SavedBy Merchant Terms of Service

NOTICE: These Merchant Terms of Service (this "**Merchant Agreement**") require that CERTAIN DISPUTES BE RESOLVED EXCLUSIVELY THROUGH INDIVIDUAL ARBITRATION, AND THEY PROHIBIT CLASS ACTIONS AND COLLECTIVE PROCEEDINGS. You should review this entire Merchant Agreement before entering into any transaction with SavedBy LLC ("**SavedBy**"). This Merchant Agreement also contains important provisions you should review carefully, including disclaimers of warranty, limitations of liability, indemnity obligations, and other risk allocations between the parties. By proceeding with any transaction or accepting any services under this Merchant Agreement, you also consent to personal jurisdiction in the state and federal courts of Colorado and agree that Delaware law will govern the interpretation and enforcement of these terms in any dispute between us. BY AGREEING TO THESE TERMS, MERCHANT (DEFINED BELOW) EXPRESSLY ACKNOWLEDGES AND AGREES THAT SAVEDBY'S SERVICES ARE NOT AND SHALL NOT CONSTITUTE OR BE DEEMED INSURANCE OF ANY KIND WHATSOEVER.

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This Merchant Agreement, including any document referenced herein, is made and entered into by and between SavedBy, a Delaware limited liability company located at 2255 Sheridan Blvd., Unit C #246, Edgewater, CO, 80214 and the merchant customer of SavedBy (the "**Merchant**"). The Merchant and SavedBy are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

WHEREAS, SavedBy has developed certain computer software programs, including without limitation the SavedBy Digital Product (as defined below) and an online platform, that help e-commerce merchants and provide them with e-commerce and related order shipping, tracking and post-purchase customer service solutions, which SavedBy updates, modifies and customizes from time to time (collectively, the "**Software**").

WHEREAS, SavedBy provides merchants with access to the Software via a software-as-a-service provider (SaaS) model, in which merchants have a right to use the Software to provide their Customers (as defined below) with access to the SavedBy Digital Product and a customer service platform via the internet;

WHEREAS, the Merchant wishes to access the Software, and SavedBy agrees to provide the Merchant with access to the Software, subject to the terms and conditions of this Merchant Agreement;

WHEREAS, SavedBy reserves the right to update any document referenced herein, including but not limited to this Merchant Agreement itself, to reflect changes in the Software and Services (each as defined below) at any time, subject to Section 4(d) of this Merchant Agreement. Any changes to this Merchant Agreement will be in effect as of the "Last Modified" date referenced at https://savedby.io/merchants/tos (the "**Site**"). Merchant should review this Merchant Agreement before buying any Services. Merchant's continued use of this Site, use of the Software, or purchase of the Services after the "Last Modified" date will constitute Merchant's acceptance of and agreement to such changes.

WHEREAS, by accessing and using the Services, Merchant acknowledges that Merchant has carefully read and agrees to be bound by this Merchant Agreement. If any individual is accessing and using the Services on behalf of a company (such as the individual's employer) or other legal entity, such individual represents and warrants that they have the authority to bind that entity to this Merchant Agreement. In that case, "Merchant" will refer to that entity.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. DEFINITIONS

(a) **"Confidential Information**" means any non-public data or information disclosed by one Party (or its agents) to the other Party, either directly or indirectly, whether communicated in writing, orally or by inspection of tangible objects, which would reasonably be considered to be proprietary to such Party including, without limitation, accounting records, business processes, customer records, data, designs, drawings, engineering, inventions, know-how, marketing or financial information, methodologies, payment and pricing terms, processes, product plans, products, trade secrets, and in the case of SavedBy, the SavedBy Digital Product, the Services, and the Software, and any other information that is not generally known in the industry of such Party and where the release of such Confidential Information could reasonably be expected to cause harm to the Party.

(b) **"Compensation"** means the compensation described in Section 6(a).

(c) **"Customer(s)"** means those certain end-user customers of the Merchant who buy the SavedBy Digital Product (as defined below) in connection with a purchase from Merchant.

(d) **"Designated Nationals"** has the definition provided in Section 21(g).

(e) **"Embargoed Countries"** has the definition provided in Section 21(g).

(f) **"Gross Sales Generated"** means the total amount of sales generated by the Merchant during an applicable billing period from selling the SavedBy Digital Product on the Merchant's Online Store.

(g) **"Intellectual Property"** means all patents, trademarks, service marks, logos, trade names, trade secrets, URLs, internet domain names, rights in designs, processes, blueprints, programs and manuals, drawings, copyrights (including rights in computer software, source code and object code), database rights, semiconductor rights, topography rights, formulas, specifications, utility models, rights in know-how, inventions (whether or not patentable), improvements, artistic works, and other intellectual property rights and proprietary information, in each case whether registered or unregistered and including applications for registration of the foregoing, and all rights or forms of protection having equivalent or similar effect anywhere in the world.

(h) **"Losses"** refers to those losses described in Section 13.

(i) **"Net Savedby Collected"** means, for each applicable billing period, the amount owed by Merchant to SavedBy as compensation for the Services under this Merchant Agreement, which shall equal the Gross Sales Generated, **less** gross Refunds (as defined below) for such billing period, **less** the cost of gross Reorders (as defined below) during such billing period, **less** the cost of gross Returned to Senders (as defined below) during such billing period, **less** the cost of any other statement adjustment made by SavedBy for the Merchant in certain unique cases, including but not limited to costs for unique claims, costs for using a partner software or costs for Store Credit.

(j) **"Online Store"** means the website or application that the Merchant uses to sell goods or services to Customers over the internet and through which the Merchant offers the SavedBy Digital Product at the point of sale.

(k) **"Refund"** means a full or partial refund issued to the Customer in response to a Ticket (as defined below) that SavedBy determines in its sole discretion is eligible for a refund from Merchant.

A full Refund amount for a particular order may be equal to the sum of the price of the product or service purchased, **plus** taxes, **plus** shipping costs, provided that SavedBy has the right to modify the Refund amount or issue only a partial Refund in its sole discretion. The Refund amount does **not** include the fee paid by the Customer for the original SavedBy Digital Product. All Refunds will be initiated by SavedBy through the Merchant's Online Store and will be paid for solely by the Merchant.

(l) "Reorder" means a new order issued to Customer on the Merchant's Online Store processed by SavedBy on behalf of a Customer in response to a Ticket that SavedBy determines in its sole discretion is eligible for a new order. The cost of a Reorder may be equal to the sum of the price of the product or service ordered, **plus** taxes, **plus** shipping costs, provided that SavedBy has the right to modify the cost of a Reorder in its sole discretion. A Reorder does **not** include the issuance of another SavedBy Digital Product, and the Customer will not receive SavedBy's customer service and package replacement solutions provided under the SavedBy Digital Product for any issues incurred with respect to such Reorder. All Reorders will be initiated by SavedBy through the Merchant's Online Store and will be paid for solely by the Merchant.

(m) "Returned to Sender" means, in connection with a shipment that the delivery company identifies as "returned to sender" or that SavedBy determines based on its own methodologies has been returned to sender, and for which the Customer submits a Ticket, SavedBy determined in its sole discretion is either: (a) a Reorder ("**Returned to Sender Reorder**"), or (b) Refund ("**Return to Sender Refund(s)**"). For the avoidance of doubt, SavedBy reserves the right to determine using its own methodologies that an order has been Returned to Sender even if the delivery company does not identify the order as "returned to sender".

(i) **Returned to Sender Reorders.**

(A) If SavedBy places a Returned to Sender Reorder on behalf of a Customer, the Merchant shall be financially responsible to the Customer and will pay for the cost of the product or service reordered and any corresponding taxes. SavedBy shall not be financially responsible for, and will not pay for, the cost of the product or service reordered, taxes or the fee for another SavedBy Digital Product for Returned to Sender Reorders. SavedBy shall only be financially responsible for the shipping cost of the Returned to Sender Reorder.

(B) If the original order of a Returned to Sender Reorder had a shipping cost displayed to the Customer on Merchant's Online Store at the point of sale, SavedBy will be financially responsible for and will pay the listed shipping cost. If the Customer had received shipping for free, SavedBy will be responsible for and pay for shipping at a rate of $10 for a domestic order and $14 for an international order, which such rates are subject to modification by SavedBy in its sole discretion from time to time.

(ii) **Returned to Sender Refunds.**

(A) If SavedBy issues a Returned to Sender Refund to the Customer, the Merchant shall be financially responsible to the Customer and will pay for the costs of the refunded product or service and any corresponding taxes. SavedBy shall not be financially responsible for, and will not pay for, the costs of the refunded product or service, taxes, or the fee paid for the SavedBy Digital Product for Returned to Sender Refunds. SavedBy is **only** financially responsible for paying the refunded shipping costs included in the Returned to Sender Refund. For a Returned to Sender Refund, SavedBy may, at its sole discretion, initiate either a partial refund or a full refund for the entire value of the Returned to Sender Refund. All such refunds will be initiated by SavedBy through the Merchant's Online Store and are paid for solely by the Merchant (with no right to reimbursement, credit, or setoff against SavedBy).

(B) If the original order for a Returned to Sender Refund had a shipping cost displayed to the Customer on the Merchant's Online Store at the point of sale, SavedBy will be financially responsible for and pay for this listed shipping cost. If the Customer had received shipping for free, SavedBy will cover shipping at a rate of $10 for a domestic order and $14 for an international order, which such rates are subject to modification by SavedBy in its sole discretion from time to time.

(n) **"SavedBy Digital Product"** is the expanded customer service bundle the Merchant offers for sale to Customers through the Merchant's Online Store at the "checkout" or point of sale in connection with an online purchase. This bundle provides Customers with customer service solutions and package replacement features through an online platform that allows Customers to: (i) report physical loss of, or damage to, their product, (ii) request refunds, reorders and store credit from the Merchant, and (iii) track the status of product shipments or customer service inquiries.

(o) "**Services**" means the services described in Section 2.

(p) "**Store Credit**" means credit that can be applied to future purchases at the Merchant's Online Store, which is issued to the Customer in response to a Ticket that SavedBy determines in its sole discretion is eligible for store credit from the Merchant. The Store Credit amount for a particular order is equal to the full or partial price of the product or service purchased (which value shall be determined by SavedBy in its sole discretion), **plus** taxes, **plus** shipping costs. The Refund amount does **not** include the fee paid by the Customer for the original SavedBy Digital Product. All Store Credit will be initiated by SavedBy through the Merchant's Online Store and will be paid for solely by the Merchant.

(q) "**Term**" means the time period described in Section 3(a).

(r) **"Ticket"** means a customer service inquiry made to SavedBy by the Merchant or a Customer through the SavedBy Digital Product customer platform related to a package shipping/delivery issue that the Customer faces after purchasing product(s) from the Merchant's Online Store.

2. SERVICES PROVIDED; RESTRICTIONS.

a. Services**.** Subject to and conditioned on Merchant's payment of the Compensation (defined below) to SavedBy and Merchant's compliance with all the terms and conditions of this Merchant Agreement, the Merchant hereby retains SavedBy to provide the following services to the Merchant, and SavedBy hereby agrees to provide such services to the Merchant, according to the following terms (collectively, the "**Services**"):

i. addressing Customer complaints and providing customer service solutions and package replacement services for Customers on behalf of the Merchant with respect to shipping issues related to products purchased on the Merchant's Online Store;

ii. providing the Merchant with the right to use and access the SavedBy Digital Product software application to be displayed at the point of sale on the Merchant's Online Store so that Customers may buy the SavedBy Digital Product;

iii. providing the Merchant and its Customers the right to use and access an online platform through the Software that gives them the ability to, *inter alia*, create SavedBy accounts, file Tickets, communicate with SavedBy customer service representatives, and track the status of their orders and/or Tickets; and

iv. performing any other tasks that the Parties may agree to in a written, mutually executed "Project Proposal". Unless expressly stated otherwise in the Project Proposal, it shall be subject to the terms and conditions as set forth in this Merchant Agreement.

b. Restrictions. Merchant will not, and will not permit any individual or entity to, directly or indirectly: (i) use the SavedBy Digital Product, Software, or Services in any manner beyond the scope of rights expressly granted in this Merchant Agreement; (ii) modify or create derivative works of the SavedBy Digital Product, Software, Services or related documentation; (iii) frame, mirror, sell, resell, rent, or lease use of the SavedBy Digital Product, Software, or Services to any other person or entity, or otherwise allow any person or entity to use the Services for any purpose other than for the benefit of Merchant in accordance with this Merchant Agreement; (iv) use the SavedBy Digital Product, Software, or Services in any way or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property right or other right of any person or entity, or that violates any applicable law; (v) use the SavedBy Digital Product, Software, or Services to send spam or otherwise duplicative or unsolicited messages to third parties in violation of applicable law; (vi) use the SavedBy Digital Product, Software, or Services to send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs; (vii) access or search the SavedBy Digital Product, Software, or Services (or download any data or content contained in the SavedBy Digital Product, Software, or Services or transmitted through the SavedBy Digital Product, Software, or Services) through the use of any engine, software, tool, agent, device or mechanism (including spiders, robots, crawlers or any other similar data mining tools) other than features provided by SavedBy for use expressly for such purposes; (viii) interfere with or disrupt the integrity or performance of the SavedBy Digital Product, Software, Services or the data contained therein; (ix) reverse engineer, disassemble, decompile, decode, or otherwise attempt to gain unauthorized access to the SavedBy Digital Product, Software, Services, or related systems or networks; (x) access or use the SavedBy Digital Product, Software, or Services to develop, or have a third party develop, a product or service that is similar or competitive to the SavedBy Digital Product, Software, or Services; or (xi) use the SavedBy Digital Product, Software, or Services if Merchant is a direct competitor of SavedBy.

3. TERM OF MERCHANT AGREEMENT; TERMINATION

a. Term. The term of this Merchant Agreement (the "**Term**") will begin on the initial date that Services are provided, or the date that the Merchant creates an account on Merchant.SavedBy.io, whichever is earlier, and will remain in full force and effect indefinitely until terminated as provided in this Merchant Agreement.

b. Termination. This Merchant Agreement may be terminated at any time, by either Party, with or without cause, by giving 24 hours prior written notice to the other Party.

c. Effect of Termination.

i. The obligations of SavedBy under this Merchant Agreement will end upon the termination of this Merchant Agreement.

ii. Following termination of the Merchant Agreement, the Merchant shall continue to grant SavedBy the same level of access to its Online Store as the Merchant provided to SavedBy before the termination date for a period of up to 90 days so that SavedBy has the ability to, at SavedBy's option in the interest of protecting its goodwill, perform the Services paid for by the Merchant on or before the termination date. Notwithstanding the foregoing, upon termination of this Merchant Agreement, SavedBy has no obligation to address or resolve Customer Tickets or perform Services related to any orders placed by Merchant's Customers at any time—i.e., before, on or after the termination date.

iii. The Merchant understands and agrees that SavedBy has no ability or obligation to resolve Customer issues if Merchant terminates SavedBy's access to Customer accounts through Merchant's Online Store or if SavedBy otherwise loses access to Customer accounts through Merchant's Online Store.

iv. Termination shall entitle SavedBy to immediately invoice the Merchant, and be paid, for the Services provided. Upon receipt of such invoice, Merchant shall promptly remit to SavedBy all Compensation and other amounts due and payable to SavedBy pursuant to this Merchant Agreement. For the avoidance of doubt, termination of the Merchant Agreement shall not: (i) relieve the Merchant from its obligation to pay for the Services provided up to the point of termination, (ii) affect Merchant's obligation to pay all Compensation that may have become due before such termination, or (iii) entitle the Merchant to any refund.

v. Upon termination of this Merchant Agreement, Merchant shall immediately discontinue use of the SavedBy Digital Product, Software and related Services.

4. PERFORMANCE

a. Cooperation.

i. Merchant shall provide assistance as reasonably requested by SavedBy in connection with the installation, implementation, and configuration of the Services, including but not limited to, by promptly providing SavedBy with access to Merchant's Online Store.

ii. Merchant acknowledges that the ability of SavedBy to provide the Services as outlined in this Merchant Agreement requires the Merchant's cooperation with providing SavedBy with timely, adequate and accurate responses to requests for data, documents, information, materials and decisions. SavedBy shall be excused from performing any Services that are precluded or prevented by Merchant delays or refusals to provide such cooperation. Merchant shall be responsible for the accuracy, quality, integrity, legality, adequacy and reliability of all Merchant data that Merchant furnishes to SavedBy and any results obtained therefrom.

b. Online Store.

i. Merchant shall keep its Online Store in good working order by maintaining commercially reasonable uptime, functionality and accessibility in order for SavedBy to: (i) bill the Merchant; (ii) collect money from the Merchant; and (iii) process Refunds and Reorders through the Online Store.

ii. After a Customer completes an order on the Merchant's Online Store, the Merchant shall not subsequently add or remove the SavedBy Digital Product to or from that order. The Merchant must obtain SavedBy's prior written approval before editing, changing, removing, adding, or in any way altering the SavedBy Digital Product from a completed order in the Online Store.

c. Merchant's Compliance with Laws; Representations & Warranties. Merchant agrees to use the Services solely for proper business purposes in accordance with applicable laws and as contemplated by this Merchant Agreement. Merchant shall, and represents and warrants that it will, comply with all applicable laws and regulations related to the offering of the Services, Software, the SavedBy Digital Product, and any products or services that Merchant offers, markets, and provides to Customers on its Online Store, including, without limitation, laws and regulations governing data privacy, international communications and the exporting and importing of data. Merchant further represents and warrants that it will: (i) clearly and conspicuously disclose to Merchant's Customers the cost(s) of the Services and SavedBy Digital Product, as well as the total price of the applicable purchase, all in

accordance with applicable price disclosure and "junk fee" laws; (ii) ensure that Merchant's Customers affirmatively select and agree to be provided the Services, Software, or SavedBy Digital Product if sold at an extra charge, and that such services are not pre-selected for purchase; and (iii) comply with all applicable laws, regulations, and ordinances governing the marketing, offering, or sale of the Services, Software, SavedBy Digital Product, or Merchant's own goods or services (including, without limitation, consumer protection, false advertising, and unfair competition laws). Merchant also represents and warrants that it will take all commercially reasonable steps to ensure that any potential disputes and claims by Customers concerning their purchase of the Services, Software, or SavedBy Digital Product are governed by an enforceable arbitration agreement with an enforceable class-action waiver and reasonable mass arbitration protections, including, without limitation, ensuring that Customers receive conspicuous notice and provide assent to such terms.

d. Modifications. SavedBy may make any non-material changes to this Merchant Agreement, the SavedBy Digital Product, the Services and the Software that SavedBy determines in its sole discretion to be necessary. If SavedBy determines in its sole discretion that any such changes will cause a material change in the operation of their Services, SavedBy will provide the Merchant with 15 days prior written notice (which may be sent by email) of such changes. By agreeing to this Merchant Agreement, Merchant accepts the affirmative obligation to periodically review whether or not these terms and conditions have changed, and Merchant's continued acceptance of SavedBy's services shall be deemed an acceptance and agreement to be bound by such modifications, alterations, or updates.

e. Pricing. The Merchant agrees that the SavedBy Digital Product will be offered to Customers at the prices listed by SavedBy through the SavedBy Digital Product online platform. The Merchant will not offer any discounts on, or promotions with respect to, the SavedBy Digital Product, including, for example, coupon discounts, "buy one get one" specials, order discounts, or product discounts on the Merchant's Online Store. Before publishing the SavedBy Digital Product on its Online Store, the Merchant shall ensure that the SavedBy Digital Product will not be billed at any amount other than at the full price as directed by SavedBy through the SavedBy Digital Product online platform. If Merchant sells the SavedBy Digital Product at any price other than the price directed by SavedBy, SavedBy reserves the right to any remedy that it sees fit, including, without limitation: (i) billing the Merchant for the difference between the fully priced SavedBy Digital Product and the amount the Merchant billed its Customer on the discounted order; (ii) waiving all of SavedBy's Services obligations with respect to any order where the Merchant mispriced the SavedBy Digital Product, in which case Merchant agrees to assume such financial obligations or refund the Customer the discounted amount paid for the SavedBy Digital Product; and (iii) reducing the amount netted from SavedBy's Compensation (defined below) for any Reorder, Refund or Returned to Sender issued to a Customer who purchased a discounted SavedBy Digital Product by the amount of such discount.

f. Tickets. SavedBy strives to respond to Customer Tickets as quickly as reasonably possible, but makes no guarantees regarding the timeframe needed to make a decision on a Ticket, the number of communications needed with the Merchant's Customer and/or the Merchant to make a decision on a Ticket or whether a Ticket is eligible for customer service solutions under the SavedBy Digital Product. Merchant understands and agrees that SavedBy may require Customers to create a SavedBy account before a Ticket can be submitted or resolved.

5. CURRENCY. Except as otherwise provided in this Merchant Agreement, all monetary amounts referred to in this Merchant Agreement are in USD (U.S. Dollars).

6. COMPENSATION.

a. As full and complete compensation for performing all Services specified in this Merchant Agreement, Merchant shall compensate SavedBy as follows (the "**Compensation**"):

i. Each billing period, the Merchant shall pay SavedBy the Net SavedBy Collected. To determine the Net SavedBy Collected amount, the Merchant will remit to SavedBy the Gross Sales Generated, and SavedBy will "net" the amounts paid by Merchant to Customers for Refunds, Reorders, Store Credit and Returned to Senders from the Gross Sales Generated. SavedBy's calculations also will incorporate any negative Net Savedby Collected that is carried over from preceding billing periods, as permitted under Section 6(a)(iii) below.

ii. In the event any taxes are imposed by any taxing authority or otherwise required to be withheld or deducted from the Merchant's payment of the Compensation to SavedBy, the Merchant shall be responsible for any amounts relating to such taxes for the period(s) covered by this Agreement and, in the case of any such taxes required to be withheld or deducted, the amount of the net payment, after tax, to SavedBy shall be equal to the Compensation that SavedBy would have received were such payment not subject to tax.

iii. If the Net Savedby Collected is negative at the end of a billing period, SavedBy will carry over this negative amount to the next billing period. A negative balance can be carried forward for up to three consecutive billing periods. After the third consecutive billing period, SavedBy will pay the Merchant the full amount of the negative balance, up to a maximum balance of $5,000, the remainder of which shall be waived and otherwise discharged.

b. Taxes. The SavedBy Digital Product offered on the Merchant's Online Store will be similar to a consignment relationship, wherein the SavedBy Digital Product will be sold through the Merchant's Online Store directly. The Merchant is responsible for collecting from Customers and remitting all applicable taxes on Compensation and charges related to the SavedBy Digital Product to the proper tax authorities, including, without limitation, any and all federal, state, local, sales, use and value-added taxes. It is the Merchant's responsibility to determine what taxes apply to the SavedBy Digital Product sold to Customers on the Merchant's Online Store and to timely pay those amounts. SavedBy will not collect taxes related to the SavedBy Digital Product from the Merchant, or on behalf of the Merchant from anyone else (including Customers). The Merchant is financially responsible for, and indemnifies and holds SavedBy harmless from, any liabilities related to taxes on a Savedby Digital Product that is sold on the Merchant's Online Store.

c. Invoices. Invoices submitted by SavedBy to the Merchant are due upon receipt. Any amounts billed but not paid will be subject to a delinquency fee when such amounts have been outstanding for more than 60 days. All amounts past due over 60 days will be subject to interest charges from the date due until paid, at the rate of one percent (1%) per month, or the maximum amount payable under applicable law, whichever is greater. Merchant has no right of offset or withholding under this Merchant Agreement except as expressly stated otherwise.

d. Termination. In the event that this Merchant Agreement is terminated by the Merchant prior to completion of the Services in accordance with Section 3(b), but where the Services have not been fully performed, SavedBy will be entitled to pro rata payment of the Compensation up to the date of termination and may invoice the Merchant on a pro rata basis for work done up to and including the termination date.

e. Modification. SavedBy expressly reserves the right to change or modify its prices and fees and to institute new prices and fees at any time during the Term, and such changes or modifications shall be effective immediately upon the date such changes are posted online at the Site.

7. CONFIDENTIAL INFORMATION. Each Party agrees that it will not disclose, divulge, reveal, report or use for any purpose, except as expressly permitted by this Merchant Agreement and as necessary to perform its obligations or exercise its rights under this Merchant Agreement, any Confidential Information which the Party (or its agents) has obtained, except as authorized by the other Party or as required by law. These obligations of confidentiality will apply during the Term and will survive indefinitely upon termination of this Merchant Agreement. Each Party owns and shall retain ownership of its Confidential Information.

8. OWNERSHIP OF INTELLECTUAL PROPERTY

a. Limited License. The Merchant is granted a non-exclusive, non-transferable, non-sublicensable, terminable and limited-use license to use the SavedBy Digital Product, Software, and Services solely for the Merchant's internal business operations as contemplated by this Merchant Agreement (and not in any resale or outsourcing capacity).

b. Intellectual Property Rights. All rights, title and interest in the Intellectual Property and related material that is licensed under this Merchant Agreement, and any deliverables provided, developed or produced under this Merchant Agreement, including but not limited to the SavedBy Digital Product, Services, and Software (the "**SavedBy IP**") including any corrections, updates, adaptations, enhancements to either or authorized copies of the SavedBy IP, is owned by and shall remain the sole property of SavedBy. SavedBy expressly reserves all rights with respect to the SavedBy IP not expressly granted to Merchant by virtue of Section 8(a) above. SavedBy may, in its sole discretion add, delete, or change some or all the features included within the Services, Software and SavedBy Digital Product at any time without affecting any commitments previously agreed to in this Merchant Agreement. Without limiting the generality of the foregoing, Merchant acknowledges and agrees that (a) Merchant shall not acquire any rights, express or implied, in the SavedBy IP under this Merchant Agreement, and (b) any improvements or modifications to the SavedBy Digital Product, Software, Services or other SavedBy IP made for Merchant's benefit shall in no way affect or diminish SavedBy's right, title, and interest in and to the SavedBy IP. Merchant acknowledges that SavedBy may create original works for third parties that may appear similar to a deliverable provided hereunder. Merchant agrees that, so long as such original work does not embody and is not created with reference to any of Merchant's Confidential Information, SavedBy will not be prevented from independently creating original, but similar, works for the benefit of third parties or incorporating a deliverable as part of the general release of the SavedBy Digital Product, Software, and Services.

c. Restrictions. The license granted to Merchant in Section 8(a) above is subject to the condition that Merchant does not (and does not allow any affiliate or third party to) (a) copy, modify, adapt, tamper with, or otherwise make any changes to the Services, Software or SavedBy Digital Product, or any part thereof; (b) write or develop any derivative works based upon the Services, Software or SavedBy Digital Product; (c) reverse engineer, disassemble, decompile, translate, or otherwise attempt to discover any source code, algorithms, tags, specifications, architecture, structure, or other elements of the Services, Software or SavedBy Digital Product, in whole or in part, for competitive purposes or otherwise; (d) use unauthorized versions of the Services, Software or SavedBy Digital Product, including, without limitation, for the purpose of building a similar or competitive product or service or for obtaining unauthorized access to the SavedBy Digital Product, Software, or Services; (e) sell, resell, distribute, host, lease, rent, license, or sublicense, in whole or in part, the Services, Software or SavedBy Digital Product or use the Services, Software or SavedBy Digital Product to provide processing services to third parties, or otherwise use the same on a 'service bureau' basis; (f) allow access to, provide, divulge, or make available the SavedBy IP or SavedBy's Confidential Information to any user other than authorized users, (g) obliterate, alter, or remove any proprietary or Intellectual Property notices from the Services, Software or SavedBy Digital Product; (h) disclose or publish, without SavedBy's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Services, Software or SavedBy Digital Product; or (i) otherwise use or copy the same except as expressly permitted in this Merchant Agreement.

d. Violations. Each Party shall promptly report any violation of this Section 8 to the other Party and shall take such further steps as may be reasonably requested by the reporting Party to remedy any such violation and prevent future violations.

9. CAPACITY/INDEPENDENT CONTRACTOR. The Parties expressly agree that SavedBy is providing the Services under this Merchant Agreement as an independent contractor and not as an employee. SavedBy and the Merchant acknowledge that this Merchant Agreement does not create a partnership or joint venture between them, and is exclusively a contract for service. The Merchant is not required to pay, or make any contributions to, any social security, local, state or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for SavedBy during the Term. SavedBy is responsible for paying, and complying with reporting requirements for, all local, state and federal taxes related to payments made to SavedBy under this Merchant Agreement.

10. RIGHT OF SUBSTITUTION

a. Except as otherwise provided in this Merchant Agreement, SavedBy may, at SavedBy's sole and absolute discretion, engage a third party sub-contractor to perform some or all of SavedBy's obligations under this Merchant Agreement. The Merchant shall not hire or engage any third parties to assist with the provision of the Services.

b. In the event that SavedBy hires a sub-contractor pursuant to this Section 10:

i. SavedBy will pay the sub-contractor for its services, and the entire Compensation will remain payable by the Merchant to SavedBy.

ii. For the purposes of this Section 10, the sub-contractor is an agent of SavedBy.

11. AUTONOMY. Except as otherwise provided in this Merchant Agreement, SavedBy will have full control over working time, methods and decision-making in relation to provision of the Services in accordance with the Merchant Agreement. SavedBy will work autonomously and not at the direction of the Merchant. However, SavedBy will be responsive to the reasonable needs and concerns of the Merchant.

12. NOTICE. All notices, requests, demands or other communications required or permitted by the terms of this Merchant Agreement will be given in writing and delivered to the Parties at the following addresses:

a. Merchant: The physical address or email address as publicly found on the website of the Merchant.

b. SavedBy:
2255 Sheridan BLVD, Unit C#246
Edgewater CO, 80214

or to such other address as either Party may from time to time notify the other, and such communications will be deemed to be properly delivered at the following times, as the case may be: (a) immediately upon being served personally, (b) two days after being deposited with the postal service if served by registered mail, and (c) the following day after being deposited with an overnight courier.

13. INDEMNIFICATION. Merchant agrees to indemnify, defend, and hold SavedBy harmless from and against any and all claims, demands, losses, liabilities, actions or causes of action, assessments, damages, fines, taxes, interest, and penalties asserted by any Customer, person, or entity against SavedBy or against any of SavedBy's affiliates, officers, directors, employees, agents, successors, assigns, licensors, and suppliers, and the reasonable costs and expenses of defending against such claims (including, without limitation, the reasonable expenses of any investigation and the reasonable fees and disbursements of counsel, accountants, and other experts) (collectively, "**Losses**") and threatened Losses arising from, in connection with, or based upon allegations involving: (a) a violation of any law arising from any use or attempted use of the SavedBy Digital Product, Software, or Services, or alleged misuse of information derived from any of the SavedBy Digital Product, Software, or Services, by Merchant or its employees or agents; (b) a violation of any applicable law governing the marketing, offering, or sale of the SavedBy Digital Product, Software, or Services (including, without limitation, false advertising, consumer protection, and unfair competition laws concerning pricing disclosures and "junk" or "hidden" fees); (c) violation, misappropriation or infringement of the SavedBy IP; (d) a breach of this Merchant Agreement by Merchant or its employees, subcontractors or agents; (e) unauthorized disclosure of SavedBy's Confidential Information; or (f) contentions that, if true, would constitute Merchant's breach of any of its representations, warranties, covenants, or obligations under this Merchant Agreement. In all such cases, SavedBy may choose to participate in the defense or settlement of any such claim at its own expense and with its own choice of counsel in which case Merchant will cooperate in good faith or, if Merchant refuses to fulfill its obligation of defense, SavedBy may defend itself and seek reimbursement from Merchant. This Section 13 shall survive the termination of this Merchant Agreement.

14. DISCLAIMERS; LIMITATION OF LIABILITY

a. Merchant agrees and acknowledges that: (i) use of the Services is entirely at Merchant's own risk, and that SavedBy has made no representations or warranties regarding (a) any data that may be provided to Merchant via the Services, Software or SavedBy Digital Product or the accuracy of any information in such data, or (b) the ability of Merchant to provide or deliver any product or service or to pay for any product or service using the Services, Software or SavedBy Digital Product; and (ii) the commitment in this Section 14(a) is given to Merchant only and shall not apply and be void to the degree that a malfunction or failure occurs because or as a result of (a) the Software or SavedBy Digital Product not being used in accordance with SavedBy's instructions; (b) the Software or SavedBy Digital Product having been altered, modified or converted by Merchant without the prior written approval of SavedBy; (c) the malfunctioning of Merchant's or a third-party's hardware or software or site preparation, or site or environmental conditions; (d) accident, abuse or misapplication of the Software or SavedBy Digital Product; (e) the Software or SavedBy Digital Product having been damaged; or (f) the Software, SavedBy Digital Product, or a portion thereof, has become inoperative due to any other causes outside the control of SavedBy.

b. MERCHANT ACKNOWLEDGES AND AGREES THAT THE SOFTWARE AND SAVEDBY DIGITAL PRODUCT, THIRD PARTY SOFTWARE AND SERVICES ARE PROVIDED BY SAVEDBY "AS IS" AND THAT EXCEPT AS MAY BE SPECIFICALLY PROVIDED IN THIS SECTION 14, SAVEDBY AND ITS LICENSORS AND SUPPLIERS HAVE MADE NO REPRESENTATIONS, AND HAVE EXPRESSLY DISCLAIMED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES OR REPRESENTATIONS OF EVERY KIND OR NATURE, EITHER EXPRESS, IMPLIED, OR STATUTORY, AS TO THE SAVEDBY DIGITAL PRODUCT AND SOFTWARE AND ANY ANCILLARY OR RELATED PRODUCTS OR SERVICES INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, USAGE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. SAVEDBY DOES NOT WARRANT THAT (I) THE SAVEDBY DIGITAL PRODUCT AND SOFTWARE WILL MEET MERCHANT'S REQUIREMENTS, (II) THE SAVEDBY DIGITAL PRODUCT, SOFTWARE AND ANY THIRD PARTY SOFTWARE OR OPEN SOURCE SOFTWARE USED IN OR WITH THE SOFTWARE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS, OR DATA NOT PROVIDED BY SAVEDBY

(EXCEPT AS MAY EXPRESSLY BE SPECIFIED IN WRITING BY SAVEDBY), (III) THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR (IV) ALL ERRORS WILL BE CORRECTED.

c. SAVEDBY SHALL NOT BE LIABLE TO MERCHANT FOR, AND MERCHANT EXPRESSLY WAIVES ANY RIGHT TO SEEK, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER DAMAGES OF ANY TYPE OR KIND FROM SAVEDBY OR SAVEDBY'S EMPLOYEES, LICENSORS, SUPPLIERS, AGENTS OR REPRESENTATIVES ("**SAVEDBY PARTIES**") ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SOFTWARE, SAVEDBY DIGITAL PRODUCT, SERVICES OR THIS MERCHANT AGREEMENT, INCLUDING, WITHOUT LIMITATION, CLAIMS FOR LOSS OF BUSINESS, REVENUE, PROFITS, OR GOODWILL, THE USE OR INABILITY TO USE THE SERVICES, FROM ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICES, ANY INTERRUPTION, INACCURACY, ERRORS, OR OMISSIONS, OR FOR ANY ACT OR FAILURE TO ACT BY THE SAVEDBY PARTIES, WHETHER SUCH CLAIMS ARE ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE, EVEN IF SPECIFICALLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

d. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SAVEDBY SHALL NOT BE LIABLE TO THE MERCHANT OR CUSTOMERS FOR ANY FINES, PENALTIES, RESTITUTION, DISGORGEMENT, DAMAGES OR OTHER MONETARY RELIEF IMPOSED UPON THE MERCHANT BY ANY COURT OR GOVERNMENTAL AUTHORITY, OR FOR ANY DAMAGES ARISING OUT OF OR RELATING TO EITHER PARTY'S ALLEGED OR ACTUAL NONCOMPLIANCE WITH APPLICABLE LAWS, RULES OR REGULATIONS GOVERNING PRICING DISCLOSURES, FEE TRANSPARENCY OR SO-CALLED "JUNK FEE" OR SIMILAR CONSUMER PROTECTION REQUIREMENTS. FOR THE AVOIDANCE OF DOUBT, EACH PARTY SHALL REMAIN SOLELY RESPONSIBLE FOR ITS OWN COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS, AND NOTHING IN THIS SECTION SHALL BE CONSTRUED AS CREATING ANY INDEMNIFICATION OBLIGATION FOR THE OTHER PARTY'S REGULATORY VIOLATIONS EXCEPT AS EXPRESSLY SET FORTH ELSEWHERE IN THIS AGREEMENT.

e. IN NO EVENT SHALL SAVEDBY'S OR ANY OF ITS AFFILIATE'S TOTAL AGGREGATE LIABILITY TO MERCHANT OR ITS AUTHORIZED USERS FOR ANY CLAIM IN CONNECTION WITH THIS MERCHANT AGREEMENT EXCEED THE AGGREGATE AMOUNT OF COMPENSATION ACTUALLY REMITTED BY MERCHANT TO SAVEDBY IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY ON WHICH THE CLAIM OR LIABILITY IS BASED, AND WHETHER OR NOT SAVEDBY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 14 ARE AN ESSENTIAL PART OF THE BASIS OF THE BARGAIN BETWEEN SAVEDBY AND MERCHANT AND WILL APPLY EVEN IF THE REMEDIES AVAILABLE HEREUNDER ARE FOUND TO FAIL THEIR ESSENTIAL PURPOSE.

f. IF ANY APPLICABLE STATE OR JURISDICTION PROHIBITS THE EXCLUSIONS OR LIMITATIONS OF LIABILITY SET FORTH ABOVE, EACH OF THE SAVEDBY PARTIES' LIABILITY IN SUCH CASE WILL BE LIMITED TO THE FURTHEST EXTENT PERMITTED BY LAW, INCLUDING FOR ANY CLAIMS ASSERTED BY THIRD PARTIES AGAINST MERCHANT OR ANY SAVEDBY PARTY.

15. PUBLICITY. Merchant grants SavedBy the right to use, in SavedBy's online and offline promotional and marketing materials, the name, logos, and other marks of Merchant as a user of Services, in connection with SavedBy's marketing and promotional efforts, including to conduct case-study activities described in this Section 15, for so long as the Merchant uses such Services (and for a reasonable period thereafter to remove Merchant's name and marks from SavedBy's website). Merchant agrees to participate in a case study and provide a testimonial about Merchant's use of the Services, which may be used on SavedBy's website and marketing materials. SavedBy shall not publicly distribute final versions of such marketing content without Merchant's prior written consent, provided that such consent shall not be unreasonably withheld or delayed.

16. DISPUTE RESOLUTION.

a. Mediation and Arbitration. Except for disputes that are subject to a small claims court of competent jurisdiction, the Parties shall attempt to resolve any dispute or claim arising out of or related to this Merchant Agreement (including, without limitation, the Services, Software, SavedBy Digital Product, or rights or licenses granted hereunder) through mediation with a third-party neutral before proceeding with litigation in court or arbitration. If mediation is unsuccessful, THE DISPUTE SHALL BE RESOLVED THROUGH BINDING ARBITRATION WITH THE AMERICAN ARBITRATION ASSOCIATION ("**AAA**") UNDER ITS COMMERCIAL RULES IN EFFECT AS OF THE DATE OF THE DISPUTE.[1] The sole and exclusive venue for any such arbitration is the AAA office in Denver, Colorado, unless the Parties agree to a different location or to remote proceedings.

[1] https://www.adr.org/media/ueonklrv/2026_commercial-arbitration-rules-mediation-procedures.pdf

b. Class Action Waiver. Any proceedings to resolve or litigate any dispute between the Parties in any forum will be conducted solely on an individual basis. Neither Party may seek to have any dispute between them heard as a class action or in any other proceeding in which either Party acts or proposes to act in a representative capacity. No arbitration or proceeding will be combined with another without the prior written consent of all Parties to all affected arbitrations or proceedings.

c. Based on this arbitration agreement and class waiver, each Party also waives its right to a trial by jury and its right to participate as a class member in any proceeding to resolve any dispute covered by Sections 16(a) or 16(b) above.

d. Merchant acknowledges and agrees that infringement of SavedBy IP or unauthorized disclosure of SavedBy's Confidential Information may cause SavedBy to incur irreparable harm and significant injury that would be difficult to ascertain and would not be compensable by damages alone. Merchant thus agrees that, in addition to any other rights and remedies that it may have at law or otherwise with respect to such infringement or unauthorized disclosure, SavedBy will have the right to seek specific performance, injunctive relief, or other appropriate equitable relief in court (i.e., outside arbitration). Any such lawsuit must be brought exclusively in the United States District Court for the District of Colorado or the courts of the State of Colorado, in each case located in the city of Denver, Colorado, unless the Parties agree otherwise. Each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

17. ATTORNEY'S FEES AND COLLECTIONS.

a. If either Party incurs any legal fees associated with the enforcement of this Merchant Agreement or any rights under this Merchant Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and any court, arbitration, mediation and other litigation expenses from the other Party.

b. If SavedBy incurs any costs, expenses or fees, including reasonable attorney's fees and professional collection services fees, in connection with the collection or payment of any amounts due it under this Merchant Agreement, Merchant agrees to reimburse SavedBy for all such costs, expenses and fees.

18. INTERNATIONAL CUSTOMERS. The SavedBy Digital Product can be accessed from countries around the world and may contain references to Services that are not available in all countries. These references do not imply that SavedBy intends to announce or promote the availability of such Services in all countries. The Services are controlled and offered by SavedBy from its facilities in the United States of America. SavedBy makes no representations that the Services are appropriate or available for use in other locations. Those who access or use the Services from other countries do so at their own volition and are responsible for compliance with local law(s).

19. SURVIVAL. This Section 19 and Sections 1, 6, 7, 8, 12, 13, 14, 15, 16, 17 and 20, and any other term that by its nature should survive the termination or expiration of this Merchant Agreement, shall survive any termination or expiration of this Merchant Agreement.

20. MISCELLANEOUS.

a. Entire Agreement. This Merchant Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Merchant Agreement and supersedes all prior and contemporaneous understandings, agreements and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Merchant Agreement and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, this Merchant Agreement, and (ii) second, any other documents incorporated herein by reference.

b. Governing Law**.** This Merchant Agreement will be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Delaware.

c. Waiver**.** The waiver by either Party of a breach, default, delay or omission of any of the provisions of this Merchant Agreement by the other Party will not be construed as a waiver of any subsequent breach of the same or other provisions. In addition, any provision of services by SavedBy while any Compensation by Merchant remains overdue and outstanding shall be treated as a professional courtesy for which additional Compensation may be owed, but not as a waiver of any right by SavedBy to receive amounts owed.

d. Force Majeure**.** Neither Party will be liable for performance delays or for failure of performance hereunder, excluding the payment of money, to the extent that performance of such Party's obligations or attempts to cure any breach under this Merchant Agreement are delayed or prevented as a result of any event, circumstance or cause beyond such Party's reasonable control.

e. Severability**.** In the event that any provision of this Merchant Agreement is held to be invalid, illegal or unenforceable in whole or in part, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the Parties, and the remaining provisions of this Merchant Agreement will remain in full force and effect.

f. Assignment. Merchant shall not assign or transfer its obligations under this Merchant Agreement, by operation of law or otherwise, without the prior written consent of SavedBy, and any attempt by Merchant to do so without such consent will be void. Subject to the foregoing, this Merchant Agreement will inure to the benefit of and be binding on the Parties and their respective heirs, executors, administrators and permitted successors and assigns.

g. Export Regulation. SavedBy provides services and uses software and technology that may be subject to U.S. export controls administered by the U.S. Department of Commerce, the U.S. Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the United States and other applicable laws. Merchant acknowledges and agrees that the Software, SavedBy Digital Product and the Services shall not be used in, and none of the underlying information, software or technology may be transferred or otherwise exported or re-exported to, countries which the United States, Switzerland, and/or the European Union maintains an embargo (collectively, "**Embargoed Countries**"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "**Designated Nationals**"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Services, Merchant represents and warrants that Merchant is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. Merchant agrees to comply with all U.S., Swiss, and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

h. Titles/Headings. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Merchant Agreement.