

## 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 Payment 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 Payment Services.
- 1.8 Intellectual Property is all rights, privileges and priorities provided under applicable supranational, national, federal, state or local law, rule, regulation, statute, ordinance, order, judgment, decree, permit, franchise, license, or other government restriction or requirement of any kind relating to intellectual property, whether registered or unregistered, in any country, including without limitation: (a) all (i) patents and patent applications (including any patent that in the future may issue in connection therewith and all divisions, continuations, continuations-in-part, extensions, additions, registrations, confirmations, reexaminations, supplementary protection certificates, renewals or reissues thereto or thereof), (ii) copyrights and copyrightable works, including reports, software, databases and related items, and (iii) trademarks, service marks, trade names, brand names, product names, corporate names, logos and trade dress, the goodwill of any business symbolized thereby, and all common-law rights relating thereto; and (b) all registrations, applications, recordings, rights of enforcement, rights of recovery based on past infringement and any and all claims of action related thereto and licenses or other similar agreements related to the foregoing.
- 1.9 Merchant 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 and Canadian 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 without a writing to include same and Merchant shall be deemed to agree to and further agrees to pay the additional fees for such Enhanced Services. BlueSnap may deduct the relevant additional fees from Merchant’s account.
- 3.2.5 BlueSnap may provide and license to Merchant for purposes of this Agreement BlueSnap Customizations 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 by informing on checkout its Refund policy and procedures, including any RMA (Return Merchandize Authorization) required and fees assessed. Merchant is responsible for any charges or costs incurred by reason of Refund, such as shipping fees.

Merchant's Refund policy shall be in compliance with all relevant Card Association rules, FTC, 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 Exhibit 1 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. 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 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.
- 4.7.11 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.
- 4.7.12 Merchant shall not hold nor store any CVV or magnetic card strip information under any circumstances.
- 4.7.13 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.
- 4.8 American Express. The provisions of Exhibit 2 shall apply with respect to all transactions involving American Express and US-based Merchants.
- 4.9 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.

- 4.10 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.
- 4.11 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.
- 4.12 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.
- 4.13 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.
- 4.14 Amendments. Merchant is responsible to regularly monitor the BlueSnap website or Merchant's account on the BlueSnap console for notice of changes to the BlueSnap Services and fees. Merchant shall be notified in advance of such changes in BlueSnap Services and fees. Fees may be updated and revised by BlueSnap upon 60 days notice as provided herein or added/revised without prior notice in the event that regulatory or governmental requirements materially increase BlueSnap's costs, including but not limited to charges based on device, product class, network, network carrier, payment method, price, currency, quantity, Acquirer, geographic location and cross-border fees, or pursuant to Section 3.2.4. By continuing to use the BlueSnap Service or not notifying BlueSnap in writing of any objection within 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, Merchant shall, for sixty 60 days after the publishing of the aforesaid notice, have the option to terminate this Agreement without penalty but remaining subject to the surviving provisions of this Agreement including but not limited to payment of fees owed, maintaining a Rolling Reserve, liability for Chargebacks for itself and any affiliates (if authorized by BlueSnap), Refunds and Fines from Card Associations and/or other governing bodies.
- 4.15 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.
- 4.16 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.

4.17 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.

4.18 Credit Card Transactions.

4.18.1 Merchant accepts that it shall not set any surcharges of its own for accepting any credit card transactions.

4.18.2 Merchant accepts that prior authorization must be obtained for recurring charge orders.

4.18.3 Credit Card transactions passed by Merchant shall represent a bona fide sale or rental of merchandise or services that have not previously been submitted.

4.18.4 Merchant shall not pass any transaction that it has notice or knowledge of being fraudulent or unauthorized, or intercept any transaction data.

4.18.5 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.

4.18.6 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.

4.18.7 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.

4.19 EChecks. ECheck transactions may only be submitted and processed if supported by prior authorization from account holder. Such authorization must be securely stored.

4.20 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.

4.21 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.

5.2 Right of Set Off, Debit and Invoice. BlueSnap shall be entitled to issue an invoice for any shortfall of funds in the Merchant’s account. BlueSnap may issue and invoice for and recover from



Merchant or setoff against current or future amounts due BlueSnap under this Agreement, payments that are charged back or disputed by End-User Customers, and also in respect of any fines, penalties, non-compliance charges and/or fees imposed on BlueSnap by any relevant authority or Acquirer due to Merchant's act, default or omission, including sums chargeable in relation to any BlueSnap or Card Association Excessive Chargeback Management Program.

Notwithstanding whether an invoice has been issued or not, 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.

- 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. 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 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 it has the appropriate license, right, title or interest to all Merchant Trademarks and other Intellectual Property provided by Merchant or on Merchant's behalf.
- 8.3.2 Merchant hereby represents, warrants and covenants to BlueSnap for the duration of the Term that: (i) to the best of Merchant's knowledge, the Products do not and will not infringe upon any intellectual property rights of any third party and that it has the right to 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.
- 8.3.3 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.
- 8.3.4 Merchant warrants that the contact and identifying particulars relating to name, location, address, email, phone, bank accounts, ownership, stakeholders, corporate officers, business names, Products, billing descriptors and customer contact information are true and correct, and that Merchant may be contacted by Customers at the address(es) given for such purpose. Merchant shall keep such information updated and correct during the course of this Agreement. Merchant shall furthermore pass transactions in its own name when using Merchant MID and only in respect of authorized products.
- 8.3.5 Merchant warrants it (or Merchant users and third parties authorized by Merchant and BlueSnap) shall (i) not engage in any fraud or scam practices; (ii) not use the BlueSnap Services to sell Products in breach of the Intellectual Property rights of any third party; (iii) not engage in any behavior in breach of the Controlling the Assault of Non-Solicited

Pornography and Marketing Act (“CANSPAM Act”) or any other laws including 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.

8.3.6 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 NON-INFRINGEMENT. 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 4 and 6 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](http://www.bluesnap.com), and/or the current administrative e-mail address that BlueSnap has on file for the Merchant. Merchant affirmatively consents to

receive notices electronically from BlueSnap and agrees that BlueSnap may provide all communications and transactions related to the Services and Merchant's account, including without limitation any ancillary agreements related to the Services, amendments or changes to such agreements, Card Association Rules, or any disclosures, notices, transaction information, statements, policies (including without limitation notices about the BlueSnap Privacy Policy), responses to claims, and other customer communications that BlueSnap may be required to provide to Merchant by law (collectively, "**Communications**") in electronic format. All such Communications will be deemed to be in "writing" and received by Merchant when sent. Merchant shall be responsible for printing, storing, and maintaining its own records of such Communications. Where appropriate Merchant shall send its responses to such notices to BlueSnap at the designated e-mail address(es) set out in the Services or through the applicable submission forms if provided. BlueSnap reserves the right to discontinue or modify how Communications are provided and shall give Merchant prior notice of any change. Merchant's continued consent is required to use the Services.

- 14.4 Publicity. Merchant consents to BlueSnap's use, subject to Section 6.1.4, 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 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. 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 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. 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”) US only**

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. The American Express Merchant Operating Guide may be viewed at:

[www.americanexpress.com/merchantopguide](http://www.americanexpress.com/merchantopguide). Additionally, Merchant 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 cease to be a Merchant under BlueSnap with regard to American Express. As a direct Card-accepting Merchant, Merchant will be bound by Amex Card acceptance agreement and Amex’s Discount and other fees and assessments shall apply;
- (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.
- (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.

## **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 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)	Santander Bank NA
	906 Main Street	75 State Street
	Cincinnati OH	Boston, MA 02109
	800-972-3030	877-768-2265

#### Applicable To Merchant Boarded With Vantiv As Acquirer (US 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 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:

- 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 (US Only)

### 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), (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: 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.



**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 Taubusanlage 12 60325, Frankfurt Am Main, Germany +49 69 910 00

**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 Organisations**” and each an “**Card Organisation**”), 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 Organisation 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 Organisations. 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 Organisation’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 Organisations 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 authorisation 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 Organisations 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 unauthorised 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 Organisation, (v) the Acquirer's agreement with the Provider terminates, (vi) any Card Organisation deregisters the Provider, (vii) the Acquirer ceases to be a member of the Card Organisations or fails to have the required licenses or (viii) the Acquirer is required to do so by any of the Card Organisations.

**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)**

In the event that First Data and, in respect of a given Territory other than the United States, its bank or other financial institution which provides Card Organization sponsorship in that Territory to First Data in accordance with the Card Organization Rules 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 ("both, 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.

A. The Merchant will not submit for payment, any transaction it 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 and Acquirer 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, and that the Merchant may not seek recourse against Acquirer, and Acquirer 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 the Merchant agrees that Acquirer 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 and Acquirer 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 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 under the Card Rules requiring Merchant to have a direct agreement with the Acquirer.

O. 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;

P. In the aforesaid event (i) if BlueSnap or Merchant fail to comply with such requirements, or Acquirer determine that they cannot make such payments under applicable law, or (ii) if Acquirer otherwise determines that any such payment by BlueSnap under the Merchant Agreement could constitute a risk, then Acquirer 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 and Acquirer and its 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 or Acquirer'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 (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.

2. 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.

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

A. Acquirer or the Card Organizations request BlueSnap to do so;

B. Acquirer terminates the Merchant Agreement with BlueSnap for any reason;

C. The Card Organizations de-register BlueSnap as a payment service provider and/or a master merchant or if Acquirer 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 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 or otherwise wrongful or in violation of the Card Organization Rules;

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 for which required by Card Organization Rules to be included as a termination event in the Merchant Agreement; or

I. For six (6) consecutive months the Merchant fails to submit any transactions.

J. 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.

4. In the event of any inconsistency between any provision of the Agreement between Merchant and BlueSnap and the Card Organization Rules, the Card Organization Rules will take precedence.
5. 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 or BlueSnap on its behalf where permitted has 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. Authorization

**7.1 Authorization Request.** Merchant must seek, authorization at the time of, or prior to, submitting each transaction.

**7.2 Authorization Granted.** If authorization is granted, Merchant shall (where relevant) record on the transaction record the code number allocated to the authorization.

**7.3 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; (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.

**7.4 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.

**7.5 Disputes with the Card Organizations and Cardholders.** Merchant shall at its own expense, provide Acquirer with all reasonable assistance to resolve any dispute arising under the Card Organization Rules. Acquirer shall, as against Merchant, have complete discretion to decide whether or not to resist or defend any claim made against Acquirer 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 and Acquirer 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.

**7.6 Dispatching of Goods.**



(a) Acquirer 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

(b) 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.

## 8 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.

(a) 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.

(b) Unless expressly authorized, Merchants is not permitted to undertake any transactions that utilize Dynamic Currency Conversion.

### (c) Card Acceptance. Merchant shall:

(a) 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;

(b) 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;

(c) submit transactions to BlueSnap and Acquirer for authorization in accordance with this Agreement or as otherwise instructed by BlueSnap;

(d) 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

(e) 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.

(a) **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.

(b) **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:
- (a) **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.
  - (b) **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.
  - (c) **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.
- 9 **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.

## **10 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 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) 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 10(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.

(e) If Merchant believes that it will be unable to meet any of the requirements as set out in this Clause 10(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.

(f) **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.

#### 11 Transaction Settlement.

(a) BlueSnap 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:

- (a) Merchant fail to comply with the terms of this Agreement;
- (b) in the circumstances listed in Clause 11(c) hereof; or
- (c) 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.

#### 12 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.

## 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

### I. Key Terms For Canadian Merchants

<b>Acquirer</b>	<p>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</p> <p>Home Trust, 145 King Street West, Suite 2400, Toronto, Ontario M5H 1J8 Canada, phone: 1-877-374-9444  Home Trust is a sponsoring bank of BlueSnap Enterprise Canada ULC</p>
<b>Effective Date</b>	See Effective Date in first paragraph of Merchant Agreement
<b>Payment Facilitator</b>	BlueSnap Enterprise Canada ULC having a registered office address at 2200 HSBC Building, 885 West Georgia Street, Vancouver, BC V6C 3E8, Canada. BlueSnap is a registered Payment facilitator of Peoples Trust and Acquirer.
<b>Expiry</b>	This Agreement is continuous. For any reason or no reason this Agreement may be terminated by either party with 60 days notice subject to the terms under Section 12.3.
<b>Cancellation Terms For Contracts</b>	<p>For any reason or no reason this Agreement may be terminated by either party without penalty with 60 days notice subject to the terms under Section 12.3.</p> <p>The agreement including all related service contracts, including terminal leases or third-party processing can be cancelled without penalty within 90 days of receiving notice to a fee increase or the introduction of a new fee or the full saving of a reduction in applicable interchange rates is not passed through subject to the terms under Section 12.3.</p>
<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 this agreement executed as a separate document by the parties.
<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, People's Trust.
<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>Code of Conduct</b>	<p>Please visit the Financial Consumer Agency of Canada's website for more information on merchant rights under the Code of Conduct for the Credit and Debit Card Industry in Canada.  <a href="http://www.fcac-acfc.gc.ca/Eng/forMerchants/merchantEducation/creditDebitCode/Pages/Merchant-Droitsde.aspx">http://www.fcac-acfc.gc.ca/Eng/forMerchants/merchantEducation/creditDebitCode/Pages/Merchant-Droitsde.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 that our conduct is contrary to the Code and feel your concerns regarding our products or services have not been adequately addressed, you may report the issue 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.hometruster.ca">www.hometruster.ca</a> to file a Code of Conduct Concern  <b>Telephone:</b> 1-877-374-9444</p> <p><b><u>For Payvision</u></b>  codecomplaints@payvision.com 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.

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 present 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)

##### ADDENDUM TO BLUESNAP MERCHANT AGREEMENT

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 Organisations**” and each an “**Card Organisation**”), 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 Organisation 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 Organisations. 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 Organisation’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 Organisations 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 authorisation 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 Organisations 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 unauthorised 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 Organisation, (v) the Acquirer's agreement with the Provider terminates, (vi) any Card Organisation deregisters the Provider, (vii) the Acquirer ceases to be a member of the Card Organisations or fails to have the required licenses or (viii) the Acquirer is required to do so by any of the Card Organisations.

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.

#### **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**

### **Third Party Referrers**

These additional definitions shall apply to this Appendix:

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

‘Royalty Recipients’ – Recipients of Royalty Payments.

1.1. Upon the express consent of BlueSnap, and if not in contravention of Card Association or Acquirer rules, Merchant may develop relationships with Third Party Referrers to promote on its behalf through BlueSnap. When engaging in such relationships, Merchant does so at its own risk and is solely responsible for checking the integrity of Third Party Referrers and their products. 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.