pitney bowes

MAILSTREAM ON DEMAND
SERVICES AGREEMENT

Thank you for choosing Pitney Bowes. Please read these terms carefully. These terms and the executed order form (the "*Order*") make up your agreement with Pitney Bowes (this "*Agreement*"). Let's start with a few definitions that should help you better understand your agreement. "*PB*", "*we*", "*our*" or "*us*" refers Pitney Bowes Inc. "*You*" or "*your*" or "*Client*" refers to the entity identified on the Order. "*Effective Date*" means the date you sign the Order.

1. **Scope.** During the term of this Agreement, we (or one of our affiliates or vendors) will provide one or more of the Mailstream On Demand services to you as identified on the Order (the "*Services*"). New services may be added from time to time by the execution of a new order.

2. **Performance Standards; Warranty.** We will perform the Services in a skillful and workmanlike manner consistent with the standards set forth in the Addendum. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, WE (ON BEHALF OF OURSELF, OUR AFFILIATES AND OUR VENDORS) MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED.

3. **Prices and Payment Terms.**
You agree to pay the fees for the Services, which are listed on the Order and applicable Addendum. You also agree to pay the fees for any other services selected on the Order. All fees are exclusive of any applicable sales, use, excise, withholding or other taxes. All fees charged to you are subject to an increase equal to any taxes PB may be required to pay, other than tax due on the net income of PB. If one or more Services are not implemented within 6 months of the date first specified above, we reserve the right to modify the fees specified in the Order or applicable Addendum for which Services have not been implemented.

4. **Confidentiality; INDEMNIFICATION; Intellectual Property.**
a. In providing the Services, each party may have access to the other party's confidential information. Each party agrees to hold this information in confidence and only use it in connection with the exercise of its rights and the performance of its obligations under this Agreement. Confidential information does not include information that: (i) is already public or becomes available to the public through no breach of this Agreement; or (ii) was in the receiving party's possession before receipt from the disclosing party; or (iii) is lawfully received independently from a third party who is not bound by a confidentiality obligation; or, (iv) is independently developed by or on behalf of the receiving party without use of any of the disclosing party's confidential information.

b. You will be responsible for ensuring that you have the appropriate rights to (including the right to provide to us) all data, materials or other information that we may provide in connection with the Services, and you agree to indemnify and hold us harmless from and against all claims, costs, expenses, losses and liabilities resulting from a violation of the foregoing.

c. You grant to us (and our affiliates and vendors, if applicable) the right to use the data you provide to us as necessary to provide the Services. All rights in and to any intellectual property used or disclosed by us (or our affiliates or vendors, as applicable) to you in providing the Services, whether developed prior to, during or after the date of this Agreement, are and will remain the sole and exclusive property of us, our affiliates or vendors and our and their

licensors, as applicable. You agree to maintain the confidentiality of this information and not use this information for any purpose not directly related to the provision of Services.

d. Each party will keep confidential the terms and conditions of this Agreement.

5. **LIMITS ON LIABILITY.** OUR TOTAL LIABILITY (INCLUDING ANY LIABILITY OF OUR AFFILIATES OR VENDORS) IS LIMITED TO THE FEES (EXCLUDING POSTAGE OR MATERIALS COSTS) PAID BY YOU TO US (FOR THE APPLICABLE SERVICES INVOLVED) IN THE 12 MONTHS BEFORE THE EVENT THAT GIVES RISE TO THE CLAIM. NEITHER PB NOR ITS AFFILIATES OR VENDORS WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING COMMERCIAL LOSS, OR LOST PROFITS, DATA OR GOODWILL, FOR ANY MATTER RELATING TO THIS AGREEMENT.

6. **Term; Termination.**
a. This Agreement will become effective as of the Effective Date and will continue for the number of years set forth on the Order (the "*Term*"). Each Addendum will be effective on the effective date set forth in the associated order and will remain in effect, unless terminated sooner as provided below, for the term set forth therein. Any Addendum effected prior to the termination of this Agreement will remain in effect for its entire term and any provisions contained in this Agreement that apply to the Addendum will remain in full force until the expiration or termination of the Addendum.

b. Either party may terminate an Addendum if the other party breaches (i) any material provision of (x) this Agreement as it applies to such Addendum or (y) the applicable Addendum, and, in either case, (ii) does not cure such breach within thirty (30) days after written notice thereof. Termination of the Print and Mail Service Addendum will terminate this Agreement and any other Addendum. Termination of any other Addendum will not affect any remaining Addendums.

7. **Compliance with Laws.** Each party will comply with the provisions of all applicable federal, state and local laws, ordinances, statutes, rules and regulations.

8. **Miscellaneous.**
a. Force Majeure. Except for a party's payment obligations, neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such party, including without limitation, acts of God, governmental actions, transportation problems, strikes, lockouts, riots, acts of war, acts of terrorism, delays or errors in the United States mail or changes of laws or regulations, epidemics, fire, interruption or failure of internet, general internet or communication line failures,
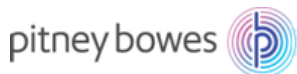
telecommunications or digital transmission links, power surges or failures, earthquakes or other disasters.

b. <u>Entire Agreement</u>. This Agreement (including all Addendum(s)) is the entire agreement and supersedes all prior written or verbal agreements, proposals, understandings and discussions between the parties. Neither party will be subject to the terms contained on any pre-printed purchase order or other acknowledgement.

c. <u>Governing Law</u>. This Agreement will be governed and construed in accordance with the laws of the State of Delaware without regard to its conflicts of laws principles.

d. <u>Assertion of Claims</u>. Any claim or cause of action arising out of or relating to this Agreement not presented by Client within 1 year from the discovery of the claim or cause of action shall be deemed waived. Client shall have the duty to mitigate damages for which we may become responsible under this Agreement.

e. <u>Assignment</u>. You may not assign this Agreement without our prior written consent, which consent shall not be unreasonably withheld. Any purported assignment is void. We may subcontract certain of our rights and/or responsibilities hereunder to third parties without your prior consent.

f. <u>Notice</u>. Notices under this Agreement will be sent via a nationally recognized overnight carrier to the party's address set forth on the Order or to such other address as such party has specified most recently by written notice to the other party.

g. <u>Survival</u>. Our respective rights and obligations under Sections 3-6 and 8(c) survive termination of the Agreement.

PRINT AND MAIL SERVICE ADDENDUM
TO
MAILSTREAM ON DEMAND SERVICES AGREEMENT

1. **Our Obligations**. Pursuant to the terms of this Addendum and the Agreement, you agree to purchase and we hereby agree to provide the services selected on the Order.

2. **Client Obligations.**

a. You agree to assist us (or our vendor) with implementation services, either by allowing access to your information system or by providing necessary data. Technical assistance during interface setup and custom programming development may be required.

b. You agree that you will deliver sufficient data and information to be incorporated into the statements, including the names and addresses of the intended recipients of such statements ("**Data Files**") to PB each month during the term of this Agreement to produce and deliver the monthly minimum number of statements set forth on the Order (the "**Minimum Volume Commitment**"). In the event that you do not meet the total of the combined Minimum Volume Commitments in any given quarter, then you agree that you will pay the shortfall fee computed according to the formula on the Order (the "**Minimum Volume Commitment Shortfall Fee**").

c. You agree to provide Data Files in an agreed upon format. Major file layout changes may require an amendment to this Addendum, or issuance of a new agreement. We reserve the right to bill you at our then prevailing rate for any modifications to the original data file layout or other account maintenance performed by us after we receive your first live file data transmission. We will provide written quotation of any such modification fees. Variance from the agreed upon format may require manual intervention and lead to processing delays.

d. Before we can start production of any data, you must first review, sign and return to us a "**Proof Responsibility Form**" in which you approve the data file layout, graphics, data mapping, and other specific elements created for your application. We will not perform the work before we have your executed Proof Responsibility Form. Each time your file layout changes, including graphics, data mapping, or other specific elements created for your application, a Proof Responsibility Form will be required.

e. You are responsible for compliance with all USPS regulations, including, without limitation, the Move Update requirements. You represent and warrant that you are in compliance with the foregoing obligations. In the event that you fail to comply with such obligations, including but not limited to failure to use an appropriate endorsement and a Move Update compliant method to verify addresses, and such failure results in fines, penalties, additional payments, or increased postage rates (i.e., loss of pre-sort mail discounts) to us or our vendor, those amounts will be charged to you.

f. You agree to give us at least 45 days' advance written notice for changes to, or discontinuation of, any custom preprinted material and agree to purchase or use any preprinted material in the event of format changes or canceling of contract. Preprinted material will not exceed a 3 month supply, based on average usage, and you will be contacted upon each reordering cycle to confirm preprinted format.

g. You will pay us for the Print and Mail Service in accordance with the pricing outlined on the Order. You will also pay any Minimum Volume Commitment Shortfall Fee in accordance with the Order.

h. In the event that any document received from you and processed through the Print and Mail Service is not accurate solely as a result of our failure to perform the Print and Mail Service in accordance with the terms of this Addendum, and such failure results in damage to you, then our sole obligation and liability to you for such event shall be limited to re-printing and, if applicable, re-mailing the inaccurate document. Any claim under this Section must be asserted in writing within 15 days after the mailing of the inaccurate information on which such claim is based. You further agree that neither we nor our vendor shall be liable in any way for any inaccuracy which can be attributed to or demonstrated as resulting from errors or omissions or negligent, wrongful or other acts of Client, Client's affiliates or any of their respective employees, representatives or agents.

3. **Content**. PB reserves the right to refuse to print, mail or deliver any statement that, in our sole reasonable judgment, may constitute an invasion of privacy, be degrading, libelous, unlawful, obscene or an infringement on any trademark, trade name or copyright, or could otherwise damage or bring disrepute on PB or any other third party. We will notify Client if we determine to exercise our rights under this Section with respect to any statement, and Client will take prompt steps to remove any objectionable text or material specified by us from the statement and/or any future statements. If you do not remove such objectionable text or material, we will have no obligation to print, mail or deliver any such statement. Notwithstanding the foregoing, PB has no obligation to review the content of any statement.

4. **Modifications**. PB or its vendor may make modifications, enhancements or upgrades ("**Modifications**") to the Print and Mail Service within its sole discretion.

5. **Term.** The effective date of this Addendum shall be the date PB signs the Order and it shall continue until the end of the Term of the Agreement, as specified on the Order, unless terminated in accordance with Section 6(b) of the Agreement. Thereafter, for so long as the Agreement is in effect, this Addendum shall then automatically renew for additional 1 year terms unless either party gives notice to the other at least 90 days before the end of the next expiration date of its decision not to renew this Addendum.
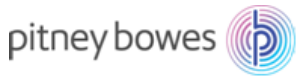
RETURN MAIL SERVICE ADDENDUM
TO
MAILSTREAM ON DEMAND SERVICES AGREEMENT

If you selected the Return Mail Service on the Order, the following terms apply:

1. **Service Offering**. Pursuant to the terms and conditions of this Addendum and the Agreement, you hereby agree to purchase and we hereby agree to provide the Return Mail Service. You hereby grant to us (or our vendor) the authority to process and redistribute documents that are returned to us (or our vendor) via our Return Mail Service. The Return Mail Service consists of the receipt and data harvesting of any document identified as being undeliverable. We agree to provide reporting of the results of the Return Mail Service.

2. **Proof Responsibility Form**. Upon our request, you must review, sign and return to us a "Proof Responsibility Form" in which you approve the data file layout, graphics, data mapping, and other specific elements created for your application. We will not perform the work before we have your executed Proof Responsibility Form. Each time your file layout changes, including graphics, data mapping, or other specific elements created for your application, a Proof Responsibility Form will be required.

3. **Pricing of Services.** During the term of this Addendum, we hereby agree to perform the Return Mail Service for you for the following fees:

$0.30 per physical document "returned."

A document is defined as "handled" when it is returned by the USPS to our vendor's return mail processing center.

4. **Term.** The effective date of this Addendum shall be the date PB signs this Addendum and it shall continue until the end of the Term, as specified in Exhibit A to the Agreement, unless terminated in accordance with Section 6(b) of the Agreement. Thereafter, for so long as the Agreement is in effect, this Addendum shall then automatically renew for additional 1 year terms unless either party gives notice to the other at least ninety (90) days before the end of the next expiration date of its decision not to renew this Addendum.
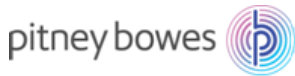
If you selected the Lockbox Service on the Order, the following terms apply:

1. **Service Offering.** Pursuant to the terms and conditions of this Addendum and the Agreement, you hereby agree to purchase and we hereby agree to provide the Lockbox Service which consists of: (a) receipt of mail at our vendor's Post Office Box (the "**PO Box**"); (b) the opening of and imaging of the contents of each mailpiece; (c) compilation of information from the mailpieces into electronic files; (d) processing of received payments through your designated accounts; and (e) creation and delivery of a posting file of all payments received (the "**Lockbox Service**"). You hereby grant to us and our vendor the authority to receive, process and distribute documents that are received via the Lockbox Service.

2. **Fees.**

2.1. **Initial Setup Fees**. You agree to pay PB an initial implementation fee as listed on the Order for the Lockbox Service. This amount shall be due upon the effective date of this Addendum.

2.2. **Transaction Fees.** You agree to pay us the following transaction fees for the Lockbox Service: $0.75 per envelope received at the PO Box.

2.3. **Exception Handling Surcharges.** The following fees will be charged in addition to the per Transaction rate outlined in Section 2.2:

2.3.1. $7.50 per returned check.

2.3.2. *at cost* postage (any outgoing correspondence to Client)

3. **PB Responsibilities.**

3.1. Correspondence will be received at our vendor's designated payment processing center. Each mailpiece received will be opened and an electronic image will be created of both the face and reverse of the contents of each mailpiece.

3.2. All credit card payments received will be processed through your merchant processor.

3.3. All checks will be deposited into your designated account.

3.4. A daily remittance file, containing both check and credit card payment information received in the preceding 24-hour period, will be delivered to you in a format appropriate for upload into your management system.

3.5. Any non-payment correspondence will be forwarded to you.

3.6. You will be notified of any payment transactions that are unable to be processed for review and resolution.

3.7. We will maintain images of all mailpieces received for at least a period of 7 years from the date of upload.

4. **Client Responsibilities.**

4.1. You will provide enrollment information to us or our vendor from your existing merchant processor and bank accounts to enable the transmission of payments received on your behalf.

4.2. You will access and resolve any exception payment transactions within 3 business days of notice of such exception transaction.

4.3. You will notify us of any changes, closures or additions to your merchant processing and banking arrangements, to the extent that such change will impact processing payment transactions on your behalf, at least 30 days prior to the effective date of such change.

4.4. You will utilize a PB-approved remittance coupon format as a part of your outgoing statement.

4.5. Proof Responsibility Form. Upon our request, you must review, sign and return to us a "Proof Responsibility Form" in which you approve the data file layout, graphics, data mapping, and other specific elements created for your application. We will not perform the work before we have your executed Proof Responsibility Form. Each time your file layout changes, including graphics, data mapping, or other specific elements created for your application, a Proof Responsibility Form will be required.

5. **Term and Termination.**

5.1. **Term.** The effective date of this Addendum shall be the date PB signs this Addendum and it shall continue until the end of the Term, as specified in Exhibit A to the Agreement, unless terminated in accordance with Section 6(b) of the Agreement. Thereafter, for so long as the Agreement is in effect, this Addendum shall then automatically renew for additional 1 year terms unless either party gives notice to the other at least ninety (90) days before the end of the next expiration date of its decision not to renew this Addendum.

5.2. Effect of Termination. Following the termination of this Addendum for any reason, the parties acknowledge that PB's vendor will continue to receive mail at the payment lockbox for an indefinite period of time. For a period of 6 months following the termination of this Addendum for any reason (the "**Wind-down Period**"), PB shall collect such mail and remit same to you, or your designee, in a mutually agreed method and schedule, at your sole expense. After the Wind-down Period, we shall return any mail to its sender as "Lockbox Closed."

6. **PayPal Payflow Pro® and Payflow Link® Terms**. You acknowledge that the Lockbox Service incorporates the Payflow Pro® product and services of PayPal Payment Services, a division of PayPal, Inc. You agree that in addition to the terms and conditions outlined in the Agreement and this Addendum, the terms and conditions outlined on **Exhibit A** to this Addendum (in which Client is referred to as "**Merchant**") shall govern your use of the Payflow Pro® and Payflow Link® product and you agree to comply with and be bound thereby.

7. **Provision of Information**. You acknowledge that the Lockbox Service incorporates the ACH processing services of PB's vendor's designated processor of electronic payments (the "**Processor**"). You agree that, as a prerequisite to processing Transactions (as defined in Section 8 below), you will complete a merchant application in a form provided by us, which shall be submitted by our vendor to the Processor. You will promptly provide all identifying information and technical data as necessary or otherwise requested by our vendor or the Processor in order to provide the Lockbox Service and for our vendor and the Processor to comply with all applicable laws, regulations, and operating rules of any credit card association, the National Automated Clearinghouse Association, or any other authority governing the receipt or provision of the Lockbox Service.

8. **Responsibility for Payment Amounts/Fees.** You agree that, with respect to the Lockbox Service provided hereunder, you will be fully liable for the underlying amount of any credit card payments, debit card payments, physical payments, and eCheck ACH debit transactions ("**Transactions**") processed by the vendor or the Processor which are charged back or for which final settlement does not occur. You will be fully liable for any fees, adjustments, nonsufficient funds ("NSF") or other charges, fines, assessments, or other penalties imposed upon vendor or the
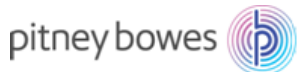
Processor with respect to such Transactions. PB, its vendor and the Processor are hereby authorized to offset and to debit via ACH from a designated Client account the underlying amount of any such Transactions and any fees related thereto.

9. **NOTWITHSTANDING SECTION 5 OF THE AGREEMENT, TO THE EXTENT ANY CLAIM OR LIABILITY ARISES FROM OR IS RELATED TO THE PAYPAL PRODUCTS OR SERVICES UTILIZED UNDER THIS ADDENDUM, PB'S LIABILITY (AND ITS VENDOR'S LIABILITY) SHALL BE FURTHER LIMITED SUCH THAT IT WILL BE NO GREATER THAN THE LIMIT OF LIABILITY APPLICABLE TO PAYPAL UNDER <u>EXHIBIT A</u>. FOR AVOIDANCE OF DOUBT, WITH RESPECT TO ANY LIABILITY ARISING FROM OR RELATED TO THE PAYPAL PRODUCTS OR SERVICES UTILIZED PURSUANT TO THIS ADDENDUM THE LIMITATION OF LIABILITY SET FORTH IN THE AGREEMENT AND UNDER <u>EXHIBIT A</u> TO THIS ADDENDUM IS INTENDED TO BE A SINGLE AGGREGATE LIMITATION OF LIABILITY AND IN NO EVENT SHALL CLIENT BE ENTITLED TO RECOVER DAMAGES IN EXCESS OF SUCH AMOUNT AGAINST PB, ITS VENDOR AND/OR PAYPAL, SEPARATELY OR JOINTLY, FOR ANY CLAIM OF LIABILITY ARISING FROM OR RELATED TO SUCH PRODUCTS OR SERVICES.**

Exhibit A
to
Lockbox Service Addendum and ePay Service Addendum
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.

If you selected the ePay Service on the Order, the following terms apply:

1. **Service Offering.**
1.1. Pursuant to the terms and conditions of this Addendum and the general terms and conditions of the Agreement, Client hereby agrees to purchase and PB hereby agrees to provide to Client PB's ePay Service which consist of: (a) an online bill payment application for Client enabling customers to pay their bills online without enrolling (the "**ePay Application**") (b) management and hosting of the ePay Application, (c) online reporting and administration for the ePay Application, and (d) integration of the ePay Application with Client's existing merchant processor to facilitate (i) credit card and debit card payments and (ii) eCheck transactions through the Automated Clearing House ("**ACH**") network (the "**ePay Services**").
1.2. PB will incorporate existing Client financial data into the ePay Application to enable account information to be validated prior to acceptance of payment.
2. **Fees.**
2.1. Initial Setup Fee. You will pay PB a non-refundable initial set up fee as listed on the Order for the ePay Service. This amount shall be due upon the Effective Date of this Addendum.
2.2. Transaction Fees. You will pay PB the following ePay transaction fees:

$0.15 per credit card or debit card transaction processed;
$0.38 per eCheck transaction processed;
$7.50 per eCheck returned.
2.3. Minimum Transaction Fee. Notwithstanding Section 2.1 and 2.2, and regardless of the actual volume submitted by Client, Client will pay PB a minimum transaction fee of $70.00 per month for the term of this Addendum. If Client pays at least $70.00 in credit/debit card or eCheck Transaction Fees, Client will not be required to pay the Minimum Transaction Fee.
3. **PB Responsibilities.**
3.1. We will provide programming to facilitate the electronic presentment of account balance and address information for each customer.
3.2. We will provide programming to enable your customers to access electronic payment services to pay their accounts online through the ePay Application.
3.3. We will provide daily payment files from the ePay Application through PB's customer portal in the mutually agreed upon format.
3.4. We will provide web-based training to designated Client employees on the ePay Application's usage and administration.
3.5. We will design an email receipt for all payments made through the ePay Application, to be delivered to each customer making a payment who has provided a valid email address.
3.6. We will provide support to Client for the ePay Application during its normal business hours, Monday through Friday, 7:00 am until 6:00 pm Central Time, excluding holidays.
4. **Client Responsibilities.**
4.1. You will transmit at your expense to PB and/or PB's agents customer financial data in a mutually agreed upon format, for the purpose of displaying customer balance and address information through the ePay Application. You will bear the risk of loss resulting from such transmission.

4.2. You will provide enrollment information from your existing merchant processor to PB necessary for integration through PayPal's Payflow Pro gateway.
4.3. Proof Responsibility Form. Upon our request, you must review, sign and return to us a "Proof Responsibility Form" in which you approve the data file layout, graphics, data mapping, and other specific elements created for your application. We will not perform the work before we have your executed Proof Responsibility Form. Each time your file layout changes, including graphics, data mapping, or other specific elements created for your application, a Proof Responsibility Form will be required.
5. **Term.** The effective date of this Addendum shall be the date PB signs this Addendum and it shall continue until the end of the Term, as specified in Exhibit A to the Agreement, unless terminated in accordance with Section 6(b) of the Agreement. Thereafter, for so long as the Agreement is in effect, this Addendum shall then automatically renew for additional 1 year terms unless either party gives notice to the other at least ninety (90) days before the end of the next expiration date of its decision not to renew this Addendum.
6. **PayPal Payflow Pro® and Payflow Link® Terms.** You acknowledge that the ePay Service incorporates the Payflow Pro® product and services of PayPal Payment Services, a division of PayPal, Inc. You agree that in addition to the terms and conditions outlined in the Agreement and this Addendum, the terms and conditions outlined on Exhibit A to this Addendum (in which you are referred to as "Merchant") shall govern your use of the Payflow Pro® and Payflow Link® product and you hereby agree to comply with and be bound thereby.
7. **Provision of Information.** You acknowledge that the ePay Service incorporates the ACH processing services of PB's vendor's designated processor of electronic payments (the "**Processor**"). You agree that, as a prerequisite to processing Transactions (as defined in Section 7 below), you will complete a merchant application in a form provided by PB, which shall be submitted by PB's vendor to the Processor. You will promptly provide all identifying information and technical data as necessary or otherwise requested by PB or the Processor in order to provide the ePay Service and for PB and the Processor to comply with all applicable laws, regulations, and operating rules of any credit card association, the National Automated Clearinghouse Association, or any other authority governing the receipt or provision of the ePay Service ("**Applicable Laws**").
8. **Responsibility for Payment Amounts/Fees.** You agree that, with respect to the ePay Service provided hereunder, you will be fully liable for the underlying amount of any credit card payments, debit card payments, physical payments, and eCheck ACH debit transactions ("**Transactions**") processed by PB or the Processor which are charged back or for which final settlement does not occur. You will be fully liable for any fees, adjustments, nonsufficient funds ("NSF") or other charges, fines, assessments, or other penalties imposed upon PB or the Processor with respect to such Transactions. PB and the Processor are hereby authorized to offset and to debit via ACH from a designated Client account the underlying amount of any such Transactions and any fees related thereto.

<p style="text-align:center"><u>**Exhibit A**</u>
to
Lockbox Service Addendum and ePay Service Addendum
<u>**PAYPAL'S PAYFLOW LINK® OR PAYFLOW PRO® SERVICE'S**</u>
<u>**PASS THROUGH TERMS**</u></p>

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;
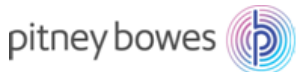
B. Establishing and maintaining a commercial banking relationship with one or more Financial Institutions. The terms of such relationship shall be determined solely by Merchant and the Financial Institution and will not necessarily reflect or incorporate terms that PayPal may have separately and independently 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.
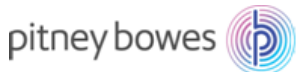
12. **Confidentiality.**
A. **Confidential Information**. **"Confidential Information"** means any confidential, trade secret or proprietary information (which may be business, financial or technical information) disclosed by one party to the other under this Agreement, directly or indirectly through 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.