

MERCHANT TERMS OF USE

LAST MODIFIED: JULY 7TH, 2016

MasterCard International Incorporated (“**MasterCard**”) has developed “**Simplify Commerce™**,” a multi-channel payment platform designed to provide businesses with a simple, single, secure platform, delivering features to initiate and manage payments as well as value added services to help merchants manage their businesses. These Merchant Terms of Use apply for the use of Simplify Commerce by businesses and individuals located in the United States. Simplify Commerce is not available in all countries. Please consult the separate Terms of Use which apply for businesses and individuals located in specific countries where Simplify Commerce has been made available by MasterCard. As a Simplify Commerce merchant, you will also have the opportunity to integrate with “**MasterPass™**,” MasterCard’s digital acceptance network that allows consumers with MasterPass-connected digital wallets to checkout wherever MasterPass is accepted.

These Merchant Terms of Use (“**Merchant TOU**”) and the [Simplify Commerce Privacy Notice](#) (the “**Simplify Commerce Privacy Notice**”) are a legal agreement between you and MasterCard. BY CREATING A MERCHANT ACCOUNT (DEFINED BELOW), WHICH INCLUDES CLICKING TO ACCEPT THESE MERCHANT TOU, YOU AGREE TO ALL OF THE TERMS AND CONDITIONS IN THESE MERCHANT TOU AND THE [SIMPLIFY COMMERCE PRIVACY NOTICE](#), AND ALL OTHER RULES, POLICIES, AND PROCEDURES RELATING TO SIMPLIFY COMMERCE THAT MASTERCARD MAY PUBLISH FROM TIME TO TIME.

“**You**” (and all derivations thereof) means you individually, and if you are accepting these Merchant TOU on behalf of a company or other legal entity, that legal entity. IF YOU DO NOT AGREE TO THESE MERCHANT TOU, YOU MAY NOT CREATE A MERCHANT ACCOUNT OR USE SIMPLIFY COMMERCE.

About Us: MasterCard International Incorporated’s registered address is 2000 Purchase Street, Purchase, New York 10577-2509. You may also contact us by sending an email to support@simplify.com.

- 1. Simplify Commerce and Payment Processing.** Simplify Commerce provides a technical interface, which includes application programming interfaces (“**APIs**”), a website, and an account management dashboard (“**Simplify Dashboard**”), between your online store and the payment processing system currently operated by an independent third party service provider (“**Processor**”). MasterCard is not a bank or a money services business as defined by the United States Department of Treasury and does not offer banking or money services. All payment transactions you submit through Simplify Commerce will be processed by Processor and not by MasterCard. By your continued use of Simplify Commerce, you signify your acceptance of both these Merchant TOU between you and MasterCard and Processor’s terms of use located [here](#) (the “**Processor Terms**”). The Processor Terms shall govern all aspects of the payment processing services that you access through Simplify Commerce (the “**Processor Services**”) and is a contractual relationship directly between you and Processor. MasterCard does not engage in Processor Services and assumes no

liability to you with respect to the Processor Services. Processor is the sole party liable to you for any payments or transfers conducted using Simplify Commerce and MasterPass.

The Simplify Dashboard currently provides you with access to the following features and tools:

- a. **Customer Details.** The Simplify Dashboard allows you to store customer details, including card details, in order to provide card-on-file functionality;
- b. **Plans.** The Simplify Dashboard allows you to produce plans that facilitate the processing of payments from customers by Processor on a recurring basis;
- c. **Invoices.** The Simplify Dashboard allows you to generate and deliver invoices and receipts to customers via email; and
- d. **Coupons.** The Simplify Dashboard allows you to create coupons for customers that allow them to avail of discounts.

2. **Accepting Cards, Payouts, the Simplify Dashboard, Fees, Payout Schedule, Payment Processing, & MasterPass.**

- a. **Accepting Cards.** You agree that you will honor all eligible cards presented for payment by your customers for your goods and services in accordance with the rules of MasterCard, Visa, American Express, Discover, and any other payment network with respect to which Processor facilitates acceptance and that you have elected with Processor to accept (the “Card Network(s),” and such rules the “Card Network Rules”), these Merchant TOU, the Processor Terms and any operating guides that we may provide you from time to time.
- b. **Payouts.** Subject to the Processor Terms, Processor will pay out funds settling from the Card Networks to your designated bank settlement account in the amounts actually received (less fees deducted) for card transactions submitted to Simplify Commerce. The payouts will be made to the bank account (“**Bank Account**”) you provide for your Merchant Account (defined below) on your application to Processor. The Bank Account must be an account held with an entity authorized to carry on banking business in the United States, and held in the name of the business. You are responsible for the accuracy and correctness of information regarding your Bank Account. Funds for any given transaction will not be transferred to your Bank Account until the transaction is deemed complete. Transactions will be deemed complete when Processor has received funds settling from the Card Networks and when Processor has accepted such funds. The actual timing of the transfers to your Bank Account of the settling funds will be subject to the Payout Schedule as defined below. To change the Bank Account associated with your Merchant Account, please email us at support@simplify.com. We are not responsible for any action taken by the institution holding your Bank Account that may result in some or all of the funds not being credited to your Bank Account or not being made available to you in your Bank Account.

- c. **Simplify Dashboard Transaction History, Reconciliations, & Errors.** Information regarding your card transactions processed and settled by Processor in respect of which Simplify Commerce provides technical support (“**Transaction History**”) will be available to you on your Simplify Dashboard when you login using your Merchant Account.

After each payout of card settlement funds to your Bank Account, we will update information in your Merchant Account to reflect settlement and you can view this information in your Transaction History on your Simplify Dashboard. We provide a minimum of one year of Transaction History on your Simplify Dashboard. Except as required by law, you are solely responsible for compiling and retaining permanent records of all transactions and other data associated with your Merchant Account, your Transaction History, and your use of Simplify Commerce.

Except as required by law, you are solely responsible for reconciling your Transaction History with your actual card payment transactions. You agree to notify us of any discrepancies arising from such reconciliation and verification. Processor will investigate any reported discrepancies and attempt to rectify any errors discovered, in accordance with the Processor Terms. In the event you are owed money as a result of the discrepancy, Processor will transfer funds to your Bank Account in the next scheduled payout. Your failure to notify us of an error or discrepancy in your Transaction History within sixty (60) days of when it first appears on your Transaction History will be deemed a waiver of any right to amounts owed to you in connection with any such error or discrepancy in processing your card payments, as further described in the Processor Terms.

If you submit or cause Processor to process transactions erroneously, you agree to contact us or Processor immediately. Processor will investigate reported errors and attempt to rectify any errors discovered, in accordance with the Processor Terms, which may include crediting or debiting your Bank Account, as appropriate. Your failure to notify us of a processing error within thirty (30) days of when it first appears on your Transaction History will be deemed a waiver of any right to amounts owed to you.

- d. **Payout Schedule.** Payout schedule refers to the time it takes for Processor to initiate a transfer to your designated Bank Account of settlement funds arising from card transactions processed through Simplify Commerce (“**Payout Schedule**”). Once your Bank Account information has been reviewed, Processor will initiate transfer of settlement funds (net of fees, chargebacks, and other funds owed to us, or to Processor, for any reason) in accordance with the Payout Schedule, the terms of which will be made available to you when you login to your Simplify Dashboard. The settlement funds should normally be credited to your Bank Account within 1-2 days of Processor initiating the payout. We are not responsible for any action taken by the institution holding your Bank Account that may result in some or all of the funds not being credited to your Bank Account or not being made available

to you in your Bank Account. You can contact Simplify Commerce to inquire about changing the timing of your Payout Schedule. Upon submitting a request, you will be informed of the process and requirements for Processor to review your Payout Schedule.

Simplify Commerce and Processor each reserve the right to change the Payout Schedule or suspend payouts to your Bank Account should we determine it is necessary due to pending disputes, excessive or anticipated excessive chargebacks or refunds, or other suspicious activity associated with your use of Simplify Commerce or if required by law or court order.

- e. **Fees.** You are responsible for any fees assessed by Processor to you, as set forth in the Processor Terms. You also acknowledge that Processor may pay fees to us in connection with our provision of Simplify Commerce. Further, you agree to pay any fees assessed by us to you for providing the services described in these Merchant TOU. These fees will be calculated pursuant to our fee schedule linked to here and incorporated into these Merchant TOU by reference. We reserve the right to revise our fees at any time by posting them on our website.

You acknowledge that you are also responsible for any penalties or fines imposed on Processor or directly to you by any Card Network or financial institution as a result of your activities. We may, in the future, offer you additional services via Simplify Commerce (“**Additional Services**”) by posting descriptions of the Additional Services and any fees related thereto on the fee schedule on our website. You will have an opportunity to opt-in to any Additional Services should they become available.

- f. **Payment Processing and the Processor Services.** For information about refunds, returns, chargebacks, contesting chargebacks, excessive chargebacks, the reserve account, and other topics related to payment processing and the Processor Services, please see the Processor Terms.
- g. **MasterPass.** As indicated above, you will have the opportunity to integrate with MasterPass. If you choose to integrate with MasterPass via Simplify Commerce, by displaying the Buy with MasterPass checkout button on your website, you agree to be bound by the MasterPass Operating Rules. Displaying the Buy with MasterPass checkout button on your website, .mobi site and/or app, either by integrating Simplify’s Pay Now button or by including the MasterPass code we provided [here](#) indicates your acceptance of the MasterPass Operating Rules. MasterPass will send their payment and, if necessary, shipping information to you via Simplify Commerce. Simplify will continue to tokenize credit and debit card information to you. When the consumer confirms their order, we will continue to submit the transaction to Processor for processing on your behalf as usual. The [MasterPass Operating Rules](#) will govern your use of MasterPass and your display of the MasterPass checkout button, while all aspects of your payment processing will be governed by the Processor Terms and these Merchant TOU.

3. Simplify Commerce SMS Text and Email Alerts.

- a. **Description of SMS Text and Email Alerts.** In connection with Simplify Commerce, MasterCard provides you the ability to elect to receive notices or alerts by email, text message, or both email and text message (the “**Alerts Service**”). In order to participate in the Alerts Service, you will need to obtain a short message service (“**SMS**”) enabled mobile device or an eligible email account. In addition, you will need to collect and deliver to MasterCard certain data elements, which may include, without limitation, mobile phone number, email address, mobile phone service provider, email service provider, along with such other information that may be required to operate the Alerts Service (the “**Alerts Service Data**”). Text messages will come from the short code **73355 (Simplify Controls by MC)**. To receive help, text **HELP** in reply to a text message you receive from MasterCard. To cancel the Alerts Service to your SMS enabled device, text **STOP** in reply to a text message you receive from MasterCard. You may receive a subsequent message confirming your cancellation request.
- b. **Manufacturer and Provider Terms Apply.** Your use of the Alerts Service will be subject to the terms of your agreements with email service provider and your mobile device manufacturer and service provider. For service, support, or warranty assistance with respect to your SMS enabled device or your email, you should contact your manufacturer or service provider directly. **Your service provider’s messaging, airtime, and data rates may apply. The frequency of the SMS messages will vary.** You are solely responsible for any fees imposed of any kind whatsoever by your service provider. **Mobile carriers are not liable for delayed or undelivered messages.**
- c. **No Performance Warranties.** There are many factors and conditions that may impact the performance or function of your SMS enabled device or your email. You acknowledge that your receipt of any alert or notice may be delayed or prevented by factors outside MasterCard’s control, including factors affecting your wireless or internet service provider and coverage in your area. MasterCard has no control and expressly disclaims any liability therefor.
- d. **Compatibility.** It is your sole responsibility to make sure your SMS enabled device and your email are compatible with the Alerts Service. MasterCard does not make any representations or warranties that your SMS enabled device or your email are compatible with the Alerts Service. MasterCard does not guarantee the deliver, timeliness, or accuracy of the contents of any alert or notice. The Alerts Service is subject to transmission limitations and service interruptions.
- e. **Your Security Obligations and Acknowledgements.** You hereby acknowledge and accept that each alert or notice may be sent to you without being encrypted and may include Personal Data, Transactional Data, or other confidential information. Anyone with access to your SMS enabled device or email will be able to view the

contents of these alerts and notices. It is your responsibility to ensure the security of your SMS enabled device and your email. BY ENROLLING IN THE ALERTS SERVICE, YOU ARE EXPRESSLY CONSENTING TO RECEIVE THE ALERTS AND NOTICES BY TEXT MESSAGE TO A CELLULAR PHONE NUMBER FOR YOUR SMS ENABLED DEVICE AND TO AN EMAIL ADDRESS FOR YOUR EMAIL ACCOUNT. MASTERCARD OR ITS THIRD PARTY VENDORS MAY USE AN AUTOMATIC DIALING SYSTEM TO DELIVER ALERTS OR NOTICES TO YOU BY TEXT MESSAGE OR EMAIL. YOU GIVE YOUR CONSENT TO MASTERCARD AND ITS THIRD PARTY VENDORS TO USE AN AUTOMATIC DIALING SYSTEM IN CONNECTION WITH THE ALERTS SERVICE. YOU ACKNOWLEDGE USE OF THE ALERTS SERVICE IS AT YOUR OWN RISK.

- f. **Disclaimer.** YOU ASSUME ALL RISKS ASSOCIATED WITH YOUR USE OF YOUR SMS ENABLED DEVICE, YOUR EMAIL, AND THE ALERTS SERVICE. IT IS YOUR SOLE RESPONSIBILITY TO DETERMINE WHETHER THE ALERTS SERVICE IS SUITABLE AND ADEQUATE FOR YOUR NEEDS. MASTERCARD ASSUMES NO RESPONSIBILITY OR LIABILITY FOR ANY DELAYS OR FAILURE OF THE ALERTS SERVICE, AN SMS ENABLED DEVICE, OR EMAIL TO FUNCTION PROPERLY. MASTERCARD IS NOT LIABLE FOR PERFORMANCE ISSUES OR INCOMPATIBILITIES CAUSED BY USE OF AN SMS ENABLED DEVICE, EMAIL, OR THE ALERTS SERVICE. MASTERCARD IS NOT RESPONSIBLE FOR THE PERFORMANCE OR NON-PERFORMANCE OF, OR THE ABILITY OR INABILITY OF YOU TO ACCESS AND USE YOUR SMS ENABLED DEVICE, YOUR EMAIL, OR THE ALERTS SERVICE. YOU ACKNOWLEDGE AND AGREE THAT MASTERCARD'S PROVISION OF THE ALERTS SERVICE DOES NOT CONSTITUTE A GUARANTEE, WARRANTY, OR REPRESENTATION FROM MASTERCARD THAT YOUR USE OF YOUR SMS ENABLED DEVICE, YOUR EMAIL, OR THE ALERTS SERVICE WILL INCREASE YOUR SALES, INCREASE YOUR REVENUE, OR PROTECT YOUR BUSINESS. MASTERCARD MAKES NO WARRANTIES, EXPRESS OR IMPLIED WITH RESPECT TO SUCH THIRD PARTY PRODUCTS, AND EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL MASTERCARD BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR COVER DAMAGES, ARISING OUT OF OR RELATING TO, YOUR USE OF AN SMS ENABLED DEVICE, EMAIL, THE ALERTS SERVICE, OR ANY OTHER THIRD PARTY PRODUCTS OR SERVICES.
4. **Registration.** You must apply to MasterCard and Processor to create an account (a "Merchant Account"). If you wish to integrate Simplify Commerce into your online store (the "Integration"), your developer will need to create a developer account with MasterCard and agree to the [Simplify Commerce Developer Terms of Use](#) (the "Developer TOU"). As a condition to creating a Merchant Account, MasterCard will require you to submit certain information that will allow MasterCard to confirm your identity. Processor will also ask you to provide them with information in order to determine whether or not you are eligible to register for the Processor Services. Please see the Processor Terms for more information regarding Processor's review and acceptance processes. MasterCard may, in its sole discretion, accept or reject your request to create a Merchant Account. If MasterCard accepts your request to create a Merchant Account, MasterCard will issue you one or more unique security certificates, tokens, passwords, and other credentials

(collectively, “**Credentials**”), for authentication, account management, and other purposes. The Credentials are MasterCard’s property and you may only use them for the purpose of using Simplify Commerce as permitted in these Merchant TOU. If Processor accepts your request, Processor will provide you with account details, as outlined in the Processor Terms.

- 5. Protecting Your Account Information.** You are responsible for keeping your Merchant Account password and your Credentials confidential and for all activities that occur through your Merchant Account or through the use of your Credentials, including the activities of others and regardless of whether such activities are authorized. You agree to immediately notify MasterCard of any breach or unauthorized use of your Merchant Account or Credentials. MasterCard reserves the right to require you to alter your password if MasterCard believes your password is no longer secure. You are responsible for maintaining up-to-date and accurate information (including a current e-mail address and other required contact information) for your Merchant Account. Without limitation of the foregoing, you will provide notice to MasterCard in advance of any change in the business of your online store in connection with which you are using Simplify Commerce.
- 6. Grant of License.** So long as you comply with these Merchant TOU and the Processor Terms, MasterCard grants you a royalty free, limited, nonexclusive, as-is, revocable, nontransferable license, without right of sublicense, to use Simplify Commerce solely for the purpose of accepting credit and debit card payments online. You may not use Simplify Commerce for any other purpose and may not, or allow any other party to:

 - a. reverse engineer, disassemble, reconstruct, or decompile any object code relating to Simplify Commerce (except to the extent you are expressly permitted by law to do so);
 - b. gain access to or use of MasterCard’s services or systems, other than Simplify Commerce as permitted hereunder, or damage, disrupt, or impede the operation of MasterCard’s services or systems;
 - c. engage in fraudulent or illegal conduct of any kind that is related in any way to Simplify Commerce;
 - d. restrict, inhibit, or engage in any activity that prevents any other merchant from using Simplify Commerce;
 - e. request, collect, solicit, or otherwise obtain access to Credentials or open a Merchant Account by automated means or under false or fraudulent pretenses;
 - f. sell, transfer, sublicense, or otherwise disclose your Credentials;
 - g. circumvent or modify any Credentials or other security mechanism used by MasterCard;

- h. use your Credentials or Simplify Commerce for purposes other than accepting and processing credit and debit card payments online;
- i. use or launch any automated system, including without limitation, “robots,” “spiders,” or “offline readers,” to access Simplify Commerce in a manner that sends more request messages to MasterCard’s servers in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser;
- j. rent, lease, loan, trade, sell/re-sell, or otherwise charge any party for access to Simplify Commerce; or
- k. transmit any viruses, worms, defects, Trojan horses, or any programming of a destructive nature.

You shall comply with all applicable laws, rules, regulations, directives, and governmental requirements relating to your use of Simplify Commerce, the Alerts Service, or your sale of products and services.

7. Prohibited Businesses and Activities. You may not use Simplify Commerce in connection with any of the following businesses and activities or prohibited business activities listed by Processor, or that are otherwise notified to you by us by email or by posting a notice on the Simplify Commerce site:

- a. **Illegal Activities.** The sale of any good or service that violates any applicable law or regulation.
- b. **Certain Adult Oriented Products and Services.** Child pornography (in all media types such as internet, phone, and printed materials). Any depiction of forcible sex or bestiality is prohibited.
- c. **Illegal Drugs.** The sale of illegal pharmaceuticals, illegal drugs, or drug paraphernalia.
- d. **Counterfeit Goods.** The sale or marketing of any counterfeit good.
- e. **Gambling Businesses.** Illegal online gambling, lotteries (including sale of lottery tickets), games of chance (including sweepstakes and raffles), sports forecasting, or odds-making.
- f. **Money Making (“Get Rich”) Businesses.** Including information guides, warranty fees, mortgage reduction services, and any product or service where a prize is guaranteed, marketing media is unavailable, premiums/incentives are offered, promises of future guaranteed results are made, or any rebate or reward program.
- g. **Tobacco Products.** Any activity violating applicable laws or industry regulations regarding the sale of tobacco products.

MasterCard may modify the above list of prohibited businesses and activities at any time. MasterCard may immediately terminate your use of Simplify Commerce and the Alerts Service if you engage in any of the above businesses or activities or any other illegal or inappropriate activity in connection with your use of Simplify Commerce or the Alerts Service, as determined by MasterCard in its sole discretion, and MasterCard reserves the right to take any other corrective action MasterCard deems appropriate. Processor may be obligated to notify MasterCard if it observes that you have engaged in any of the above businesses or activities or any other illegal or inappropriate activity.

- 8. Customer Support.** MasterCard will provide you with support via email to resolve any issues relating to your use of Simplify Commerce (click [here](#) for details). You are solely responsible for providing support to your customers for all issues relating to the products and services that you sell and the payment transactions you process using Simplify Commerce.
- 9. Modifications to Simplify Commerce.** MasterCard may discontinue, modify, or change Simplify Commerce, the Alerts Service, or MasterCard’s service and systems at any time. Such changes may require you to update your online store at your own cost so that it remains compatible with, and interfaces accurately with, Simplify Commerce. MasterCard will have no liability or obligation to you with regard to any modifications or changes it makes to Simplify Commerce, the Alerts Service, or MasterCard’s services or systems.
- 10. Additional Products and Services.** From time to time, MasterCard may contact you regarding additional MasterCard products and services that it believes may be useful to you in your business. If you do not wish to receive these messages, you may opt out by following the instructions you can find [here](#).
- 11. Third Party Sites.** Simplify Commerce may contain third party content and links to third party sites that are completely independent of Simplify Commerce and not owned or controlled by MasterCard (“**Third Party Sites**”). Links to Third Party Sites are included solely for the convenience of users and do not constitute any approval, endorsement, or warranty by MasterCard. Moreover, MasterCard is not responsible for the content, security, operation, or use of any Third Party Sites or the products or services that may be offered or obtained through them or for the accuracy, completeness, or reliability of any information obtained from a Third Party Site. When you click on a link to a Third Party Site, you will leave Simplify Commerce. Any information you submit after you leave Simplify Commerce will not be collected or controlled by MasterCard. It will be subject to the privacy notice or terms of use applicable to the Third Party Site. It is your responsibility to review those policies before submitting your information to the Third Party Site and you provide your information to Third Party Sites at your own risk. You expressly relieve MasterCard from any and all loss, damages or other liabilities you incur as a result of your access to, or use of, any Third Party Sites.
- 12. Personal Data and Data Security.**

a. **MasterCard's Obligations.** In order to provide the Simplify Commerce service, MasterCard is required to process information on your behalf, and in respect of which you are the data controller, relating to identified individuals who make a payment through Simplify Commerce, or whose details you otherwise cause to be stored in the Simplify Commerce systems (including but not limited to name, postal address, email address, telephone number, credit and debit card numbers and bank account numbers, or any other unique identifier specific to an individual that may be collected, stored or transferred in anticipation of, in connection with or incidental to making payments) (“**Personal Data**”). MasterCard shall only process such Personal Data in accordance with the terms of these Merchant TOU, and otherwise in accordance with your instructions. MasterCard shall ensure that appropriate security measures are taken against unauthorized access to, or unauthorized alteration, disclosure or destruction of, all Personal Data. However, you acknowledge that MasterCard is unable to ensure that unauthorized third parties shall not be able to circumvent MasterCard’s protections and gain access to that Personal Data. You further acknowledge that MasterCard has no responsibility for or control over Processor and its use of any Personal Data in its possession or control. Simplify Commerce is and shall remain compliant with the Payment Card Industry Data Security Standards (PCIDSS).

b. **Your Obligations.**

(1) You shall be solely responsible for the security of your online store, including all content contained in your online store and all Personal Data you collect from your customers. You shall comply with all applicable Privacy and Information Security Requirements. For the purposes of these Merchant TOU, “Privacy and Information Security Requirements” means: (i) all applicable laws, rules, regulations, directives and governmental requirements currently in effect and as they become effective relating in any way to the privacy, confidentiality, or security of Personal Data, including, without limitation, to the extent applicable, the EU Data Directive 95/46/EC and all laws implementing that Directive in the relevant EU Member States; the Gramm-Leach-Bliley Act; laws regulating unsolicited email communications; laws regarding the use of cookies, web beacons, and similar technologies; security breach notification laws; laws imposing minimum security requirements; laws requiring the secure disposal of records containing certain Personal Data; and all other similar laws, rules, regulations, directives, and governmental requirements; and (ii) your own published policies relating to the collection, usage, sharing, and security of Personal Data.

(2) You are solely responsible for notifying your customers that MasterCard is providing Simplify Commerce and Processor is providing Processor Services to you and that MasterCard and Processor are collecting Personal Data from your customers on your behalf in connection with such services. You represent and warrant to MasterCard that you will provide your

customers with any and all notices, and will obtain from your customers all necessary rights and consents, under applicable law and the Privacy and Information Security Requirements, to allow MasterCard to use and disclose all Personal Data collected, stored or processed by Simplify Commerce through your online store (the “Required Notices and Consents”). The Required Notices and Consents include, but are not limited to, providing notice and procuring consent to the use of customer Personal Data for the following purposes:

- i. Collecting, storing, and tokenizing payment card (credit, debit and/or prepaid cards) information;
- ii. Delivering Personal Data, including payment card information, to Processor to facilitate Processor Services;
- iii. Collecting and storing Personal Data to create customer accounts in the Simplify Dashboard to facilitate the following services:
 1. Customer Details. Storing of customer details, including card details, in order to provide card-on-file functionality;
 2. Plans. The processing of payments from customers by Processor on a recurring basis;
 3. Invoices. The generation and delivery of invoices and receipts to customers via email;
 4. Coupons. Providing coupons to customers that allow them to avail of discounts; and
 5. Store Analysis. The analysis of data in relation to customer shopping habits in your online store;
- iv. Assisting you and Processor in the provision of products or services that are requested by a customer;
- v. Collecting and storing Personal Data for the purposes of sending direct marketing messages to customers;
- vi. Transferring Personal Data outside of the United States for the purposes of providing the Simplify Commerce service;
- vii. For the purposes of allowing MasterCard to include the Personal Data in anonymized form in aggregated databases that can be used to generate reports, statistics or other analysis for use in improving

the Simplify Commerce services or promoting the Simplify Commerce service to third parties; and

- viii. For any additional use of Personal Data necessary to implement new features of Simplify Commerce.

You represent and warrant that you will not use the Personal Data that is collected by MasterCard on your behalf, or which is made available to you via the Simplify Dashboard, otherwise than in accordance with the Required Consents and Notices.

- c. **Data Usage.** You may not retain, track, monitor, store, or otherwise use Personal Data regarding customers making payments or receiving invoices and/or receipts through Simplify Commerce for any purpose other than to process the payment transaction, fulfill orders, send the invoice and/or receipt, and collect consents to future direct marketing by email, as the case may be. If you engage a developer and/or administrator to implement or manage your participation in Simplify Commerce, you represent and warrant that they will not access or use the Personal Data for any other purposes other than as contemplated in these Merchant TOU.
- d. **Privacy.** MasterCard recognizes the importance of respecting the privacy of those who visit its websites and use its products and services, including Simplify Commerce. The Simplify Commerce Privacy Notice provides a description of how MasterCard collects, uses, shares, and protects personal information in connection with Simplify Commerce, as well as the choices and access rights you have in regards to such personal information.

13. Ownership and Rights.

- a. **Feedback.** You may provide feedback, suggestions comments, improvements, and ideas (collectively “**Feedback**”) to MasterCard but you are not required to do so. You agree that MasterCard may use and exploit all Feedback for any purpose without obligation of any kind and without any obligation of confidentiality, attribution, accounting, compensation, or other duty to account to you.
- b. **MasterCard Property.** MasterCard owns and retains all right, title, and interest, including, without limitation, all intellectual property rights, in and to: (i) Simplify Commerce; (ii) MasterCard’s systems and services; (iii) the Alerts Service; (iv) all names, trade names, trademarks, service marks, slogans, logos, domain names, or other indicia of MasterCard, including without limitation “Simplify Commerce,” “Alerts Service,” and MasterPass, (the “**MasterCard Brands**”); (v) all Feedback; and (vi) all MasterCard Confidential Information, as defined below (collectively, the “**MasterCard Property**”). MasterCard reserves all rights in the MasterCard Property not expressly granted to you in these Merchant TOU. Without limitation of the foregoing, you have no right to use the MasterCard Brands in any manner except as may be expressly permitted by MasterCard in advance in writing and in accordance with MasterCard’s then-current trademark use guidelines.

- c. **Usage Data.** MasterCard shall own all right, title and interest in all information it collects with respect to your use of Simplify Commerce and the Alerts Service, including without limitation, statistical information, and traffic analysis data (“**Usage Data**”). You agree that MasterCard may use and exploit all Usage Data for any purpose without any obligation to you; provided however, that MasterCard may only disclose Usage Data to third parties so long as the Usage Data is disclosed only in the aggregate and not in a manner that it is attributable to you or any individual.
- d. **Customer List.** During the term of these Merchant TOU, you hereby grant MasterCard the right to list you as a Simplify Commerce customer in any descriptions of Simplify Commerce and related press releases, case studies, and other promotional and marketing materials; provided however, that MasterCard has no obligation to do so.
- 14. Your Warranties.** You represent and warrant to MasterCard that: (a) the information you provide to MasterCard in connection with your creation of a Merchant Account and use of Simplify Commerce is true and correct; (b) you will comply with these Merchant TOU, the Developer TOU, the MasterPass Operating Rules, the Processor Terms, and all applicable laws, rules, regulations, directives, and governmental requirements; (c) you are not engaged in, and will not engage in, any activity prohibited by Section 6 (Prohibited Businesses and Activities); (d) you will not engage in any activity designed to influence the mix of the transactions you submit for processing via Simplify Commerce to be comprised 100% of one Card Network brand; (e) you are at least eighteen (18) years of age; (f) you are eligible to register and use Simplify Commerce and have the right, power, and ability to enter into and perform under these Merchant TOU, or where you are doing so on behalf of a company or another legal entity, you have authority to bind that legal entity; and (g) the name under which you have opened your Merchant Account is the name under which you sell products and services.
- 15. Indemnification.** You agree to indemnify and hold harmless MasterCard and its business partners, employees, representatives, and affiliates (the “**MasterCard Parties**”) from and against any and all claims, liabilities, damages (actual and consequential), losses, fines, and expenses (including, but not limited to, legal and other professional fees and costs of investigation) arising from or in any way related to: (a) your use of Simplify Commerce; (b) your (or anyone using your account’s) breach of these Merchant TOU, the Processor Terms, or applicable law; (c) your online store and/or the activities in connection with which you are using Simplify Commerce; (d) your use of the Alerts Service; or (e) your or any of your staff’s or representatives’ negligence or willful misconduct, including without limitation, claims of intellectual property infringement, breach of privacy or violation of applicable law arising under any of the foregoing clauses. You may not enter into any stipulated judgment or settlement that purports to bind MasterCard without MasterCard’s prior express written authorization, which will not be unreasonably withheld or delayed.

- 16. Disclaimer of Warranties.** SIMPLIFY COMMERCE, MASTERPASS, THE ALERTS SERVICE, AND THE CREDENTIALS ARE PROVIDED “AS IS,” “AS AVAILABLE,” AND WITH ALL FAULTS. THE MASTERCARD PARTIES DISCLAIM ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, QUALITY OF INFORMATION, QUIET ENJOYMENT, NON-INFRINGEMENT, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. THE MASTERCARD PARTIES DO NOT WARRANT THAT SIMPLIFY COMMERCE, MASTERPASS, THE ALERTS SERVICE, OR ANY THIRD PARTY SITES WILL BE ERROR FREE, UNINTERRUPTED, FREE FROM SPYWARE, MALWARE, ADWARE, VIRUSES, WORMS, OR OTHER MALICIOUS CODE, OR WILL FUNCTION TO MEET YOUR REQUIREMENTS. THE MASTERCARD PARTIES DO NOT WARRANT THAT SIMPLIFY COMMERCE, MASTERPASS, THE ALERTS SERVICE, OR ANY THIRD PARTY SITES WILL WORK ON YOUR HARDWARE, WITH YOUR OPERATING SYSTEMS, OR WITH ANY OTHER SOFTWARE INSTALLED ON YOUR COMPUTERS. INFORMATION OBTAINED BY YOU FROM ANY MASTERCARD PARTY WILL NOT CREATE ANY WARRANTIES. YOU ASSUME ALL RISKS ASSOCIATED WITH YOUR USE OF SIMPLIFY COMMERCE. IT IS YOUR SOLE RESPONSIBILITY TO DETERMINE WHETHER SIMPLIFY COMMERCE IS SUITABLE AND ADEQUATE FOR YOUR NEEDS.

YOU SPECIFICALLY ACKNOWLEDGE THAT MASTERCARD DOES NOT HAVE ANY CONTROL OVER THE PROCESSOR SERVICES OR THE PRODUCTS OR SERVICES THAT ARE PAID FOR THROUGH SIMPLIFY COMMERCE OR THE PROCESSOR SERVICES, AND MASTERCARD CANNOT ENSURE THAT ALL TRANSACTIONS WILL BE COMPLETED OR THAT PROCESSOR WILL AUTHORIZE ALL TRANSACTIONS THAT YOUR CUSTOMERS INITIATE.

- 17. Limitation of Liability.** SAVE IN RESPECT OF FRAUD AND FRAUDULENT MISREPRESENTATION, AND DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE, REGARDLESS OF WHETHER ANY REMEDY IN THESE MERCHANT TOU FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, THE MASTERCARD PARTIES ARE NOT AND SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, OR ANY OTHER DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO ANY:
- a. PROPERTY DAMAGE;
 - b. LOSS OF USE;
 - c. LOSS OF BUSINESS;
 - d. ECONOMIC LOSS;
 - e. LOSS OF DATA; OR

f. LOSS OF PROFITS;

WITHOUT REGARD TO THE FORM OF ACTION (INCLUDING, BUT NOT LIMITED TO, CONTRACT, NEGLIGENCE, OR OTHER TORTIOUS ACTIONS) ARISING OUT OF OR IN CONNECTION WITH: (A) THESE MERCHANT TOU OR THE PROCESSOR TERMS; (B) SIMPLIFY COMMERCE, INCLUDING YOUR USE OF SIMPLIFY COMMERCE OR ANY INTERRUPTION OF SERVICE RELATING TO SIMPLIFY COMMERCE; (C) MASTERPASS, INCLUDING YOUR USE OF MASTERPASS OR ANY INTERRUPTION OF SERVICE RELATING TO MASTERPASS; (D) THE ALERTS SERVICE, INCLUDING YOUR USE OF THE ALERTS SERVICE OR ANY INTERRUPTION OR SERVICE RELATING TO THE ALERTS SERVICE; (E) YOUR USE OF THE PROCESSOR SERVICES; (F) ANY THIRD PARTY SITE; OR (G) THE UNAUTHORIZED ACCESS BY ANY PARTY TO MASTERCARD'S SERVICES AND SYSTEMS, INCLUDING PERSONAL DATA, EVEN IF ANY OF THE MASTERCARD PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. YOU WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST THE MASTERCARD PARTIES ARISING OUT OF YOUR USE OF SIMPLIFY COMMERCE, MASTERPASS, THE ALERTS SERVICE, THE CREDENTIALS, YOUR USE OF THE PROCESSOR SERVICES, OR THESE MERCHANT TOU.

NOTWITHSTANDING THE FOREGOING, THE MASTERCARD PARTIES' TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED ONE HUNDRED DOLLARS (\$100).

THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY EXCEPT TO THE EXTENT EXPRESSLY PRECLUDED BY APPLICABLE LAW. IN SUCH JURISDICTIONS, ALL OR A PORTION OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU AND THE SCOPE AND DURATION OF THE MASTERCARD PARTIES' WARRANTIES AND THE EXTENT OF THEIR LIABILITY WILL BE THE MINIMUM PERMITTED UNDER SUCH APPLICABLE LAW.

18. **Confidential Information.** “MasterCard’s Confidential Information” includes those portions of Simplify Commerce that MasterCard does not make publicly available and all information that: (a) gives MasterCard a competitive business advantage, gives MasterCard the opportunity to obtain a competitive business advantage, or the disclosure of which could be detrimental to MasterCard’s interests; or (b) which is either (i) marked “Confidential,” “Restricted,” “Proprietary Information,” or other similar marking, (ii) known to be considered confidential and proprietary, (iii) received under circumstances reasonably interpreted as imposing an obligation of confidentiality, or (iv) “confidential transaction data,” as defined in the MasterCard Rules, Maestro Global Rules, and Cirrus Worldwide Operating Rules (currently available [here](#)). You will treat all MasterCard Confidential Information as strictly confidential and use the same degree of care to prevent

disclosure of MasterCard's Confidential Information as you would use with respect to your own most confidential and proprietary information and, under no circumstances, less than the care that a reasonable person would take under the circumstances. Except as expressly provided in these Merchant TOU, you may not use or disclose any MasterCard Confidential Information without MasterCard's prior written consent, except as required by your employees and agents on a need-to-know basis in order to fulfill your obligations under these Merchant TOU; provided that those employees or agents have executed written agreements that are at least as protective of MasterCard's rights to the MasterCard Confidential Information as those contained in these Merchant TOU. On termination of these Merchant TOU or on MasterCard's written request at any time, you will destroy or return to MasterCard all MasterCard Confidential Information in your custody or control. This provision will survive any termination of these Merchant TOU for so long as you have in your possession any MasterCard Confidential Information.

19. Term and Termination.

- a. These Merchant TOU will be effective until terminated as provided herein. MasterCard may suspend or terminate your use of Simplify Commerce, the Alerts Service, or these Merchant TOU at any time, without cause effective immediately upon notice to you at the email address listed in your Merchant Account. Such notice shall be effective as described in Section 23.a. Without limitation of the foregoing, MasterCard may, in its sole discretion, suspend, revoke, or terminate your Merchant Account at any time if: (i) your contact information is not up-to-date or you do not respond to communications directed to you; (ii) the information you have provided to obtain your Merchant Account is false, inaccurate, not current, or incomplete; (iii) you are engaged in any activity prohibited by Section 6 (Prohibited Businesses and Activities); or (iv) you have breached, or MasterCard reasonably believes you are about to breach, any of these Merchant TOU, the Processor Terms, or any other agreement between you and MasterCard. You may terminate these Merchant TOU for any reason or no reason at all, at your convenience, by sending a written notice to MasterCard at support@simplify.com with the word "terminate" in the subject line and by ceasing all use of Simplify Commerce.
- b. On termination of these Merchant TOU and/or your Merchant Account for any reason, the rights and licenses granted to you will immediately terminate. Upon the termination of these Merchant TOU and/or your Merchant Account, you shall immediately cease all use of Simplify Commerce and the Alerts Service; and the terms, conditions, and warranties contained in these Merchant TOU that by their nature and context are intended to survive the termination of these Merchant TOU shall survive, including but not limited to, Sections 3d., g., h. (Alerts Service), 12 (Personal Data and Data Security), 13 (Ownership and Rights), 14 (Your Warranties), 15 (Indemnification), 16 (Disclaimer of Warranties), 17 (Limitation of Liability), 18 (Confidential Information), 19 (Term and Termination), 20 (Remedies), and 23 (Miscellaneous). MasterCard shall have no liability to you for

any damages, loss of profits or other claims arising from the termination or suspension of your access to Simplify Commerce or the Alerts Service.

20. Remedies. You acknowledge and agree that your breach of these Merchant TOU relating to the licenses granted herein and your use of MasterCard's Confidential Information may result in irreparable harm and permanent injury to MasterCard for which monetary damages would be an inadequate remedy. Consequently, you acknowledge and agree that, in such circumstances, MasterCard will be entitled to seek and obtain, without the posting of a bond, in addition to all other remedies available to MasterCard, at law or in equity, immediate injunctive relief to prevent or stop any breach of those provisions.

21. United States Use and Government Restrictions.

a. **United States Use.** These Merchant TOU apply to individuals and businesses located in the United States. By accepting these Merchant TOU and using Simplify Commerce, you hereby represent and warrant that you are either a legal resident of the United States or that you represent a legal entity that is authorized to conduct business by the state in which you operate. You may not export Simplify Commerce.

b. **Government Restrictions.** With respect to use of Simplify Commerce or MasterCard Confidential Information by or on behalf of the federal government, the technical data and software rights related to all of the foregoing provided by MasterCard include only those rights and licenses provided pursuant to these Merchant TOU and are provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data ñ Commercial Items) and DFAR 227.7202 (Commercial Computer Software or Computer Software Documentation).

22. Additional Terms. In addition to the terms and conditions in these Merchant TOU, your use of Simplify Commerce is subject to: (a) to the extent you are accepting MasterCard transactions, those portions of the MasterCard Rules applicable to Merchants, a copy of which is available [here](#); and (b) any other agreements between you and MasterCard relating to other products and services you obtain from MasterCard, all of which are incorporated into these Merchant TOU by reference. MasterCard may also make additional material available for download or use that may have additional terms and conditions. All additional terms and conditions are incorporated into and are a part of these Merchant TOU. In the event of a conflict between these Merchant TOU and any additional terms and conditions, the additional terms and conditions will control only with respect to their specific subject matter.

23. Miscellaneous.

a. **Notifications.** Unless provided otherwise by MasterCard in connection with Simplify Commerce, all notices required from you under these Merchant TOU must be sent to support@simplify.com or any other address(es) specified by MasterCard

from time-to-time, in its sole discretion. MasterCard may send any and all notices to you via e-mail at the address associated with your Merchant Account, and you hereby consent to all notices being received electronically.

- b. **Entire Agreement.** These Merchant TOU constitute the entire agreement between you and MasterCard with regard to their subject matter.
- c. **TOU Modifications.** MasterCard may, at any time and from time-to-time, change the terms of these Merchant TOU or provide other disclosures and notices regarding Simplify Commerce by posting them on the Simplify Commerce site or emailing them to the email address listed in your Merchant Account. You will be deemed to have received those disclosures and notices within 24 hours after MasterCard posts them on the Simplify Commerce site or emails them to you, unless MasterCard receives notice that the email delivery failed. If you do not accept those revisions to these Merchant TOU or Simplify Commerce, your only recourse is to stop using Simplify Commerce and to terminate these Merchant TOU by sending a termination notice to MasterCard as described in Section 18.a before the effective date of the revisions. Your continued use of Simplify Commerce after such effective date will constitute your acceptance of those revisions.
- d. **Relationship of the Parties.** These Merchant TOU do not create and shall not be construed as creating a joint venture, co-ownership, partnership, or agency relationship between you and MasterCard.
- e. **MasterCard Third Party Beneficiaries.** You acknowledge and agree that each affiliate of MasterCard is a third party beneficiary to these Merchant TOU and that you owe obligations to those affiliates to the extent that these Merchant TOU confers a benefit on (or provides rights in favor of) them. No other person or company is a third party beneficiary to these Merchant TOU.
- f. **Jurisdiction; Venue; Jury Waiver.** These Merchant TOU will be construed, interpreted, and performed exclusively according to the laws of the State of New York, without giving effect to any principles of conflicts of law or the UN Convention on the International Sale of Goods. Any action at law or in equity arising out of or directly or indirectly relating to these Merchant TOU may be instituted only in the Federal or state courts located in Westchester County, New York. You and MasterCard consent and submit to the personal jurisdiction of those courts for the purposes of any action related thereto and waive any objection thereto, including forum non conveniens. You agree that regardless of any statute or law to the contrary, any claim or cause of action that you may have arising out of or related to these Merchant TOU must be filed within one (1) year after the claim or cause of action arose. **THE PARTIES WAIVE ANY RIGHT TO A JURY TRIAL.**

- g. **Waiver.** MasterCard's failure or delay to exercise or enforce any right or provision of these Merchant TOU or any rights under applicable law shall not constitute a waiver of any of those provisions or rights.
- h. **Headings.** The section headings in these Merchant TOU are for convenience only and have no legal or contractual effect.
- i. **Assignment.** You may not assign or transfer your rights or obligations under these Merchant TOU. Any purported assignment or transfer in violation of the foregoing will be invalid.
- j. **Force Majeure.** MasterCard shall not be liable for any delay or failure to perform its obligations hereunder resulting from any cause beyond its reasonable control, including without limitation, telecommunications, power, or utility failures.
- k. **Severability.** If at any time any provision of these Merchant TOU (or any part of a provision of these Merchant TOU) is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, that shall not affect or impair:
 - i. the legality, validity, or enforceability in that jurisdiction of any other provision of these Merchant TOU (including the remainder of a provision, where part thereof has become illegal, invalid, or unenforceable); or
 - ii. the legality, validity, or enforceability under the law of any other jurisdiction of that or any other provision of these Merchant TOU.