as to the subject matter of this Agreement. You acknowledge that this Agreement reflects an informed, voluntary allocation between Payment Gateway and You of all risks (both known and unknown) associated with Payment Gateway Services.

### **15.12 Survival**

The provisions of this Agreement relating to any fees or other amounts owed, payment of finance charge on unpaid fees, confidentiality, warranties, limitation of liability, indemnification, governing law, severability, headings and this paragraph shall survive termination or expiration of this Agreement.

## **Appendix A - PAYMENT GATEWAY SERVICE LEVEL AGREEMENT**

This Service Level Agreement ("SLA Agreement") sets forth the SLA applicable to the various Payment Gateway Services ordered by You and provided through Payment Gateway. This SLA provides Your sole and exclusive remedies for any Service interruptions, deficiencies, or failures of any kind. If such remedies include service credits, the parties agree that such credits constitute liquidated damages. No otherwise applicable SLA, including any remedies hereunder, shall apply with respect to any Excluded Events.

The following Service Level Targets apply to the Services.

### **AVAILABILITY Service Level Target**

For transaction processing services, this SLA provides that the Payment Gateway Application will be available 99.5% of the time (averaged over the calendar month). You will be eligible for service credits as set forth in the following table if this Availability Target is not met due to Outages.

Cumulative Duration of Outages within a Calendar Month which exceed the Availability Target	Credit
10 minutes through 60 minutes	1/30 <sup>th</sup> of MRFC for Affected Service
Each full hour in excess of 60 minutes	1/30 <sup>th</sup> of MRFC for Affected Service

**LATENCY Service Level Target**

This SLA provides for monthly average response time Latency as set forth in the following table. If the monthly average Latency through the Payment Gateway Application exceeds the Targets set forth in the following table, You will be eligible for a service credit of 3/30<sup>th</sup> of the applicable MRFC for the Affected Service.

PAYMENT GATEWAY Application Latency	3 seconds
-------------------------------------	-----------

**Definitions**

“MRFC” Monthly Recurring Fixed Charge means any and all fees You are obligated to pay to Payment Gateway including Your monthly commitment and fixed Service charges.

“Affected Service” means only the portion of a Service actually impacted by the relevant Service Level Target.

“Availability” means the percentage of time during a month in which the Payment Gateway application is not subject to an Outage.

“Latency” means the monthly average time it takes for a transaction to travel through the relevant portion of the Payment Gateway Application excluding transaction settlements and any time waiting for a response from a third party.

“Outage” means any period of at least one minute during which the Payment Gateway Application is completely unavailable or inaccessible for reasons other than an Excluded Event. An Outage begins when Payment Gateway opens the relevant trouble ticket and ends at the earlier of the restoration of the Affected Service or when the ticket is closed. All Outage measurements will be rounded to the nearest one minute increment.

“Payment Gateway Application” means the components owned and operated by Payment Gateway excluding any components that are not owned and operated directly by Payment Gateway.

“Excluded Events” means any event that adversely impacts the Service that is caused by (a) the acts or omissions of You, Your

employees, customers, contractors or agents; (b) the failure or malfunction of equipment, applications or systems not owned or controlled by Payment Gateway; (c) Force Majeure events; (d) scheduled maintenance, alteration or implementation; (e) any suspension of Service pursuant to the Merchant Service Agreement; or (f) the unavailability of Your required personnel, including as a result of failure to provide Payment Gateway with accurate, current contact information.

**Process**

You must request any credit due hereunder within 30 days of the conclusion of the month in which it accrues. You waive any right to credits not requested within this 30 day period. Credits will be issued once validated by Payment Gateway and applied toward the invoice which You receive no later than two months following Your credit request. All performance calculations and applicable service credits are based on Payment Gateway records and data.

**Limitations**

This SLA does not apply to any Excluded Events, as defined in this SLA. You will not be eligible to accrue any otherwise applicable service credits: (a) during any period in which You are in violation of the Payment Gateway Merchant Service Agreement or is past due on any amounts owed in connection with the Payment Gateway Services; and (b) before the start of the first full calendar month following the Billing Commencement Date for the Affected Service. You may not carry over to subsequent months any service credits subject to the limits or exclusions of this SLA.

In no event will the credits accrued in a single month exceed, in the aggregate across all service levels and events: thirty percent (30%) of the invoice amount for the Affected Service.

You acknowledge that Payment Gateway manages its throughput in part on the basis of Your utilization of Service and that changes in such utilization may impact Payment Gateway’s ability to manage throughput. Therefore, notwithstanding anything else to the contrary, if You significantly change Your utilization of the Service and such change creates a material and adverse impact on the volume through the Payment Gateway Application, as determined by Payment Gateway, Payment Gateway may either modify the applicable charges or terminate the Affected Services.

**Appendix B - VALUE-ADDED SERVICES**

In the event You enroll in, and Payment Gateway provides You with, Value-Added Service(s), You agree as follows:

**1.Expansion of Services**

The terms “Services” and “Payment Gateway Services,” as each is defined in the Agreement, shall include each of the Value-Added Services. Each Value-Added Service is described on the Payment Gateway Web site and in other Services Documentation provided to You from time to time. All terms of the Agreement applicable to the Payment Gateway Services shall be applicable to each Value-Added Service.

**2.Your Obligations**

In addition to Your obligations set forth in the Agreement, You agree to pay the Value-Added Service Fees, in accordance with Section 8 and Section 9 of this Agreement, in the amounts provided in the Fee Schedule provided to You by Payment Gateway and/or, if applicable Affiliate Partner. The Fee Schedule is hereby incorporated into the terms of this Agreement by reference and/or in the Value-Added Service documentation page accessed during enrollment in the applicable Value-Added Service. By checking the “I ACCEPT” button next to a Value-Added Service Fee schedule, You acknowledge Your acceptance of such fees, Your obligation to pay same and the terms and conditions applicable to the Value-Added Service.

**3.Your Warranty**

You represent, warrant, and covenant to Payment Gateway that Your use of the Value-Added Services and any information gathered by You in connection with use of a Value-Added Service: **(a)** will be fully compliant with all applicable local, state and federal laws, rules, and regulations; **(b)** will be in accordance with all applicable Services Documentation; and **(c)** will not be used for any purpose other than in connection with the Value-Added Service.

#### **4. Acknowledgement**

You understand, acknowledge, and agree that **(a)** You will be solely responsible for ALL transactions processed through Your payment gateway account(s), regardless of whether such transactions are monitored by a Value-Added Service; **(b)** You will be solely responsible for Your use of the Value-Added Service including, without limitation (i) configuring, maintaining and updating, as You deem necessary, the applicable settings for Your Value-Added Service account; and (ii) with respect to each Transaction processed via your account(s), it may be necessary for Payment Gateway, or information generated or not generated by the Value-Added Service, as applicable, determining the appropriate action for each such Transaction (i.e., approve, void, decline, reject); **(c)** under certain circumstances, it may be necessary for Payment Gateway to adjust Your Value-Added Service security settings, with or without notice to You, to guard against fraudulent activity and that such actions may inadvertently cause legitimate transactions to expire, be rejected or delayed; and **(d)** Payment Gateway shall not be liable under any theory of law, including negligence, for any loss associated with any of the foregoing.

#### **5. PAYMENT GATEWAY WARRANTY**

IN ADDITION TO ANY LIMITATIONS OR DISCLAIMERS SET FORTH IN THE AGREEMENT, YOU UNDERSTAND, ACKNOWLEDGE AND AGREE THAT THE VALUE-ADDED SERVICES ARE PROVIDED TO YOU BY PAYMENT GATEWAY "AS IS" AND THAT PAYMENT GATEWAY DOES NOT REPRESENT OR WARRANT THAT THE VALUE ADDED SERVICES OR ANY OTHER TECHNOLOGY, CONTENT, INTELLECTUAL PROPERTY, OR ANY OTHER INFORMATION, DATA, PRODUCTS, OR SERVICES, WILL BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE, OR ERROR-FREE, AND THAT YOUR SOLE REMEDY FOR ANY ISSUE RELATED TO OR ARISING FROM THE VALUE ADDED SERVICES, AND PAYMENT GATEWAY'S SOLE LIABILITY FOR SAME, WILL BE TO TERMINATE THIS AGREEMENT AND DISCONTINUE YOUR USE OF THE VALUE-ADDED SERVICES.

#### **6. Risk, Security and Disclosure**

The risk and security suggestions provided to You in the Services Documentation for any of the Value-Added Services are solely for illustrative purposes to show best industry practices, and You shall be solely responsible for choosing the appropriate settings and parameters for Your account.

#### **7. Termination**

If Your Agreement is terminated for any reason, Payment Gateway shall immediately cancel access to Your Value-Added Service account. It is Your responsibility to download all reports prior to the effective date of any such termination as such reports will not be available following the termination date.

#### **8. Incorporation by Reference**

The Value-Added Services Fee Schedules are incorporated herein by reference.

#### **9. Third Party Programs**

Payment Gateway makes no warranty, express or implied, with regard to any third party services or software.

#### **10. Definitions**

All terms and conditions of the Agreement not specifically modified in this Appendix B shall remain unchanged and in full force and effect. Unless separately defined herein, capitalized words used in this Appendix as defined terms shall have the same meanings herein as in the Agreement.

#### **Appendix C - Prohibited Activities.**

You agree that You will not at any time conduct Your business in any manner that directly or indirectly offers, sells, leases, licenses or displays, delivers, advertises, recommends, or promotes any product(s), service(s), data, information, image(s), text and/or any content which:

- (i) is unlawful or violates any applicable local, state, federal, national or international law, statute, ordinance, or regulation including, without limitation, Credit Card Association rules, consumer protection laws, unfair competition, antidiscrimination or false advertising;
- (ii) is associated with any illegal form of adult, sexually oriented, or obscene materials or services, including without limitation, any material clearly designed to sexually arouse the viewer/reader with images of children less than 18 years old and/or escort services;
- (iii) infringes on any patent, trademark, trade secret, copyright, right of publicity, or other proprietary right of any party, including, but not limited to, the unauthorized copying and posting of trademarks, pictures, logos, software, articles, musical works and videos;
- (iv) is threatening, abusive, harassing, defamatory, obscene, libelous, slanderous, deceptive, fraudulent, invasive of another's privacy, tortuous, or otherwise violate Payment Gateway's rules or policies;
- (v) victimizes harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age, or disability;
- (vi) impersonates any person or entity;
- (vii) contains harmful content, including, without limitation, software viruses, Trojan horses, worms, time bombs, cancel bots, spy-ware, or any other files, software programs, or technology that is designed or intended to disrupt, damage, surreptitiously intercept or expropriate the Services or any system, program, data or personal information or limit the functioning of any software, hardware, or equipment or to damage or obtain unauthorized access to any data or other information of any third party;
- (viii) violates any U.S. export or import laws, including, without limitation, the Export Administration Act and the Export Administration Regulations maintained by the Department of Commerce;
- (ix) offers or disseminates fraudulent goods, services, schemes, or promotions (i.e., make money fast schemes, chain letters, pyramid schemes) or engage in any unfair deceptive act or practice;
- (x) is associated with any form of illegal gambling or illegal lottery type services;
- (xi) is associated with illegal telecommunications or illegal cable television equipment or illegal satellite equipment;
- (xii) is associated with electronic wallets (i.e., "e-wallets") or any similar payment type; or
- (xiii) is associated with the sale of (a) any controlled drug that requires a prescription from a licensed practitioner unless you are authorized by the National Association of Boards of Pharmacy to offer such products as a Verified Internet Pharmacy Practice Site and only if such a prescription has been issued by the practitioner after a bona fide examination of the patient; or (b) any over-the-counter drug, unless the sale of such product, without a prescription, has been approved by the Food & Drug Administration; or (c) nonprescription drugs that make false or misleading treatment claims or treatment claims that require FDA approval; or (d) any drug or controlled substance that Payment Gateway believes to be or may become harmful, unlawful, or prohibited. Payment Gateway requires sellers of prescription drugs to abide by all laws applicable to both the buyer and seller and may require you to provide evidence of compliance with these requirements. In addition, due to the complexities of current laws regulating the importation of controlled drugs into the United States, you may not use the Services to sell prescription drugs that are imported into the United States from an international location. The foregoing list is a non-exhaustive list of prohibited goods and services.

Payment Gateway Merchant Service Agreement

Last Revised September 12, 2013

**CONFIDENTIAL**

## EXHIBIT 10

### Third Party Referrers

These additional definitions shall apply to this Appendix:

‘Third Party Referrers’ – Commissioned or paid referrers and marketers of Merchant.

‘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. 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 to 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.

**EXHIBIT 11**

**BlueSnap Reseller License of Cardinal Commerce Corporation Products and Services**

**1. Licensed Access for Merchant.** BlueSnap will provide Merchant with a limited, fully revocable non-transferable license to utilize such Cardinal products and services as BlueSnap is authorized to resell/license and which are mutually agreed upon by BlueSnap and Merchant ("Services"), which services shall be defined as set forth in the

website hosted by BlueSnap and in a schedule of fees, in accordance with the following terms and conditions. Any license rights not expressly set forth herein are fully reserved to BlueSnap and Cardinal Commerce Corporation.

**2. TRANSACTION FEES.** Transaction Fees are those fees paid by Merchant to BlueSnap for the Services, as set forth in a schedule of fees.

### **3. PAYMENT TERMS**

**3.1 Payment for Services.** Payment of Fees is due in accordance with Section 2. "Fees" shall mean and refer to the consideration set forth in Section 2 to be paid by Merchant to BlueSnap for the Services provided by BlueSnap in accordance with the terms of this Agreement. The Fees shall be deducted by BlueSnap at payout of funds due to Merchant. If Merchant has a commercially reasonable basis for disputing any portion of the Fees, Merchant must notify BlueSnap in writing within ten (10) calendar days of receipt of the applicable payout statement and any substantiated correction shall be made as a credit against the next payout. If a Fee or Transaction is not disputed in writing within such period, any dispute as to said Fees shall be waived. A finance charge of 1 ½ % per month will be charged on all past due balances.

**3.3 Taxes.** All amounts payable pursuant to this Agreement are exclusive of taxes. Accordingly, Merchant will be solely and exclusively responsible for any and all current and future applicable taxes, which may be incurred as a result of or otherwise in connection with this Agreement or the provision of the Services, including without limitation, state and local privilege, excise, sales, services, withholding, and use taxes and any taxes or other amounts in lieu thereof paid or payable by Merchant.

**4. DISCLAIMER/LIMITATION OF LIABILITY.** To the fullest extent permissible under the applicable law, BlueSnap and its partner, Cardinal Commerce Corporation disclaims all warranties express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, in relation to its Service, use thereof and the results of such use. BlueSnap and its partner, Cardinal Commerce Corporation, shall not be liable to Merchant or any other person or entity for: (a) any indirect, special, incidental, consequential or exemplary damages of any kind arising out of the use or inability to use the Services or any information provided by BlueSnap either through its website or verbally by a representative of BlueSnap, including, without limitation, damages for loss of goodwill, lost profits, business interruption, loss of programs or other data, even if BlueSnap has been advised of the possibility of such damages, or (b) any claim attributable to errors, omissions or other inaccuracies as to the Services.

Notwithstanding the foregoing, the cumulative aggregate liability of BlueSnap shall not exceed the actual aggregate amount of compensation and Fees paid to, and received by BlueSnap for the prior six (6) months of the Agreement, less the aggregate sum of BlueSnap's actual third party expenses.

### **5. TERM AND TERMINATION**

**5.1 Term.** This Agreement shall commence on the Effective Date and will remain in effect contemporaneously with the BlueSnap Inc Merchant Agreement between the Merchant and BlueSnap and terminates immediately if the Merchant Agreement between Merchant and BlueSnap is terminated.

#### **5.2 Effects of Termination.**

(a) Upon termination, BlueSnap may deduct any due and unpaid sums from funds owed to Merchant. Otherwise, payment shall be due within ten (10) days of any such termination.

(b) Upon termination of the Agreement regardless of the reason for termination, Merchant will be precluded from using the Services set forth in Section 1 hereinabove, unless otherwise agreed to in writing by BlueSnap and/or Cardinal Commerce Corporation; or

**6. INDEMNIFICATION/ HOLD HARMLESS.** Merchant agrees to indemnify, defend, and hold BlueSnap and the licensor, Cardinal Commerce Corporation, harmless including its officers, directors, employees and agents from and against any and all liability, claims, losses, damages, injuries, expenses, attorneys' fees, costs or otherwise, directly or indirectly arising from or related to this Agreement or the products and service contained herein.

**7. REPRESENTATIONS, WARRANTIES AND COVENANTS OF MERCHANT.** Merchant agrees, represents, warrants and covenants as follows:

(a) Merchant is a corporation, limited liability company, partnership or other entity validly existing and in good standing under the laws of the State where formed;

(b) Merchant has full authority and power to enter into this Agreement and to perform its obligations hereunder;

(c) Merchant's performance of this Agreement will not violate any applicable law or regulation or any agreement to which it is bound as of the date hereof, including, without limitation the Merchant Agreement;

(d) Merchant has been authorized by each Consumer to use the personal and other information of Consumer



("Consumer Information") that shall be provided to BlueSnap hereunder and has the right to use all such Consumer Information in connection with BlueSnap's provision of the Services hereunder in the manner contemplated by this Agreement; and

(e) Merchant has legal rights and permission for all its Consumers ("Consumer" shall mean and refer to an individual or entity that presents a Payment Brand (defined below) to purchase goods or services from the Merchant and submits a Payment Brand to facilitate payment) for which Merchant requests Services, to obtain said Services related to said Consumers. Payment Brand shall mean and refer to the type of payment submitted by a customer for services, products or otherwise, including, but not limited to, Visa, MasterCard, American Express, Discover, PayPal, ACH, "Bill Me Later", or any credit card, charge card, debit card, gift card, loyalty card, prepaid card or other alternative method accepted as payment by Merchant.

## **8. CONFIDENTIAL INFORMATION AND NON-DISCLOSURE**

**8.1 Confidential Information.** The Parties may wish to disclose certain proprietary, Confidential Information ("Confidential Information" shall mean any and all data and information relating to the business of the disclosing Party ("Disclosing Party") which is disclosed to the other Party ("Receiving Party") pursuant to this license. The confidentiality provisions of the BlueSnap Inc Merchant Agreement shall apply in all respects

**8.2 Disclosure of Confidential Information.** The Receiving Party may use the Disclosing Party's Confidential Information only in furtherance of this Agreement. The Receiving Party shall use reasonable care and discretion to prevent disclosure, publication, or dissemination of the Disclosing Party's Confidential Information. Disclosure by the Receiving Party of Confidential Information may be made only to officers, directors, general partners, employees, agents, financial advisors or attorneys, Card Organizations, Acquiring banks and entities (collectively, "Representatives") of the Receiving Party who have a reason to know or have access to such information, and have obligated themselves to hold such Confidential Information in trust and confidence or otherwise to comply with the terms herein.

**8.3 Consent.** Merchant expressly consents to give Cardinal Commerce Corporation access to fraud, chargeback and authentication data concerning Merchant's transactions involving the Services.

**9. ASSIGNMENT.** Merchant shall not assign this Agreement or any of Merchant's rights and/or obligations hereunder to any third Party without the prior written consent of BlueSnap. This Agreement shall be binding upon and shall inure to the benefit of any such successors and assigns of Merchant. No other assignment of this Agreement shall be made by Merchant without BlueSnap's prior written consent, and any attempt to assign this Agreement without such prior written consent shall be deemed null and void. BlueSnap may assign this Agreement and such assignment shall be binding upon and inure to the benefit of BlueSnap, and its respective successors and assigns.

**10. SURVIVAL.** The provisions of Sections 3.1, 4, 5.1, 5.2, 6, 7, 8, and 9 shall survive the termination of this Agreement, to the extent applicable.

## **EXHIBIT 12**

### **BLUESNAP DATA PROTECTION ANNEX**

This BlueSnap Data Protection Annex ("**DPA**") shall apply between Merchant and BlueSnap, Inc. and its subsidiaries worldwide including but not limited to BlueSnap Payment Services Ltd., The parties agree that the EU Standard Contractual Clauses (hereafter "Standard Contractual Clauses" that shall supersede any conflicting terms in this DPA) shall become operative as provided in this DPA. If there is any conflict between this DPA and the Agreement regarding BlueSnap's privacy and security obligations, the provisions of this DPA shall control.

#### **1. Definitions**

"**Customer**" means an EEA-based customer of Merchant purchasing products and/services and in the case of an individual person is a data subject for the purposes of this DPA.

"**Customer Data**" means the Personal Data that Customer provides to Merchant and which is then passed on to BlueSnap through use of the BlueSnap Services.

"**EEA**" means the European Economic Area, the European Union, plus Switzerland and, if the UK ceases to be a part of the EEA, the UK.

"**EU Privacy Law**" means Regulation (EU) 2106/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing

of Personal Data and on the Free Movement of Such Data (“GDPR”) from its date of application 25 May 2018, and any legislation and/or regulation implementing or made pursuant thereto, or which amends, replaces re-enacts or consolidates.

“**Personal Data**” means any data that (a) personally identifies or may be used to personally identify a natural person, and/or (b) relates to a natural person, which either directly or indirectly, in combination with other information, is capable of identifying a natural person.

“**Merchant Party**” or “**Merchant Parties**” refers to a customer, employee, officer, director, supplier and/or contractor of Merchant or of a Merchant customer.

“**Merchant Personal Data**” means shall mean Personal Data that is disclosed to and/or shared with BlueSnap by Merchant under the Agreement;

“**Processing**” means any operation or set of operations that is performed on Merchant Personal Data and Customer Data whether by automatic means or otherwise, such as accessing, collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, any disclosure, including without limitation, by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction. “**Privacy Laws**” means:

- (i) all applicable legal requirements (federal, state, local and international laws, rules and regulations and governmental requirements) currently in effect and as they become effective, relating in any way to the privacy, confidentiality or security of Personal Data, including, but not limited to EU Privacy Law and any other laws and regulations of the EEA and their member states, applicable to the Processing of Personal Data under the Agreement;
- (ii) all applicable industry standards concerning privacy, data protection, confidentiality or information security, including without limitation, the Payment Card Industry (“**PCI**”) Data Security Standard, and any other similar standards;
- (iii) applicable privacy policies, statements or notices that are provided to Merchant in writing and to which Merchant has agreed to abide; and
- (iv) other controls required by BlueSnap and agreed to by Merchant in writing.

“**Privacy Shield**” means the EU-US Privacy Shield, and the Swiss-US Privacy Shield self-certification programs operated by the U.S. Department of Commerce as approved by the European Commission and any subsequent programs updating, amending, adding to, or replacing the programs;

“**Privacy Shield Principles**” means the Privacy Shield Framework Principles as supplemented by the Supplemental Principles and as may be amended, superseded or replaced.

“**Sub-processor**” means any third party data processor engaged by BlueSnap including entities related to BlueSnap, that receive Personal Data from BlueSnap intended for processing on behalf of Merchant and in accordance with Merchant’s instructions as communicated by BlueSnap and the terms of its contract with such third party.

2. With respect to EU Privacy Law:

Merchant shall be deemed to be acting as the data controller and BlueSnap as the data processor in relation to all Customer Data that is passed to or received by BlueSnap. Merchant shall be solely responsible for notifying its Customers of the use of BlueSnap for supplying payment services so as to enable Customers’ payment for Merchant’s goods and/or services. Merchant assumes sole responsibility for obtaining all necessary consents from its Customers for the passing of Customer Data to BlueSnap, including for the onwards transfer of Customer Data by BlueSnap to its sub-processors and transfer outside the EEA, and for ensuring that such disclosure and transfer to BlueSnap is in full accordance with EU Privacy Law.

BlueSnap shall be deemed to be acting as the data controller for Merchant Personal Data supplied by Merchant to BlueSnap with respect to servicing Merchant, setting up account, performing merchant underwriting, conducting checks and reviews relating to KYC, anti-money laundering, identity, credit status, reference, financial status, beneficial interests, location, tax status and other related matters.

3. The subject matter of the Processing, type of Personal Data, duration of Processing, categories of data subject, persons or parties that shall be exposed to the data, and Sub-processors are as set out in Appendix 1.

4. BlueSnap shall ensure that all parties and persons employed or contracted to process Merchant Personal Data and/or Customer Data, shall be subject to a binding duty of confidentiality, and are adequately trained in accordance with the requirements of EU Privacy. BlueSnap shall ensure that its employees, contractors and Sub-processors are contractually bound not to

wrongfully publish, disclose or divulge any Merchant Personal Data or Customer Data to any third party.

5. Ownership of Merchant Personal Data. Any Merchant Personal Data, in any reconfigured format, shall at all times be and remain the sole property of Merchant or the Merchant Parties, unless agreed otherwise in writing by Merchant. Any use of Merchant Personal Data and/or Customer Data is limited to the sole purpose expressly authorized by the Agreement and this DPA.
6. BlueSnap Processing and Use of Merchant Personal Data and Customer Data.
  - 6.1. BlueSnap shall only process Merchant Personal Data and/or Customer Data on behalf of Merchant and in accordance with Merchant's written instructions including the Agreement and this DPA. For avoidance of doubt, Merchant instructs BlueSnap to process Merchant Personal Data and/or Customer Data;
    - (i) in accordance with and to fulfill its obligations under its Agreement with Merchant and
    - (ii) in accordance with other lawful and reasonable instructions as may be provided by Merchant from time to time. If BlueSnap is unable or refuses to comply with Merchant's instructions, for whatever reason, BlueSnap will inform Merchant promptly of its inability or refusal to comply. If BlueSnap's inability or refusal to comply with Merchant's instructions results in BlueSnap being unable to fulfill its obligations under the Agreement or this DPA, Merchant is entitled to treat such inability or refusal as grounds for termination of the Agreement.
  - 6.2. BlueSnap agrees that it will not access or use Merchant Personal Data and/or Customer Data except as necessary to fulfill its obligations to Merchant under the Agreement or as necessary to carry out Merchant's lawful and reasonable instructions to BlueSnap with regard to Merchant Personal Data.
7. Compliance. Each party will comply with all laws, rules, and regulations applicable to it and binding on it in the performance of this DPA, including all Privacy Laws.
8. Appropriate Security Safeguards. BlueSnap will implement and maintain appropriate technical, administrative, physical and organizational measures as set out in Appendix I to adequately safeguard and protect the security and confidentiality of Merchant Personal Data and/or Customer Data against, without limitation, accidental, unauthorized or unlawful destruction, alteration, modification, processing, disclosure, loss, or access. BlueSnap will not materially decrease the overall security of its services during the term during which it processes Merchant Personal Data and/or Customer Data.
9. Audit. Subject to reasonable notice, BlueSnap shall enable Merchant to access and review up-to-date security certifications, attestations, reports or extracts thereof from independent bodies relating to compliance with the security requirements of this DPA. BlueSnap shall provide Merchant an opportunity to conduct a security audit of BlueSnap's security program and systems and procedures that are applicable to the services provided by BlueSnap to Merchant. Audits will occur at most annually or following notice of a security incident. Alternatively Merchant may request in writing a copy of the most recent audit of such services conducted on behalf of BlueSnap by an independent third party security professional at Merchant's selection and expense. Merchant shall promptly provide a copy of such audit report to BlueSnap without charge. If any such audit reveals any vulnerability, BlueSnap shall take reasonable steps to correct such vulnerability at its sole cost and expense.
10. Notice to Merchant Regarding Third Party Inquiries. BlueSnap will, to the extent legally permitted, promptly notify Merchant of any security issue, inquiry, claim or complaint received by or affecting BlueSnap or any of its third party service providers and Sub-processors regarding the Processing of Merchant Personal Data or Customer Data within 48 hours of discovery, including but not limited to any incidences of data breach or suspected data breach, valid requests from any person for access to, correction, amendment or deletion of that person's Personal Data that constitutes Merchant Personal Data or Customer Data, and any communication from a regulator or data protection authority, or independent recourse mechanism that BlueSnap has elected to adopt under the Privacy Shield Framework. BlueSnap will not respond to any such inquiry, claim, or complaint without Merchant's prior written consent, unless legally required to do so and shall be entitled to inform the requesting party if consent has not been given. BlueSnap will provide reasonable cooperation and

assistance to Merchant, upon Merchant's request, in responding to such inquiries, claims or complaints. Merchant shall agree in advance to reimburse BlueSnap for the costs arising from such assistance based on BlueSnap's standard customer work rates.

11. Sub-processing. Merchant agrees that BlueSnap may continue to use those Sub-processors already engaged by BlueSnap as at the effective date of this DPA, subject to the provisions of sub-sections (i) to (iv) of this clause, and that BlueSnap may appoint Sub-processors to assist it in providing Processing, provided that such Sub-processors:
  - (i) agree to act only on BlueSnap's instructions (which shall be consistent with Merchant's instructions to BlueSnap); and
  - (ii) are engaged under a written agreement consistent with this DPA; and
  - (iii) agree to protect the Personal Data to a standard consistent with the requirements of this DPA, including by implementing and maintaining appropriate technical and organizational measures to protect the Personal Data consistent with those required by the Privacy Shield Principles if appropriate and this DPA.
  - (iv) BlueSnap agrees and warrants to remain liable to Merchant for the subcontracted services of any of its direct or indirect Sub-processors under this Agreement.
  - (v) BlueSnap shall maintain a list of its current Sub-processors used for Processing under this Agreement and shall update such list as necessary with details of any changes and additions. BlueSnap shall notify Merchant of any additions or changes within 7 days prior to such changes taking effect by email to the email registered to Merchant in the BlueSnap console. Merchant shall have the opportunity to object to the engagement of new Sub-processors within 30 days of the issue of such notice. The objection must be based on reasonable grounds such as Merchant establishes significant risk for the protection of Merchant Personal Data and/or Customer Data. If the parties are unable to resolve such objection then either party may terminate the Agreement on providing 30 days' written notice without penalty.

12. Return or Destruction of Merchant Personal Data, Retention of Copies

Upon Merchant's request or upon termination or expiration of the Agreement, and subject to all relevant legal requirements or credit card association requirements, BlueSnap agrees, at Merchant's option, to either deliver to Merchant or destroy in a manner that prevents Merchant Personal Data from being reconstructed, any Merchant Personal Data in BlueSnap's control or possession. Such delivery or destruction shall occur as soon as practicable and in any event within thirty (30) business days after the effective date of such termination or the date of Merchant's request. Upon reasonable notice and if requested by Merchant, BlueSnap shall provide Merchant a certificate by an officer of compliance with this Section or written reasons why such data cannot or should not be delivered or destroyed.

BlueSnap and each Sub-processor may however retain Merchant Personal Data and/or Customer Data to the extent required by applicable laws only to the extent and for such period as required by such laws and always provided that BlueSnap shall ensure the confidentiality of all such Merchant Personal Data/Customer Data and shall ensure that such data is only processed as necessary for the purpose(s) specified in such laws and for no other purpose.

Merchant agrees that after the termination or expiration of the Agreement, Merchant Personal Data and/or Customer Data may be stored as a backup for the time needed to secure (establish, investigate or defend) Merchant's and BlueSnap's claims that may arise due to the performance of the services (for the time it takes for the claims to be barred).

13. If required under EU Privacy Law, BlueSnap shall take steps to appoint a Data Protection Officer and a representative in the European Union, and shall notify Merchant in writing within 7 days of any such appointment. BlueSnap's current representative in the European is BlueSnap Payment Services Limited, a company based in the European Union and regulated by the Financial Conduct Authority as an authorized payments institution.
14. BlueSnap shall keep records of its processing activities in accordance with EU Privacy Law, including but not limited to Article 30 of the GDPR.
15. Nothing in this DPA shall relieve BlueSnap or Merchant of their respective individual responsibilities and liabilities under international and/or EU Privacy Law.
16. Cross-Border Transfers of Merchant Personal Data.
- 16.1. If, in fulfilling its obligations under the Agreement or pursuant to other lawful instructions

from Merchant, Merchant Personal Data and/or Customer Data must be transferred, directly or via an onward transfer, from the European Economic Area to any country that has not been recognized by the European Commission as providing an adequate level of protection for Personal Data (as described under EU Privacy Law), BlueSnap agrees to comply with either of the following in 16.2.1 or 16.2.2:

- 16.2.1 Execute, as an annex hereto as Appendix 2, at the written request of the Merchant, the Standard Contractual Clauses deemed by the European Commission, on the basis of Article 26(4) of the Directive, as amended or superceded, to offer adequate data protection and safeguards in relation to any transfer of Personal Data out of the European Economic Area (EEA). BlueSnap will comply with such terms of Standard Contractual Clauses as though it were the named data importer therein with respect to the Processing of Personal Data. BlueSnap agrees that the Standard Contractual Clauses shall be binding on BlueSnap as between BlueSnap and Merchant:
- (a) whether Merchant is acting as a data exporter or data importer under any set of Standard Contractual Clauses, with respect to Personal Data that BlueSnap is then Processing during the course of providing Merchant services;
  - (b) that each affiliate of Merchant established in the EEA and Switzerland that has purchased or benefitted from BlueSnap's services or on whose behalf BlueSnap may Process Personal Data shall be covered; and
  - (c) that each data subject whose Personal Data is Processed by BlueSnap under the Agreement and who is entitled to make a claim against Merchant or any of its affiliates pursuant to clause 3 of the Standard Contractual Clauses shall be covered.

The Standard Contractual Clauses will prevail over this DPA to the extent there is any conflict or inconsistency between the two; or

- 16.2.2 Where BlueSnap has itself self-certified to the Privacy Shield Framework, BlueSnap warrants and undertakes:

- (a) to provide at least the same level of protection to the Personal Data as is required by the Privacy Shield Principles;
- (b) to promptly notify Merchant if it makes a determination that it can no longer meet its obligation to provide the same level of protection as is required by the Privacy Shield Principles and in such event, to work with Merchant to promptly take reasonable and appropriate steps to stop and remediate any processing until such time as the processing meets the level of protection as is required by the Privacy Shield Principles; and
- (c) at Merchant's sole election, to cease processing the Personal Data immediately if in Merchant's reasonable discretion, BlueSnap is not providing the same level of protection to the Personal Data as is required by the Privacy Shield Principles.

Notwithstanding the foregoing, BlueSnap shall not be required to carry out Section 16.2.1 or 16.2.2 above if it has adopted an alternative recognized compliance standard for the lawful transfer of personal data (as defined by the EU Privacy Law) outside the European Economic Area, such as Binding Corporate Rules.

17. Privacy Policy. BlueSnap shall publish on its web site and adhere to a Privacy Policy that fully conforms with all relevant requirements of EU Privacy Law.
18. Disclosure of DPA and Agreement. The parties acknowledge that they may each disclose this DPA, and any relevant privacy provisions in the agreement to the US Department of Commerce, the Federal Trade Commission, European or Swiss data protection authority, or any other judicial or regulatory body upon their request. Where BlueSnap's services are related to the processing of payment transactions, BlueSnap may also make such disclosure to relevant credit card associations and acquiring banks.
19. Jurisdiction and Law. The parties to this DPA submit to the choice of jurisdiction and choice of law stipulated in the Agreement with respect to any disputes or claims howsoever arising under this DPA, including disputes regarding its existence, validity or termination or the consequences of its nullity.
20. BlueSnap may propose variations to this DPA which it reasonably considers to be necessary to address the requirements of any international or EU Privacy Law.
21. Severance. Should any provision of this DPA be invalid or unenforceable, then the remainder

of this DPA shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

## Appendix 1

Section A:

**Reason for Processing:** The underwriting and due diligence reviews of Merchant and prospective affiliates in accordance with payment/financial industry standards, legal requirements relating to Know Your Customer, Anti-Money Laundering, Counter Terrorist Financing checks, and in order to provide safe secure payment transaction services to individuals, customers and businesses.

**Legal Basis for Processing:**

Compliance with a legal obligation  
Performance of a contract  
Legitimate Interest

**Subject Matter of Processing:** Contact information, identity documents, financial records, references, payment and payment account data

**Type of Personal Data:**

Including but not limited to the following:

1. Contact details (name, address, e-mail address, phone and fax contact details and associated local time zone information);
2. IT systems information (user ID and password, computer name, domain name, IP address, location, and software usage pattern tracking information i.e. cookies);
3. Where applicable financial, payment data
4. Other data: ID documents, passport data, financial records, security certificates, professional qualifications, bank/credit/personal references

**Duration of Processing:**

Data to be retained until cessation of BlueSnap's due diligence processes. If Merchant is retained then until cessation of contract with data subject or following Merchant's request to delete Merchant Data in respect of individual data subjects

**Categories of Data Subject:**

Customers, potential customers, affiliates, and personnel of Merchant

**Persons or Parties Exposed to Merchant Personal Data:**

Merchant's and BlueSnap's personnel, employees, contractors

**List of BlueSnap Sub-processors** (including relevant cloud server services): See list at

<https://home.bluesnap.com/legal/BlueSnapDPASubprocessors>

Section B:

### Description of the technical and organizational security measures implemented by BlueSnap February 2018

#### 1. Information Security Program

(a) BlueSnap maintains an information security program focused on the security and integrity of Customer Data. BlueSnap's information security program includes administrative, technical and operational controls appropriate for the size of its business, the types of information it processes and the relative level of risk such information poses.

## **2. Personnel Security.**

- (a) As part of the hiring process, all employees undergo criminal background (US) and reference checks, sign NDAs committing them to protecting confidential information (including Customer Data), agree to reasonable use policies for Customer Data, and sign off on the BlueSnap Information Security Policy
- (b) During employment, continued security awareness training and education are provided annually.
- (c) Following any severing of the work relationship, the employee must surrender all assets and all access is revoked.

## **3. Physical Security and Hosting Environment**

- (a) All customer data is secured and access is limited to only the systems and employees that need access to facilitate providing services to the customer.
- (b) The production servers are hosted at SSAE16-audited facilities. Visual confirmation and strict sign-in procedures are executed by trained security personnel that have passed criminal background checks. Data center access is also restricted with key cards, photo ID verification and is staffed 24/7/365. The site is also monitored and recorded via color, high-resolution digital video cameras. Neither the lessor of the servers nor the facility managers have login access to the servers.
- (c) The BlueSnap corporate headquarters in USA is protected by badge access and staffed by security personnel 24/7.

## **4. Application Security and Access Control**

- (a) System Administration: All access is authenticated via userID/password, sensitive systems/services are also protected with an additional 2FA authentication. All access is logged and those logs are replicated and preserved.
- (b) Customer Data  
Employees that need to access customer data to do their jobs may only do so under the following conditions:  
There is no other way to accomplish the task  
Only the minimal amount of data required is accessed  
Any captured information is destroyed once no longer needed  
Access is granted on a per-user basis, based on job role and requirements, and only to the appropriate level of customer data in accordance with least privilege. User authentication is controlled using multiple security factors including username, password, and 2 Factor authentication. Passwords are safeguarded and never stored in plain text, either at rest or in transit.

## **5. Information Security / Incident Management**

- (a) For Production systems, the operating system is CentOS Linux with all ports but 443 are closed to the internet at large. Critical patches are applied with urgency commensurate with the vulnerability severity. Vulnerability digests are monitored daily for new issues in any software BlueSnap relies on.
- (b) Surfaces are minimized by locking down all ports accessible outside of the private network.
- (c) In the event of an incident, there is an on-call engineer at all times. The process for triage, escalation, and communication are clear and documented internally.
- (d) BlueSnap maintains security incident management policies and procedures. BlueSnap will promptly notify Customer in the event Company becomes aware of an actual or reasonably suspected unauthorized disclosure of Personal Data.
- (e) In addition, periodic penetration tests are performed against the Production and Corporate environment to minimize the risk of exposure. Internal security reviews are conducted for all new features. A particular emphasis is placed on the OWASP Top 10.

## **6. Data Protection and Encryption**

Https is required for all access to production services and applications that have access to customer data

## **7. Corporate Infrastructure Security**

- (a) Anti-Virus/Anti-Malware: All workstations are equipped with centrally-managed anti-malware and anti-virus

software

- (b) Next Generation Security agent is deployed on every desktop/laptop
- (c) Wireless Networks: Wi-Fi networks is completely segregated from the corporate network.
- (d) Automatic Updates: All Windows workstations are configured using Active Directory based Group Policies to automatically download and install security and related updates released by Microsoft.
- (e) User Account Password Complexity: Passwords used for common login services such as Active Directory and Google Apps for Work are required to meet complexity requirements, where available, required to be changed on a regular basis.
- (f) An Intrusion Prevention System is deployed in production and corporate networks
- (g) Web Application Firewall is deployed in Production to defend against application attacks
- (h) Host Intrusion Detection Software is deployed on every production server to alert on system file changes
- (i) Data Leak Detection is deployed in email and SharePoint sites
- (j) 2 Facto Authentication is deployed to protect every sensitive server/IT asset
- (k) The Production network is segmented into VLANs for further isolation and protection of data and servers
- (l) BlueSnap is level 1 PCI compliant which requires the following:
  - Annual Report on Compliance (“ROC”) by Qualified Security Assessor (“QSA”)
  - Annual onsite audit and assessment by the QSA
  - Quarterly network scan by an Approved Scan Vendor (“ASV”)
  - Proper encryption of card data at rest and in transmission

## **Appendix 2**

### **EU Standard Contractual Clauses Controller to Processor (set II) or as subsequently updated or superseded**

**To be activated by BlueSnap in accordance with clause 16.2.1 above.**

## **EXHIBIT 13**

### **Alipay Terms of Service**

Last Updated: October 2018

These Alipay Terms of Services apply if you elect to offer the Alipay software system and service for the making and collection of payments for products and services (“Alipay Services”) to your Customers via BlueSnap. The Alipay Services are made available to you by Alipay.com Co., Ltd. (“Alipay”), and include the Alipay Wallet, and in these Alipay Terms of Services your Customers that use the Alipay Services are referred to as “Alipay Users”.

#### **1. Use of Alipay Services.**

If you offer the Alipay Services to your Customers, you may not require a minimum or maximum purchase amount with respect to the Customers’ use of the Alipay Services.

#### **2. Products and Services.**

You acknowledge that Alipay may not provide Alipay Services with respect to any transaction which is prohibited by applicable Laws or violates Alipay’s internal policies, or which will result in Alipay being considered to have breached any applicable Laws. Accordingly, you must not sell products or services through the Alipay Services that contain articles prohibited or restricted from being sold to Alipay Users under any applicable Laws, including, without limitation, the products and services prohibited by Alipay. Please contact us for more information about products and services prohibited by Alipay.

You must provide BlueSnap with information about your products and services as may be reasonably requested by BlueSnap or Alipay from time to time, and you must ensure that no transaction submitted through the Alipay Services is for the purchase of any item prohibited by Alipay or BlueSnap. Alipay and BlueSnap will have the right to refuse to provide the Alipay Services with respect to any such transaction. To the best of your knowledge, the products or services that you sell do not infringe upon any third party’s rights and interests, including, without limitation, intellectual property rights and proprietary rights. If you become aware that any of your products or services infringes upon any third party’s rights and interests,



you must notify BlueSnap and immediately cease selling such products or services. If you continue to sell infringing goods or services, BlueSnap may immediately terminate provision of the Alipay Services to you.

3. Alipay intellectual property; brand and logo; publicity.

Alipay owns all rights in and to the Alipay Services, including, without limitation, the information described on the Alipay website. Except as expressly stated to the contrary, nothing in these Alipay Terms of Service grants, or may be construed to grant, to you any license, ownership or other rights of any kind in any Alipay content, technology or intellectual property.

You must display the brand or logo of Alipay during checkout for the sale of products or services in parity with other payment methods. You may not use Alipay’s logo or proprietary content for any purpose other than to indicate your acceptance of Alipay as a form of payment, unless otherwise authorized by Alipay.

You must present a truthful description of the Alipay Services in accordance with Alipay’s guidance, and direct Alipay Users to access the Alipay Services using their Alipay Wallet to make the relevant payments.

You may not issue any press release or make any public announcement pertaining to Alipay or the Alipay Services without the prior written consent of Alipay.

4. Business purposes.

You may only use the Alipay Services for your own account and with respect to the products and/or services that you have told BlueSnap about.

5. Modification of Alipay Services.

Alipay may modify the Alipay Services from time to time and require you to take steps to reduce the risk of unauthorized Transactions.

6. Alipay User complaints; disputes.

You are solely liable for any complaints by Alipay Users regarding your products and/or services. In the event that Alipay or BlueSnap becomes aware of complaints by an Alipay User, you will work in good faith to resolve such complaint.

If an Alipay User refuses to pay for a product or service on the basis that there has been an unauthorized Transaction, you must provide documentary evidence, as requested by Alipay and BlueSnap, that you have properly delivered the products or provided the services in accordance with such underlying transaction order. Such evidence may include, but is not limited to logistics certificates, shipping certificates, receipts, addresses, name and contact information of the recipient; as well as product names and prices. Based upon the provided evidence, BlueSnap and Alipay will determine whether you have sufficiently demonstrated that you properly delivered the products or provided the services.

7. AML requirements.

Alipay is subject to anti-money laundering, countering the financing of terrorism and sanctions (“AML”) laws and regulations. In accordance with its AML and anti-fraud practices, Alipay may reject or suspend suspicious transactions and payments, restrict individuals involved in suspicious transactions from using the Alipay Services, and impose other reasonable limitations and controls on your and Alipay Users’ use of the Alipay Service sufficient to meet Alipay’s AML compliance obligations. Alipay may, for the purposes of complying with applicable suspicious transaction reporting and tipping-off laws and regulations, notify suspicious transactions to the relevant authorities with jurisdiction over Alipay or relevant affiliates of Alipay.

Within a reasonable time after request from Alipay or BlueSnap, and only to the extent permitted by applicable Law, you must, at your own cost, provide information and transaction records to permit Alipay to investigate an actual or suspected violation by an Alipay User of the AML laws and regulations applicable to Alipay; except that the information provided shall be limited only to the information required to complete Alipay’s investigation.

8. Prohibited product/business list

1.	Illegal political audio visual products and publications
2.	Illegal political program channels
3.	State secret documents and information
4.	Pornographic and vulgar audio visual products, channels and publications
5.	Pornographic and vulgar erotic services

6.	Gambling devices and accessories
7.	Lottery
8.	Gambling service
9.	Narcotics and related accessories
10.	Weapons of all types (including daggers, firearms and accessories), replica weapons, ammunitions and explosives)
11.	Military or police equipment
12.	Illegally obtained proceeds or properties as result of crime
13.	Poisonous or hazardous chemicals prohibited by Applicable Law and/or the laws of the People's Republic of China
14.	Batons and electric batons
15.	Lock picking tools and accessories
16.	Anesthetic, psychotropic or prescription medicine prohibited by the People's Republic of China; illegal unregistered medicine
17.	Fetal gender determination
18.	Aphrodisiac
19.	Medical services, including medical consulting, hypnotherapy, plastic surgery
20.	Hacking services or accessories
21.	Malwares
22.	Illegal publication of certificates issuing or carving of stamps
23.	Crowd funding
24.	Video chatting services
25.	All religious websites, publication or accessories
26.	Online cemeteries and ancestor worshipping
27.	Sales of personal information (e.g. identity card information)
28.	Espionage equipment and accessories
29.	Services or products that infringe on personal privacy (e.g. online activity monitoring)
30.	Pyramid schemes and multi-level marketing
31.	Gold investment
32.	Cash disbursement from credit funding sources (e.g. credit cards)
33.	Counterfeit currency
34.	Illegal sale of financial information (e.g. bank accounts, bank cards)
35.	Stock and securities
36.	Mutual Funds
37.	Insurance products and platforms
38.	Financial products and services
39.	Rebate or cashback services
40.	Software or products related to trading of financial products and information
41.	Single-purpose prepaid cards (including gift cards and other stored value cards)
42.	Illegal or un-registered fund-raising activities
43.	Foreign exchange services
44.	Peer to peer (P2P) lending services
45.	Payment by instalments service
46.	Trading in invoices issued within the Peoples' Republic of China
47.	Trading or sale of virtual currencies (e.g. Bitcoin, Litecoin)
48.	Satellites and antennas
49.	Archaeological and cultural relics
50.	Trading or distribution of currency (both RMB and foreign currencies)
51.	Counterfeit or replica food products
52.	Online sale of tobaccos and cigarettes

53.	Fireworks and firecrackers
54.	Crude oil
55.	Human organs
56.	Surrogacy services
57.	Services to facilitate plagiarism and examination fraud
58.	Protected species
59.	Smuggled goods
60.	Sales of distribution of event tickets without license (e.g. Olympic Games or World Expo tickets)
61.	Seeds
62.	Real estates
63.	Charitable Organizations
64.	Auction sites and services
65.	Pawn services
66.	Lucky draw
67.	Sale of animals, plants or products with contagious and hazardous diseases
68.	Sale of animals, plants or products originating from areas declared with an epidemic outbreak of contagious diseases
69.	Services or products facilitating unlawful public gathering

As prohibited by Chinese law or other applicable law, Illegal political products, publications, programs and channels (e.g. products, video, television or radio programs, and publications supporting political organizations, activities, or propaganda prohibited by Chinese law or other applicable law)  
State secret documents and information  
Software or services that may otherwise jeopardize the reputation or goodwill of Alipay and its affiliates