

# Master Service Agreement (v04012020)

THIS MASTER SERVICE AGREEMENT (“AGREEMENT“) GOVERNS YOUR USE OF CERTAIN SERVICES (AS DEFINED BELOW) THAT ARE ORDERED THROUGH AN ORDER FORM, AND PROVIDED BY ORDERGROOVE, INC. (“ORDERGROOVE“). BY ACCEPTING THIS AGREEMENT, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, MERCHANT AND ORDERGROOVE AGREE TO THE TERMS OF THIS AGREEMENT.

1. **Definitions.** As used in this Agreement:

**A. “Affiliate”** means an entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, Merchant.

**B. “Confidential Information”** means confidential and proprietary information of a Disclosing Party, whether disclosed orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement and each Order Form), the Merchant Data, the Service, business and marketing plans, technology and technical information, product designs, and business processes.

**C. “Customer”** means the end user that purchases goods or other items through the Merchant.

**D. “Disclosing Party”** means a party disclosing Confidential Information.

**E. “Merchant Data”** means all data collected by Ordergroove from Merchant and Customers in connection with the Services, including but not limited to Customer transactional data.

**F. “Order Form”** means each order form signed by the parties that identifies

the Services, Merchant website, fees and other terms and conditions agreed upon by the parties.

**G. “Service(s)”** means the provision by Ordergroove to Merchant of the Ordergroove Platform and the other services to be provided by Ordergroove to Merchant hereunder.

**H. “Receiving Party”** means a party receiving Confidential Information

**I. “Ordergroove Platform”** or **“Platform”** means the implemented platform provided by Ordergroove to Merchant.

**J. “Gross Merchandise Value”** or **“GMV”** means revenue generated from all purchases, including the first purchase upon activation of a new subscription or creation of a relationship through the use of the Platform, and every subsequent purchase thereafter, including the retail value after promotional or discounted items as provided by Merchant through the Platform, made by Customers through use of the Ordergroove Platform. For the avoidance of doubt, taxes and shipping fees are not included in GMV.

## **2. Affiliates; Responsibilities.**

**A.** Merchant’s Affiliates shall have the right to purchase Services in accordance with the terms and conditions of this Agreement, provided that each Affiliate purchasing Services hereunder shall be required to enter into an Order Form with Ordergroove. In each case, the Affiliate shall be bound by all of the terms and conditions of this Agreement and any applicable Order Form(s). Ordergroove agrees that unless the context clearly requires otherwise, any Affiliate that enters into an Order Form shall be deemed to be the “Merchant” for all purposes hereunder. The parties agree that Affiliates may not amend, modify or change the terms of this Agreement, except as they specifically apply to the Affiliate Order Form.

**B.** Merchant shall be responsible for complying with certain Ordergroove documentation outlining programming requirements for the Merchant in order to successfully implement the Ordergroove Platform.

**C.** Merchant is ultimately responsible for all Merchant related content and product offer language on the Ordergroove Platform. Merchant is also solely responsible for communicating and legal compliance of Merchant terms and conditions, order instructions and policies, and Merchant’s privacy policy to Customers that purchase Merchant’s products or services through the Ordergroove Platform.

**D.** Merchant is responsible for all of its marketing and product information material, program enrollment terms, order fulfillment, shipping, transaction processing, invoicing, product returns or replacements, product warranties and payment of any taxes or charges.

**E.** Ordergroove will (a) make the Services available to Merchant pursuant to this Agreement, and the applicable Order Forms and documentation, (b) provide reasonable technical support to Merchant at no additional charge, and (c) use commercially reasonable efforts to make the Platform available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which Ordergroove shall give advance electronic notice), and (ii) any unavailability caused by circumstances beyond Ordergroove's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Ordergroove employees), Internet service provider failure or delay, or denial of service attack,

**F.** All standard, non-customized updates, upgrades and modifications to the Ordergroove Platform and the Services that are made generally available to Ordergroove's other merchants at no additional cost will be made available to Merchant at no additional cost as applicable (it being understood that additional features and functionality that may hereinafter be offered by Ordergroove to other merchants for an additional cost shall not be made available to Merchant free of charge).

### **3. Use Guidelines.**

The Ordergroove Platform software may be used only internally by Merchant, for the purposes intended, and may not be used for any other purpose. Merchant shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Service or the Ordergroove Platform available to any third party, other than as expressly permitted under this Agreement; (ii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; (iii) attempt to gain unauthorized access to the Service or its related systems or networks, including, but not limited to, disabling, hijacking, copying, or reverse engineering; (iv) modify, copy or create derivative works based on the Service; (v) frame or mirror any content forming part of the Service, other than on Merchant's own intranets or otherwise for its own internal business purposes; or (vi) sublicense the Ordergroove Platform software or use the Ordergroove Platform software to offer services for remuneration to any other party or in the provision of any service to a third party, which are similar to those offered by Ordergroove. Any such use is unauthorized and shall constitute a material breach by Merchant of this Agreement.

### **4. Term, Termination.**

**A. Term.** Subject to the termination rights set forth below, this Agreement shall remain in effect so long as any Order Form remains in effect. In addition to any other remedies it may have, if either party breaches any of the terms or conditions of this Agreement or any Order Form and fails to cure such breach within 30 days after written notice from the non-breaching party, the non-breaching party may terminate this Agreement or a specific Order Form upon 10 days' written notice.

**B. Bankruptcy.** A Party may terminate this Agreement immediately upon providing written notice to the other Party upon the occurrence of any of the following events: (a) the institution by the latter Party of proceedings for relief under any current or future bankruptcy or insolvency law; (b) the execution by the latter Party of an assignment for the benefit of its creditors; (c) the admission by the latter Party in writing of its inability to pay its debts as the same become due and/or (d) the institution of involuntary bankruptcy proceedings against that Party, which involuntary proceedings are not dismissed within sixty (60) days from the date that the same were instituted.

**C. Violation of Law.** Ordergroove may terminate this Agreement or any Order Form immediately if, in Ordergroove's reasonable opinion, Merchant or Merchant's business violates or is likely to violate any law or regulation.

## **5. Fees; Payment Terms.**

Merchant shall pay Ordergroove the fees set forth in each Order Form. If applicable, Merchant shall also reimburse Ordergroove for reasonable, pre-approved business travel and related expenses. Other than net income taxes imposed on Ordergroove, unless Merchant provides Ordergroove with a valid tax exemption or a properly completed direct pay certificate, Merchant will bear all taxes, duties, and other governmental charges resulting from this Agreement, even if assessed after payment. All invoices are due and payable net 30 days from the invoice date. A late fee of 1.50% per month or the maximum lawful rate permitted by applicable law, whichever is less, may be applied to all amounts past-due and, in the event any account becomes delinquent by 60 days, the Ordergroove Platform may be removed from the Merchant system in Ordergroove's sole discretion. Merchant shall be responsible for all Ordergroove fees on orders placed prior to expiration or termination regardless of whether such orders have been fulfilled by Merchant.

## **6. Proprietary Rights.**

**A. Reservation of Rights.** The Ordergroove Platform including its software consists of proprietary software owned or licensed by Ordergroove which shall include all upgrades thereto as such may occur from time to time. Except for the Merchant Data, all of the contents of the Service, including without limitation, the Ordergroove Platform, all software pertaining to the Service (including the likeness, layout, copy, organization, structure and graphical attributes of the Ordergroove Platform), and all marketing data that may be presented by Ordergroove in connection with the provision of the Service to Merchant, are and shall remain the sole and exclusive property of Ordergroove and the title thereto shall be vested in and remain with Ordergroove and/or its suppliers or licensors at all times. The Ordergroove Platform and the software used in performance of the Service are protected under United States copyright, patent and/or trade secret law. The owner of such intellectual property is Ordergroove or its suppliers or licensors, as the case may be. No rights, title or interest are granted to Merchant hereunder other than as expressly set forth herein. Merchant agrees that Ordergroove is free to use and incorporate into the Ordergroove Platform any suggestions, ideas, recommendations, or other feedback that Merchant provides to Ordergroove without payment of compensation to Merchant..

**B. Merchant Data.** Ordergroove may collect certain Merchant Data which, as between Ordergroove and Merchant, Merchant exclusively owns. Merchant Data is deemed Confidential Information under this Agreement. Merchant grants and agrees to grant to Ordergroove a non-exclusive, royalty-free, irrevocable, world-wide license during the term of the Agreement to use and disclose Merchant Data in order to provide and monitor the Services. Merchant further grants and agrees to grant to Ordergroove a perpetual, non-exclusive, royalty-free, irrevocable, world-wide license to use and disclose Merchant Data or other data related to Merchant's or a Customer's use of the Ordergroove Platform for statistical, analytical and other aggregate uses, including without limitation, product research, development and improvement so long as any such use does not personally identify Merchant or its Customers. Within 30 days following termination of this Agreement, Merchant may request, in writing, that Ordergroove delete or make permanently unreadable all Merchant Data that is personally identifiable. If no such request is made, Ordergroove may delete or make permanently unreadable all Merchant Data, including Merchant Data that is personally identifiable.

## **7. Personal Data.**

**A. Definitions.** As used in this Section:

i. The terms “**Business**” and “**Service Provider**” shall have the same meanings as in the CCPA, and their cognate terms shall be construed accordingly.

ii. The term “**CCPA**” shall mean Assembly Bill 375 of the California House of Representatives, an act to add Title 1.81.5 (commencing with Section 1798.100) to Part 4 of Division 3 of the Civil Code, relating to privacy and approved by the California Governor on June 28, 2018, together with any additional implementing legislation, rules or regulations that are issued by applicable supervisory authorities.

iii. The terms “**Controller**”, “**Data Subject**”, “**Personal Data Breach**” and “**Processor**” shall have the same meanings as in the GDPR, and their cognate terms shall be construed accordingly.

iv. The term “**Data Protection Legislation**” shall mean all applicable privacy and data protection laws including the GDPR, the CCPA and any applicable implementing laws, regulations and secondary legislation relating to the processing of Personal Data and the privacy of electronic communications.

v. The term “**GDPR**” shall mean Regulation (EU) 2016/679, the European General Data Protection Regulation, together with any additional implementing legislation, rules or regulations that are issued by applicable supervisory authorities.

vi. The term “**Personal Data**” shall mean any information relating to an identified or identifiable natural person and includes “personal data” as defined in Article 4(1) of the GDPR and “personal information” as defined in Section 1798.140 of the CCPA.

vii. The terms “**Process**” and “**Processing**” shall mean any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

viii. The term “**Subprocessor**” shall mean any third party engaged by the Processor, or its sub-Processor, to Process Personal Data on

behalf of the Controller.

ix. The term “**Third Country**” shall mean a country or territory outside of the European Union/European Economic Area that is not a country or territory that is recognized for the purpose of the GDPR as providing an adequate level of protection of Personal Data.

x. The term “**Transfer**” shall mean to disclose or otherwise make Personal Data available to a third party (including to any affiliate of Ordergroove or of a Subprocessor), either by physical movement of the Personal Data to such third party or by enabling access to the Personal Data by other means, and includes a transfer that falls within the scope of Chapter V of the GDPR of Personal Data to a Third Country. .

## **B. Privacy Statements.**

i. Each Party shall maintain and make available on its respective websites a statement of privacy practices, which privacy statements comply with applicable laws, rules, and regulations, including disclosing clearly, and (where applicable) obtaining consent to or establishing another lawful basis for, any data collection, sharing and usage. The current version of Ordergroove’s privacy statement is located at <https://www.Ordergroove.com/privacy-policy> (or such other web address that Ordergroove may provide from time to time).

ii. Modifications to Privacy Statement. Each party may at any time modify and make changes to its privacy statement, including to comply with applicable laws, rules, and regulations. Any change to its privacy statement under this Section shall apply to the other party beginning thirty (30) days after the date of written or email notice to the other party of such changes.

## **C. Processing of Personal Data.**

i. General Obligations of Merchant and Ordergroove. The parties acknowledge that (a) for purposes of any Processing of Personal Data that is subject to the GDPR, Merchant is a Controller and that Ordergroove is a Processor and (b) for purposes of any Processing of Personal Data that is subject to the CCPA, Merchant is a Business and that Ordergroove is a Service Provider. All Personal Data Processed by Ordergroove on behalf of Merchant belongs to Merchant and Ordergroove shall have no rights to such Personal Data.

ii. Ordergroove shall process Personal Data of Merchant's Customers solely on behalf of Merchant for the purpose of providing the Services and as expressly authorized under this Agreement, and not for any other purpose or in any other manner, unless specifically instructed by Merchant in writing to do so, or as required by applicable law. When Ordergroove Processes Personal Data for or on behalf of Merchant, Ordergroove agrees:

1. To immediately inform Merchant if, in Ordergroove's opinion, an instruction from Merchant infringes the GDPR, the CCPA or other Data Protection Legislation.

2. Not to disclose or transfer Personal Data to any third party without Merchant's prior express written consent, except where such disclosure or transfer is:

a. To a Subprocessor that, prior to such disclosure, has (1) agreed by written contract to be bound by obligations no less onerous than the obligations set out in this Agreement, and (2) undergone a thorough assessment for compliance with these obligations conducted by Ordergroove and agreed to be assessed periodically by Ordergroove; or

b. To an affiliate, in which case Ordergroove shall require the affiliate to provide at least the same level of protection for the Personal Data as is required by Ordergroove under this Section; or

c. Required by applicable law; and

3. To notify Merchant without undue delay following Ordergroove's receipt of requests from individuals exercising rights under the GDPR, the CCPA or other Data Protection Legislation applicable to Merchant (such as rights to access, rectify, erase, block or port Personal Data) relating to Personal Data that Ordergroove Processes for or on behalf of Merchant. By appropriate technical and organizational measures, insofar as this is possible, taking into account the nature of the Processing, Ordergroove agrees to assist Merchant in fulfilling its obligations to respond to such communications and comply with applicable law;

4. To take appropriate technical and organizational security measures to adequately protect Merchant's users' Personal Data against misuse and loss in accordance with this Agreement and applicable law; and



5. To regularly train personnel responsible for processing Personal Data of Merchant's users about the obligations set forth in this Agreement, to provide an appropriate level of supervision and guidance to such personnel (including background checks where permitted by law), and to enforce disciplinary policies for personnel who fail to comply with those obligations.

iii. Merchant represents and warrants to Ordergroove that it has obtained or established, or shall have obtained or established prior to any Processing of Personal Data under this Agreement, all rights or lawful basis reasonably required by Data Protection Legislation to Process, and to authorize Ordergroove to Process on Merchant's behalf, Personal Data of Merchant's users as contemplated by this Agreement.

iv. Ordergroove shall not (i) sell Personal Data, (ii) retain, use or disclose Personal Data for a commercial purpose other than providing the Services and/or (iii) retain, use or disclose Personal Data outside of this Agreement. Ordergroove represents and warrants to Merchant that it understands the prohibitions outlined in this Section 7.C.iv.

v. Ordergroove shall, without undue delay, inform Merchant in the event of any actual or reasonably suspected Personal Data Breach that may involve Personal Data of Merchant's users, and shall reasonably assist Merchant to comply with Merchant's obligations regarding any such Personal Data Breach.

vi. Ordergroove shall maintain and update at least annually a Personal Data Breach incident response plan that complies in all respects with applicable laws.

vii. Retention and Return of Personal Data. Ordergroove shall retain Personal Data for only as long as is necessary to provide the Services or as required by applicable law. Ordergroove shall, consistent with Merchant's directions, return, delete, destroy or makes permanently unreadable all Personal Data that Ordergroove obtains in connection with this Agreement, including all originals and copies of such Personal Data in any medium, and any materials derived from or incorporating such Personal Data, within 30 days following the termination or expiration of this Agreement, except to the extent that Ordergroove is required by law to retain some or all of the Personal Data, and except to the extent the Personal Data is archived on back-

up systems, in either case so long as Ordergroove securely protects and anonymizes such Personal Data from any further processing and eventually deletes or makes permanently unreadable in accordance with Ordergroove's retention and deletion policies.

#### **D. Location of Processing; Transfers.**

i. Merchant agrees that Ordergroove may, subject to Section D.ii of this Section, store and Process Personal Data in the United States of America and any other country in which Ordergroove or any of its Subprocessors maintains facilities.

ii. In relation to transfers of Personal Data to areas outside the EEA, Ordergroove agrees to comply with its obligations under the Data Protection Legislation by ensuring that, in relation to such transfers:

1. There is an adequate level of protection to any Personal Data that is transferred;
2. There are appropriate safeguards in place in relation to that transfer;
3. Data Subjects have enforceable rights and effective legal remedies; and
4. Ordergroove shall comply with any other reasonable instructions as notified to it by Merchant in relation to such transfers.

### **8. Confidentiality.**

**A. Protections.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care). In the event that the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**B. Restrictions.** Each party agrees not to use or disclose the Confidential Information of the other party except as expressly provided herein or as required in connection with this Agreement.

**C. Carve Out.** These confidentiality obligations do not apply to Confidential Information that: (i) the Disclosing Party is legally required to disclose; (ii) is already known by the Receiving Party prior to the date hereof; (iii) is legally obtained from other sources not in violation of an agreement of confidentiality; or (iv) is or becomes part of the public domain through no fault of the Receiving Party.

**D. Remedies.** Each party acknowledges that compliance with this section is necessary to protect the business, goodwill, and Confidential Information of the other, and that a breach of the same will cause irreparable and continual damage for which money damages may not be adequate. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of the confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies may be inadequate.

## **9. Warranties & Disclaimers.**

**A. Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. Ordergroove represents and warrants that (i) the Service shall perform materially in accordance with the terms of this Agreement; (ii) the functionality of the Service will not be materially decreased during the term of the applicable Order Form; (iii) it owns or otherwise has sufficient rights in the Service to grant to Merchant the rights to use the Service granted herein; and (iv) the Service does not, to Ordergroove's knowledge, infringe any intellectual property rights of any third party. Merchant further represents and warrants that the content of all marketing materials, program enrollment terms, privacy policies, and terms of use, on the Merchant's web site, each channel enabled on the Ordergroove Platform, and the Merchant's products and services comply with all applicable laws and regulations, including, but not limited to, any and all notice and disclosure obligations under applicable automatic renewal and negative option laws and regulations.

**B. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ORDERGROOVE MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

## **10. Mutual Indemnification.**

**A. Indemnification by Ordergroove.** Subject to this Agreement, Ordergroove shall defend, indemnify and hold Merchant harmless against any fines, penalties, damages awarded and/or amounts paid in settlement of any claims, demands, suits, or proceedings (“**Claims**”) made or brought against Merchant by a third party alleging that the use of the Service as contemplated hereunder infringes the intellectual property rights of a third party; provided, that Merchant (a) promptly gives written notice of the Claim to Ordergroove; (b) gives Ordergroove sole control of the defense and settlement of the Claim (provided that Ordergroove may not settle any Claim unless it unconditionally releases Merchant of all liability); and (c) provides to Ordergroove, at Ordergroove’s cost, all reasonable assistance. Notwithstanding the foregoing, Ordergroove shall have no obligation or liability to the extent that the alleged infringement or misappropriation arises from Merchant’s use of the Services other than in accordance with this Agreement. Upon the occurrence of any claim for which indemnification is or may be due under this Section, or in the event that Ordergroove believes that such a claim is likely, Ordergroove may, at its option (i) modify the Service so that it becomes non-infringing but functionally similar, or substitute a functionally similar alternative; (ii) obtain a license to the applicable third-party intellectual property at no cost to Merchant; or (iii) terminate the applicable Order Form on written notice to Merchant and refund any fees paid for Services not yet rendered.

**B. Indemnification by Merchant.** Subject to this Agreement, Merchant shall defend, indemnify and hold Ordergroove and its employees, officers and directors, harmless against any and all fines, costs, penalties, damages and awards, awarded and/or amounts paid in defending or in settlement of Claims made or brought against Ordergroove by a third party arising out of or relating to (i) Merchant’s act, omission, or breach of any provision of this Agreement and (ii) any claim that the Merchant Data infringes the intellectual property rights of, or has otherwise harmed, a third party; provided, that Ordergroove (a) promptly gives written notice of the Claim to Merchant; (b) gives Merchant sole control of the defense and settlement of the Claim (provided that Merchant may not settle any Claim unless it unconditionally releases Ordergroove of all liability); and (c) provides to Merchant, at Merchant’s cost, all reasonable assistance.

## **11. Limitation of Liability.**

**A. Limitation of Liability.** IN NO EVENT SHALL EITHER PARTY’S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER

THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID TO ORDERGROOVE HEREUNDER DURING THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY.

**B. Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE SERVICES OR TECHNOLOGY, LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

**C. Carveouts.** The foregoing limitations shall not apply with respect to damages that arise out of the gross negligence or willful misconduct of a party, breach of Section 6 (Proprietary Rights), a breach of Section 8 (Confidentiality), or a party's indemnification obligations under Section 10.

## 12. General Provisions.

**A. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**B. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**C. Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon; (i) personal delivery; (ii) the third business day after mailing if sent first class United States Postal Service mail postage prepaid and return receipt requested; or (iii) the second business day after sending by email, in each case to the applicable party's primary place of business, to the attention of the Chief Executive Officer.

**D. Cumulative Remedies.** Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**E. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**F. Assignment.** Neither party may assign any of its rights or obligations

hereunder or under an Order Form, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement (by operation of law or otherwise) in its entirety without the consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**G. Non-Waiver.** Either party's failure at any time to require strict performance from the other party of any of the provisions hereof shall not waive or diminish either party's right thereafter to demand strict compliance therewith or with any other provision.

**H. Governing Law.** This Agreement and each Order Form shall be governed exclusively by the internal laws of the State of Delaware, without regard to its conflicts of laws rules.

**I. Counterparts.** This Agreement and each Order Form may be executed electronically and in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement binding on Merchant and Ordergroove.

**J. Force Majeure.** Neither party shall be in default of or to have breached any provision of an Order Form or this Agreement as a result of any delay, failure in performance or interruption of service, resulting directly or indirectly from acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, fires, transportation contingencies, interruptions in telecommunications or internet services or network provider services, failure of equipment and or software, other catastrophes or any other occurrences which are beyond such party's reasonable control.

**K. Entire Agreement.** This Agreement and each Order Form constitute the entire agreement between the parties, and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement or any Order Form shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Merchant purchase order or in any other Merchant order documentation shall be incorporated into or form any part of this Agreement or an Order Form, and all such terms or conditions shall be null and void.

**L. Surviving Provisions.** The provisions of Sections 5, 6, 7, 8, 10, 11 and 12 shall survive the expiration or termination of this Agreement.

**[End of Agreement]**

**ordergroove**

We are marketers, engineers and innovators creating the future of Relationship Commerce.

**OUR OFFICE**

Ordergroove, Inc.  
75 Broad Street,  
23rd Floor  
New York, NY  
10004



**SOLUTIONS**

Plans  
Experiences  
Partner Ecosystem  
eCommerce  
Platforms  
Clients  
Case Studies

**COMPANY**

Leadership  
Events  
Resources  
Careers  
Press  
Contact Us

**CONTACT US**

info@ordergroove.com  
support@ordergroove.com  
Contact sales »  
(866) 253-1261

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