

## KingsPay Merchant Terms of Service

*[Last Updated: June 1, 2020]*

These Merchant Terms of Service (the "**Agreement**") are a legal agreement between Kinging LLC, a United States limited liability company established and registered under the relevant laws of the state of Delaware ("**KingsPay**") and you ("**Merchant**"). You should review this entire Agreement before you decide whether to accept this Agreement and continue with the registration process.

BY CLICKING "I AGREE TO THE TERMS OF SERVICE" BELOW AND CLICKING ON THE "AGREE AND PROCEED" BUTTON YOU AGREE TO BE BOUND BY THIS AGREEMENT.

### SECTION 1. DEFINED TERMS

**1.1 "Beta Features"** means those features of the Service which are identified by KingsPay as beta or unsupported in KingsPay's then current technical documentation, including without limitation the Integration Guidelines for the version of the Service that Merchant has implemented.

**1.2 "Brand Features"** means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party.

**1.3 "Buyer"** means a person or entity that registers to use the Service to make payments using a Payment Account.

**1.4 "Disputes"** means any disagreements, litigation, or other disputes between Merchant and a Buyer or between Merchant and a third party arising from the use of the Service, but excluding Service Disputes.

**1.5 "Intellectual Property Rights"** means any and all rights existing from time to time under patent law, copyright law, semiconductor chip protection law, moral rights law, trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, as well as, any and all applications, renewals, extensions, restorations and re-instatements thereof, now or hereafter in force and effect worldwide.

**1.6 "Payment Account"** means the credit card account, debit card account or other payment instrument that is registered by a Buyer with the Service and accepted by KingsPay to facilitate the processing of Payment Transactions.

**1.7 "Payment Gateway Provider"** means Stripe, Paystack or any other payment gateway services provider that may be engaged by KingsPay.

**1.8 "Payment Transaction"** means the processing of a payment through the Service that results in the debiting or charging of the Purchase Amount to a Buyer's Payment Account and the issuance of funds to Merchant's Settlement Account.

**1.9 "Policies"** means the various policies, guidelines, and other terms and conditions that are referenced in this Agreement but are not expressly set forth in this Agreement. The Policies may be updated from time to time by KingsPay.

**1.10 "Products"** mean any digital or physical merchandise, goods, or services offered by Merchant that a Buyer may pay for using the Service.

**1.11 "Purchase Amount"** means the monetary amount of a Payment Transaction, which includes any taxes, shipping charges, handling charges, or other fees that are charged to the Buyer as part of the Payment Transaction.

**1.12 "Merchant Website"** means the website pages of Merchant.

**1.13 "Service"** means the service, described in this Agreement, that facilitates the processing of Payment Transactions on behalf of Merchant to complete a payment for a purchase between Merchant and Buyer.

**1.14 "Service Disputes"** mean any disagreements, litigation, or other disputes between KingsPay and Buyers arising solely from an error in the functioning of the Service.

**1.15 "Service Fees"** means 1% of the value of each Payment Transaction (as may be revised by KingsPay from time to time). For the avoidance of doubt, this fee shall be exclusive of any additional charges that may be imposed by a Payment Gateway Provider or other third party for the provision of any ancillary services in connection with a Payment Transaction.

**1.16 "Settlement Account"** means the deposit account of Merchant maintained at a financial institution located in Merchant's country of registration that is designated by Merchant and approved by KingsPay for receipt of funds from the processing of Payment Transactions through wire transfer or other form of electronic funds transfer (collectively EFT).

## SECTION 2. SERVICE FEATURES AND DESCRIPTION

**2.1 Service Description.** Merchant acknowledges and agrees that:

*(i) Merchant's sales of Products are transactions between Merchant and the Buyer and not with KingsPay or any of KingsPay's affiliates;*

*(ii) KingsPay is a third-party service provider facilitating Payment Transactions for Merchant and is not a party to any Payment Transaction;*

*(iii) KingsPay is not a Buyer or a seller in connection with any Payment Transaction;*

*(iv) KingsPay will not be responsible for and does not control any aspect of the Products or the description of the Products; and*

*(v) KingsPay will not be responsible for and does not control if a Buyer will complete the purchase of or payment for Products. When a Buyer seeks to make a purchase with a Payment Account, the Service will process the Payment*

*Transaction on behalf of Merchant through the appropriate payment processing network, including without limitation credit card or debit card networks as described below.*

**2.2 Permissible Payment Transactions.** Merchant may only use the Service to process a Payment Transaction for a Product that is purchased by a Buyer through a legitimate, bona fide sale of the Product. The Service may not be used to process a Payment Transaction for Merchant, or otherwise transfer money between a Buyer and Merchant, that does not directly result from a Buyer's purchase of a Product. Merchant may not use the Service to provide cash advances to Buyers or to facilitate the purchase by Buyers of cash equivalents (e.g., travelers checks, prepaid cards, money orders); provided however, that Merchant may use the Service to facilitate the purchase by Buyers of a gift certificate or stored value card as permitted by the Policies. KingsPay may establish general practices and limits concerning use of the Service, including without limitation individual or aggregate transaction limits on the dollar amount or number of Payment Transactions during one or more specified time periods. Merchant may not use the Service to process Payment Transactions in connection with an illegal transaction or the sale or exchange of any illegal or prohibited goods or services, including without limitation prohibited Products as set forth in the Content Policies.

**2.3 Limitations on the Use of Service.** Merchant must comply with the Policies and any other limits concerning use of the Service as updated by KingsPay from time to time, including without limitation;

*(i) KingsPay requirements for data security and privacy, including the Privacy Policy; or*

*(ii) operating rules and/or policies of the Payment Gateway Providers, card associations, schemes or networks that are used to process the Payment Transactions.*

*KingsPay has the right:*

*(a) to change, suspend or discontinue the Service, in whole or in part, as necessary to perform maintenance or updates to the Service; and*

*(b) to impose limits on certain features or restrict access to parts or all of the Service without notice and without liability.*

*KingsPay may decline to process any Payment Transaction in connection with, among other reasons, fraud prevention activities, applicable law, or KingsPay policies.*

**2.4 Prohibited Actions.** Unless expressly permitted in writing by KingsPay, Merchant may not:

*(a) establish a minimum or maximum Purchase Amount as a condition for Buyer's use of the Service to pay for a Product;*

*(b) require Buyer to provide Merchant with the account numbers of any credit card, debit card or other payment instrument;*

*(c) add any Service use surcharge to a Payment Transaction;*

*(d) separately process as a Payment Transaction the amount of any tax applicable to a purchase of a Product;*

~~(e)~~ submit to the Service a Payment Transaction that was previously returned as a chargeback; or

~~(f)~~ permit the use of the Service for payment of any debt owed to Merchant by Buyer.

**2.5 Payment Transaction Authorization.** Merchant acknowledges that the receipt of an authorization for a Payment Transaction indicates only that, as of the date of the authorization, the underlying Payment Account has sufficient credit with the card issuer for the amount of the Purchase Amount. Merchant acknowledges that the authorization is not a confirmation of the Buyer's identity; nor is an authorization a guarantee by KingsPay that the transaction will not be subject to a chargeback or other reversal.

**2.7 Beta Features.** From time to time, KingsPay may make Beta Features available to Merchant as part of the Service, which are provided "as is." Merchant's use of Beta Features is solely at Merchant's own risk. KingsPay reserves the right, in its sole discretion, to include or cease providing Beta Features as part of the Service at any time.

### SECTION 3. SERVICE IMPLEMENTATION

**3.1 Implementation of Service.** Merchant agrees not to use the Service through websites other than the Merchant Websites. KingsPay at all times reserves approval authority as to the implementation of the Service on each Merchant Website, and KingsPay may upon notice suspend Merchant's use of the Service until Merchant corrects implementation issues as reasonably specified by KingsPay.

**3.2 Implementation Setup.** Merchant agrees to provide current, complete and accurate registration information for the Service and to maintain and promptly update the information. Merchant will set up and maintain a Settlement Account that is capable of receiving funds through electronic funds transfer. Merchant authorizes KingsPay to confirm that the Settlement Account is in good standing with the financial institution, including by submitting a request for a payment authorization and/or a low monetary credit to the Settlement Account. Merchant authorizes KingsPay to reconfirm the Settlement Account any time the account information is changed. Merchant also authorizes KingsPay to obtain from time to time a credit report and to otherwise make credit or other background inquiries on Merchant as KingsPay deems appropriate to assess Merchant's eligibility for continued use of the Service. KingsPay may require Merchant to provide additional information from time to time as a condition of Merchant's continued use of the Service in connection with a credit or other background inquiry.

**3.3 Payment Gateways.** While KingsPay provides you with an interface and platform to receive funds, Merchant may be required to register with a Payment Gateway Provider for payment processing and deposit into your Settlement Account. KingsPay is an independent entity with no legal affiliations with either Paystack or Stripe; as such, KingsPay shall not be responsible for decisions made by a Payment Gateway Provider. Merchants are encouraged to read through and thoroughly understand the

terms of service, terms of use and privacy policy of their payment gateway of choice. KingsPay shall not be responsible for liabilities arising out of or connected to payment gateways.

**3.4 Implementation Updates.** Merchant will provide KingsPay with sixty (60) days advance notice of any change to a Merchant Website or the code or technology used to implement the Service on a Merchant Website that could reasonably be expected to adversely affect Merchant's implementation of the Service; provided that giving notice will not relieve Merchant of its obligations under this Agreement. If KingsPay updates the technical or implementation specifications for the Service, Merchant will implement the updates as soon as reasonably practical, but no later than ninety (90) days of receiving notice of the updates. If KingsPay updates its look and feel or branding specifications, Merchant will implement the updates as soon as reasonably practical, but no later than thirty (30) days of receiving notice of the updates.

**3.5 Support.** Prior to making any support request to KingsPay, Merchant will first use reasonable efforts to resolve the problem on its own without any escalation to KingsPay. Thereafter, Merchant may submit a written request for technical support via the methods specified by KingsPay. Any support that Merchant provides to Buyers will be at Merchant's own expense. Merchant agrees that any telephone communications between Merchant and KingsPay related to the support or operation of the Service may be recorded by KingsPay for quality assurance and training purposes.

## SECTION 4. ADDITIONAL SERVICE TERMS

**4.1 KingsPay Not A Banking Institution.** Merchant hereby acknowledges and agrees that:

- (i) KingsPay offers the Service to facilitate the processing of Payment Transactions in connection with Product purchases by Buyers,*
- (ii) KingsPay processes Payment Transactions on behalf of Merchant,*
- (iii) KingsPay is not a bank or other financial institution and,*
- (iv) funds held by KingsPay or its service providers (including any bank service providers) in connection with the processing of Payment Transactions are not deposit obligations of Merchant and are not insured for the benefit of Merchant by the Nigeria Deposit Insurance Corporation or any other governmental agency.*

**4.2 Unclaimed Property.** Merchant acknowledges and agrees that if:

- (i) KingsPay is holding funds that are due to Merchant arising from a Payment Transaction processed through the Service or otherwise,*
- (ii) KingsPay is unable to contact Merchant and*
- (iii) KingsPay has no record of Merchant's use of the Service for several years, then KingsPay may be required under applicable law to report the balance of such funds as unclaimed property. In the event of the foregoing, KingsPay will try to locate Merchant at the Merchant's mailing address shown in KingsPay's records and, if KingsPay is unable to locate Merchant, Merchant acknowledges and agrees that KingsPay may be required to deliver any such funds to the applicable*

*state as unclaimed property; provided, however that KingsPay may deduct a dormancy fee and other administrative charges from such unclaimed funds, as permitted by applicable law.*

**4.3 No Endorsement.** Merchant acknowledges that KingsPay does not endorse the Merchant Website, any of the information or other content appearing on the Merchant Website or provided by Merchant to KingsPay ("**Merchant Content**"), or any of the Products. Merchant agrees not to state or imply any endorsement by KingsPay on the Merchant Website or otherwise. To the extent that Merchant Content appears within the Service, KingsPay reserves the right to modify or remove the Merchant Content at its sole discretion.

**4.4 Buyer Identity.** KingsPay has no responsibility to Merchant to investigate the background or confirm the identity of Buyers, except to the extent required by applicable law. KingsPay may offer a feedback or other ranking system to assist Merchant in evaluating Buyers or to assist Buyers in evaluating Merchant. Merchant acknowledges that any feedback or ranking system represents solely the opinion of third parties, and is not an opinion, representation, or warranty by KingsPay.

**4.5 Disputes.** Merchant is solely responsible for Disputes and KingsPay is not a party to and will not be responsible for any Disputes. With respect to Disputes, Merchant may be subject to any chargeback resolution policy and other dispute procedures as maybe provided by KingsPay from time to time. KingsPay may provide tools to facilitate communication between Merchant and a Buyer to resolve Disputes. If Merchant and a Buyer are unable to resolve a Dispute, KingsPay may mediate the Dispute upon either party's request and may propose a non-binding solution at KingsPay's sole discretion. KingsPay is solely responsible for Service Disputes and Merchant is not a party to and will not be responsible for any Service Disputes; provided, that Merchant agrees to provide reasonable assistance to KingsPay in resolving Service Disputes.

## SECTION 5. BRAND FEATURES

**5.1 KingsPay Brand Features.** Subject to this Agreement and after Merchant has implemented the Service, KingsPay grants Merchant a limited, nonexclusive, non-transferable, and nonsublicensable license to display KingsPay Brand Features to promote the availability of the Service on the Merchant Websites. KingsPay may revoke the permission granted in this paragraph to use KingsPay Brand Features by providing notice to Merchant and a reasonable period of time to cease usage.

**5.2 Merchant Brand Features.** Subject to this Agreement, Merchant grants KingsPay and its affiliates a limited, nonexclusive and nonsublicensable license to display Merchant Brand Features in connection with

*(i) operating the Service and*

*(ii) promotions, presentations, marketing materials, verbal communications, and lists of sellers (e.g. a seller directory posted on a KingsPay Website) that identify Merchant as a seller that has implemented the Service.*

**5.3 Brand Feature Rights.** Each party retains all right, title and interest, including without limitation all Intellectual Property Rights, relating to its Brand Features. Except as expressly provided in this Agreement, neither party acquires any right, title or interest in any Brand Features of the other party, and any rights not expressly granted are deemed withheld. All use by KingsPay of Merchant Brand Features (including any associated goodwill) will inure to the benefit of Merchant, and all use by Merchant of

KingsPay Brand Features (including any associated goodwill) will inure to the benefit of KingsPay. While this Agreement remains in effect and upon request, each party agrees to furnish the other party with samples of the usage of the other party's Brand Features as contemplated by this Section 5 to enable the other party to monitor and ensure that the usage is consistent with the other party's quality control requirements. While this Agreement remains in effect, Merchant agrees not to challenge or assist others to challenge the KingsPay Brand Features (except to protect Merchant's rights to its own Brand Features) and not to register any Brand Features or domain names that are confusingly similar to those of KingsPay.

## SECTION 6. SERVICE FEES AND PAYMENT TERMS

**6.1 Service Fees.** KingsPay reserves the right to earn interest and/or other compensation from its service provider banks or others arising from the processing of Payment Transactions that have not settled to Merchant.

**6.2 Payment Terms.** Merchant will conduct transactions on the Service, and the Service will make payments to the Merchants Settlement Account, in the local currency of the Merchant's registration country. KingsPay will hold amounts due and payable to Merchant (subject to adjustments as described in Section 6.3) separate from KingsPay's general corporate funds and will not use the amounts for KingsPay's corporate operating expenses. Subject to the terms agreed between the Merchant and a Payment Gateway Provider, KingsPay will use commercially reasonable efforts to procure the electronic transfer funds to Merchant's Settlement Account before the end of the second business day (excluding bank holidays) after the day that Payment Transactions are submitted for capture by Merchant. Notwithstanding the foregoing, KingsPay will not be obligated to settle funds to Merchant:

*(i) for any Payment Transaction for which KingsPay has not received full settlement in final available funds if Merchant does not capture funds during the agreed authorization hold period or*

*(ii) if Merchant's earned balance at the time of disbursement or transfer is less than one dollar.*

**6.3 Payment Adjustments.** Merchant acknowledges that Buyers may retain a chargeback right pursuant to card association and network rules and/or their agreement with the holder of the Payment Account, and KingsPay will have the right (but not the obligation) to pass chargebacks to Merchant. As to particular Payment Transactions, KingsPay may withhold payments or reverse previous payments if:

*(i) a Buyer makes a claim to KingsPay for a refund or other reversal,*

*(ii) the transaction is rejected by card network, Payment Gateway Provider, or the acquiring or issuing banks or*

*(iii) KingsPay believes that the Payment Transactions are invalid, involve misconduct or fraud (such as fraudulent use of a payment instrument), or otherwise violate applicable law, this Agreement, or the Policies. Merchant agrees to cooperate with KingsPay and to provide any information that may be reasonably requested by KingsPay in its investigation of any of the foregoing circumstances.*

KingsPay may withhold payment amounts to Merchant in the event KingsPay requires additional informational from Merchant to complete a credit or other background inquiry pursuant to Section 3.2.

KingsPay may offset any payment obligation that KingsPay may have to Merchant under this Agreement against:

*(i) Service Fees owed by Merchant,*

*(ii) amounts overpaid to Merchant due to a later reversal, refund, chargeback or other adjustment to prior Payment Transactions, and*

*(iii) any other amounts owed by Merchant to KingsPay under this Agreement or any other agreement. In the event that Merchant incurs a negative balance (i.e. due to negative adjustments exceeding the settlement proceeds for a particular period), KingsPay may debit the Settlement Account for the amount of the negative balance. Furthermore, KingsPay may choose to invoice Merchant for any amounts owed by Merchant under this Agreement which will be immediately due and payable.*

**6.4 Reserve.** KingsPay reserves the right to withhold a portion of the proceeds that are payable to Merchant with respect to the processing of Payment Transactions (a "**Reserve**") to help ensure that sufficient funds are available to KingsPay in the event of chargebacks, reversals and other liabilities related to Merchant's use of the Service. Circumstances where KingsPay may impose a Reserve include, but are not limited to:

*(i) adverse changes in Merchant's financial condition or its payment record with creditors;*

*(ii) excessive rate of chargebacks, reversals, or Buyer support issues; or*

*(iii) significant changes in the nature of Merchant's business or product lines. KingsPay is not responsible for any losses sustained by Merchant as a result of the imposition of a Reserve.*

**6.5 Refunds and Adjustments.** Merchant will disclose its return/cancellation policy on the Merchant Website. If Merchant allows returns, cancellations or price adjustments in connection with a Payment Transaction, Merchant will initiate a credit to the Buyer using the refund function of the Service within three (3) days of receiving the Buyer's request. Refunds cannot exceed the total amount of the Payment Transaction. Merchant agrees not to accept cash or any other consideration from a Buyer in exchange for issuing a refund to a Buyer. Merchant agrees not to give cash refunds to a Buyer in connection with a Product paid for with the Service unless required by law. If Merchant provides a refund through a means other than through the Service, Merchant remains responsible if the Payment Transaction results in a chargeback through the Service. Merchant acknowledges that even if Merchant's return/cancellation policy prohibits returns or cancellations, Merchant may still receive chargebacks relating to the transactions. KingsPay may reject or delay a refund request from Merchant through the Service if KingsPay is unable to obtain sufficient funds from Merchant to fund the refund.

**6.6 Taxes and Other Charges.** Merchant will pay any applicable taxes, including sales, use, personal property, value-added, excise, customs fees, import duties or stamp duties or other taxes and duties imposed by governmental entities of whatever kind and imposed with respect to the transactions under this Agreement, including penalties and interest, but specifically excluding taxes based upon KingsPay's net income. For purposes of clarification, KingsPay is not responsible for, and is not the entity collecting sales or income or other taxes with respect to Payment Transactions. When KingsPay has the legal obligation to collect any applicable taxes, the appropriate amount will be invoiced to and paid by Merchant net thirty (30) days from the date of invoice or other notification. Merchant will promptly

provide KingsPay with documentation as may be required by the applicable governmental entity in order for KingsPay to process payments hereunder (including, without limitation, a valid certificate of Merchant's exemption from obligation to pay taxes as authorized by the appropriate governmental entity), and KingsPay may withhold any payments required to be made hereunder until Merchant has provided the documentation. Merchant will promptly provide KingsPay with original or certified copies of all tax payments or other sufficient evidence of tax payments at the time the payments are made by Merchant pursuant to this Agreement.

## SECTION 7. CONFIDENTIALITY AND PROPRIETARY RIGHTS

**7.1 Confidentiality.** Merchant will hold confidential and will not use or share any Buyer information obtained through the Service, except to process the transaction the Buyer requested and maintain the Buyer's account with the Merchant. Merchant acknowledges that Buyer information received from KingsPay in connection with the Service is subject to the Privacy Notice, and Merchant agrees it will not use or share Buyer information obtained from KingsPay in any manner that contravenes the Privacy Notice. Merchant will not disclose or cause to be disclosed any KingsPay Confidential Information without KingsPay's prior written consent, except to those employees, agents, representatives, or contractors of Merchant who require access to KingsPay Confidential Information to perform under this Agreement ("**Authorized Personnel**") and who are bound by a written agreement not to disclose third party confidential information. Merchant agrees that Merchant is responsible for any act and/or omission of any Authorized Personnel in breach of this paragraph. Merchant agrees to use the same degree of care, but no less than a reasonable degree of care, as Merchant uses with respect to its own information of a similar nature to protect the KingsPay Confidential Information and to prevent communication of KingsPay Confidential Information to any unauthorized third parties. "**KingsPay Confidential Information**" includes without limitation:

*(i) all KingsPay software, technology, programming, specifications, materials, guidelines and documentation relating to the Service;*

*(ii) any information provided pursuant to this Agreement, including, without limitation, tangible, intangible, visual, electronic, present, or future information such as:*

*(a) trade secrets;*

*(b) financial information, including pricing;*

*(c) technical information, including research, development, procedures, algorithms, data, designs, and know-how; and*

*(d) business information, including operations, planning, marketing and promotion plans, and products; and*

*(iii) any other information designated in writing by KingsPay as "Confidential" or an equivalent designation.*

This Agreement imposes no obligation upon Merchant with respect to KingsPay Confidential Information that:

*(i) was known to Merchant before receipt from KingsPay;*

*(ii) is or becomes publicly available through no fault of Merchant;*

*(iii) is rightfully received by Merchant from a third party without a duty of confidentiality; or*

*(iv) is independently developed by Merchant without a breach of this Agreement. If KingsPay Confidential Information is required to be produced by law, court order, or other governmental demand ("Process"), Merchant must immediately notify KingsPay of that obligation. Merchant will not produce or disclose KingsPay Confidential Information in response to the Process unless KingsPay has:*

*(a) requested protection from the court or other legal or governmental authority requiring the Process and the request has been denied, or*

*(b) consented in writing to the production or disclosure of the KingsPay Confidential Information in response to the Process. Upon KingsPay's written request, Merchant will promptly return all KingsPay Confidential Information, together with all copies, or certify in writing that all KingsPay Confidential Information and copies have been destroyed.*

**7.2 Username, Password, and Merchant Key.** Merchant will be responsible for maintaining the confidentiality of its Service username/password and merchant key. Merchant is responsible for all Service activity by persons that use the username/password and merchant key, including any consequences of the use or misuse of the username/password and merchant key. Merchant agrees to notify KingsPay immediately of any unauthorized use of its username/password or merchant key or any other breach of security regarding the Service of which Merchant has knowledge. Merchant agrees that all officers, employees, agents, representatives and others having access to the Service username/password and merchant key will be vested by Merchant with the authority to use the Service and legally bind Merchant.

**7.3 Proprietary Rights.** KingsPay and its licensors retain all right, title and interest, including without limitation all Intellectual Property Rights relating to the Service (and any derivative works or enhancements thereof), including but not limited to, all software, technology, information, content, materials, guidelines, and documentation. Merchant does not acquire any right, title, or interest therein, except for the limited use rights expressly set forth in the Agreement. Any rights not expressly granted in this Agreement are deemed withheld. Merchant agrees not to modify, adapt, translate, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Service.

## SECTION 8. WARRANTIES; DISCLAIMER OF WARRANTIES

**8.1 Representations and Warranties.** Merchant represents and warrants that:

*(i) if an individual, Merchant is at least 18 years old,*

*(ii) if a business entity, Merchant is duly authorized to do business in the Merchants country of registration,*

*(iii) Merchant is capable of and has full power and authority to enter into the Agreement and this Agreement will constitute the valid and binding obligations of Merchant,*

*(iv) Merchant is a resident of the Merchants country of registration,*

*(v) Merchant owns and controls the Merchant Websites and otherwise has and will maintain all rights, authorizations and licenses that are required to permit Merchant to use the Service on the Merchant Websites;*

*(vi) Merchant's execution of this Agreement and use of the Service does not violate any other agreement to which Merchant or its affiliates are subject; and*

*(vii) Merchant will comply with all applicable laws, regulations and ordinances in connection with Merchant's use of the Service.*

**8.2 DISCLAIMER OF WARRANTIES.** THE SERVICE (INCLUDING ALL CONTENT, SOFTWARE, DATA TRANSMISSION, FUNCTIONS, MATERIALS AND INFORMATION PROVIDED IN CONNECTION WITH OR ACCESSIBLE THROUGH THE SERVICE) IS PROVIDED "AS IS" AND WITHOUT WARRANTY. KingsPay AND ITS AFFILIATES AND AGENTS DISCLAIM ALL WARRANTIES (WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE), INCLUDING WITHOUT LIMITATION WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. KingsPay does not warrant that the OPERATION OF the Service will be uninterrupted or error free. KingsPay WILL not be responsible for any service interruptions, including, but not limited to, power outages, system failures or other interruptions that may affect the receipt, processing, acceptance, completion or settlement of Payment Transactions or the Service.

## SECTION 9. LIMITATION OF LIABILITY AND INDEMNIFICATION

**9.1 LIMITATION OF LIABILITY.** KINGSPAY (INCLUDING ITS AFFILIATES AND AGENTS) WILL NOT BE LIABLE TO SELLER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOST REVENUE, LOSS OF GOODWILL, OR PROCUREMENT OF SUBSTITUTE SERVICES, HOWEVER CAUSED AND REGARDLESS OF THE TYPE OF CLAIM OR THE NATURE OF THE CAUSE OF ACTION, EVEN IF KINGSPAY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGE OR LOSS. IN NO EVENT WILL KINGSPAY'S LIABILITY ARISING OUT OF THIS AGREEMENT AND THE SERVICE (WHEN AGGREGATED WITH KINGSPAY'S LIABILITY FOR ALL OTHER CLAIMS ARISING OUT OF THIS AGREEMENT AND THE SERVICE) EXCEED THE NET FEES THAT KingsPay HAS RECEIVED AND RETAINED UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE CLAIM ARISES. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Each party acknowledges that the other party has entered into this Agreement relying on the limitations of liability stated in this paragraph and that these limitations are an essential basis of the bargain between the parties.

**9.2 Merchant Indemnification.** Merchant will indemnify, defend and hold the KingsPay Indemnified Parties harmless from and against any and all third party claims, liability, loss, and expense (including damage awards, settlement amounts, and reasonable legal fees) brought against any of the KingsPay Indemnified Parties, arising out of or related to:

*(i) the Merchant Websites,*

*(ii) Merchant Brand Features;*

*(iii) Merchant's use of the Service; and/or*

*(iv) any breach of or non-compliance with this Agreement or the Policies by Merchant. "KingsPay Indemnified Parties" include*

*(a) KingsPay, and their subsidiaries and affiliates and*

*(b) officers, directors, agents, employees, information providers, licensors, licensees, consultants, contractors and other applicable third parties (including without limitation any Payment Gateway Provider) of KingsPay, and their subsidiaries and affiliates. KingsPay may join in defense with counsel of its choice at its own expense.*

## SECTION 10. TERMINATION

**10.1 By Merchant.** Merchant may terminate this Agreement or Merchant's use of the Service at any time upon providing prior written notice to KingsPay or as otherwise permitted by KingsPay.

**10.2 By KingsPay.** KingsPay may terminate, limit or suspend this Agreement or Merchant's use of the Service at any time for any reason and without liability to Merchant, including without limitation:

*(i) inactivity,*

*(ii) violation of this Agreement or the Policies, or*

*(iii) if Merchant's use of the Service, in KingsPay's reasonable discretion, creates a risk of financial harm or loss of goodwill to KingsPay or any of the payment card systems used for processing Payment Transactions.*

**10.3 Effect of Termination.** Sections 1, 4, 5.3, 6.3, 6.5, 6.6, 7.1, 7.3, 8, 9, 10.3, and 11 will survive any termination or expiration of this Agreement. Notwithstanding the payment terms described in Section 6.2 (Payment Terms), upon the expiration or termination of this Agreement or other cessation of Merchant's use of the Service, KingsPay may withhold funds to cover KingsPay's expectation of potential chargeback exposure for up to one hundred eighty (180) days. Merchant will remain liable for chargebacks and any other obligations incurred by Merchant after the expiration or termination of this Agreement. Following the expiration or termination of this Agreement, KingsPay may disable Merchant's access to the Service.

## SECTION 11. GENERAL

**11.1 Notice to KingsPay.** Except as otherwise specified in the Agreement, all notices given under this Agreement by Merchant to KingsPay will be in English and in writing to Kinging LLC, 8505 Upton Circle, Unit 401, Rosedale MD 21237, with a copy to Attn: Legal Department at the same address. Notice to KingsPay will be deemed given upon receipt when delivered personally, upon written verification of receipt from overnight courier, or upon verification of receipt of registered or certified mail.

**11.2 Notice to Merchant.** KingsPay may communicate with Merchant regarding the Service by means of electronic communications, including:

*(i) sending electronic mail to the email address Merchant provided to KingsPay during registration or*

*(ii) posting of notices or communications within the Service console.*

KingsPay and Merchant agree that KingsPay may communicate by means of electronic communications the following types and categories of communications and records: this Agreement (and revisions or amendments), notices or disclosures regarding the Service, payment authorizations, and any other matter relating to Merchant's use of the Service. Merchant is responsible for providing its own hardware, software and electronic access to the Internet in order to use the Service and access the electronic communications. Merchant should maintain copies of electronic communications by printing a paper copy or saving an electronic copy on Merchant's computer. Electronic communications will be deemed received by Merchant when KingsPay sends the electronic communication to the email address of Merchant provided at the time of registration or as revised by Merchant thereafter in accordance with this Agreement or when KingsPay posts the electronic communication within the Service console. For those categories of communications or records that KingsPay is otherwise required under applicable law to provide in a written paper form to Merchant, KingsPay and Merchant agree that KingsPay may provide the communications or records to Merchant by means of electronic communications. The following additional terms will apply to electronic communications:

*(a) Merchant may contact KingsPay here to request another electronic copy of the electronic communication without a fee;*

*(b) Merchant may request a paper copy of an electronic communication, and KingsPay reserves the right to charge Merchant a fee to provide a paper copy;*

*(c) Merchant may contact KingsPay through the Service contact page to update Merchant's registration information (such as email address) used for electronic communications or to withdraw consent to receive electronic communications; and*

*(d) KingsPay reserves the right to terminate Merchant's use of the Service if Merchant declines or withdraws consent to receive electronic communications from KingsPay.*

**11.3 Governing Law; Venue.** This Agreement shall be governed by the laws of Delaware, and applicable federal United States laws. To the extent permitted by law, each party agrees to submit to personal and exclusive jurisdiction of the courts located in the State of Delaware.

**11.4 Entire Agreement; Modification.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter. This Agreement supersedes any other prior or collateral agreements, whether oral or written, with respect to the subject matter. The Agreement will be binding on and inure to the benefit of each of the parties and their permitted successors and assigns. KingsPay will have the right, at its sole and absolute discretion, to change, modify, or amend any portion of this Agreement at any time by posting notification on its Website or otherwise communicating the notification to Merchant. The changes will become effective, and will be deemed accepted by Merchant, after the initial posting by KingsPay or the sending by KingsPay of notification to Merchant and will apply on a going-forward basis with respect to Payment Transactions initiated after the posting or

sending date. In the event that Merchant does not agree with the modification, Merchant must terminate its use of the Service, which will be Merchant's sole and exclusive remedy.

**11.5 Assignment.** Merchant may not assign (including by way of merger, sale of stock, or sale of assets) this Agreement or any rights or obligations under this Agreement without the prior written consent of KingsPay. Any attempt by Merchant to make an assignment or transfer in violation of this paragraph will be void and without effect. KingsPay may assign this Agreement or any rights or obligations under this Agreement to any of its affiliates or subsidiary.

**11.6 Force Majeure.** Neither party will be liable for failing or delaying performance of its obligations (except for the payment of money) resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood, pandemics or other acts of God, labor conditions, power failures, and Internet disturbances.

**11.7 Other Provisions.** The failure of KingsPay to exercise or enforce any right or provision of the Agreement will not constitute a waiver of the right or provision. Headings are for reference purposes only and will not be used for interpretation of this Agreement. Unless otherwise expressly stated, all amounts stated in this Agreement are denominated in United States dollars. The Policies referenced in this Agreement are incorporated by reference and may be updated by KingsPay from time to time. The parties are and will remain independent contractors and nothing in this Agreement will be deemed to create any agency, partnership, or joint venture relationship between the parties. Neither party will be deemed to be an employee or legal representative of the other nor will either party have any right or authority to create any obligation on behalf of the other party. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and remain enforceable between the parties. This Agreement is not intended and will not be construed to create any rights or remedies in any parties other than Merchant and KingsPay and no other person may assert any rights as a third party beneficiary; provided, that the KingsPay Indemnified Parties will be a third party beneficiary of the Merchant indemnity in Section 9.

