PAYPAL'S PAYFLOW LINK® OR PAYFLOW PRO® SERVICE'S
PASS THROUGH TERMS

1. **Definitions.**

A. **"Add-On Service"** shall mean an additional service for use in conjunction with the Services that are subject to additional fees and additional terms and conditions governing use. The terms and conditions for Add-On Services that are made generally available to merchants by PayPal and for which you enroll are set forth in a separate schedule to the Terms, attached at the end of the Terms.

B. **"Financial Institution"** shall mean banks or financial institutions having business relationships with one or more Financial Processors that have agreed to evaluate and provide merchant accounts and payment authorization services to merchants.

C. **"Financial Processor"** shall mean an entity that performs the back-end authorization and processing of Transactions between the Merchant's Financial Institution and the cardholder's bank.

D. **"Services"** shall mean the Payflow Link® or Payflow Pro® services used by Merchant and any Add-On Services specifically described in the Terms. Current descriptions of the Payflow Link and Payflow Pro services can be found at the URL: *https://www.paypal.com/cgi-bin/webscr?cmd=_payflow-link-overview-outside* (for the Payflow Link services) or *https://www.paypal.com/cgi-bin/webscr?cmd=_payflow-pro-overview-outside* (for the Payflow Pro services).

E. **"Software"** shall mean the object code version of client Software Development Kit ("SDK"), HTML code, application programming interfaces (APIs), related documentation and other client software or code which PayPal provides to Merchant, including updates, to enable PayPal to provide the Services to Merchant. Unless otherwise specified, Software shall not include any source code. The Software is proprietary to PayPal and is licensed to Merchant under a separate SDK License Agreement at the time of download.

F. **"Transaction"** shall mean information related to the purchase of goods and services from Merchant by a third party. Specifically a Transaction is an authorization, delayed capture, sale or credit data transmission between PayPal and its back end processors.

G. **"PayPal Manager Web Site"** means PayPal's online account management tools provided to Merchant in connection with the Payflow Link services and Payflow Pro services that are part of the Services.

2. **Merchant Obligations.** Merchant shall be solely responsible for:

A. Establishing, hosting and maintenance of its Web site(s) and its connection to the Internet (the "Merchant Web Site(s)"), fulfilling all orders for products and services sold by Merchant to its users on the Merchant Web Site(s) or otherwise, including without limitation transmitting Merchant's registration information and Transaction data to PayPal servers via the PayPal web site and ensuring that the data transmitted in conjunction with the Services and for enrollment for the Services is accurate, complete and in the form as requested by PayPal, and is not corrupted due to Merchant's systems. Merchant is also responsible for reviewing the Transactions in its account on a regular basis and notifying PayPal promptly of suspected unauthorized activity through its account;

B. Establishing and maintaining a commercial banking relationship with one or more Financial Institutions. The terms of such relationship shall be determined solely by Merchant and the Financial Institution and will not necessarily reflect or incorporate terms that PayPal may have separately and independently negotiated with Financial Institutions;

C. Keeping its user name and password confidential. Merchant shall notify PayPal immediately upon learning of any unauthorized use of its user name or password. Merchant shall be solely responsible for (i) updating its passwords for access to the Services periodically, and (ii) creating passwords that are reasonably "strong" under the circumstances, both in accordance with PayPal's requirements. A "strong" password is at least six characters long, does not contain all or part of the users account name, and contains at least three of the four following categories of characters: uppercase characters, lowercase characters, base 10 digits, and symbols found on the keyboard (such as !, @, #). Strong passwords should be generated in such a way that knowledge of one does not lead to knowledge of another;

D. Maintaining commercially reasonable business practices in conjunction with use of the Services, ensuring the security and privacy of its customer data and complying with all applicable laws and regulations with respect to its use of the Services. Merchant represents and warrants that it shall comply with all applicable privacy, consumer and other laws and regulations with respect to its (i) provision, use and disclosure of the Data; (ii) dealings with the users providing the Data; and (iii) use of the Services; and

E. Updating to the most current Software and comply with PayPal requests for reasonable action on Merchant's part, to the extent necessary, to maintain security and integrity of the Services.

F. Merchant agrees, and hereby represents and warrants that Merchant shall (A) use the Services in accordance with the applicable user guides and other documentation; and (B) not use or permit others to use information obtained through the use of the Services for any purpose other than in conjunction with the Services and in a manner described in the documentation for the Services.

3. **Services.** Subject to the provisions of the Terms, and provided PayPal receives payment for the applicable Services from the PayPal authorized reseller on Merchant's behalf, PayPal agrees to (i) provide to Merchant the Services requested and used by Merchant, including without limitation the transmission of Transaction information to financial processors with whom PayPal has established a relationship, and (ii) provide Merchant with access to standardized reports regarding Merchant's Transactions processed using the Services and certain reporting tools to assist Merchant in accounting activities. PayPal hereby grants to Merchant the right to access and use the Services in accordance with the Terms.

4. **Modification of Terms; Changes to Services.** Except as otherwise provided in this Agreement, Merchant agrees, during the term of this Agreement, that PayPal may: (1) revise the terms and conditions of this Agreement, including without limitation modifying the service fees or payment terms; and/or (2) change part of the Services provided under this Agreement at any time. Any such revision or change will be binding and effective 30 days after posting of the revised Agreement or change to the Services on the PayPal Manager Web Site. You agree to periodically review the PayPal Manager, including the current version of this Agreement available on the PayPal Manager, to be aware of any such revisions. If you do not agree with any revision to the Agreement, you may terminate this Agreement at any time by providing us with notice as set forth in this Agreement. Notice of your termination will be effective on receipt and processing by us. Any fees paid by you if you terminate your Agreement with us are nonrefundable, except as otherwise expressly stated herein, but you will not incur any additional fees. By continuing to use the Services after any revision to this Agreement or change in Services, you agree to abide by and be bound by any such revisions or changes. We are not bound by nor should you rely on any representation by (i) any agent, representative or employee of any third party that you may use to apply for our Services; or in (ii) information posted on our Web site of a general informational nature. No employee, contractor, agent or representative of PayPal is authorized to alter or amend the terms and conditions of this Agreement.

5. **Support.** Unless otherwise agreed in writing by PayPal, Merchant shall obtain customer support from its PayPal authorized reseller.

6. **Termination.**

A. Merchant may cancel the Services through its authorized PayPal reseller. PayPal may suspend or terminate the performance of the Services: (i) Following ten (10) days prior electronic or written notice from PayPal or its authorized reseller (such as an overdue invoice) (a) if Merchant breaches the Agreement, (b) perpetrates fraud, (c) if Merchant causes or fails to fix a security breach relating to the Services, (d) if Merchant fails to comply with PayPal's best practices requirements for security management or to respond to an inquiry from PayPal or its

authorized reseller, concerning the accuracy or completeness of the information Merchant is required to provide to enroll for the Services, (e) if PayPal reasonably suspects fraudulent activity on Merchant's payment services account, (if such breach is not cured within such 10-day period), (f) in the event that certain third party licenses or access to third party components of the Services are terminated, or (g) for non-payment of fees due to PayPal for the Services; or (ii) Immediately, without prior notice, if PayPal reasonably believes Merchant's breach compromises the security of the Services in any material fashion, if fraudulent Transactions are being run on your account, or Merchant's reseller, financial processor or Financial Institution with which Merchant has a merchant account requires such termination or suspension. Additionally, PayPal may immediately suspend the Services to Merchant, without prior notice, until PayPal has received the fees due for the applicable Services.

B. **Effect of Termination.** Each party will be released from all obligations and liabilities to the other occurring or arising after the date of such termination, except that any termination of this Agreement will not relieve PayPal or Merchant from any liability arising prior to the termination of this Agreement. To the extent permitted by applicable law, you agree that upon termination for any reason, we may delete all information relating to your use of the Service. In the event that the PayPal authorized reseller with which Merchant has entered into a business relationship for the Services ceases to be an authorized reseller of PayPal, Merchant may continue to access the Services as mutually agreed by Merchant and PayPal. Notwithstanding the foregoing, the provisions of Sections 6 and 8-14 will survive any termination of this Agreement. Merchant shall cease using all Services and return any PayPal materials to PayPal or its PayPal authorized reseller.

7. **Other Services.** Merchant's use of PayPal services other than those paid for by Merchant directly to PayPal or to an authorized reseller of PayPal shall be subject to Merchant's payment of additional fees, and Merchant will be invoiced for the standard fees associated with such services. Invoices are payable net-30 days from date of receipt by Merchant. This includes "Add-On Services".

8. **Warranty Disclaimer.** PAYPAL MAKES NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES PROVIDED PURSUANT TO THE TERMS, AND ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY DISCLAIMED BY PAYPAL. MERCHANT ACKNOWLEDGES THAT PAYPAL HAS NOT REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY OR WITHOUT COMPROMISE OF THE SECURITY SYSTEMS RELATED TO THE SERVICES.

9. **Indemnification.** Merchant will indemnify, defend and hold harmless PayPal, its officers, directors, agents and employees, from and against any and all claims, losses, demands, liabilities, damages, costs and expenses (including reasonable attorneys' fees), either arising out of or relating to (i) the breach of any representation or warranty by Merchant, (ii) the sale or use of any product or services sold by Merchant, (iii) claims brought or damages suffered by any Financial Institution, customer, or prospective customer of Merchant relating to Merchant's or its agents' misuse of the Services or (iv) the breach of the Terms or any representation or warranty by Merchant.

10. **Limitation of Liability.** Merchant acknowledges that PayPal is not a financial or credit reporting institution. PayPal is responsible only for providing data transmission to effect certain payment authorizations for Merchant and is not responsible for the results of any credit inquiry, the operation of web sites of ISPs or Financial Institutions or the availability or performance of the Internet, or for any damages or costs Merchant suffers or incurs as a result of any instructions given, actions taken or omissions made by Merchant, Merchant's financial processor(s), Merchant's Financial Institution or any ISP. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL PAYPAL HAVE ANY LIABILITY TO MERCHANT OR ANY OTHER THIRD PARTY FOR ANY LOST OPPORTUNITY OR PROFITS, INJURY TO ANY CUSTOMER RELATIONSHIP, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF THE TERMS, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY (INCLUDING NEGLIGENCE), AND WHETHER PAYPAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IN ANY CASE, PAYPAL'S ENTIRE LIABILITY UNDER ANY PROVISION OF THE TERMS SHALL NOT EXCEED IN THE AGGREGATE THE TOTAL OF THE FEES PAID TO PAYPAL ON BEHALF OF MERCHANT FOR THE SERVICES IN THE PREVIOUS TWELVE MONTH PERIOD. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. **Privacy.** Our privacy statement is located on our Web site at *http://www.paypal.com/cgi-bin/webscr?cmd=p/gen/ua/policy_privacy-outside* and is incorporated herein by reference, as it is applicable to the Services. The privacy statement sets forth your and our rights and responsibilities with regard to your personal information. You agree that we, in our sole discretion, may modify our privacy statement as set forth therein. You acknowledge that if you do not agree to any such modification, you may terminate this Agreement. In addition to the above, PayPal will capture certain transaction and user information (collectively, the "**Data**"). You agree to provide to PayPal, and PayPal shall capture, only the Data that is required by the Payment Software and is necessary for PayPal to provide the Services. PayPal shall not disclose Data to third parties or use the Data, except that PayPal shall have the rights (i) to use the Data as necessary to perform the Services contemplated in the Terms (including distributing the Data to third parties providing services requested by you); (ii) to maintain the Data as long as necessary or as required by law and used internally for record keeping, internal reporting, and support purposes; and (iii) to provide the Data as required by law or court order, or to defend PayPal's rights in a legal dispute.

12. Confidentiality.

A. **Confidential Information.** "**Confidential Information**" means any confidential, trade secret or proprietary information (which may be business, financial or technical information) disclosed by one party to the other under this Agreement, directly or indirectly through authorized resellers, that is marked confidential or if disclosed orally designated as confidential at the time of disclosure or that should be reasonably understood to be confidential. All source code and the terms of this Agreement will be considered Confidential Information.

B. **Confidentiality Obligations.** Each party (i) shall not disclose to any third party or use any Confidential Information disclosed to it by the other except as expressly permitted in this Agreement and for purposes of performing this Agreement, and (ii) shall take reasonable measures to maintain the confidentiality of all Confidential Information of the other party in its possession or control, which shall in no event be less than the measures it uses to maintain the confidentiality of its own proprietary information or Confidential Information of similar importance. Each party further agrees to use the other party's Confidential Information only for the purpose of its performance under this Agreement. In addition, the receiving party shall not reverse engineer, disassemble or decompile any prototypes, software or other intangible objects which embody Confidential Information and which are provided to the receiving party hereunder.

C. **Limitation of Confidentiality.** The Obligations set forth in Section 12.B ("**Confidentiality Obligations**") above do not apply to information that (i) is in or enters the public domain without breach of this Agreement, (ii) the receiving party lawfully receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation, (iii) the receiving party knew prior to receiving such information from the disclosing party or develops independently without access or reference to the Confidential Information, (iv) is disclosed with the written approval of the disclosing party, or (v) is disclosed five (5) years from the effective date of termination or expiration of this Agreement.

D. **Exceptions to Confidentiality.** Notwithstanding the Confidentiality Obligations set forth in Section 12.B above, each party may disclose Confidential Information of the other party (i) to the extent required by a court of competent jurisdiction or other governmental authority or otherwise as required by law but only after alerting the other party of such disclosure requirement and, prior to any such disclosure, allowing (where practicable to do so) the other party a reasonable period of time within which to seek a protective order against the proposed disclosure, or (ii) on a "need-to-know" basis under an obligation of confidentiality substantially similar in all material respects to those confidentiality obligations in this Section 12 to its legal counsel, accountants, contractors, consultants, banks and other financing sources.

13. **Proprietary Rights**. Except as otherwise set forth herein, all right, title and interest in and to all, (i) registered and unregistered trademarks, service marks and logos; (ii) patents, patent applications, and patentable ideas, inventions, and/or improvements; (iii) trade secrets, proprietary information, and know-how; (iv) all divisions, continuations, reissues, renewals, and extensions thereof now existing or hereafter filed, issued, or acquired; (v) registered and unregistered copyrights including, without limitation, any forms, images, audiovisual displays, text, software and (vi) all other intellectual property, proprietary rights or other rights related to intangible property which are used, developed, comprising, embodied in, or practiced in connection with any of the Services identified herein ("**PayPal Intellectual Property Rights**") are owned by PayPal or its licensors, and you agree to make no claim of interest in or ownership of any such PayPal Intellectual Property Rights. You acknowledge that no title to the PayPal Intellectual Property Rights is transferred to you, and that you do not obtain any rights, express or implied, in the PayPal or its licensors' service, other than the rights expressly granted in this Agreement. To the extent that you create any Derivative Work (any work that is based upon one or more preexisting versions of a work provided to you, such as an enhancement or modification, revision, translation, abridgement, condensation, expansion, collection, compilation or any other form in which such preexisting works may be recast, transformed or adapted) such Derivative Work shall be owned by PayPal and all right, title and interest in and to each such Derivative Work shall automatically vest in PayPal. PayPal shall have no obligation to grant you any right in any such Derivative Work. Except to the extent permitted by applicable law, Merchant shall not disassemble, decompile, decrypt, extract, reverse engineer, prepare a derivative work based upon, distribute, or time share the Services or any components thereof, or otherwise apply any procedure or process to the Services or components thereof in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listings or any algorithm, data, process, procedure or other information contained therein. Merchant shall not rent, sell, resell, lease, sublicense, loan or otherwise transfer the Services or components thereof.

14. **Miscellaneous. Disputes; Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California without reference to its conflicts of laws principles. Each party consents to the exclusive venue and jurisdiction of the appropriate state or Federal courts in Santa Clara County and the Northern District of California for any dispute arising out of or related to this Agreement. The parties acknowledge and agree that this Agreement is made and performed in San Jose, California. The parties hereby waive any right to jury trial with respect to any action brought in connection with this Agreement. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. **Severability.** If any provision of the Terms shall be deemed invalid or unenforceable, in whole or in part, the Terms shall be deemed amended to delete or modify, as necessary, the invalid or unenforceable provision to render it valid, enforceable, and, insofar as possible, consistent with the original intent of the parties. **Force Majeure.** Neither party will be liable for any cessation, interruption or delay in the performance of its obligations hereunder due to earthquake, flood, fire, storm, natural disaster, act of God, war, terrorism, armed conflict, labor strike, lockout, or boycott. **No Waiver.** The failure of a party, at any time or from time to time, to require performance of any obligations of the other party hereunder shall not be deemed a waiver and shall not affect its right to enforce any provision of the Terms at a subsequent time. **Amendment.** Any waiver, modification, or amendment of any Term by Merchant will be effective only if in writing and signed by the parties herein. **Independent Entities.** The relationship of PayPal and Merchant is that of independent contractors. Neither party nor their employees, consultants, contractors or agents are agents, employees or joint venturers of the other party, nor do they have any authority to bind the other party by contract or otherwise to any obligation. **No Third Party Beneficiaries.** No provisions of the Terms are intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party. **Suppliers Rights.** Notwithstanding the foregoing, PayPal's suppliers of Services delivered hereunder shall enjoy the same disclaimers of warranty, limitations on liability and similar exculpatory provisions with respect to such product(s), as does PayPal. **Entire Agreement.** The Terms constitutes the entire understanding and agreement of the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements or understandings between the parties with respect to the products and services licensed and/or used by Merchant hereunder, including without limitation any Add-On Services; except for written agreements between Merchant and its PayPal authorized reseller relating to the Services excluding any Add-On Services. **Export Restrictions.** Merchant acknowledges and agrees that it shall not import, export, or re-export directly or indirectly, any commodity, including Merchant's products incorporating or using any PayPal products in violation of the laws and regulations of any applicable jurisdiction. **No Assignment.** Merchant may not assign this Agreement without the prior written consent of PayPal. **Non-Disparagement; Publicity.** During the term of the Agreement, neither party will disparage the other party or the other party's trademarks, web sites, products or services, or display any such items in a derogatory or negative manner on any web site or in any public forum or press release. Unless otherwise stated herein, neither party shall issue a press release or otherwise advertise, make a public statement or disclose to any third party information pertaining to the relationship arising under the Terms, the existence or terms of the Agreement, the underlying transactions between PayPal and Merchant, or referring to the other party in relation to the Agreement without the other party's prior written approval.