

## MANAGEITWARE SUBSCRIPTION AGREEMENT TERMS AND CONDITIONS

These ManageITWare Subscription Agreement Terms and Conditions (these "Terms and Conditions") set forth the terms and conditions pursuant to which ManageITWare, LLC ("ManageITWare") will provide to Subscriber (as defined in the Order Form of the Agreement) Services (as defined below). References to the "Agreement" herein mean these Terms and Conditions, the Order Form, the Service Addendum, and any written addenda or amendments to any of the foregoing that are signed by both parties.

**1. SERVICES.** ManageITWare will provide Subscriber with the Services in accordance with the terms and conditions set forth in this Agreement. Any services agreed to by the parties that are in addition to the Services shall be provided at ManageITWare's then-current standard rates.

**2. LICENSE.** Solely to the extent necessary to utilize the Services during the term of this Agreement and in accordance with this Agreement, ManageITWare grants the Subscriber a personal, non-exclusive, non-transferable, and non-sublicensable license to access and use the Services for Subscriber's internal business purposes at the site designated on the Order Form (the "Site").

**3. RESTRICTIONS ON USE.** Subscriber shall not, and shall cause its employees, officers, directors, members, managers, partners, agents, third party service providers, or other designated persons (its "Representatives") not to, take any of the following actions: (a) creating or enabling the creation of derivative works, modifications, or adaptations of the Services; (b) decompiling, reverse engineering or disassembling the Services, (c) distributing or disclosing the Services to third parties; (d) removing or modifying any proprietary marking or restrictive legends placed on the Services; (e) using any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Services, or (f) allowing anyone other than the User(s) to use the Services.

**4. FEES & PAYMENT TERMS.** Subscriber will pay ManageITWare the fees stated on the Order Form (the "Fees"), in accordance with the applicable payment terms set forth on the Order Form. After the Initial Term (as defined below), ManageITWare may increase the Fees upon written notice to Subscriber. Any amounts past due shall accrue interest from the due date at the rate of one and one-half percent (1-1/2%) per month. Failure to make timely payment shall give ManageITWare the right to terminate the Services and the Agreement without notice. All amounts stated in the Agreement or on any invoice are in U.S. dollars, and all payments will be made in U.S. dollars. Subscriber will pay any sales, use or other tax related to the Services, exclusive of taxes on ManageITWare's income.

**5. INITIAL TERM AND RENEWALS.** The initial term of this Agreement shall be for the "Initial Term" stated on the Order Form (or if no Initial Term is stated, for one (1) year), unless terminated earlier as provided in these Terms and Conditions. Upon expiration of the Initial Term or any Renewal Terms (as defined below), the term of this Agreement shall automatically renew for consecutive one (1) year renewal terms (each, a "Renewal Term"), provided that either party may elect not to renew the term of this Agreement by providing the other party written notice of non-renewal at least fifteen (15) days prior to the beginning of the upcoming Renewal Term.

**6. TERMINATION.** Subscriber may terminate this Agreement at any time for any reason by providing written notice to ManageITWare of its decision to terminate, but Subscriber shall not receive a refund of the Fees paid for the month during which such termination occurs. In the event that Subscriber commits a material breach of this Agreement (other than breach of its payment obligations), ManageITWare may terminate this Agreement on five (5) business days prior written notice to Subscriber; provided that Subscriber fails to cure such breach within such five (5) business day period. In the event that Subscriber fails to pay any amounts due, and such failure continues for a period of fifteen (15) days after Subscriber's receipt of written notice thereof, ManageITWare may terminate this Agreement on written notice.

**7. EFFECT OF TERMINATION OR EXPIRATION.** Subscriber's right to use the Services shall end immediately upon any termination or expiration of this Agreement, and Subscriber shall immediately cease any use of the Services upon such termination.

**8. INTELLECTUAL PROPERTY RIGHTS.** No intellectual property rights of any kind are assigned or transferred to Subscriber under this Agreement. Subscriber's license with respect to the Services, Information, and any other materials provided hereunder is set forth in Section 2. Subscriber shall have no right to use the Services for any purpose other than as set forth herein. Subscriber shall not challenge, or assist any person or entity in challenging, ManageITWare's right, title, and interest in the Services.

**9. CONFIDENTIALITY.** The parties acknowledge and agree that, as a result of negotiating, entering into and performing this Agreement, each party (the "Receiving Party") has and will have access to certain confidential information ("Confidential Information") of the other party (the "Disclosing Party"). "Confidential Information" means all information provided by the Disclosing Party to the Receiving Party hereunder that is (i) proprietary and/or non-public information related to the past, present and future business activities of the Disclosing Party, its subsidiaries, and its affiliates; (ii) information relating to the Disclosing Party's business plans, pricing, financial information, methods, processes, code, data, information technology, network designs, passwords, and sign-on codes; (iii) the terms of this Agreement; and/or (iv) any other information that is designated as confidential by the Disclosing Party. Confidential Information of ManageITWare shall also include the Services.

Confidential Information does not include information that is or was, at the time of the disclosure: (i) generally known or available to the public; (ii) received by Receiving Party from a third party; (iii) already in Receiving Party's possession prior to the date of receipt from Disclosing Party; or (iv) independently developed by the Receiving

Party provided in each case that such information was not obtained by the Receiving Party as a result of any unauthorized or wrongful act or omission, or breach of this Agreement, or breach of any legal, ethical or fiduciary obligation owed to the Disclosing Party.

At all times the Receiving Party shall: (1) use the same standard of care to protect the Confidential Information as it uses to protect its own confidential information of a similar nature, but not less than a commercially reasonable standard of care, (2) not use the Disclosing Party's Confidential Information other than as necessary to perform its obligations under this Agreement, (3) not disclose, distribute, or disseminate the Confidential Information to any third party (except to Representatives, as expressly permitted below), and (4) disclose the Disclosing Party's Confidential Information to its Representatives on a "need to know basis;" provided that each Representative is bound by confidentiality obligations at least as restrictive as those contained in this Agreement.

**10. DISCLAIMER OF WARRANTIES.** MANAGEITWARE DOES NOT WARRANT THE COMPLETENESS, ADEQUACY, ACCURACY, OR USEFULNESS OF THE SERVICES OR ANY OTHER MATERIALS OR SERVICES PROVIDED HEREUNDER (COLLECTIVELY, THE "MATERIALS"). THE MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH ALL DEFECTS. MANAGEITWARE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, MANAGEITWARE MAKES NO WARRANTY THAT (i) THE MATERIALS WILL MEET THE REQUIREMENTS OF SUBSCRIBER, (ii) THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE MATERIALS WILL BE ACCURATE OR RELIABLE, OR (iv) ANY ERRORS IN THE MATERIALS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR COMMUNICATIONS GIVEN BY MANAGEITWARE, ITS EMPLOYEES, OR AGENTS WILL INCREASE THE SCOPE OF THE ABOVE WARRANTY OR CREATE ANY NEW OR ADDITIONAL WARRANTIES. To the extent that ManageITWare may not as a matter of applicable law disclaim an implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

**11. LIMITATION OF LIABILITY.** MANAGEITWARE WILL NOT BE LIABLE TO SUBSCRIBER (NOR TO ANY OTHER PERSON CLAIMING RIGHTS DERIVED FROM SUBSCRIBER'S RIGHTS) FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, LOSS OF USE, LOSS OF COST OR OTHER SAVINGS, LOSS OF GOODWILL OR REPUTATION) OR LOSS OF DATA WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING FROM OR RELATING TO THE SERVICES, THE MATERIALS OR OTHERWISE ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER

MANAGEITWARE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF. To the extent the foregoing exclusion of liability is not permitted under applicable law, ManageITWare's liability in such case will be limited to the greatest extent permitted by law.

MANAGEITWARE'S MAXIMUM LIABILITY ARISING FROM OR RELATING TO THE SERVICES, THE MATERIALS OR OTHERWISE ARISING FROM OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE FEES ACTUALLY PAID TO MANAGEITWARE BY SUBSCRIBER WITH RESPECT TO THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES.

**12. INDEMNIFICATION.** Subscriber shall indemnify, defend and hold harmless ManageITWare, its affiliates, and each of their respective officers, directors, managers, members, shareholders, employees and agents (collectively, the "ManageITWare Indemnitees") from and against any and all liabilities, claims, demands, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of (a) any breach of this Agreement by Subscriber or (b) use of the Services by Subscriber or the User(s).

### **13. MISCELLANEOUS.**

Entire Agreement. The Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto. There are no other oral or written understandings, terms or conditions with respect to the subject matter of the Agreement, and neither party has relied upon any representation, express or implied, not contained in the Agreement.

Governing Law. The Agreement and any and all disputes arising directly or indirectly from the Agreement shall be governed by the laws of the State of New Jersey, without regard to its conflict of law provisions.

Exclusive Forum. The parties hereby irrevocably submit to the exclusive jurisdiction of the state and federal courts located in New Jersey for all suits, actions or proceedings directly or indirectly arising out of or relating to the Agreement, and waive any and all objections to such courts, including but not limited to objections based on improper venue or inconvenient forum.

Waiver. The rights and remedies of the parties are cumulative and not alternative. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged. Neither the failure nor any delay by any party in exercising any right, power, or privilege under the Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

Modification. No modification of or amendment to the Agreement will be effective unless in writing signed by authorized representatives of both parties.

Severability. If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of the Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the parties' intent.

Force Majeure. Except with respect to failure to pay any amount due under the Agreement, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

Assignment. Subscriber may not assign or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of ManageITWare, which consent ManageITWare may grant or withhold in its sole and absolute discretion; provided, however, that Subscriber may, upon prior, written notice to ManageITWare and without the consent of ManageITWare, assign or otherwise transfer the Agreement to any of Subscriber's affiliates or to an entity with or into which Subscriber is merged or consolidated or to which it sells its stock or all or substantially all of its assets, provided that such affiliate or entity is not a competitor of ManageITWare. ManageITWare may freely transfer or assign its rights and obligations under the Agreement, in whole or in part, without the consent of Subscriber. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Any purported or attempted assignment or other transfer or delegation in violation of this Section shall be null and void.

Headings. The section titles in these Terms and Conditions are for convenience only and have no legal effect.

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## Service Addendum

The Services include providing electronic documents and labels for the supported retailers listed on [Exhibit I](#) attached hereto (the "Supported Retailers"), which may be updated by ManageITWare from time to time in its sole discretion. A description of the electronic documents and labels that are provided for each Supported Retailer may be found in the routing guide for that Supported Retailer.

The Services may be updated and modified from time to time in ManageITWare's sole discretion.