

SHOPDOT BUSINESS TERMS OF SERVICE

Last Updated: September 1, 2022

BY CLICKING THE “ACCEPT” BUTTON OR USING THE SHOPDOT, INC. (“**SHOPDOT**”) SERVICE IDENTIFIED IN THE ORDER FORM THAT REFERENCE THIS TERMS OF SERVICE AGREEMENT (“**AGREEMENT**”), THE INDIVIDUAL OR ENTITY OBTAINING THE RIGHT TO ACCESS SUCH SERVICES (“**CUSTOMER**” OR “**YOU**”) IS AGREEING TO BE BOUND BY AND BECOMES A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, YOU MUST NOT, AND MAY NOT, ACCESS OR USE THE SHOPDOT SOLUTION OR SERVICE.

ShopDot offers and provides certain services that enables entities to offer and sell their merchandise and other products (each, a “**Brand**” and collectively, “**Brands**”) through the brick and mortar and online stores of third party retailers (each, a “**Retailer**” and collectively, “**Retailers**”). If you, as a Customer, use the Services in order to offer, promote and sell merchandise you own or are otherwise authorized to sell, you may be referred to as a Brand. If you, as a Customer, use the Service in order to offer to sell the merchandise and products of Brands through your store, you may be referred to as a Retailer. This Agreement governs ShopDot’s provision of such services and the respective rights and liabilities of the parties with respect thereto.

1. DEFINITIONS. Capitalized terms will have the meanings set forth in this Section 1, or in the section in which they are first used.

1.1 “Anonymized Data” means Customer Data from which Customer-specific characteristics have been removed, and/or that is combined with other data, in a manner that renders it generic and not attributable to Customer.

1.2 “Access Protocols” means the passwords, access codes, technical specifications, connectivity standards or protocols, or other relevant procedures, as may be necessary to allow Customer or any Authorized Users to access ShopDot Solution.

1.3 “Authorized User” means each of Customer’s employees, agents, and independent contractors who are authorized to access ShopDot Solution pursuant to Customer’s rights under this Agreement.

1.4 “Brand Catalog” means a Brand’s catalog of Merchandise to be made available for sale on a Retailer’s Store via the ShopDot Solution.

1.5 “Customer Data” means any content and information provided or submitted by, or on behalf of, Customer or its Authorized Users for use with the Services, including without limitation Customer Data and Customer uploaded call logs and contact information.

1.6 “Intellectual Property Rights” means any and all now known or hereafter existing (a) rights associated with works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

1.7 “Merchandise” means any merchandise, products, goods or other items to be made available for sale on a Retailer’s Store via the ShopDot Solution.

1.8 “Order Form” means a physical or electronic order form, pricing page or service registration page that is agreed to by both parties identifying the services to be made available by ShopDot pursuant to this Agreement.

1.9 “Services” means any services provided by ShopDot to Customer under this Agreement as set forth in an Order Form, including, but not limited to, provision of ShopDot Solution and/or professional services.

1.10 “ShopDot Solution” means a ShopDot software-as-a-service application identified in any Order Form that allows Authorized Users to access certain features and functions through a web interface.

1.11 “Store” means a Retailer’s online and/or brick and mortar store.

2. SHOPDOT SERVICES

2.1 Generally. The ShopDot Solution enables Brands to reach a wider audience of potential buyers, while also enabling Retailers to sell a broader range of products from more unique Brands. Brands can integrate their Shopify Stores and other e-commerce stores supported by ShopDot (collectively, “**eCommerce Stores**”) with ShopDot and choose the Merchandise they are willing to sell through Retailer Stores from their Brand Catalogs. Following their integration with ShopDot, Retailers may search for and invite Brands to sell their Merchandise through their Stores. Sales made through Retailer Stores are transmitted to Brands via the ShopDot Solution, and Brands are responsible for fulfilling sales made by Retailers.

2.2 Registering Your Account. In order to access certain features of the ShopDot Solution you may be required to become a Registered User. For purposes of the Agreement, a “**Registered User**” is a user who has registered an account on the Website (“**Account**”). In registering an account on the ShopDot Solution, you agree to (a) provide true, accurate, current and complete information about yourself as prompted by the registration form (the “**Registration Data**”); and (b) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. You represent that you are (i) of legal age to form a binding contract; and (ii) not a person barred from using ShopDot Solution under the laws of the United States, your place of residence or any other applicable jurisdiction. You are responsible for all activities that occur under your Account. You may not share your Account or password with anyone, and you agree to notify ShopDot immediately of any unauthorized use of your password or any other breach of security. If you provide any information that is untrue, inaccurate, not current or incomplete, or ShopDot has reasonable grounds to suspect that any information you provide is untrue, inaccurate, not current or incomplete, ShopDot has the right to suspend or terminate your Account and refuse any and all current or future use of ShopDot Solution (or any portion thereof). You agree not to create an Account using a false identity or information, or on behalf of someone other than yourself. You agree that you shall not have more than one Account per platform at any given time. ShopDot reserves the right to remove or reclaim any usernames at any time and for any reason, including but not limited to, claims by a third party that a username violates the third party’s rights. You agree not to create an Account or use the ShopDot Solution if you have been previously removed by ShopDot, or if you have been previously banned from any of ShopDot Solution.

2.3 Support Services. Subject to the terms and conditions of this Agreement and the applicable Order Form, ShopDot will exercise commercially reasonable efforts to (a) provide support for the use of ShopDot Solution to Customer, and (b) keep ShopDot Solution operational and available to Customer, in each case in accordance with its standard policies and procedures.

2.4 Professional Services. If applicable, ShopDot will be responsible for providing personnel who are reasonably sufficient for the provision of any professional Services set forth under the applicable Order Form. Such personnel will have reasonable training, skills, education and experience as is required to perform the corresponding professional Services.

2.5 Third Party Service Integrations. ShopDot may enable certain third party services, including eCommerce Stores, to integrate with ShopDot Solution (each, a “**Third Party Service**”). Customer understands that it must maintain its own account with such Third Party Services (each, a “**Customer Account**”) in order to make use of such integrations, and that the relevant third parties who provide such Third Party Services are solely responsible for the use and access of such Third Party Services, including the availability and uptimes related thereto. Customer agrees that ShopDot will have no liability to Customer for any unavailability of any Third Party Services, or any Third Party Provider’s decision to discontinue, suspend or terminate any Third Party Services. Customer further acknowledges and agrees that certain Third Party Services may be subject to certain API call and/or capacity limits, and that Customer shall not use any Third Party Services in excess of any such call or capacity limits communicated to Customer. Customer represents and warrants that it has all necessary rights and consents necessary to provide any Customer Account information provided by Customer to ShopDot, if any.

3. SHOPDOT SERVICES AND SHOPDOT INTELLECTUAL PROPERTY

3.1 License Grant. Subject to the terms and conditions of this Agreement and the applicable Order Form, ShopDot grants to Customer a non-exclusive, non-transferable (except as permitted under Section 10.5) license solely: (i) as a Brand, to use the ShopDot Solution for your internal business purposes, including to offer to sell and sell your Merchandise on Retailer Stores; and (ii) as a Retailer, to use the ShopDot Solution for your internal business purposes, including to offer to sell the Merchandise of Brands on your Store(s). Customer may permit any Authorized Users to access and use the features and functions of ShopDot Solution as contemplated by this Agreement.

3.2 Restrictions. Customer will not, and will not permit any Authorized User or other party to: (a) allow any third party to access ShopDot Solution, except as expressly allowed herein; (b) modify, adapt, alter or translate ShopDot Solution; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of ShopDot Solution for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of ShopDot Solution, except as permitted by law; (e) interfere in any manner with the operation of ShopDot Solution or the hardware and network used to operate ShopDot Solution; (f) modify, copy or make derivative works based on any part of ShopDot Solution; (g) access or use ShopDot Solution to build a similar or competitive product or service; (h) attempt to access ShopDot Solution through any unapproved interface; or (i) otherwise use ShopDot Solution in any manner that exceeds the scope of use permitted under Section 3.1 or in a manner inconsistent with applicable law or this Agreement.

3.3 Ownership. ShopDot Solution, Services and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of ShopDot and its suppliers. All rights in and to ShopDot Solution not expressly granted to Customer in this Agreement are reserved by ShopDot and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding ShopDot Solution, or any part thereof.

4. FEES AND EXPENSES; PAYMENTS

4.1 Fees. In consideration for the access rights granted to Customer and the Services performed by ShopDot under this Agreement, Customer will pay to ShopDot the Fees pursuant to the terms set forth on the Order Form (the “**Fees**”). Except as otherwise provided in the Order Form, all Fees will be paid via any third party payment processor supported by ShopDot (“**Third Party Payment Processor**”), which currently includes Priority Technologies Holdings. ShopDot will accept and process such Fees from Customer based on the then-current information provided by Customer to ShopDot. Customer’s agreement with the applicable Third Party Payment Processor governs its use of the designated account. By providing ShopDot with payment information, Customer agrees that ShopDot is authorized to invoice and charge Customer’s account for all Fees due and payable to ShopDot and that no additional notice or consent is required. If the Third Party Payment Processor rejects any amount charged on Customer’s account, then ShopDot will notify Customer thereof and Customer will pay the Fees by check or wire transfer within thirty (30) days of the date of the notice. ShopDot reserves the right to modify the Fees payable hereunder upon notice to Customer; *provided, that*, any such modifications will not apply with respect to any Merchandise previously sold via the ShopDot Solution. ShopDot reserves the right (in addition to any other rights or remedies ShopDot may have) to discontinue ShopDot Solution and suspend all Authorized Users’ and Customer’s access to the Services if any Fees are more than thirty (30) days overdue until such amounts are paid in full. Customer will maintain complete, accurate and up-to-date Customer billing and contact information at all times. Except as expressly set forth herein or in an Order Form, all Fees are fully earned and non-refundable when due. Payments will be made without right of set-off or chargeback. All dollar amounts referred to in this Agreement are in United States Dollars.

4.2 Taxes. The Fees are exclusive of all applicable sales, use, value-added and other taxes, and all applicable duties, tariffs, assessments, export and import fees, or other similar charges, and Customer will be responsible for payment of all such taxes (other than taxes based on ShopDot’s income), fees, duties, and charges and any related penalties and interest, arising from the payment of the fees, the provision of the Services, or the license of ShopDot Solution to Customer. Customer will make all payments of Fees to ShopDot free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of Fees to ShopDot will be Customer’s sole responsibility, and Customer will provide ShopDot with official receipts issued by the appropriate taxing authority, or such other evidence as ShopDot may reasonably request, to establish that such taxes have been paid.

4.3 Interest. Any amounts not paid when due will bear interest at the rate of one and one half percent (1.5%) per month, or the maximum legal rate if less, from the due date until paid.

4.4 Non-Circumvention. Customer acknowledges that ShopDot has invested a significant amount of time, effort and capital in developing its business, including its relationships with various Brands and Retailers. In addition, Customer acknowledges that it is the intent and spirit of this Agreement that all payments related to Merchandise sold via the ShopDot Solution be made via the ShopDot Solution. As such, during the term of this Agreement and for a period of six (6) months thereafter, Customer will not, directly or indirectly, for itself or anyone else, solicit, contact or provide competitive services or products to any person or entity who was a Customer or prospective Customer, of ShopDot or otherwise interfere with ShopDot’s relationships with such Customers or prospective Customers; *provided, that*, any contact or communication via the ShopDot Solution to fulfill orders through such solution will not be deemed a breach of the foregoing. In the event of any breach of the foregoing, Customer, without limiting ShopDot’s other remedies, will pay to ShopDot liquidated damages in an amount equal to the total amounts paid by ShopDot to Customer during the twelve (12) prior immediately preceding such breach. The parties agree that the aforesaid remedy is a fair and reasonable determination of the amount of actual damages that

would be suffered by ShopDot for a breach of this Section 4.4 at the time this Agreement is entered into, including the relationship of the value of the liquidated damages to the range of harm to the parties. In the event Customer fails to pay ShopDot the liquidated damages due within thirty (30) days of written notice by ShopDot, ShopDot may, at its absolute discretion, exercise the right to deduct the sum due as liquidated damages from any monies due or to become due under this Agreement or any other contracts between the parties. If the recovery by forfeiture and/or deduction in the manner as provided herein before is not possible for any reason or if the amount recovered by such means is insufficient to meet the amount due and payable, the full amount of the liquidated damages or the difference thereof shall be treated as a debt due from Customer to ShopDot recoverable in civil action.

5. CUSTOMER DATA, USER DATA, ACCEPTABLE USE AND CUSTOMER RESPONSIBILITIES

5.1 License; Ownership; Feedback. Customer is solely responsible for any and all obligations with respect to the accuracy, completeness, content, quality, timeliness and legality of Customer Data, and acknowledges that other users of the ShopDot Solution are responsible for the accuracy, completeness, content, quality, timeliness and legality of the content they upload, distribute, post or otherwise make available (collectively, “**Make Available**”) via the Company Solution (such content of other users, “**User Content**”). Customer will obtain all third party licenses, consents and permissions needed for ShopDot to use the Customer Data to provide the Services and to exercise the licenses granted herein. Customer grants ShopDot a non-exclusive, worldwide, royalty-free and fully paid license during the Term (a) to use the Customer Data as necessary for purposes of providing the Services, and (b) generate and disclose Anonymized Data. For clarity, ShopDot owns all Anonymized Data and ShopDot may freely and perpetually use Anonymized Data, during and after the term hereof, for commercial uses including e.g., developing aggregate statistical analyses, improving the Service, and sharing with third parties. Customer also hereby grants to ShopDot a non-exclusive, sub-licensable, royalty-free, worldwide, perpetual, irrevocable and fully transferable right and license to: use or incorporate into the Service any suggestions, ideas, feedback, recommendations or other information provided by Customer or its Authorized Users with respect to the Service or ShopDot Solution (“**Feedback**”) and to reproduce, distribute, modify, create derivative works of, publicly perform and display, and sub-license Feedback. Anonymized Data and Feedback are not Confidential Information of Customer. The Customer Data, and all worldwide Intellectual Property Rights in it, is the exclusive property of Customer. All rights in and to the Customer Data not expressly granted to ShopDot in this Agreement are reserved by Customer.

5.2 Customer Data Warranty. Customer represents and warrants that any Customer Data will not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret; (c) be deceptive, defamatory, obscene, pornographic or unlawful; (d) contain any viruses, worms or other malicious computer programming codes intended to damage ShopDot’s system or data; and (e) otherwise violate the rights of a third party. ShopDot is not obligated to back up any Customer Data; the Customer is solely responsible for creating backup copies of any Customer Data at Customer’s sole cost and expense. Customer agrees that any use of ShopDot Solution contrary to or in violation of the representations and warranties of Customer in this Section 5.2 constitutes unauthorized and improper use of ShopDot Solution.

5.3 Responsibility for Data and Security. Customer and its Authorized Users will have access to the Customer Data and will be responsible for all changes to and/or deletions of Customer Data and the security of all passwords and other Access Protocols required in order to access ShopDot Solution. Customer will have the ability to export Customer Data out of ShopDot Solution and is encouraged to make its own back-ups of the Customer Data. Customer will have the sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data.

5.4 Data Privacy Addendum. To the extent Customer Data includes Personal Information derived from California residents or consumers, the terms of ShopDot’s CCPA Addendum shall apply to such Personal Information and be incorporated into the Agreement.

5.5 No Obligation to Pre-Screen Content. Customer acknowledges that ShopDot has no obligation to pre-screen any User Content or Customer Data, although ShopDot reserves the right in its sole discretion to pre-screen, refuse and remove any such User Content or Customer Data. In the event ShopDot pre-screens, refuses or removes any User Content or Customer Data, Customer acknowledges that ShopDot will do so for its sole benefit and not any other person.

5.6 Storage. Unless otherwise agreed to by ShopDot in writing elsewhere, ShopDot has no obligation to store any Customer Data or User Content. You agree that ShopDot retains the right to create reasonable limits on Customer use and storage of Customer Data and User Content, such as limits on file size, storage space, processing capacity and similar limits as may be described on the ShopDot Solution.

5.7 Acceptable Use Policy. In connection with Customer’s use of the ShopDot Solution, Customer agrees that will not: (A) Make Available any Customer Data that, in ShopDot’s sole discretion, (i) is unlawful, tortious, defamatory, vulgar,

obscene, libelous, or racially, ethnically or otherwise objectionable; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (iv) is violent or threatening, or promotes violence or actions that are threatening to any other person; or (v) promotes illegal or harmful activities; (B) harm minors in any way; (C) impersonate any person or entity, including, but not limited to, ShopDot personnel, or falsely state or otherwise misrepresent your affiliation with a person or entity; (D) Make Available any Customer Data that you do not have a right to Make Available under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under non-disclosure agreements); (E) Make Available any Customer Data that infringes the rights of any person or entity, including without limitation, any patent, trademark, trade secret, copyright, privacy, publicity or other proprietary or contractual rights; (F) intentionally or unintentionally violate any applicable local, state, national or international law or regulation, or any order of a court; (G) register for more than one Account or register for an Account on behalf of an individual other than yourself; (H) stalk or otherwise harass any other user of our ShopDot Solution; or (I) advocate, encourage or assist any third party in doing any of the foregoing activities in this section.

5.8 Interactions with Other Users. Customer is solely responsible for its interactions with other Registered Users and any other parties with whom Customer interacts; *provided, however*, that ShopDot reserves the right, but has no obligation, to intercede in such disputes. Customer agrees that ShopDot will not be responsible for any liability incurred as the result of such interactions. Customer hereby releases ShopDot and its successors and assigns from claims, demands, any and all losses, damages, liabilities, rights, and actions of any kind, including personal injuries, death and property damage, that is either directly or indirectly related to or arises from Customer's interactions with any other Registered Users. If Customer is a California resident, Customer hereby waives California Civil Code Section 1542, which states, "A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

5.9 Order Fulfillment and Order Issue Resolution. As between ShopDot and Customers, Customers are solely responsible for the fulfillment of all orders placed with Retailers with respect to the Merchandise of Brands. Brands are expected to fulfill all orders made through a Retailer's Store, but ShopDot does not assume any responsibility or liability with respect to enforcing any such fulfillment or any other issues. In addition, Brands and Retailers are solely responsible for resolving any disputes and issues with respect to any orders created through the use of the ShopDot Solution, including, without limitation, issues related to insufficient inventory, quality of Merchandise, and incorrect or delayed shipments, and Customer acknowledges that ShopDot is not responsible for and will have no liability with respect to any such disputes and issues.

5.10 Customer Indemnification. Customer will indemnify, defend and hold harmless ShopDot and its officers, directors, employees, consultants and agents (the "**ShopDot Indemnitees**") from and against any damages, liabilities, losses, judgments, settlements, costs and expenses (including any attorney's fees) incurred by any of the ShopDot Indemnitees in connection with or arising from any third party claims, demands, actions or suits related to: (i) Customer's breach or alleged breach of this Agreement; (ii) any disputes between Customer and any Registered User or other person related to Customer's Store, Brand(s), Store(s) and/or Merchandise; or (iii) any claim that Customer's Brand(s), Store(s) or Merchandise, as applicable, infringe upon, misappropriate or otherwise violate the rights of any third parties, including any intellectual property rights or rights of publicity.

6. DISCLAIMERS

6.1 GENERAL DISCLAIMERS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED "AS IS," AND SHOPDOT MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. SHOPDOT DOES NOT WARRANT THAT ANY ERRORS CAN BE CORRECTED, OR THAT OPERATION OF SHOPDOT SOLUTION WILL BE UNINTERRUPTED OR ERROR-FREE.

6.2 NO LIABILITY FOR CONDUCT OF THIRD PARTIES. CUSTOMER ACKNOWLEDGES AND AGREES THAT SHOPDOT IS NOT LIABLE, AND CUSTOMER AGREES NOT TO SEEK TO HOLD SHOPDOT LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER REGISTERED USERS OR CUSTOMERS.

6.3 NO LIABILITY FOR MERCHANDISE OR STORES. CUSTOMER ACKNOWLEDGES AND AGREES THAT SHOPDOT IS NOT LIABLE, AND CUSTOMER AGREES NOT TO SEEK TO HOLD SHOPDOT LIABLE, FOR THE

MERCHANDISE OR STORES OF THIRD PARTIES, INCLUDING ANY CLAIMS OF UNAVAILABILITY OF MERCHANDISE, DOWNTIME OF STORES, THE CONTENT OF OR OTHER MERCHANDISE AVAILABLE ON, ANY STORES, OR ANY QUALITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY MERCHANDISE.

7. LIMITATION OF LIABILITY

7.1 Types of Damages. IN NO EVENT WILL SHOPDOT BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA, OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF SHOPDOT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

7.2 Amount of Damages. THE MAXIMUM LIABILITY OF SHOPDOT ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT WILL NOT EXCEED THE FEES PAID OR PAYABLE BY CUSTOMER TO SHOPDOT DURING THE TWELVE (12) MONTHS PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT WILL SHOPDOT'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF A PARTY OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY.

7.3 Basis of the Bargain. The parties agree that the limitations of liability set forth in this Section 7 will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

8. CONFIDENTIALITY

8.1 Confidential Information. "Confidential Information" means any nonpublic information of a party (the "Disclosing party"), whether disclosed orally or in written or digital media, that is identified as "confidential" or with a similar legend at the time of such disclosure or that the receiving party (the "Receiving party") knows or should have known is the confidential or proprietary information of the Disclosing party. The Services, and all enhancements and improvements thereto, will be considered Confidential Information of ShopDot.

8.2 Protection of Confidential Information. The Receiving party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing party, except as expressly permitted under this Agreement. The Receiving party will limit access to the Confidential Information to Authorized Users (with respect to Customer) or to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information (with respect to ShopDot). In addition, the Receiving party will protect the Disclosing party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing party's request or upon termination or expiration of this Agreement, the Receiving party will return to the Disclosing party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving party does not have a continuing right to use under this Agreement, and the Receiving party will, upon request, certify to the Disclosing party its compliance with this sentence.

8.3 Exceptions. The confidentiality obligations set forth in Section 8.2 will not apply to any information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Receiving party; (b) is lawfully provided to the Receiving party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving party at the time of disclosure free of any confidentiality duties or obligations; or (d) the Receiving party can demonstrate, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving party who had no access to the Confidential Information. In addition, the Receiving party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Receiving party promptly notifies the Disclosing party in writing of such required disclosure and cooperates with the Disclosing party if the Disclosing party seeks an appropriate protective order.

9. TERM AND TERMINATION

9.1 Term. This Agreement will begin on the date Customer accepts it (in accordance with the preamble) and continue in full force and effect, until terminated in accordance with the Agreement (the “**Term**”).

9.2 Termination for Breach. Either party may terminate this Agreement immediately upon notice to the other party if the other party materially breaches this Agreement, and such breach remains uncured more than five (5) days after receipt of written notice of such breach.

9.3 Termination for Convenience. Either party may terminate this Agreement for convenience upon ten (10) days prior written notice to the other party.

9.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason: (a) all licenses granted hereunder will immediately terminate; (b) promptly after the effective date of termination or expiration, each party will comply with the obligations to return all Confidential Information of the other party; and (c) any amounts owed to ShopDot under this Agreement will become immediately due and payable. Sections 1, 3.2, 3.3, 4, 5.1, 5.8, 5.9, 5.10, 6, 7, 8, 9.4, and 10 will survive expiration or termination of this Agreement for any reason.

10. MISCELLANEOUS

10.1 Governing Law and Venue. This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. Customer hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for Wilmington, Delaware for any lawsuit filed there against Customer by ShopDot arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

10.2 Dispute Resolution; Mediation; Arbitration. In the event of any dispute hereunder, the parties shall engage in informal, good faith discussions to resolve it. If the parties are unable to resolve the dispute, then the parties agree to comply with the following procedures. The dispute shall first be submitted to mediation on an expedited basis in New York County, New York, administered by JAMS, or its successor, in accordance with the JAMS rules and procedures then in effect. Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested, with the expectation that the first mediation session shall occur within forty-five (45) days of such written request. The parties will cooperate in selecting an appropriate neutral mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. If the parties are unable to select the mediator within ten (10) business days after receipt of the mediation notice by JAMS, then JAMS shall designate the mediator. The parties will share equally in the costs of the mediator and related JAMS administrative costs, and pay in advance the estimated reasonable fees and costs of the mediation, as may be specified in advance by the mediator. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator, are confidential, privileged and inadmissible for any purpose, including impeachment, in any reference, arbitration, litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Either party may seek equitable relief in the New York Supreme Court prior to the mediation to preserve the status quo pending the completion of that process. If necessary, any party may file a motion in the New York Supreme Court to compel the other party to participate in the mediation and the prevailing party shall be awarded its costs and expenses, including reasonable attorneys’ fees in connection with such motion. If the dispute is not resolved within ten (10) business days after the first mediation session, either party may give written notice to JAMS and the other party that the mediation is terminated and may submit the dispute to final and binding arbitration in New York County, New York, administered by JAMS, or its successor, in accordance with the rules and procedures of JAMS (including JAMS Comprehensive Rules) then in effect. A party may commence the arbitration process called for in this Agreement by filing a written demand for arbitration with JAMS, with a copy to the other party. Any and all disputes that are so submitted to arbitration shall be decided by three (3) neutral and appropriate arbitrators. Each party shall select one (1) arbitrator and those party-selected arbitrators shall jointly select the third arbitrator, who shall act as Chairman of the arbitral tribunal. If the party-selected arbitrators are unable to select the third arbitrator, JAMS shall designate the third arbitrator. The parties will cooperate in selecting such arbitrators and in scheduling the arbitration proceedings. The parties will share equally in the administrative costs and arbitrator’s fees associated with the arbitration; provided, however, that each party will bear its own attorneys’ fees and costs associated with the arbitration. The arbitrator shall apply Delaware law without reference to conflicts of laws principles. Any award issued as a result of such arbitration shall be final and binding between the parties thereto and shall be enforceable by any court having jurisdiction over the party against whom enforcement is sought.

The parties expressly acknowledge that by entering into this Agreement, they each are waiving their respective rights to have any Dispute between the parties hereto adjudicated by a court or by a jury.

10.3 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

10.4 Waiver. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

10.5 No Assignment. Customer may not assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. ShopDot may assign this Agreement to an affiliate or in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of Customer. The terms of this Agreement will be binding upon the parties and their respective successors and permitted assigns.

10.6 Compliance with Law. Customer will always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Services.

10.7 Force Majeure. Any delay in the performance of any duties or obligations of either party (except the payment of Fees owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible.

10.8 Independent Contractors. Customer's relationship to ShopDot is that of an independent contractor, and neither party is an agent or partner of the other. Customer will not have, and will not represent to any third party that it has, any authority to act on behalf of ShopDot.

10.9 Notices. All notices required or permitted under this agreement must be delivered in writing, if to ShopDot, by emailing info@shopdotapp.com, and if to Customer, by emailing the Customer Point of Contact email address last made available by Customer, provided, however, that with respect to any notices relating to breaches of this agreement or termination, a copy of such notice will also be sent in writing to the other party at the address listed in the Order Form by courier, by certified or registered mail (postage prepaid and return receipt requested), or by a nationally-recognized express mail service. Each party may change its email address and/or address for receipt of notice by giving notice of such change to the other party.

10.10 Precedence. To the extent that a conflict arises between the terms and conditions of an Order Form and the terms of this Agreement, the terms and conditions of this Agreement will govern, except to the extent that the Order Form, expressly states that it supersedes specific language in the Agreement.

10.11 Modifications of this Agreement. ShopDot may modify this Agreement in its sole discretion, at any time. When changes are made, ShopDot will make a new copy of the Agreement available on its website and update the Last Updated date above. ShopDot will also email Customer at the last email address Customer provided to ShopDot. Unless otherwise specified in ShopDot's notice, any changes will become effective within thirty (30) days of ShopDot's provision of notice of such updates. ShopDot may require Customer to provide consent to the updated Agreement in a specified manner before further use of ShopDot Service is permitted.

10.12 Entire Agreement. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such subject matters.

CCPA ADDENDUM

1. DEFINITIONS

1.1. “CCPA” means the California Consumer Privacy Act of 2018 as set forth in California Civil Code § 1798.100 et seq. and all other applicable laws or regulations relating to the Processing of Personal Information that may exist in the relevant jurisdiction.

1.2. “Business,” “Business Purpose,” “Consumer,” “Person,” “Personal Information,” “Sell,” “Service Provider,” and “Third Party” shall have the meanings set forth in the CCPA.

1.3. All other defined terms shall have the meanings set forth in the Agreement.

2. TERMS

2.1. The parties agree that Customer is a Business and ShopDot, Inc. (“ShopDot”) is its Service Provider in relation to this Addendum and Personal Information that is Processed in the course of ShopDot’s provision of the Services set forth in the Agreement. The parties agree to comply at all times with the applicable provisions of the CCPA in respect to the collection, transmission, and processing of all Personal Information exchanged or shared pursuant to the Agreement.

2.2. The subject-matter of the Processing of Personal Information covered by this Addendum is the Services provided to Customer by ShopDot as set out in the Agreement.

2.3. In respect of Personal Information Processed in the course of providing the Services, ShopDot:

2.3.1. shall Process Personal Information only in accordance with the documented instructions from Customer (as set out in this Addendum or the Agreement or as otherwise notified by Customer to ShopDot from time to time); provided ShopDot may Process Personal Information for Business Purposes under the CCPA or another applicable law or regulation, and in such cases ShopDot will inform Customer of such requirement prior to the Processing unless that law prohibits this on important grounds of public interest;

2.3.2. may hire other companies to provide limited services on its behalf, provided that ShopDot complies with the provisions of this clause. Any such subcontractors will be permitted to Process Personal Information only to deliver the Services. ShopDot remains responsible for its subcontractors’ compliance with the obligations of this Addendum, and ShopDot shall ensure that any subcontractors to whom ShopDot transfers Personal Information will have entered into written agreements with ShopDot requiring that the subcontractor abide by terms substantially similar to this Addendum; and

2.3.3. shall reasonably assist the Customer with its obligation to respond to requests from Consumers under the CCPA (including requests for information relating to the Processing, and requests relating to access, rectification, erasure or portability of the Personal Information) provided that ShopDot reserves the right to reimbursement from Customer for the reasonable cost of any time, expenditures or fees incurred in connection with such assistance.

3. MISCELLANEOUS

3.1. Except as expressly provided in this Addendum, the parties intend no amendment or modification of the Agreement or in such other addendum or supplement which may have been signed by the parties.

3.2. Any notice to be provided under this Addendum to Customer shall be sent via email to the email address associated with Customer’s account.

3.3. This Addendum supplements the terms of the Agreement. To the extent that a conflict arises between this Addendum and the Agreement regarding the processing of Consumers’ Personal Information, the terms of this Addendum will govern.

3.4. If any provision of this Addendum is held by a court of competent jurisdiction to be contrary to the law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Addendum shall remain in full force and effect.

3.5. No waiver under this Addendum will be valid or binding unless set forth in writing and duly executed by the party against whom enforcement of such waiver is sought. Any such waiver will constitute a waiver only with respect to the specific matter described therein and will in no way impair the rights of the party granting such waiver in any other respect or at any other time. Any delay or forbearance by either party in exercising any right hereunder will not be deemed a waiver of that right.