

Contract Library

MyCommerce Master Services Agreement (6.4)

The selected contract reads as follows:

Master Services Agreement

This Master Services Agreement ("**Agreement**") is made and entered into as of the date of your acceptance ("**Effective Date**"), between Digital River GmbH, with offices at Wiesenhüttenstraße 11, 60329 Frankfurt am Main, Germany ("**Digital River or "we"**") and you (each of you and Digital River will be referred to individually as a "**Party**" or collectively as the "**Parties**" in this Agreement). If you are entering into these terms on behalf of an organization or entity ("**Company**"), "you" and "your" refers to you and Company. BY USING THE MYCOMMERCE PLATFORM, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD AND AGREE TO BE BOUND BY, THE FOLLOWING:

1. Definitions

"**Acceptable Use Policy**" means the policy available at [LINK].

"**Administration Interface**" means the user interface provided by Digital River and is also known as "Control Panel".

"**Chargeback**" means the reversal of a previously completed payment for a Transaction due to a dispute initiated by an End User, payment processor, third party payment provider or financial institution.

"**Checkout Solution**" means the customer-facing purchase interface for Products, including without limitation, the "shopping cart" identifying the Products to be purchased and post-purchase confirmation page.

"**Data Protection Legislation**" means any applicable data protection, security and related legislation worldwide, as may be amended or superseded from time to time, including but not limited to: (i) the European General Data Protection Regulation, any binding orders issued by relevant bodies and the relevant implementation law of any EU member state; (ii) the EU e-Privacy Directive (Directive 2002/58/EC) as amended and any legislation replacing this Directive; and (iii) any other non-European legislation as may be applicable to the Parties and particularly legislation of any country where a Party is established to conduct business in relation to this Agreement.

"**Digital River Property**" means the Platform, the Checkout Solution, and any other software, technology, or other property owned by Digital River.

"**End User**" means any person or entity that purchases a license, subscription or other right to use a Product through the Checkout Solution.

"**EULA**" means the end user license agreement between you and the End User that governs that End User's use of the Products.

"**Fees**" has the meaning set forth in Section 5(a).

"**Net Purchase Price**" means the purchase price of each Product in a Transaction purchased by Digital River from you for Digital River's resale, calculated as the sales price of such Product less (i) any amounts assessed or charged by third parties, including governments or other regulatory bodies, in connection with a Transaction such as shipping and handling, sales or use taxes, valued added or other taxes or fees assessed against the value of individual Transactions or assessed on a per item or per order basis, regulatory fees, import or export duties or fees during the Pay Period and less (ii) the DR Margin and any other Fees.

"**Pay Period**" has the meaning set forth in section 5(d).

"**Platform**" means the ecommerce platform and services provided by Digital River to you, which enables you to sell Products to End Users online, and any related services and/or functionality provided to you by Digital River.

"**Products**" means your software, keys or software-as-a-service products provided by you to Digital River for resale to End Users.

"**Standard Contractual Clauses**" means the contractual requirements approved by a relevant authority to ensure the appropriate data protection standards are in place in the event of the international transfer of Personal Data, such as the standard clauses approved by the European Commission for the transfer of Personal Data from the European Economic Area to another non-European country which country is not considered to provide an adequate level of data protection as may be amended or replaced from time to time.

"**Territory**" All countries in the world except (i) countries to which export or re export of any Product (a) is prohibited by applicable law or by Digital River's corporate policy, or (b) would require Digital River to obtain an export license, with no license exception available; and (ii) countries excluded by you through the Administration Interface.

"**Transaction**" means the sale of a Product or the grant of a license, subscription or other usage rights to a Product through the Checkout Solution.

2. Grant of Rights and Licenses; Restrictions

(a) Grant of Rights. Subject to the terms of this Agreement (including timely payment of all applicable Fees), Digital River grants to you a non-exclusive, non-transferable and revocable right to: (i) access the Platform solely for your internal business purposes; and (ii) utilize and make available the Checkout Solution for the purposes of conducting Transactions.

(b) Restrictions. To the maximum extent permitted by applicable law, you will not, directly or indirectly, and will not authorize any person to: (i) decompile, disassemble, reverse engineer or attempt to reconstruct or discover any elements of; (ii) translate, adapt, or modify; (iii) write or develop any program based upon; (iv) sell, sublicense, transfer any rights in, use for the benefit of, or allow access to, unauthorized persons to; (v) transmit unlawful, infringing or harmful data, content or code to or from; (vi) copy or replicate; or (vii) otherwise use except as expressly permitted hereunder any Digital River Property.

(c) Acceptable Use. Your use of the Platform, including all Products and any other materials provided by you or made available through the Platform, must be in accordance with the Acceptable Use Policy.

(d) Digital River Obligations. Digital River will provide the Platform in accordance with this Agreement.

(e) Login Credentials. You are responsible for maintaining the secrecy of any passwords or login credentials used to verify you or your authorized users identity and to access to the Platform, and must immediately notify Digital River in writing of any unauthorized access or use. You will take all steps reasonably necessary to terminate any unauthorized access or use of the Platform, and will cooperate and assist with any actions taken by Digital River to remediate any issues related to that unauthorized access or use. You will be responsible for all uses of your account on the Platform with or without your knowledge or consent.

3. Digital River's Role, Ownership

(a) Digital River's Role. Digital River will act as a non-exclusive reseller of the Products and is authorized to sell, offer for sale and distribute the Products to End Users in the Territory through the Checkout Solution in accordance with this Agreement.

(b) Ownership of Products. At the time Digital River processes a Transaction for the purchase of a Product by an End User, Digital River purchases from you for Digital River's resale to that End User that initiated the

Transaction: (i) with respect to Products which are licensed and not sold, a license right; (ii) with respect to Products which are sold and not licensed, the Product; or (iii) with respect to a right to a service (including software-as-a-service) provided by you, a right to access and use that service. For Products which are licensed and not sold, Digital River reserves that (x) you retain all right, title and interest, including intellectual property rights, in and to the Products and any and all related and underlying software, technology, reports and documentation; and (y) Digital River may not use, distribute, modify, reverse engineer, or decompile those Products except as expressly authorized by this Agreement or by you in writing.

4. Resale of Products

(a) Seller and Merchant of Record. Digital River will be the seller and merchant of record for all Transactions through the Platform. Digital River may decline to resell, suspend resale and/or remove any Products from the Platform: (i) that Digital River believes in good faith violate Section 2(c) (Acceptable Use Policy) or otherwise do not comply with applicable laws, rules or regulations; (ii) that are prohibited by Digital River's payment processor, merchant bank, or third party payment provider; or (iii) when the percentage of sales of a Product subject to Chargebacks or otherwise fraudulent orders is significantly higher than Digital River's average Chargeback rate for all or for similar products sold, resold or distributed by Digital River. Digital River will notify you of any suspension of the sale of a Product in connection with the foregoing, and, where possible, will consult with you prior to taking action with respect to the suspension of the sale of a Product. You may not enter orders on behalf of End Users through the Checkout Solution. The Parties agree that Digital River is not acting as your sales agent under this Agreement.

(b) End User License Agreement. End Users' use of the Products will be subject to the EULA. The Platform allows you to present your EULA to End Users through the Checkout Solution. You agree that each Product you make available through the Platform will be subject to a legally enforceable EULA and that this EULA will contain disclaimers of liability in favor of any reseller for all claims relating to the Product or breach of the EULA.

(c) End User Pricing. You will provide Digital River with suggested retail prices for any Products sold through the Platform. Digital River, however, may charge prices and fees for the Products (including any Transaction related taxes, regulatory fees and shipping and handling fees, if applicable) to End Users at its sole discretion.

(d) Returns and Cancellations. Digital River may determine, in its sole discretion, the terms and conditions under which it provides refunds to End Users or allows End Users to cancel subscriptions for Products purchased through the Platform. You must promptly notify Digital River of any refund requests or subscription cancellation requests that you receive from or grant to an End User.

(e) Fulfillment of Orders. You may elect the method(s) of delivery of the Products available to End Users upon registration with Digital River.

i. By Digital River. Where Digital River is responsible for fulfillment of digitally delivered Products, Digital River will fulfill Products via email or download from servers under its control, or other methods as agreed upon by the Parties. Promptly following the Effective Date, you will provide Digital River with all information and materials necessary for Digital River to fulfill Transactions. Digital River will allow End Users to download a purchased Product for a 30 day period from the date of purchase, unless mutually agreed by the Parties.

ii. By You. Where you are responsible for fulfillment of digitally delivered Products, you will fulfill Products (or license keys or login credentials, as applicable) via email or download from servers under your control, or other methods as agreed upon by the Parties and will do so as Digital River's fulfillment agent. You must deliver each Product upon receipt of notice of the Transaction by Digital River. Digital River will have no liability of any kind whatsoever as a result of any delay in the delivery of Products by you, or the delivery of non conforming Products. You must allow End Users to download a purchased Product for a 30 day period from the date of purchase, unless mutually agreed in writing by Digital River. You will be solely responsible for all costs of the infrastructure and

bandwidth in connection with your provision of digital fulfillment services. You are responsible for maintaining appropriate integration(s) with the Checkout Solution to allow Digital River to transmit fulfillment information to you upon completion of a Transaction, and for you to transmit confirmation of fulfillment to Digital River. You may use a third party agent approved by Digital River to perform your fulfillment obligations. You will be responsible for all of your acts and omissions (and will be responsible for the acts and omissions of your third party fulfillment agent) related to your obligations to fulfill orders for Products purchased through the Platform.

(f) Additional Offering. In connection with the sale of Products, Digital River may offer certain Digital River offered services (each such service, a "**DR-Provided Additional Service**"). These DR- Provided Additional Service may include but are not limited to the "Extended Download Service" that permits End Users who have purchased a digitally delivered Product to make multiple downloads of the same Product for an extended period and the "Backup Media Service" to allow the End User to purchase a copy of the Product download on backup media. Digital River shall be solely responsible for determining the terms and conditions on which the DR-Provided Additional Services are offered to End Users and if such DR-Provided Additional Services are offered to End Users. The purchase price of the DR-Provided Additional Service through a Transaction (for each DR-Provided Additional Service, the "**Additional Service Fee**") will be determined by Digital River.

5. Payments and Reporting

(a) Fees. For each Transaction, Digital River will be entitled to margin equal to the revenue share percentage and/or flat fee that you select upon registration (the "**DR Margin**"), and any other fees as further described in the Administration Interface and/or in Appendix A (the DR Margin together with any other fees hereinafter referred to as the "Fees"). The DR Margin will be calculated based on the total revenue (including without limitation any amounts received for shipping and handling, regulatory fees, sales or use taxes, valued added or other Transaction based taxes, import or export duties or fees) received by Digital River for each Product sale to End Users during the Pay Period. Digital River shall have the right to change the Fees by giving thirty (30) days prior written notice to you. If the Fees increase, you shall have the right to terminate this Agreement as of the day the increase takes effect, by providing written notice of termination to us. Additional fees may apply as further described in the Administration Interface and/or at in Appendix A.

(b) Support Fees. We will provide you with access to the MyCommerce Help portal in which you can navigate through various articles to support your use of the Solution. If you would like us to support you with any inquiry through our solution center via case or chat (such as escalated orders, account related issues/changes etc. "**Tier 2 Support**"), we will provide that Tier 2 Support at the rates further described in Appendix A.

(c) Additional Service Revenue Share. Digital River will pay to you a certain percentage of the Additional Service Fee as further described in the Administration Interface and at in Appendix A on each purchase of a DR-Provided Additional Service by an End User through the Platform (each such percentage, a "**Additional Service Revenue Share**"). Such amount (net of any refunds to End Users for cancellations of a previously purchased DR-Provided Additional Service) will be paid to you on a monthly basis together with such other amounts as may be owed to you under this Agreement.

(d) Payment. Within 30 calendar days of the end of each calendar month, Digital River will provide a statement through the Administration Interface of all Transactions for which Digital River has received payment in the preceding calendar month (the "**Pay Period**"). If you do not object in writing (including email) to an invoiced amount or statement within 30 calendar days from the date of such invoice or statement, you shall be deemed to have acknowledged the correctness and waived your right to dispute of that invoice or statement. Digital River will initiate payment of the sum of the Net Purchase Price of those Products for which Digital River processed payment during the Pay Period less (i) any amounts refunded to End Users; less (ii) any amounts subject to a Chargeback; less (iii) any fines or penalties and less (iv) any other Fees or charges due to us under the Agreement within 30 days of your receipt of the statement through the method of payment you select in the Administration Interface. Some methods of payment may

be subject to additional fees. If at any time during the Term of this Agreement the amount to be paid to you by Digital River represents a negative number as the amount offset from the Net Purchase Price according to the previous calculation is greater than the Net Purchase Price, we may immediately, on notice to you either hold back further payments to you or terminate this Agreement. Digital River will be entitled to retain its DR Margin and other Fees earned on Products sold and/or distributed by Digital River, even if subsequently returned or canceled, or if such Products or associated Transactions becomes subject to Chargeback.

(e) Chargeback Fees; Fraud. Digital River may charge you fees for each Chargeback as described in Appendix A (the "**Chargeback Fee**"). Digital River will treat any non-fraudulent Chargeback and any Transaction identified as fraudulent or potentially fraudulent subsequent to settlement of payment but prior to receipt of a Chargeback for that Transaction, as an order-level return and refund validly provided by Digital River, provided that Digital River will remain entitled to the Chargeback Fee. Further, any Transaction where the fulfillment of that Product was initiated pursuant to a valid payment authorization but is subsequently rejected or cancelled prior to settlement by Digital River, the merchant bank or payment processor, will not be treated as a completed sale to an End User by Digital River for the purposes of calculating payments due to you.

(f) Reserve. Digital River may determine to exceptionally holdback some or all of the money that is in your account if Digital River has reason to believe that it might be necessary to cover future refunds, charges against your account, or other liabilities you may owe to Digital River including but without limitation any chargebacks and fines. Digital River may also holdback some or all of the money if Digital River has reason to believe that the funds represent fraudulent Transactions or involve other kinds of illegal activities. Digital River will only holdback those amounts which are reasonable under the circumstances. Digital River's statements or other communication will note how much Digital River is holding back and shall where possible consult with you prior to taking action with respect to the issue that caused this delay in payout. Digital River will keep any held-back amounts only for a reasonable time as determined in our sole discretion, and will promptly pay over to you any remaining held back amounts after that reasonable time has passed.

(g) Taxes. With respect to Products sold by you to Digital River, you will be solely responsible for the collection and remittance of any required applicable sales, GST, value-added tax, or other Transaction based taxes on such sale of Products by you to Digital River, and, where required or requested, shall provide Digital River with a valid tax invoice for any VAT taxes payable by Digital River to you. You shall hold Digital River harmless from and against any failure to properly collect taxes from Digital River on the sale of a Product from you to Digital River (including without limitation interest and penalties resulting therefrom). In no event shall Digital River be responsible for any tax based on your net income or similar basis (including without limitation amounts for non-resident withholding taxes retained from amounts due to you and remitted to a taxing authority by Digital River if Digital River is required to do so), or the preparation of any tax return related thereto. With respect to Products sold by Digital River to End Users pursuant to this Agreement, as the seller of record Digital River will be solely responsible for the tax compliance on the sale of Products from Digital River to End User.

(h) Payment Terms. All fees and payments contemplated by this Agreement are in the remittance currency defined by you in the Administration Interface.

6. Term and Termination

(a) Term. This Agreement will be effective from the Effective Date and continue until terminated (the "**Term**").

(b) Termination. Either Party may terminate this Agreement at any time. In addition, this Agreement may be terminated: (i) upon written notice by either Party, if the other Party materially breaches a representation or warranty made hereunder or fails to substantially perform its obligations under this Agreement and either (A) the breach cannot be cured or (B) if the breach can be cured, it is not cured within 30 days after the breaching Party's receipt of written notice of that breach; (ii) upon written notice by Digital River, without the opportunity to cure, if you substantially cease to offer products for sale through the Platform or

substantially cease to do business in the manner in which it was conducted as of the Effective Date of this Agreement; or (iii) the non-terminating Party initiates or has initiated against it, voluntarily or involuntarily, any act, process or proceeding under the provisions of any bankruptcy statute or law, or under any other insolvency law or other statute or law providing for the modification or adjustment of the rights of creditors, which is not dismissed within 60 calendar days from the date of filing.

(c) Effect of Termination. Upon termination, each Party (a) shall cease performance of its obligations under this Agreement, and (b) shall promptly return or destroy any of the other Party's Confidential Information or other materials in its possession or control (and shall provide written certification of return or destruction executed by an officer of the Recipient upon the Disclosure's request), except for archival copies of the Confidential Information or other materials, which will remain subject to the provisions of this Agreement. For a period of two (2) months following the expiration or termination of this Agreement, Digital River shall provide access to reporting through the Administration Interface and shall continue to provide returns processing as set forth in the Agreement. All other transition assistance provided by Digital River shall be billed on a time and material basis to you. This Section 6(c) and Sections 7(b) 8, 9, 10, 12, 13 and 14 will survive any termination or expiration of this Agreement.

7. Proprietary Rights

(a) Company Name and Trademarks. You hereby grant Digital River a non-exclusive right and license to use your trademarks, service marks, trade names, logos and other designations or brands used in connection with the Products (collectively, the "**Marks**"): (i) in connection with the sale of the Products; (ii) in order to provide the Platform and Checkout Solution; and (iii) to otherwise exercise Digital River's rights or perform its obligations under this Agreement. Digital River acknowledges that, other than the license to use the Marks granted in this Agreement, you retain all right, title and interest in the Marks.

(b) Platform and Checkout Solution. Except for the limited rights granted in this Agreement, Digital River retains all right, title and interest, including all intellectual property rights, in and to the Digital River Property. If you provide any suggestions or feedback, including, without limitation, any information about operating results, known or suspected bugs, errors or compatibility problems, suggested modifications, and user-desired features, regarding Digital River Property ("**Feedback**"), you hereby grant to Digital River a worldwide, irrevocable, perpetual, sublicensable, royalty-free right and license to use and exploit without restriction the Feedback.

8. Confidential Information

(a) Definition. "Confidential Information" means any information disclosed by one party ("**Discloser**") to the other ("**Recipient**") pursuant to this Agreement, whether orally or in writing, which is marked as "Confidential" or "Proprietary" or which, by the nature of the information or under the circumstances surrounding disclosure, would reasonably be expected to be confidential. Confidential Information does not, however, include any information that: (i) was publicly known or made generally available without a duty of confidentiality prior to the time of disclosure by Discloser to Recipient; (ii) becomes publicly known or made generally available without a duty of confidentiality after disclosure by Discloser to Recipient through no wrongful action or inaction of Recipient; (iii) is in the rightful possession of Recipient without confidentiality obligations at the time of disclosure by Discloser to Recipient as shown by Recipient's then-contemporaneous written files and records kept in the ordinary course of business; (iv) is obtained by Recipient from a third party without an accompanying duty of confidentiality and without a breach of that third party's obligations of confidentiality; or (v) is independently developed by Recipient without use of or reference to Discloser's Confidential Information.

(b) Compelled Disclosures. If Recipient becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Recipient will provide Discloser prompt written notice, if legally permissible, and will use its best efforts to assist Discloser in seeking a protective order or another appropriate remedy. If Discloser waives Recipient's compliance with this Agreement or fails to obtain a protective order or other appropriate remedy, Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed; provided that any Confidential Information

so disclosed will maintain its confidentiality protection for all purposes other than that legally compelled disclosure.

(c) Maintenance of Confidentiality. Recipient will maintain Discloser's Confidential Information in confidence and may only use Discloser's Confidential Information for the performance of its obligations or exercise of its rights under the Agreement. Recipient may only disclose Discloser's Confidential Information to Recipient's own employees or representatives with a need to know that Confidential Information and who are bound by written nondisclosure agreements no less protective of Discloser's Confidential Information than the protections set forth in this Agreement. Discloser's Confidential Information may not be disclosed by Recipient to third parties without Discloser's prior written consent.

(d) Survival of Confidentiality. The obligations of confidentiality set forth herein will survive for a period of three years following the termination or expiration of this Agreement.

9. Warranties

(a) Mutual Warranties. Each Party represents, warrants and covenants to the other that: (i) it has full right, power and authority to enter into, agree to the terms of, and fully perform its obligations under this Agreement; (ii) the execution, delivery and performance of this Agreement by that Party does not conflict with any other agreement to which it is a party or by which it is bound; and (iii) it will comply with all laws, rules and regulations applicable to its activities in connection with this Agreement.

(b) Your Warranties. You represent, warrant and covenant to Digital River that: (i) you have all rights necessary to grant the rights contemplated under this Agreement; (ii) the Products do not infringe any third party copyright, patent, trademark, trade secret or other intellectual property right; and (iii) the Products and any materials comply with Section 2(c) (Acceptable Use Policy) and all applicable laws. Any warranty regarding the performance of the Products, as set forth in the EULA or implied by law, will run directly from you to the End Users. Digital River will not make any additional warranties or representations on your behalf to the End User.

(c) Disclaimer. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION 9, DIGITAL RIVER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER ORAL OR WRITTEN, WHETHER EXPRESS, IMPLIED OR ARISING BY STATUTE, CUSTOM, COURSE OF DEALING OR TRADE USAGE IN CONNECTION WITH THIS AGREEMENT. TO THE FULLEST EXTENT PERMITTED BY LAW, DIGITAL RIVER SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON- INFRINGEMENT. THE MYCOMMERCE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE" AND DIGITAL RIVER DOES NOT WARRANT THAT THE FUNCTIONS OR FEATURES CONTAINED WITH THE MYCOMMERCE PLATFORM WILL MEET COMPANY'S REQUIREMENTS, ACHIEVE ANY PARTICULAR RESULT, OR WILL OPERATE IN ANY COMBINATION WHICH MAY BE SELECTED FOR USE BY COMPANY, OR THAT OPERATION OF THE MYCOMMERCE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL DEFECTS THAT MAY EXIST IN THE MYCOMMERCE PLATFORM WILL BE CORRECTED.

10. Indemnification by Digital River

(a) Indemnification. Digital River will defend, indemnify, and hold harmless you from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) ("**Losses**") incurred by you resulting from any actual or threatened third-party claim that the Platform infringes or misappropriates any patent, copyright, trademark, or trade secret (an "**Infringement Claim**") if: (i) you give Digital River prompt written notice of the claim; (ii) Digital River has full and complete control over the defense and settlement of the claim; (iii) you provide assistance in connection with the defense and settlement of the claim as Digital River may reasonably request; and (iv) you comply with any settlement or court order made in connection with the claim.

(b) Mitigation of Infringement Action. If your use of the Platform is, or in Digital River's reasonable opinion is likely to become, enjoined or materially diminished as a result of an Infringement Claim, then Digital River will either at its sole option: (i) procure the continuing right of you to use the Platform; (ii)

replace or modify the Platform in a functionally similar manner so that it no longer infringes; or if, despite its commercially reasonable efforts, Digital River is unable to do either (i) or (ii), Digital River may (iii) terminate this Agreement.

(c) Exclusions. Digital River will have no obligation under this Section 10 for any infringement if any portion of the Infringement Claim arises out of or is based upon: (i) the combination, operation, or use of the Platform with a third-party product or service not authorized by Digital River; (ii) use of the Platform outside of the scope of the rights granted to you; (iii) your failure to use the latest release of the Platform or to comply with instructions or documentation provided by Digital River; (iv) any modification of the Platform not made or authorized by Digital River; or (v) unauthorized use of the Platform.

(d) Exclusive Remedy. THIS SECTION 10 STATES DIGITAL RIVER'S SOLE AND EXCLUSIVE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY, FOR THE ACTUAL OR ALLEGED INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHT BY THE MYCOMMERCE PLATFORM.

11. Indemnification by You

You will defend, indemnify, and hold harmless Digital River and its affiliates, and each of their officers, directors, employees, and agents (the "**Digital River Indemnitees**") from and against any and all Losses incurred by Digital River resulting from any actual or threatened third-party claim which arises from or relates to: (i) your breach of applicable law; (ii) an allegation that the Products, or any materials provided by you to Digital River, infringes or misappropriates any copyright, trade secret, patent, or trademark right of the third party; (iii) your negligence, gross negligence or willful acts or omissions; (iv) the design, installation, use, and/or operation of the Products; or (v) your violation of any applicable privacy policy or EULA between you and an End User.

12. Limitation of Liability; Disclaimer of Certain Damages

EXCEPT (A) IN CONNECTION WITH DIGITAL RIVER'S OBLIGATIONS UNDER SECTION 10 (INDEMNIFICATION BY DIGITAL RIVER) OR YOUR OBLIGATIONS UNDER SECTION 11 (INDEMNIFICATION BY YOU), (B) LIABILITY RESULTING FROM A PARTY'S MISAPPROPRIATION OF THE OTHER PARTY'S TRADE SECRET, AND (C) LIABILITY RESULTING FROM A PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL AGGREGATE LIABILITY OF A PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE LARGEST NET AMOUNT REALIZED BY THAT PARTY UNDER THIS AGREEMENT DURING ANY SINGLE CONTIGUOUS TWELVE (12) MONTH PERIOD DURING WHICH THIS AGREEMENT WAS OR IS IN EFFECT. IF THIS AGREEMENT HAS BEEN IN EFFECT FOR FEWER THAN 12 MONTHS, THEN EACH PARTY'S TOTAL AGGREGATE LIABILITY WILL BE CALCULATED ON AN ANNUALIZED BASIS.

EXCEPT FOR (A) DIGITAL RIVER'S OBLIGATIONS UNDER SECTION 10 (INDEMNIFICATION BY DIGITAL RIVER) OR YOUR OBLIGATIONS UNDER SECTION 11 (INDEMNIFICATION BY YOU) AND (B) LIABILITY RESULTING FROM A PARTY'S MISAPPROPRIATION OF THE OTHER PARTY'S TRADE SECRET, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOSS OR INTERRUPTION OF BUSINESS), HOWEVER CAUSED AND WHETHER BASED ON CONTRACT, NEGLIGENCE, TORT, OR ANY OTHER LEGAL THEORY, REGARDLESS OF WHETHER ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND IRRESPECTIVE OF THE NUMBER OR NATURE OF CLAIMS.

13. Data Protection and Security

(a) Each Party represents and warrants to the other Party that it shall comply with all applicable Data Protection Legislation. As such, the obligations of the Parties are outlined as follows.

(b) Defined Terms. For purposes of this Section 13, all capitalized terms used in this Section and not otherwise defined in Section 1 or in the Agreement shall have the meanings set forth under applicable Data Protection Legislation.

(c) (Independent) Data Controllers. Each Party agrees that, as between the Parties, it shall be considered an (independent) Data Controller (or its equivalent under Data Protection Legislation) for any Personal Data

which originates from or is gathered by its business activities in connection with its activities under this Agreement. For Digital River, this shall include without limitation Personal Data processed by Digital River during a Transaction.

(d) Privacy Policies. Each Party shall maintain and abide by a privacy policy which clearly describes how Personal Data will be Processed, including without limitation all collection, use, transfer, storage and disclosure contemplated by this Agreement. Each privacy policy must also include how an End User may exercise their rights with respect to such Personal Data.

(e) Cross-border Data Transfers. Where applicable, a Party shall not perform a cross-border transfer of Personal Data unless it has taken such measures necessary to ensure the transfer is made in accordance with all applicable Data Protection Legislation. Such measures may include, but are not limited to, executing appropriate Standard Contractual Clauses for an international cross border transfer to a destination country without an adequate level of data protection. Where the Parties' transfer of Personal Data is reliant on such Standard Contractual Clauses, the Standard Contractual Clauses shall be completed and signed either together with the acceptance of this Agreement, or as promptly as practical following acceptance of this Agreement.

(f) Safeguards. Each Party represents and warrants that it has and will maintain administrative, technical and physical safeguards reasonably designed to prevent the unauthorized access, use or disclosure of Personal Data.

14. General

(a) Modifications. From time to time in the course of our business we may modify the Agreement. We will provide at least thirty (30) days' advance notice via electronic posting or e-mail of any material change to the Agreement, unless applicable laws or regulatory requirements require us to give earlier notice. If the change materially impairs the Platform, you may terminate the Agreement in accordance with section 6. Subject to your termination rights in section 6, your continued use of the Platform after the effective date of any modification to the Agreement constitutes your acceptance of such modification.

(b) End User Marketing. Digital River has the right to send marketing emails and other promotional communications to End Users. In order to support Digital River's marketing efforts, you agree that Digital River may in its sole discretion add and maintain marketing consent language and checkboxes to the Checkout Solution. Digital River agrees to comply with all applicable laws and regulations related to the sending of these communications.

(c) Independent Contractors. The relationship of the parties under this Agreement is that of independent contractors. Except as expressly set forth in this Agreement, neither party will be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither will have any right, power or authority to create any obligation or responsibility on behalf of the other.

(d) Export Compliance. The Parties will comply with all applicable export control laws and regulations of all countries in which you and Digital River conduct business including, without limitation, the Export Administration Regulations ("**EAR**"), the International Traffic in Arms Regulations ("**ITAR**"), Foreign Assets Control Regulations, Foreign Trade Regulations and U.S. Customs Regulations (collectively, "**Export Control Laws**") that may apply to each Party's activities under this Agreement. You will not offer to Digital River for resale any Product which: (i) requires Digital River to submit an export license application to the U.S. government for delivery to countries not subject to U.S. embargo; (ii) requires Digital River to comply with any other license requirement or restriction (e.g., limited value shipment, etc.); or (iii) has an end use which is prohibited by applicable Export Control Laws. The Parties agree and acknowledge that the sale of physical Products is not allowed under this Agreement. Digital River's policy is to not provide information, documentation or to participate in any way with a foreign boycott-related request that would violate U.S. anti-boycott laws, rules and/or regulations. You shall be solely responsible for determining and providing Digital River prior to the date on which such Products are offered for sale through the Platform accurate export classifications of the Products which Digital River will resell pursuant to this Agreement (i.e., Commerce Control List classification, US Munitions List Categories, U.S. Harmonized Tariff Classifications),

export licensing requirements (if any) and applicability of any EAR license exceptions or ITAR license exemptions. You shall provide Digital River with the foregoing information, as well any subsequent changes, via the Administration Interface (or if such functionality is not available, by email to export@digitalriver.com). Digital River may cancel any Transaction involving an IP address, bill-to address and/or ship-to address indicating an embargoed or sanctioned country, an individual or entity designated on any U.S. or foreign restricted parties list such as but not limited to the Denied Persons Lists, and Specially Designated Nationals Lists, Unverified Lists, Entity Lists, Debarred Parties Lists, and Nonproliferation Sanctions Lists (collectively, "**Restricted Parties Lists**"), or where prohibited end-use is indicated. You agree and acknowledge that Digital River shall have the right to immediately terminate this Agreement without penalty if it determines that Digital River is unable to engage in business with you under applicable Export Control Laws or Digital River's territorial restrictions for permitted commerce, including without limitation your designation on one or more Restricted Parties Lists or residence in or provision of Products from a country which is embargoed/sanctioned or in which Digital River does not conduct commerce.

(e) Notices. Any notice required or permitted under this Agreement or required by law must be in writing and must be: (i) delivered in person; (ii) sent by first class registered mail, or air mail, as appropriate; or (iii) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth in this section. Notices to Digital River must be sent to the address at the beginning of the Agreement. Notices to you will be sent to the email address you provide to Digital River upon registration. You may update your address for notice through the Administration Interface. You hereby consent to receive any notices, agreements, disclosures, or other communications from Digital River electronically. Notices will be considered to have been given: (A) if by electronic communication, within 3 calendar days of the date sent by Digital River to your email address; (B) at the time of actual delivery in person; (C) three (3) business days after deposit in the mail as set forth above; or (D) 1 day after delivery to an overnight air courier service.

(f) Headings. The headings in this Agreement are for reference purposes only and will not be construed as affecting the meaning or interpretation of this Agreement.

(g) Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable, each Party agrees that such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the validity, legality and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired thereby.

(h) Waiver. No waiver of any provision or breach of this Agreement will be effective unless made in writing or will operate as or be construed to be a continuing waiver of that provision or breach.

(i) Force Majeure. Neither Party will be in default or otherwise liable for any delay in or failure of its performance under this Agreement if that delay or failure arises by any reason beyond its reasonable control, including any act of God, or any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delays in transportation or communications. The parties will promptly inform and consult with each other as to any of the above causes that, in their judgment, may or could be the cause of a substantial delay in the performance of this Agreement.

(j) Remedies. Each Party acknowledges that its breach of this Agreement would cause irreparable injury to the other for which monetary damages are not an adequate remedy. Accordingly, a Party will be entitled to seek injunctive relief and other equitable remedies in the event of a breach of the terms of this Agreement, without the necessity of posting a bond. The availability of injunctive relief will be cumulative and not an exclusive remedy available to the Parties.

(k) Assignment. Neither party may assign any of its rights or obligations hereunder without the other party's prior written consent (not to be unreasonably withheld); provided, however, either party may assign this Agreement in its entirety, without your consent: (i) to an entity that directly or indirectly controls, is controlled by, or is under common control with such party; or (ii) in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, provided that if the assignee is a direct competitor of the non-assigning Party, the non-assigning Party may terminate this Agreement upon

thirty (30) calendar days prior written notice to the assignee, which notice will only be valid and effective if received by the assignee within thirty (30) calendar days of the terminating Party's receipt of notice of assignment. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Digital River may engage the services of subcontractors or agents to assist Digital River in the performance of its obligations provided that Digital River will be responsible for the acts and omissions of such subcontractors and agents.

(l) Change in Circumstances. If you are subject to a material change in circumstances (including without limitation a change in ownership, a material change in your financial condition, a material change in your Products or services, or a change in the laws or regulations applicable to your business) that we believe, in good faith, is likely to cause you or us to be in violation of applicable law, rule or regulation or which represents a significant economic or liability risk to us, we may immediately, on notice to you, (i) require you to establish and maintain a reserve account with us in an amount we in good faith specify, which may be funded by deductions from payments due to you from us, or by charging your account with us, or a deposit by you; (ii) institute a delay in our periodic payments to you; (iii) suspend your use of the Checkout Solutions; or (iv) terminate this Agreement. In order to protect our rights under this section, you must provide to us in a timely manner all information, items and materials in your control reasonably required by us as well as any subsequent changes.

(m) Our "Know Your Customer" and Anti Money Laundering Regulatory Obligations. To set up your account and make payments to you, you must provide us certain information, which includes our Know Your Customer account verification form and may include additional information required to comply with anti-money laundering regulations. As part of our diligence, we may engage in any investigation of your finances, activities, and operations that we reasonably deem necessary to confirm your eligibility for and use of the Platform, and you agree to provide us with information reasonably required to complete such investigation. You authorize us to share any information we collect or receive from or about you with the card associations, processor/acquiring banks or legal or regulatory payment authorities if necessary for us to respond to an information request. You authorize us to conduct a customary commercial background check for these purposes and to assess the risk of our doing business with you.

(n) Governing Law. The Parties specifically disclaim application of: (i) the United Nations Convention on the International Sale of Goods, 1980; and (ii) Article 2 of the Uniform Commercial Code as codified.

This Agreement will be governed by the laws of the State of Minnesota in the United States of America without reference to conflict of law principles. The Parties expressly agree that the exclusive venue for any proceedings related to this Agreement will be in the State of Minnesota in the United States of America only, and the Parties hereby consent to the exclusive jurisdiction of the federal and state courts located in Hennepin County, Minnesota in the United States of America.

(o) No Third-Party Beneficiaries. There are no third party beneficiaries under this Agreement.

Appendix A

MyCommerce Fees

MyCommerce Offering	Fees*
MyCommerce Platform Fee (a non-refundable fee, charged on a monthly basis and each anniversary of the initial payment)	100 USD**/month
Payment-Gateway and Services Globally	Included
Risk & Fraud Management	Included
Tax and Regulatory Management	Included
License and/or Product Delivery	Included
MyCommerce Promotion Management System	Included

Customer Service (order-related, Tier 1 Support)	Included
Reseller and Order Management System	Included
Revenue share percentage and potential flat fee to calculate the DR Margin	As further defined in the Administration Interface
Additional Components of MyCommerce Offering	Additional Fees and Costs
Chargeback Fee	USD**20/chargeback
Payment Methods	
Wire Transfer within SEPA (minimum payment amount USD** 2,500)	Included
ACH (minimum payment amount USD** 2,500)	Included
Checks (minimum payment amount USD** 2,500)	USD**15
PayPal (minimum payment amount USD** 2,500)	USD**15
Wire Transfer outside SEPA (minimum payment amount USD** 10,000)	USD**15
Client Support (Tier 2 Support) Includes support for escalated orders, account related issues/changes etc.	USD** 185/hour
Access to MyCommerce Affiliate Platform ***	2%
Affiliate program management ***	Based on individual quote
Customer Success Management - Individual Set-up, changes or optimizations of the Store ****	USD** 185/hour
Additional Service Revenue	20%
System Implementation / Setup *** Set-up of order process tailored to your corporate design, one style; Upload of Products using the standard template Integration of web based Key Generator or upload of Key lists Project Management Online Training	Based on individual quote or USD** 185/hour
Foreign exchange fee for orders with a different currency than your payout currency	2%

* We have the right to offset all Fees from amounts owed to you under the Agreement

** May be converted to an alternative currency in case you have chosen that in the Administration Interface

*** Subject to agreeing to additional contract addendum for optional additional service

**** Optional additional service