

OrderNow Merchant Terms of Use

Date of Last Revision: March 3rd, 2013

By registering as a www.givlet.org third-party merchant to offer products or services through www.givlet.org (a “Merchant”, “you” or “your”), you agree to these Merchant Terms of Use (“Merchant Terms”), which include and incorporate the OrderNowApp.com general Terms of Use https://ordernow_exp1.s3.amazonaws.com/docs/OrderNow_11-September-2012_Terms-of-Service.pdf (“User Terms”) and Privacy Policy https://ordernow_exp1.s3.amazonaws.com/docs/OrderNow_11-September-2012_Terms-of-Service.pdf. The givlet.org site includes the websites owned and/or operated by OrderNow, LLC and its affiliates (collectively, “OrderNow,” “we,” “us,” or “our”), including but not limited to affiliate sites, subdomains, mobile and touch versions, and any associated applications (collectively, the “Site”).

Please read and carefully review these Merchant Terms. By accessing, browsing or otherwise using the Site (i) you acknowledge that you have read, understood and are agreeing to be bound by these Merchant Terms and that you will comply with all applicable laws, regulations, rules and policies; and (ii) you represent that you are at least thirteen years old and either have the legal capacity to enter a contract in the jurisdiction where you reside, or if you are a minor, you have obtained the consent of your parents or legal guardian and are able and competent to comply with these Merchant Terms and grant OrderNow rights as detailed in these Merchant Terms. Those younger than 13 years old may not register as a Merchant or use this Site. You further agree that your access to and use of the Site are valuable benefits that you receive by agreeing to and complying with these Merchant Terms. If you do not agree to these Merchant Terms, you may not access, browse or use the Site.

We reserve the right, at our sole discretion, to change, modify, add, or delete portions of these Merchant Terms, the User Terms or the Privacy Policy at any time without further notice. Such revisions are effective immediately after we give notice thereof, which we may do by revising the “Date of Last Revision” date of these Merchant Terms or by otherwise posting on the Site, or by email or conventional mail, and/or by any other means which provides reasonable notice. Your continued use of any of the Site after any such changes constitutes your acceptance of the new Merchant Terms. If you do not agree to abide by these or any future Merchant Terms, do not use or access (or continue to use or access) the Site. It is your responsibility to regularly check the Site to determine if there have been changes to these Merchant Terms and to review such changes. You agree that we shall not be liable to you for any delay or other damages that might result from any changes to the Merchant Terms, if any. You can contact us with any questions or concerns you may have about these Merchant Terms at theteam@givlet.org or via mail at 175 Varick Street, 4th Floor NY, NY 10014.

1. Ownership and Restrictions on Use

OrderNow is the owner or licensee of all content and materials on the Site, including, without limitation, applications, software, movies, television shows, sporting events, clips, videos, images, text, scripts, photos, graphics, music, animation, audio, audiovisual materials, downloadable materials, applications, and also including the look and feel, design, layout, organization, presentation, user interface, navigation and stylistic conventions of the Site (the “Site Content”), as well as the OrderNowApp.com logo and certain other names, logos or marks displayed on or through the Site that constitute trademarks, trade names, service marks or

logos owned or licensed by OrderNow (the “Marks”), and all other intellectual property rights covering or embodied by the Site Content, including, without limitation, all copyrights, moral rights, trademark rights and patent rights. The Site Content does not include Merchant Content, as defined herein. You do not acquire any ownership interests in any Site Content by accessing or using the Site or Site Content.

2. System Requirements

To access the Site, you will need a compatible Authorized Device (as defined herein), Internet access, and certain software that may require obtaining updates or upgrades from time to time. Because use of the Site involves hardware, software, and Internet access, your ability to use the Site may be affected by the performance of these elements. You agree that such system requirements, which may change from time to time, are your responsibility. You are responsible for any costs you incur to access the Internet.

3. Your Use and Merchant Content; License Grant; Right to Monitor and Editorial Control

You may not copy, reproduce, modify, distribute, transmit, display, perform, publish or otherwise use or exploit, through any means or media, any of the Site or Site Content, except as expressly provided herein. To list products and/or services (“Items”) for sale through the Site and Site Content, you must submit information and content regarding such Items in the format specified in the Site’s Merchant interface (“Merchant Content”). We do not ask for, nor do we wish to receive, any confidential, secret or proprietary information or other material from you through the Site, by e-mail or in any other way. By providing Merchant Content to us, you: (i) represent and warrant that the Merchant Content is original to you, that you own or otherwise control all of the rights in the Merchant Content, or that you have the rights necessary to grant to us the license to the Merchant Content granted herein, and that the Merchant Content does not violate any rights, including rights of privacy, of any party and does not otherwise violate the law; (ii) represent that you have no expectation of compensation or confidentiality of any nature with respect to the Merchant Content and that we, our affiliates, our licensors and/or their affiliates may already have projects under consideration or are independently developing projects that are similar to the Merchant Content; (iii) grant to us and our affiliates a world-wide, non-exclusive, fully paid-up, royalty-free, unrestricted, perpetual, irrevocable, fully transferable, assignable and fully sub-licensable (through multiple tiers) right and license, to copy, reproduce, edit, modify, distribute, transmit, translate, display, perform, publish, sell, adapt, create derivative works from, and otherwise use the Merchant Content, for any purpose reasonably related to our provision of the Site and Site Content and through any means or media, whether now existing or subsequently developed, and without any compensation to you or any third party; and (iv) shall indemnify and hold us harmless from and against any and all claims, actions and damages (including, without limitation, court costs, legal fees, accounting fees and amounts paid in settlement) that are related to or result from your use of the Site, the Site Content, Merchant Content or its posting on, or submission to, the Site, and/or your violation of these Merchant Terms or your representations and warranties hereunder. You will cooperate as fully as reasonably required in the defense of any such claim or action; however, we reserve the right, at our own expense, to assume the exclusive defense and control of any matter subject to indemnification by you.

You should not submit any Merchant Content to the Site that you do not want to be viewed by others. We cannot be responsible for maintaining Merchant Content, and we may remove Merchant Content from the Site at any time, for any and no reason, and without notice to you.

You must notify us immediately of inaccuracies or mistakes in Merchant Content so that it may be corrected in a timely fashion. We reserve the right, but do not have an obligation, to monitor and/or review all materials posted to or through the Site and/or Site Content by its users, and we are not responsible for any such materials. However, we further reserve the right at all times to disclose any information as necessary to satisfy any law, regulation or government request, or to edit, refuse to post or to remove any information or materials, in whole or in part, that in our sole discretion are objectionable or in violation of these Merchant Terms or applicable law. We may also impose limits on access to certain Site Content or restrict your access to part or all of the Site or Site Content without notice or penalty if we believe that you are in breach of these Merchant Terms or applicable law, or for any other reason, all without notice or liability.

4. Term and Termination

These Merchant Terms constitute a valid agreement and are effective and binding upon the date you agree to them (by electronically indicating acceptance hereof or otherwise) and continue so long as you use the Site and Site Content or until terminated by OrderNow. OrderNow may terminate these Merchant Terms with respect to your use of the Site and Site Content at any time based on a breach of any of your obligations under these Merchant Terms. In addition and without limiting the generality of the foregoing, OrderNow may terminate these Merchant Terms with respect to you at any time upon written notice to you as a result of any of the following events: (a) irregular orders or transactions processed by you; (b) you fail in any material respect in performance or observance of any term, covenant, condition, or agreement contained in these Merchant Terms or in your Merchant Terms of Sale or Refund Policy (as those terms are defined below), including without limitation, engaging in the Prohibited Conduct described herein, failure to make payment of fees due, failure to provide OrderNow with a valid payment account, or if Your User Information is inaccurate, failure to safeguard Your User Information, violation of any license to Site Content, or infringement or other violation of third parties' rights; (c) failure to make timely delivery of an Item to a customer by the time specified in the Merchant Content applicable to such Item and Order Information after the customer's payment for the Item has been timely processed by OrderNow; (d) a case or other proceeding is commenced by or against you in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up, or adjustment of debts, the appointment of a trustee, receiver, custodian, liquidator, or the like of Merchant, or of all or any substantial part of the assets, domestic or foreign, of Merchant, and such case or proceeding continues undismissed or unstayed for a period of 60 consecutive days, or an order granting the relief requested in such case or proceeding against Merchant (including, without limitation, an order for relief under the Bankruptcy Code) is entered; and/or (e) you engage in conduct that creates or could tend to create harm or loss to the goodwill of OrderNow or which otherwise may impose undue risk of harm to us. Notwithstanding any termination of these Merchant Terms with respect to you, those Merchant Terms which by their nature are intended to survive termination (including without limitation, indemnification obligations and limitations of liability) shall survive. Termination does not affect either party's respective rights and obligations under these Merchant Terms as to an Order (defined herein) submitted prior to termination. OrderNow reserves the right to modify, suspend, or discontinue the Site and/or access to any Site Content, or any part thereof, at any time and without notice to you, and OrderNow will not be liable to you should it exercise such rights, even if your use of Site Content is impacted by the change.

5. Prohibited Conduct

You warrant and agree that, while accessing or using the Site, you will not:

- reproduce, duplicate, copy, download, stream capture, archive, upload, publish, broadcast, sell, resell, modify, translate, decompile, disassemble, reverse engineer or exploit any portion of the Site or the Site Content unless permitted under these Merchant Terms or with the prior written authorization of OrderNow and any applicable licensors;
- create derivative works of the Site Content, including, without limitation, montages, mash-ups and similar videos, wallpaper, desktop themes, greeting cards or merchandise, unless permitted under these Merchant Terms or with the prior written authorization of OrderNow and any applicable licensors;
- access or attempt to access another user's account that you are not authorized to access;
- incorporate Site Content into any hardware or software application;
- impersonate any person or entity or misrepresent your affiliation with any other person or entity, whether actual or fictitious, including anyone from the Site, our licensors or anyone otherwise affiliated with us;
- sell, rent, lease, distribute, broadcast, sublicense or otherwise assign any right to the Site Content to any third party;
- remove any proprietary notices or labels on any Site Content;
- use an inappropriate username or screen name;
- obtain or attempt to gain unauthorized access to other computer systems, materials, information or any Site Content available on or through the Site through any means, including through means not intentionally made publicly available or provided through the Site;
- engage in any automatic or unauthorized means of accessing, logging-in or registering on the Site, or obtaining lists of users or other information from or through the Site, including, without limitation, any information residing on any server or database connected to the Site;
- use the Site or Site Content in any manner that could interrupt, damage, disable, overburden or impair the Site, or interfere with any other party's use and enjoyment of the Site, including, without limitation, sending mass unsolicited messages or "flooding" servers;
- use the Site or Site Content in violation of our intellectual property or other proprietary or legal rights or rights of any third party;
- use the Site or Site Content in violation of any applicable law;
- attempt (or encourage or support anyone else's attempt) to disable, bypass, modify, defeat, circumvent, reverse-engineer, decrypt, or otherwise alter, or interfere with, the Site or the Site Content, including without limitation any security, digital rights management or data encryption components limiting access to Site Content;
- post, transmit, publish or otherwise disseminate through the Site or the Site Content any Merchant Content that, as we determine in our sole discretion: (i) is unlawful, harmful, harassing, fraudulent, threatening, abusive, libelous, defamatory, vulgar, obscene, hateful, or racially, ethnically or otherwise objectionable, or infringes our or any third party's intellectual property or other rights; (ii) is derogatory or harmful to our reputation, the reputation of our licensors, or any of our or their respective officers, members, employees, representatives, licensors and/or suppliers, in any way; (iii) may incite violence or other unlawful activity; or (iv) is harmful to children in any manner.

6. Your Registration and Your User Information

To become a Merchant, you must complete the Merchant registration process on our Site (“Your Registration”) by providing us with complete and accurate user information (“Your User Information”). You grant to us and to all other persons and entities involved in the operation of the Site the right to use, store, monitor, retrieve and transmit Your User Information in connection with the operation of the Site, the Site Content and as otherwise provided herein. Our information collection and use policies with respect to the privacy of Your User Information are set forth in our Privacy Policy https://ordernow_exp1.s3.amazonaws.com/docs/OrderNow_11-September-2012_Privacy-Policy.pdf, which is incorporated in these Merchant Terms by reference for all purposes. You further agree to maintain and update Your User Information as required to keep it accurate, current, and complete. You agree that OrderNow may store and use Your User Information (including your payment account information) to maintain your account and to bill fees to your payment account.

You are solely responsible for maintaining the confidentiality of Your User Information. You are also solely responsible for any and all activities on the Site that occur under Your Registration or Your User Information. You must notify us immediately of any suspected or actual unauthorized use of Your Registration or Your User Information, and of any and all other security breaches. If you believe your OrderNow Member ID or/and Password has been lost or stolen, contact OrderNow Customer Service at: theteam@givlet.org or 175 Varick, 4th Floor NY, NY 10014.

By submitting Your Registration, you represent and warrant that: (i) if you are a business, you are duly organized, validly existing and in good standing under the laws of the country in which your business is registered; and (ii) you have all required rights, powers and authority to enter into these Merchant Terms and perform your obligations hereunder.

We reserve the right to terminate Your Registration or to refuse services to you, without prior notice to you, at any time and for any or no reason. Without limiting the foregoing, if you are a repeat copyright infringer, we will, in appropriate circumstances, permanently terminate Your Registration and remove Merchant Content from the Site. You have the right to cancel Your Registration at any time. You may cancel Your Registration by following the instructions on the Site. If you voluntarily terminate Your Registration or allow Your Registration to lapse, you may reactivate Your Registration at any time through the user account section of the Site. Accounts terminated by us for any type of abuse including, without limitation, a violation of these Merchant Terms, may not be reactivated.

7. Submission of Your Ideas and Suggestions

If you submit Merchant Content that constitutes ideas, suggestions, know-how, concepts, techniques, comments, criticisms or reports or other feedback (“Feedback”), you hereby grant us and our designees a worldwide, non-exclusive, fully paid-up, unrestricted, fully sublicenseable (through multiple tiers), fully transferrable, assignable, royalty-free, perpetual, irrevocable right to copy, use, reproduce, edit, distribute, modify, adapt, create derivative works of, publish, publicly perform, publicly display, transmit, translate and license, digitally perform, make, have made, sell, offer for sale, import or make any other use of Feedback in any and all embodiments, media and means of communication, now known or hereafter developed. You represent and warrant to us that your Feedback is original to you, that you own or otherwise control all of the rights in your Feedback, or that you have the rights necessary to grant to us the license to your Feedback granted herein, and that your Feedback do not violate any rights, including the rights of privacy, of any party and do not otherwise violate the law. Notwithstanding

the foregoing, nothing in these Merchant Terms shall impose any obligation or requirement on us to proceed with or conclude any agreement or transaction with you concerning any such Feedback. IF YOU DO NOT WISH TO GRANT THE RIGHTS GRANTED IN THIS PARAGRAPH, DO NOT SHARE, SUBMIT OR POST ANY FEEDBACK ON OR THROUGH THE SITE.

8. Prohibited Products and Services

You may not offer the following Items for sale through the Site and Site Content: products derived from endangered species, false identification or passports, fireworks, illegal drugs, pharmaceuticals, subscriptions for services or magazines, sexual services, pornography, online courses, vehicles, weapons, guns, ammunition, knives, tobacco, cigarettes, alcoholic beverages, alcoholic brewing kits and/or equipment, radar/laser jammers, scramblers, diffusers or shifters, license plate covers, license plate sprays, traffic signal changers, photo radar and photo blocker sprays, products related to casinos and/or gambling, products (excluding mobile phones/devices) bundled with service plans, and computer programs containing viruses, malware, or spyware. You may not offer any products or services for sale that are illegal in any of the United States or its overseas territories.

9. Product and Service Descriptions

The descriptions of your Items made available on the Site ("Item Descriptions") must comply with Federal Trade Commission advertising laws and guidelines. This requirement applies to, without limitation, competitive claims, superlatives, offers, discounts, pricing, unverified offers and claims that are either scientifically impossible, or otherwise misleading. All Item Descriptions must be factually supported. Any pricing information, discounts and offers applicable to an Item must (i) comply with local regulations concerning applicable taxes and other charges, must be contained in the Item Description, and must be up to date. All Item Descriptions must disclose any shipping and handling or any other additional charges in excess of the base price listed, and any other material terms of the transaction. You are required to maintain a refund policy ("Refund Policy") if you limit refund/exchange terms or other specific conditions for purchases. Your Refund Policy must be clearly provided to in the Item Description prior to the sale and as part of the sale confirmation process. Proper disclosure would include wording that is prominently displayed, states "NO REFUND, EXCHANGE ONLY" or substantially equivalent wording and includes any special terms. You acknowledge that your refund or exchange terms do not eliminate your liability for a refund because consumer protection laws and credit card merchant terms may allow disputes regarding Items. If refunds are allowed under your Refund Policy, such refund should be implemented within three days of approving the the request for such refund. The amount of a refund cannot exceed the amount processed as the Order total by OrderNow, except by the exact amount required to reimburse such customer for shipping charges that it paid to return merchandise. You shall not accept any payment as consideration for issuing a refund. All Item Descriptions must contain the applicable return and exchange policy for such Item, a valid and working email address for purchasers to contact you with customer service queries, and a link to your Privacy Policy regarding any purchaser user data you collect during the purchase process. Once a user has committed to purchasing an Item, you may not change any of the terms of the transaction. You must ensure the Items listed on the Site are in stock for the duration of the Item Description's availability on the Site and are delivered to their buyers, unless the buyer doesn't meet the terms of the transaction. Any inventory or availability problems which arise that are beyond your control must be disclosed to the buyer and regardless of your Refund Policy, if the Item cannot be

provided to the buyer within 20 working days of its expected arrival date, you must provide the buyer with the option to receive a refund and issue such refund for the full amount paid immediately upon request. For Items to be shipped, Item Descriptions must provide an accurate estimate of shipping time, and you are required to ship within 30 days of the date of the Item's purchase. Promptly after shipment of an Item, you must accurately inform us that the order has been shipped. For Items which are services, the available service dates must be contained in the Item Descriptions. Recurring transactions and installment plan purchases are not permitted.

10. Order Processing Procedures and Conditions

Subject to these Merchant Terms, we will remit to you the amounts actually received by us for transactions submitted through OrderNow, less applicable fees as set forth during Your Registration process and herein (each such transaction, an "Order"). Orders are deemed complete when OrderNow has received and accepted the funds from the customer submitting the Order and you have confirmed to OrderNow that delivery of the Order has been scheduled, or if the Order is for services, that the time for which such services are to be provided to the customer has been scheduled. Funds for any Order will not be transmitted to you until the transaction is deemed complete. It is your responsibility to monitor Orders and ensure that any payments made to you by us are accurate. We will process all payments and refunds for Orders submitted to OrderNow. Our name will appear on the customer's credit card statement for each order. We will determine the time at which we process payments and refunds for your Orders. You will accept and process returns of, and provide refunds and adjustments for, your Items in accordance with these Merchant Terms, Merchant Information and your policies posted on your website at the time of the applicable Order (the "Merchant Terms of Sale"), and you will calculate and refund any associated taxes required to be refunded. You shall not add any tax or surcharge to Orders, unless applicable law expressly allows or requires the Merchant to impose such tax or surcharge. If any tax or surcharge amount is allowed, such amount shall be included in the Order amount and shall not be collected separately. You must route all Order-related payments through OrderNow and not arrange to make adjustments to Order-related payments (i.e. refunds, credits or similar) by other means. We will credit the applicable customer account and you will reimburse us for all amounts so refunded. We have no obligation to accept any returns of your Items. You are the seller of record for any Orders placed through OrderNow. We may withhold for investigation, or refuse to process, any Orders we suspect of being fraudulent, unlawful or otherwise violates these Merchant Terms or any of our policies.

You shall receive from us all information required to process the Order, including applicable customer payment and delivery information ("Order Information"), which must be handled in accordance with our Privacy Policy. You shall not use the Order Information to process any transaction that is not a bona fide Order. A bona fide Order means an Order that is (i) between the Merchant and its customer ("Customer"), (ii) for the sale of Items (or a refund for such a sale) that are Merchant's property or that Merchant has the legal right to sell, (iii) submitted on behalf of Merchant (and not on behalf of any third party), and (iv) legal, authorized by the Customer, non-fraudulent, and is, to the Merchant's knowledge, enforceable, collectible, and in full compliance with these Merchant Terms and applicable law. You agree that (i) you will not use Order Information for any purpose that you know or should know to be fraudulent; (ii) you will not sell, purchase, provide or exchange in any manner or disclose Order Information to anyone other than OrderNow or in response to a government request; and (iii) you will cooperate in a forensic investigation if so required.

You are responsible for any non-delivery, misdelivery, theft or other mistake or act in connection with the fulfillment and delivery of Items and Orders, except to the extent caused by our failure to make available to you Order Information as it was received by us. You are also responsible for any non-conformity or defect in, or any public or private recall of, any of your Items. You will notify us promptly of any recalls of your Items as soon as you have knowledge thereof. In the event of a conflict between these Merchant Terms and your Merchant Terms of Sale or Refund Policy, these Merchant Terms shall prevail, and you agree to defend, indemnify and hold us harmless from all losses, liabilities, damages and expense resulting from claims made by any of your customers as a result of such conflict.

You shall not disburse or advance any cash to a customer or any of its representatives, agents, or employees in connection with an Order, nor shall you accept payment for effecting credits or issuing refunds to a customer. The amount of any refund or adjustment cannot exceed the amount shown as the total in the associated Order Information except by the exact amount required to reimburse the customer for postage paid to return merchandise. If you accept returns in connection with an exchange of merchandise where the merchandise being returned does not match the sales price of the new merchandise, you must issue a credit for the total amount of the merchandise being returned and complete a new sale for any new merchandise. If your Refund Policy prohibits returns or is the subject of a customer complaint in connection with an Order, you may still receive a Chargeback (defined herein) relating to the Order. Merchant shall not attempt to recharge a Customer for an item that has been charged back to the Customer, even with the Customer's consent. The amount of an Order may be charged back or reversed prior to disbursement of payment to you (a "Chargeback") if the Order is (a) disputed by the sender, (b) reversed for any reason by our processor or any associated financial institution, (c) unauthorized (or we have any reason to believe the Order was not authorized), or (d) suspicious, allegedly unlawful, or in violation of these Merchant Terms or any policy. OrderNow is solely responsible for all customer service issues relating to payment processing of Orders; you are responsible for all other customer service issues. If we are unable to recover funds related to a Chargeback for which you are liable, you will pay us the full amount of the Chargeback immediately upon demand. You agree to pay all costs and expenses, including without limitation attorneys' fees and other legal expenses, incurred by or on behalf of us in connection with the collection of all such deficits unpaid by you. You agree to promptly assist us when requested, at your expense, to investigate any of your Orders processed by us. For Chargebacks associated with credit cards, we will work with you to contest the Chargeback with applicable financial institutions should you choose to contest. If the Chargeback is contested successfully, we will release the associated funds to you, but if you are unsuccessful, we may recover the amount of the Chargeback and any associated fees as described herein.

Subject to these Merchant Terms, we will automatically transmit to you funds for an order submitted to us 14 days after the first business day on which the Order is deemed complete and to the extent we have received payment, less any fees due. We may withhold payments for Orders to you in such amounts and for such time as we reasonably deem necessary to protect us or other users if (a) we are subject to financial risk, (b) you have violated these Merchant Terms, (c) any dispute exists involving an Order to which you are a party, (d) as required by law or court order or if otherwise requested by law enforcement or any governmental entity and (e) needed to protect the security of our system.

11. Linking to the Site

We may, at any time and for any or no reason, require that any link to the Site be discontinued and removed and revoke your right to link to the Site.

12. Disclaimers

We will, at our own expense, correct any Item Description and/or Order Information to the extent that such errors have been caused by us or by malfunctions of our processing systems. Under no circumstances will OrderNow's financial responsibility for our failure of performance under these Merchant Terms exceed the total fees paid to us under these Merchant Terms (net of third party fees, interchange, assessments, penalties and fines) for the six months prior to the time the liability arose. EXCEPT AS OTHERWISE PROVIDED FOR IN THESE MERCHANT TERMS, AND EXCEPT WITH RESPECT TO MERCHANT'S FAILURE TO COMPLY WITH THESE MERCHANT TERMS, IN NO EVENT WILL ANY ORDERNOW PARTY, ITS RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, OR AFFILIATES, BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS, THEFT, DISAPPEARANCE, OR DAMAGE TO DATA TRANSMITTED ELECTRONICALLY IN CONNECTION WITH THESE MERCHANT TERMS. ALL PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR SERVICES TO WHICH THE UNIFORM COMMERCIAL CODE DOES NOT APPLY, AND ORDERNOW AND MERCHANT HEREBY DISCLAIM ANY AND ALL REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE TO MERCHANT OR ANY OTHER PERSON REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE (REGARDLESS OF ANY COURSE OF DEALING, CUSTOM, OR USAGE OF TRADE) OF ANY SERVICES PROVIDED UNDER THIS AGREEMENT OR ANY GOODS PROVIDED INCIDENTAL TO SUCH SERVICES, EXCEPT THAT MERCHANT MAY BE LIABLE TO ORDERNOW FOR DAMAGES IN CONNECTION WITH MERCHANT'S FAILURE TO FULFILL ORDERS PURSUANT TO THESE MERCHANT TERMS.

ORDERNOW DOES NOT WARRANT THAT THE SITE OR SITE CONTENT WILL BE TIMELY, SECURE, UNINTERRUPTED, OR OPERATED FREE OF DELAYS IN TRANSMISSION, FAILURE IN PERFORMANCE, COMPUTER VIRUSES, INACCURACIES, ERRORS, OR DEFECTS. YOU USE THE SITE AT YOUR OWN RISK. WE ALSO ASSUME NO RESPONSIBILITY, AND SHALL NOT BE LIABLE FOR, ANY DAMAGES TO, OR VIRUSES THAT MAY INFECT, YOUR COMPUTER EQUIPMENT OR OTHER PROPERTY ON ACCOUNT OF YOUR ACCESS TO, BROWSING IN, OR USE OF, THE SITE OR YOUR DOWNLOADING OF THE SITE CONTENT. YOU ARE SOLELY RESPONSIBLE FOR IMPLEMENTING SUFFICIENT PROCEDURES AND VIRUS CHECKS (INCLUDING ANTI-VIRUS AND OTHER SECURITY CHECKS) TO SATISFY YOUR PARTICULAR REQUIREMENTS FOR THE ACCURACY AND SECURITY OF DATA INPUT AND OUTPUT. WE MAKE NO WARRANTY THAT THE SITE WILL MEET USERS' REQUIREMENTS. NO ADVICE, RESULTS OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH THE SITE SHALL CREATE ANY WARRANTY NOT EXPRESSLY MADE HEREIN. THE SITE AND SITE CONTENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY FOR INFORMATION, DATA, DATA PROCESSING SERVICES, UPTIME OR UNINTERRUPTED ACCESS, ANY WARRANTIES CONCERNING THE AVAILABILITY, ACCURACY OR USEFULNESS OF SITE CONTENT AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, WHICH ARE EXCLUDED

FROM THESE MERCHANT TERMS TO THE EXTENT THAT THEY MAY BE EXCLUDED AS A MATTER OF LAW.

You represent and warrant that statements made to OrderNow, including without limitation Your User Information, are true as of the date of your assent to these Merchant Terms.

Some Site Content is provided by the users of the Site. With the exception of the limited license granted in these Merchant Terms, we do not obtain or control any rights in, and do not exert editorial control over, such Site Content. We do not independently verify the representations and warranties made by the users with respect to such Site Content.

Some jurisdictions do not allow the disclaimer of implied warranties, so the foregoing disclaimers may not apply to you.

OrderNow provides a platform for Merchants to negotiate and complete transactions with customers. OrderNow is not a party to or involved with any actual transaction between Merchants and customers, and is not granted any authority to act as, nor does OrderNow act as, the agent of either for any purpose.

13. Indemnification

OrderNow agrees to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses: (a) resulting from any breach of any warranty, covenant, or agreement or any misrepresentation by OrderNow under these Merchant Terms; or (b) arising from OrderNow's or any OrderNow employee's gross negligence or willful misconduct in connection with these Merchant Terms. You agree to indemnify and hold OrderNow and OrderNow's owners, members, managers and employees harmless from and against all losses, liabilities, damages and expense: (a) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Merchant under these Merchant Terms, including without limitation Merchant's failure to fulfill customer orders placed in accordance with these Merchant Terms; (b) resulting from claims made by any of your customers as a result of a conflict between your Merchant Terms of Sale and/or Refund Policy and these Merchant Terms; and (c) arising out of Merchant's or any of its employee's negligence or willful misconduct, in connection with Orders or otherwise arising from Merchant's provision of products and services to customers through the Site and Site Content.

14. Limitation of Liability

EXCEPT AS SET FORTH HEREIN, UNDER NO CIRCUMSTANCES, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR ARISING UNDER ANY OTHER LEGAL OR EQUITABLE THEORY WILL WE BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT ARISE OUT OF OR IN CONNECTION WITH THE USE OF THE SITE OR WITH THE DELAY OR INABILITY TO USE THE SITE OR SITE CONTENT, OR FOR ANY INFORMATION, SOFTWARE APPLICATIONS, PRODUCTS OR SERVICES OBTAINED THROUGH THE SITE, OR OTHERWISE ARISING OUT OF THE USE OF THE SITE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THOSE ASPECTS OF THE HEREIN LIMITATION MAY NOT

APPLY TO YOU, IN WHICH CASE OUR LIABILITY SHALL BE LIMITED TO THE FULLEST EXTENT PERMITTED BY LAW.

IN NO EVENT SHALL WE BE LIABLE FOR, OR IN CONNECTION WITH, ANY CONTENT POSTED, TRANSMITTED, EXCHANGED OR RECEIVED BY OR ON BEHALF OF ANY USER OR OTHER PERSON ON OR THROUGH THE SITE (INCLUDING, WITHOUT LIMITATION, ANY OF THE MERCHANT CONTENT). IN NO EVENT SHALL OUR TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION EXCEED, IN THE AGGREGATE THE TOTAL FEES PAID TO US UNDER THESE MERCHANT TERMS (NET OF THIRD PARTY FEES, INTERCHANGE, ASSESSMENTS, PENALTIES AND FINES) FOR THE SIX MONTHS PRIOR TO THE TIME THE LIABILITY AROSE.

15. Notices.

OrderNow may send you notices by sending an email message to the email address listed in Your User Information or by a posting on the Site. Notices shall become effective immediately upon their distribution or posting.

If any purchaser of your products or services offered through the Site contacts you regarding a customer service complaint or dispute, you agree to notify us of the content of the complaint within 10 working days of your receipt of such complaint.

16. Assignment.

You agree that we may assign any of our rights, and/or transfer, sub-contract or delegate any of our obligations, under these Merchant Terms. Your agreement to these Merchant Terms is personal to you and you may not transfer or assign it to any third party.

17. Governing Law.

The Site and Site Content are controlled and operated by OrderNow from its offices in the State of New York, the United States of America. You agree to comply with all local, state, federal, and national laws, statutes, ordinances, and regulations that apply to your use of the Site and Site Content. You agree that the laws of the United States of America and the laws of the State of New York, without regard to the principles of conflicts of laws, will govern your use of the Site, these Merchant Terms and all matters relating to your access to, and/or use of, the Site, including all disputes between you and OrderNow. You irrevocably submit to the exclusive jurisdiction of, and venue in, the state and federal courts seated in New York County, New York, and the related appellate courts, in any related action or proceeding.

18. Entire Agreement.

These Merchant Terms shall be deemed to include all other notices, policies, disclaimers and other terms and conditions contained in the Site and Site Content, including, without limitation, our User Terms and Privacy Policy, provided, however, that these Merchant Terms shall prevail in the event of a conflict with any such other documents. These Merchant Terms, including any applicable end user license terms for software applications available from OrderNow that you may install, constitute the entire agreement between you and us and supersede all prior or contemporaneous communications and proposals, whether electronic, oral or written, between you and us, with respect to your use of the Site and all matters relating to your access to, and/or

use of, the Site and Site Content. A printed version of these Merchant Terms and of any notice given in electronic form shall be admissible in any and all judicial or administrative proceedings based upon or relating to these Merchant Terms to the same extent as other business documents and records originally generated and maintained in printed form.

If any part of these Merchant Terms is determined to be invalid or unenforceable under applicable law including, without limitation, the warranty disclaimers and liability limitations stated herein, then the invalid or unenforceable provision(s) will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision, and the remainder of these Merchant Terms shall continue in full effect.

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