# Merchant Agreement

This Merchant Agreement is effective as of the date shown above ("Effective Date"), if you created your account or accepted or otherwise agreed to it on or after the Effective Date.

This Merchant Agreement is effective thirty (30) days after the Effective Date, if you created your account or accepted or otherwise agreed to a previous version of this Merchant Agreement prior to the Effective Date.

Please read our online notice, which explains changes to the Merchant Agreement and our other legal terms and conditions in more detail.

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PLEASE REVIEW THIS MERCHANT AGREEMENT CAREFULLY. ONCE ACCEPTED, THIS MERCHANT AGREEMENT BECOMES A BINDING LEGAL COMMITMENT BETWEEN YOU AND ONEAPP.

BY USING, INSTALLING, OR ACCESSING THE SAAS (AS DEFINED IN SECTION 1 (DEFINITIONS) BELOW), AUTHORIZING A BUSINESS OR INDIVIDUAL TO USE OR ACCESS THE SAAS ON YOUR BEHALF, EXECUTING THIS MERCHANT AGREEMENT, OR CLICKING TO ACCEPT WHEN PROMPTED IN THE SAAS, YOU ACCEPT AND AGREE TO BE BOUND BY ALL AGREEMENTS THAT CONSTITUTE ONEAPP'S TERMS OF SERVICE, AND YOU AGREE THAT THE "TERMS OF SERVICE" MEANS EVERY AGREEMENT LINKED HEREIN AND INCLUDES THE PRIVACY POLICY, ACCEPTABLE USE POLICY, FEE AND PAYMENTS AUTHORIZATION, AND REFUND POLICY. FOR THE AVOIDANCE OF DOUBT, THIS MERCHANT AGREEMENT ALSO INCORPORATES, FOR ANY END USER USING THE SCREENING SAAS (BOTH AS DEFINED IN SECTION 1 (DEFINITIONS) BELOW), THE SCREENING SAAS TERMS, THE QUALIFIED SUBSCRIBER ATTESTATION, AND THE QUALIFIED SUBSCRIBER TERMS AND CONDITIONS.

IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, YOU SHOULD NOT ACCEPT THEM OR USE THE SAAS.

THE SAAS ARE INTENDED FOR YOUR BUSINESS USE, OR USE IN CONNECTION WITH YOUR INDIVIDUAL TRADE, CRAFT, OR PROFESSION ONLY.

If you have a separate written agreement with oneapp for your use of the SaaS, the Merchant Agreement will not apply to you, unless

that written agreement does not cover a particular SaaS application, in which case, this Merchant Agreement applies solely to your use of that particular SaaS application.

This Merchant Agreement sets forth the terms for your use of the SaaS and are effective as of the date you accept or otherwise agree to the terms of this Merchant Agreement ("Effective Date"). This Merchant Agreement is between the applicable oneapp entity identified below ("oneapp") and the corporation, LLC, partnership, sole proprietorship, or other business entity on whose behalf you are accepting or otherwise agreeing to the terms of this Merchant Agreement ("you", "your", "yours", or "Merchant").

| If you are domiciled in: | oneapp entity entering into this Merchant Agreement: |
| --- | --- |
| The United States | With One App Inc., a Delaware corporation, with a place of business at 195 Plymouth Street, Suite 3/1, Brooklyn NY 11201, United States of America |

oneapp may update the terms of this Merchant Agreement from time to time. oneapp will provide you with written notice of any material updates at least thirty (30) days prior to the date the updated version of this Merchant Agreement is effective, unless such material updates result from changes in laws, regulations, or requirements from oneapp's suppliers. The updated version of this Merchant Agreement will be available at http://legal.withoneapp.com/#merchant-agreement. Notices for material updates to the terms of this Merchant Agreement will be given in accordance with Section 9.5 (Notices). Following such notice, your continued use of the SaaS on or after the date the updated version of this Merchant Agreement is effective and binding, as indicated at the top of this Merchant Agreement, constitutes your acceptance of the updated version of this Merchant Agreement. The updated version of this Merchant Agreement supersedes all prior versions. If you do not agree to the updated version of this Merchant Agreement, you must stop using the SaaS immediately.

If you are the party that agreed to the terms of this Merchant Agreement and you reassign your account to a third-party for administration purposes, such account reassignment will not excuse your obligations under this Merchant Agreement. Your use of the SaaS will continue to be subject to this Merchant Agreement.

# 1. Definitions

"Affiliate" means with respect to a party, any person or entity that controls, is controlled by, or is under common control with that party, where "control" means the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract, or otherwise.

"Beta Offerings" means SaaS that are identified as alpha, beta, not generally available, limited release, developer preview, or any similar SaaS offered by oneapp.

"Consumer Agreement" means such terms of service as oneapp may require for users of the SaaS who are not oneapp's customers or their employees, the current version of which is available at https://legal.withoneapp.com/#consumer-agreement.

"Consumers" means any of Merchant's business or individual clients or other third parties, to whom Merchant gives access to the SaaS, including without limitation such users' agents and employees.

"Merchant Data" means data and other information made available by you to oneapp in connection with your use of the SaaS under this Merchant Agreement.

"Merchant Services" means any software application, products, services or Professional Services provided by you and used in connection with your use of the SaaS under this Merchant Agreement. If applicable, Merchant Services includes sources from which you choose to retrieve Merchant Data and destinations to which you choose to transmit Merchant Data using the SaaS.

"Documentation" means oneapp documentation, including any usage guides and policies, for the SaaS.

"End User" means any business or individual who uses the SaaS on Merchant's behalf or through Merchant's account or passwords,

whether authorized or not, including without limitation Consumers.

"Malicious Code" means code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

"oneapp Acceptable Use Policy" means certain terms relating to the use of the SaaS, including the Service and Area Specific Requirements set forth therein, the current version of which is available at https://legal.withoneapp.com/#aup.

"oneapp Data Protection Addendum" means the personal data processing-related terms for the SaaS, the current version of which is available at https://legal.withoneapp.com/#data-protection-addendum.

"oneapp Security Overview" means the security related terms for the SaaS, the current version of which is available at https://legal.withoneapp.com/#security-overview.

"oneapp SLA" means the service level agreement for the Services, the current version of which is available at http://legal.withoneapp.com/#service-level-agreements.

"Order" means an order for access to the SaaS or Third Party Services, executed as follows: (a) successfully registering on oneapp for a customer account; (b) purchasing a subscription for an existing customer account; (c) funding your Merchant account with your payment method, and executing a SaaS clickwrap (d) adding or inviting End Users to access the SaaS under your Merchant account; (e) via completed API call from Merchant Services to your account.

"Order Form" means a physical Order document executed between you and oneapp.

"Professional Services" means only those services performed by individuals in connection with a trade, craft or profession.

"SaaS" means software as a service applications developed by oneapp or its Affiliates, provided on or through the oneapp cloud platform, as applicable, that (a) you use, including, without limitation, software as a service applications that are on a trial basis or otherwise free of charge or (b) you order under an Order Form. SaaS excludes any Merchant Services and Third Party Services (as defined below).

"SaaS Usage Data" means any data that is derived from the use of the SaaS that does not directly or indirectly identify you, your End Users, or any natural person and includes (a) data such as volumes, frequencies, bounce rates, and SaaS performance data and (b) subject to any restrictions under applicable law or regulation, data that is anonymized, de-identified, and/or aggregated such that it could no longer directly or indirectly identify you, your End Users, or any natural person.

"Third Party Services" means any products, services, Professional Services, or software components that are purchased by you from or through oneapp, but provided, or otherwise made available, by a third party (i.e., a party other than oneapp). Third Party Services are governed by a separate agreement between you and the third-party provider.

Any capitalized term not defined in this Section 1 will have the meaning provided in this Merchant Agreement.

# 2. The SaaS

2.1 Provision of the SaaS. oneapp will: (a) provide the SaaS to you pursuant to this Merchant Agreement, the applicable Documentation, and any applicable Order Form(s); (b) comply with the oneapp SLA (c) comply with the security terms for the SaaS as set forth in the oneapp Security Overview; (d) provide the SaaS in accordance with laws applicable to oneapp's development of the SaaS for its customers generally (i.e., without regard for your particular use of the SaaS), subject to your use of the SaaS in accordance with this Merchant Agreement, the applicable Documentation, and any applicable Order Form(s); (e) make commercially reasonable efforts to use industry standard measures designed to scan, detect, and delete Malicious Code; (f) if applicable, use trained, qualified personnel to provide the SaaS; and (g) use commercially reasonable efforts to provide you with applicable support for the SaaS.

2.2 Merchant Responsibilities. You will: (a) be solely responsible for all use of the SaaS and Documentation under your account and the Merchant Services; (b) not transfer, resell, lease, license, or otherwise make available the SaaS to third parties (except to make the

SaaS available to your End Users) or offer them on a standalone basis; (c) use the SaaS only in accordance with this Merchant Agreement, the oneapp Acceptable Use Policy, the applicable Documentation, any applicable Order Form(s), and applicable law or regulation; (d) be solely responsible for all acts, omissions, and activities of your End Users, including their compliance with this Merchant Agreement, the oneapp Acceptable Use Policy, the applicable Documentation, any applicable Order Form(s), and applicable law or regulation; (e) use commercially reasonable efforts to prevent unauthorized access to or use of the SaaS and notify oneapp promptly of any such unauthorized access or use; (f) provide reasonable cooperation regarding information requests from law enforcement, regulators, or oneapp's suppliers; and (g) comply with your representations and warranties set forth in Section 5 (Representations, Warranties, and Disclaimer).

2.2.1 End Users. Subject to the provisions below of this Section 2.2.1, you may authorize your End Users to access and use the SaaS in such numbers and according to such restrictions as are set forth in the applicable Order, solely for the purposes identified therein. You will: (a) provide complete name, current email address, and other required contact information for each proposed End User upon or before providing such access, and update such information as soon as you become aware of a change; (b) require that each Consumer execute the then-standard Consumer Agreement; and (c) you will provide oneapp with each copy of your executed Consumer Agreement upon the Consumer's execution. You will make no representations or warranties regarding the SaaS or any other matter, to your End Users or any other third party, from or on behalf of oneapp, and you will not create or purport to create any obligations or liabilities for oneapp. You will be jointly and severally liable to oneapp for your Consumer's compliance with the Consumer Agreement. oneapp will have no obligation to provide support or other services, SLA remedies, or other remedies to your Consumers.

2.3 Suspension of Services. oneapp may suspend the SaaS upon written notice to you if oneapp, in good faith, determines: (a) that you or your End Users materially breach (or oneapp, in good faith, believes that you or your End Users have materially breached) the oneapp Acceptable Use Policy; (b) there is an unusual and material spike or increase in your use of the SaaS and that such traffic or use is fraudulent or materially and negatively impacting the operating capability of the SaaS; (c) that its provision of the SaaS is prohibited by applicable law or regulation; (d) there is any use of the SaaS by you or your End Users that threatens the security, integrity, or availability of the SaaS; or (e) that information in your account is untrue, inaccurate, or incomplete. You remain responsible for the Fees (as defined in Section 3.3 (Payment Terms)).

2.4 Changes to the SaaS. You acknowledge that the features and functions of the SaaS may change over time; provided, however, oneapp will not materially decrease the overall functionality of the SaaS. It is your responsibility to ensure the Merchant Services are compatible with the SaaS. oneapp endeavors to avoid changes to the SaaS that are not backwards compatible, however, if any such changes become necessary, oneapp will use commercially reasonable efforts to notify you at least sixty (60) days prior to implementation. In the event oneapp makes a non-backwards compatible change to certain SaaS applications and such change materially and negatively impacts your use of the SaaS ("Adverse Change"), (a) you will notify oneapp of the Adverse Change and (b) oneapp may agree to work with you to resolve or otherwise address the Adverse Change, except where oneapp, in its sole discretion, has determined that an Adverse Change is required for security reasons, by oneapp's suppliers, or to comply with applicable law or regulation.

2.5 Beta Offerings. From time to time, oneapp may make available Beta Offerings. You may, in your sole discretion, choose to use a Beta Offering. oneapp may discontinue a Beta Offering at any time, in its sole discretion, or decide not to make a Beta Offering generally available. To the extent you use any Beta Offerings that are only made available to a limited number of Merchants on an invitation basis in a non-public or private manner (collectively, "Private Beta Offerings"), the additional terms in Section 10.1 (Private Beta Offerings) apply to you.

# 3. Fees and Payment Terms

3.1 Fees. You agree to pay the fees set forth in the applicable Order Form(s). If you use any SaaS not set forth in the applicable Order Form(s), you will be charged the applicable rates available at https://withoneapp.com/#pricing.

3.2 Taxes and Communications Surcharges

3.2.1 Taxes. All fees are exclusive of any applicable taxes, levies, duties, or other similar exactions imposed by a legal, governmental, or

regulatory authority in any applicable jurisdiction, including, without limitation, sales, use, value-added, consumption, communications, or withholding taxes (collectively, "Taxes"). You will pay all Taxes in connection with this Merchant Agreement, excluding any taxes based on oneapp's net income, property, or employees. If you are required by applicable law to withhold any Taxes from payments owed to oneapp, you will reduce or eliminate such withheld Taxes upon receipt of the appropriate tax certificate or document provided by oneapp. You will provide oneapp with proof of payment of any withheld Taxes to the appropriate authority. Taxes will be shown as a separate line item on an invoice.

3.2.2 Communications Charges. If applicable, all fees are exclusive of any applicable communications service, or telecommunication provider (e.g., supplier) fees or surcharges (collectively, "Communications Surcharges"). You will pay all Communications Surcharges in connection with your use of the SaaS. You will pay all costs, fines, or penalties that are imposed on oneapp by a government or regulatory body or a telecommunications service provider as a result of your or your End Users' use of the SaaS.

3.2.3 Exemption. If you are exempt from paying certain Taxes or Communications Surcharges, you will provide the necessary exemption information as requested by oneapp or a valid exemption certificate issued by the appropriate authority via e-mail to support@withoneapp.com. You will be exempt on a going-forward basis once oneapp has approved your exemption request. If the appropriate authority determines, at any time, that you are not exempt from paying any Taxes or Communications Surcharges, you will promptly pay such Taxes or Communications Surcharges to oneapp, plus any applicable interest or penalties.

3.3 Payment Terms. Except as otherwise expressly set forth herein, payment obligations are non-cancelable and fees, Taxes, and Communications Surcharges (collectively, "Fees"), once paid, are non-refundable. Except as otherwise set forth in the applicable Order Form(s) and subject to Section 3.3.3 (Payment Disputes), You will pay the Fees due hereunder in accordance with the following applicable payment method:

3.3.1 Credit Card. If you elect to add funds to your account by credit card and use such funds to pay the Fees due, you are responsible for ensuring such funds cover the Fees due. If your account does not have sufficient funds or your credit card declines a charge for the Fees due, oneapp may suspend the provision of the SaaS to all of your accounts until the Fees due are paid in full. You are prohibited from creating new accounts until the Fees due are paid in full.

3.3.2 Invoicing. If you request to receive invoices and oneapp approves you for the same, then, except as otherwise set forth in the applicable Order Form(s) and subject to Section 3.3.3 (Payment Disputes), you will be offered Payment Terms and payment methods at oneapp's discretion. Except as otherwise set forth in the applicable Order Form(s) or an invoice to the extent you procure the SaaS without any applicable Order Form(s), the Fees are payable in United States dollars. If you fail to pay the Fees and remedy such failure within fifteen (15) days of the date oneapp provides you with written notice of the same, then oneapp may (i) assess and you will pay a late fee of the lesser of 1.5% per month or the maximum amount allowable by law and (ii) suspend the provision of the SaaS to all of your accounts until the Fees due are paid in full. You are prohibited from creating new accounts until the Fees due are paid in full.

3.3.3 Payment Disputes. You will notify oneapp in writing within sixty (60) days of the date oneapp charges you for any Fees that you wish to dispute. Where you are disputing any Fees, you must act reasonably and in good faith and will cooperate diligently with oneapp to resolve the dispute. oneapp will not charge you a late fee, unless you fail to cooperate diligently with oneapp or oneapp determines the dispute is not reasonable or brought in good faith by you.

# 4. Ownership Rights, Merchant Data, and Confidentiality

4.1 Ownership Rights. As between the parties, oneapp exclusively owns and reserves all right, title, and interest in and to the SaaS, the Documentation, oneapp's Confidential Information (as defined in Section 4.3.1 (Definition)), SaaS Usage Data, and any feedback or suggestions you or your End Users provide regarding the SaaS. As between the parties, you exclusively own and reserve all right, title, and interest in and to the Merchant Services, your Confidential Information, and Merchant Data, subject to oneapp's rights to process Merchant Data in accordance with this Merchant Agreement.

4.2 Merchant Data. You grant oneapp and its Affiliates the right to process Merchant Data as necessary to provide the SaaS in a manner that is consistent with this Merchant Agreement and the oneapp Data Protection Addendum. You are responsible for the quality and integrity of Merchant Data.

4.3 Confidentiality

4.3.1 Definition. "Confidential Information" means any information or data, regardless of whether it is in tangible form, disclosed by either party ("Disclosing Party") to the other party ("Receiving Party") that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential given the nature of the information and the circumstances surrounding the disclosure, including, without limitation, this Merchant Agreement, Order Form(s), Merchant Data, security reports and attestations, audit reports, customer lists, pricing, concepts, processes, plans, designs and other strategies, "know how", inventions, and financial, technical, or other business information and materials of Disclosing Party and its Affiliates. Confidential Information does not include any information which: (a) is publicly available through no breach of this Merchant Agreement or fault of Receiving Party; (b) was properly known by Receiving Party, and to its knowledge, without any restriction, prior to disclosure by Disclosing Party; (c) was properly disclosed to Receiving Party, and to its knowledge, without any restriction, by another person without violation of Disclosing Party's rights; or (d) is independently developed by Receiving Party without use of or reference to the Confidential Information of Disclosing Party.

4.3.2 Use and Disclosure. Except as otherwise authorized by Disclosing Party in writing, Receiving Party will not (a) use any Confidential Information of Disclosing Party for any purpose outside of exercising Receiving Party's rights or fulfilling its obligations under this Merchant Agreement and (b) disclose or make Confidential Information of Disclosing Party available to any party, except to Receiving Party's Affiliates, and Receiving Party's and its Affiliates' respective employees, legal counsel, accountants, contractors, and in oneapp's case, subcontractors (collectively, "Representatives") who have a "need to know" as necessary for Receiving Party to exercise its rights or fulfill its obligations under this Merchant Agreement. Receiving Party will be responsible for its Representatives' compliance with this Section 4.3. Representatives will be legally bound to protect Confidential Information of Disclosing Party under terms of confidentiality that are at least as protective as the terms of this Section 4.3. Receiving Party will protect the confidentiality of Confidential Information of Disclosing Party using the same degree of care that it uses to protect the confidentiality of its own confidential information but in no event less than reasonable care.

4.3.3 Compelled Disclosure. Receiving Party may disclose Confidential Information of Disclosing Party if so required pursuant to a regulation, law, subpoena, or court order (collectively, "Compelled Disclosures"), provided Receiving Party gives Disclosing Party written notice of a Compelled Disclosure (to the extent legally permitted). Receiving Party will provide reasonable cooperation to Disclosing Party in connection with a Compelled Disclosure at Disclosing Party's sole expense.

4.3.4 Injunctive Relief. The parties expressly acknowledge and agree that no adequate remedy may exist at law for an actual or threatened breach of this Section 4.3 and that, in the event of an actual or threatened breach of the provisions of this Section 4.3, the non-breaching party will be entitled to seek immediate injunctive and other equitable relief, without waiving any other rights or remedies available to it.

4.4 Use of Marks. You grant oneapp the right to use and display your name, logo, and a description of your use case(s) on oneapp's website, in earnings releases and calls, and in marketing and promotional materials, subject to your standard trademark usage guidelines that you expressly provide to oneapp.

# 5. Representations, Warranties, and Disclaimer

5.1 Power and Authority Representation. Each party represents and warrants that it has validly accepted or entered into this Merchant Agreement and has the legal power to do so.

5.2 Anti-Corruption and International Trade Laws. Each party (a) warrants that it will comply with all applicable anti-corruption, anti-money laundering, economic and trade sanctions, export controls, and other international trade laws, regulations, and governmental orders (collectively, "Anti-Corruption and Trade Laws") in the jurisdictions that apply directly or indirectly to the SaaS, including, without limitation, the United States, and (b) represents that it has not made, offered, promised to make, or authorized any payment or anything of value in violation of Anti-Corruption and Trade Laws. You will promptly notify oneapp in writing of any actual or potential violation of Anti-Corruption and Trade Laws in connection with the use of the SaaS and take all appropriate steps to remedy or resolve such violations, including any steps requested by oneapp. If applicable, you represent that you have obtained, and warrant that you will

continue to obtain, all licenses or other authorizations required to export, re-export, or transfer the SaaS. Each party represents that it (and in your case, also your End Users) is not on any government prohibited, denied, or unverified-party, sanctions, debarment, or exclusion list or export-controlled related restricted party list (collectively, "Sanctions Lists"). You will immediately (i) discontinue your use of the SaaS if you become placed on any Sanctions List and (ii) remove your End Users' access to the SaaS if your End Users become placed on any Sanctions List. You represent that you have not, and warrant that you will not, export, re-export, or transfer the SaaS to an entity on any Sanctions List without prior authorization from the applicable governmental authority. Notwithstanding anything to the contrary in this Merchant Agreement, either party may terminate this Merchant Agreement immediately upon written notice to the other party if the other party is in breach of its obligations in this Section 5.2. If your account is blocked because it is operating in a country or region prohibited under this Section 5.2, you will receive notice of your account being inoperable when you attempt to log into your account in such prohibited country or region.

5.3 Consents and Permissions. You represent and warrant that you have provided and will continue to provide adequate notices, and that you have obtained and will continue to obtain the necessary permissions and consents, to provide Merchant Data to oneapp for processing pursuant to Section 4.2 (Merchant Data).

5.4 SaaS. oneapp represents and warrants that the SaaS perform materially in accordance with the applicable Documentation. Your exclusive remedy for a breach of this Section 5.4 will be, at oneapp's option, to (a) remediate any material non-conformity or (b) refund you the Fees paid for the time period during which the affected SaaS do not comply with this Section 5.4.

5.5 DISCLAIMER. WITHOUT LIMITING A PARTY'S EXPRESS WARRANTIES AND OBLIGATIONS HEREUNDER, AND EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SAAS ARE PROVIDED "AS IS," AND NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. ONEAPP ADDITIONALLY DISCLAIMS ALL WARRANTIES RELATED TO TELECOMMUNICATIONS PROVIDERS. YOU ACKNOWLEDGE THE INTERNET AND TELECOMMUNICATIONS PROVIDERS' NETWORKS ARE INHERENTLY INSECURE AND THAT ONEAPP WILL HAVE NO LIABILITY FOR ANY CHANGES TO, INTERCEPTION OF, OR LOSS OF MERCHANT DATA WHILE IN TRANSIT VIA THE INTERNET OR AN INFRASTRUCTURE SERVICE'S SYSTEMS AND NETWORK. BETA OFFERINGS ARE PROVIDED "AS IS" AND "AS AVAILABLE". ONEAPP MAKES NO WARRANTIES AND WILL HAVE NO LIABILITY FOR ANY BETA OFFERINGS, MERCHANT SERVICES, OR THIRD PARTY SERVICES WHATSOEVER.

# 6. Mutual Indemnification

6.1 Indemnification by oneapp

6.1.1 Scope of Indemnification. oneapp will defend you, your Affiliates, and each of their directors, officers, and employees (collectively, "Merchant Indemnified Parties") from and against any claim, demand, suit, or proceeding made or brought against a Merchant Indemnified Party by a third party alleging that oneapp's development of the SaaS infringes or misappropriates such third party's intellectual property rights ("oneapp Indemnifiable Claim"). oneapp will indemnify you from any fines, penalties, damages, attorneys' fees, and costs awarded against a Merchant Indemnified Party or for settlement amounts approved by oneapp for a oneapp Indemnifiable Claim.

6.1.2 Infringement Options. If oneapp's provision of the SaaS has become, or in oneapp's opinion is likely to become, the subject of any oneapp Indemnifiable Claim for third-party intellectual property rights infringement or misappropriation, oneapp may at its option and expense: (a) procure the right to continue to provide the SaaS as set forth herein; (b) modify the SaaS to make them non-infringing; or (c) if the foregoing options are not reasonably practicable, terminate this Merchant Agreement, or, if applicable, terminate the SaaS that are the subject of any oneapp Indemnifiable Claim for third-party intellectual property rights infringement or misappropriation, and refund you any unused pre-paid Fees.

6.1.3 Limitations. oneapp will have no liability or obligation under this Section 6.1 with respect to any oneapp Indemnifiable Claim arising out of (a) your use of the SaaS in breach of this Merchant Agreement; (b) the combination, operation, or use of the SaaS with other applications, portions of applications, products, or services, including, without limitation, the Merchant Services or Third Party

Services, where the SaaS would not by themselves be infringing; or (c) SaaS for which there is no charge or Beta Offerings.

6.2 Indemnification by Merchant. You will defend oneapp, its Affiliates, and each of their directors, officers, and employees (collectively, "oneapp Indemnified Parties") from and against any claim, demand, suit, or proceeding made or brought against a oneapp Indemnified Party by a third party alleging or arising out of: (a) your or your End Users' breach of Section 2.2 (Merchant Responsibilities) or (b) any Merchant Services infringing or misappropriating such third party's intellectual property rights (collectively, "Merchant Indemnifiable Claims"). You will indemnify oneapp from any fines, penalties, damages, attorneys' fees, and costs awarded against a oneapp Indemnified Party or for settlement amounts that you approve for a Merchant Indemnifiable Claim.

6.3 Conditions of Indemnification. As a condition of the foregoing indemnification obligations: (a) the indemnified party ("Indemnified Party") will promptly notify the indemnifying party ("Indemnifying Party") of any Merchant Indemnifiable Claim or oneapp Indemnifiable Claim (individually or collectively referred to herein as a "Claim")in writing; provided, however, that the failure to give prompt written notice will not relieve Indemnifying Party of its obligations hereunder, except to the extent that Indemnifying Party was actually and materially prejudiced by such failure; (b) Indemnifying Party will have the sole authority to defend or settle a Claim; and (c) Indemnified Party will reasonably cooperate with Indemnifying Party in connection with Indemnifying Party's activities hereunder, at Indemnifying Party's expense. Indemnified Party reserves the right, at its own expense, to participate in the defense of a Claim. Notwithstanding anything herein to the contrary, Indemnifying Party will not settle any Claim for which it has an obligation to indemnify under this Section 6 admitting liability or fault on behalf of Indemnified Party, nor create any obligation on behalf of Indemnified Party without Indemnified Party's prior written consent, which will not be unreasonably withheld, conditioned, or delayed.

6.4 Exclusive Remedy. This Section 6 states Indemnifying Party's sole liability to, and Indemnified Party's exclusive remedy against, the other party for any third-party claims.

# 7. Limitation of Liability

7.1 LIMITATION ON INDIRECT, CONSEQUENTIAL, AND RELATED DAMAGES. IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS MERCHANT AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, LOST DATA, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

7.2 LIMITATION OF LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS MERCHANT AGREEMENT EXCEED THE AMOUNTS PAID OR PAYABLE BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SAAS GIVING RISE TO THE LIABILITY DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY.

7.3 EXCEPTIONS TO THE LIMITATION OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN SECTION 7.1 (LIMITATION ON INDIRECT, CONSEQUENTIAL, AND RELATED DAMAGES) AND SECTION 7.2 (LIMITATION OF LIABILITY), THE LIMITATIONS IN SECTION 7.1 AND SECTION 7.2 DO NOT APPLY TO (a) YOUR BREACH OF SECTION 2.2 (MERCHANT RESPONSIBILITIES); (b) YOUR AND YOUR AFFILIATES' BREACH OF SECTION 3 (FEES AND PAYMENT TERMS); OR (c) AMOUNTS PAYABLE PURSUANT TO A PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 6 (MUTUAL INDEMNIFICATION).

# 8. Term, Termination, and Survival

8.1 Merchant Agreement Term. This Merchant Agreement will commence on the Effective Date and continue until terminated in accordance with Section 8.2 (Termination) ("Term").

8.2 Termination

8.2.1 For Convenience. Either party may terminate this Merchant Agreement for convenience by providing the other party with at least thirty (30) days prior written notice. Notwithstanding the preceding sentence, if there are any Order Form(s) in effect, this Merchant Agreement will not terminate until all such Order Form(s) have expired or have been terminated in accordance with the terms therein.

8.2.2 Material Breach. Either party may terminate this Merchant Agreement (including all Order Form(s) and SaaS that are in effect) in the event the other party commits any material breach of this Merchant Agreement and fails to remedy such breach within ten (10) days of the date of written notice of such breach. For the avoidance of doubt, a breach of the oneapp Acceptable Use Policy will be considered a material breach of this Merchant Agreement. If oneapp terminates this Merchant Agreement because of your material breach, then oneapp will also close your accounts.

8.2.3 Insolvency. Subject to applicable law, either party may terminate this Merchant Agreement immediately by providing written notice in the event of the other party's liquidation, commencement of dissolution proceedings, or any other proceeding relating to a receivership, failure to continue business, assignment for the benefit of creditors, or becoming the subject of bankruptcy.

8.3 Survival. Upon termination of this Merchant Agreement, the terms of this Section 8.3 and the terms of the following Sections will survive: Section 2.1(c) (regarding the oneapp Security Overview), Section 3 (Fees and Payment Terms), Section 4 (Ownership, Merchant Data, and Confidentiality), Section 5.5 (Disclaimer), Section 6 (Mutual Indemnification), Section 7 (Limitation of Liability), Section 9 (General), and any applicable terms in Section 10 (Additional Terms).

# 9. General

9.1.1 Affiliates of Merchant. Your Affiliates may use the SaaS under and in accordance with the terms of this Merchant Agreement. You represent and warrant that you have sufficient rights and the authority to make this Merchant Agreement binding upon each of your Affiliates. You and each of your Affiliates will be jointly and severally liable for the acts and omissions of such Affiliate in connection with this Merchant Agreement and such Affiliate's use of the SaaS. Only you will bring any claim against oneapp on behalf of your Affiliates.

9.1.2 Affiliates of oneapp. An Affiliate of oneapp may provide the SaaS, or a portion thereof, to you or your Affiliates, as applicable, in accordance with this Merchant Agreement and any applicable Order Form(s) with such Affiliate of oneapp. oneapp will (a) be responsible for the SaaS its Affiliates provide and (b) not be relieved of its obligations under this Merchant Agreement if its Affiliates provide the SaaS or a portion thereof. oneapp will enforce the terms of this Merchant Agreement relating to the SaaS its Affiliates provide. Notwithstanding anything to the contrary in this Merchant Agreement, an Affiliate of oneapp may directly bill you or your Affiliates, as applicable, (i) for the SaaS it provides or (ii) solely as a billing agent for oneapp or the Affiliate of oneapp providing the SaaS, as applicable.

9.2 Assignment. Neither party may assign or otherwise transfer this Merchant Agreement or any applicable Order Form(s), in whole or in part, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, oneapp may assign this Merchant Agreement or any applicable Order Form(s), in whole or in part, without consent to (a) a successor to all or part of its assets or business or (b) an Affiliate. Any attempted assignment or transfer by either party in violation hereof will be void. Subject to the foregoing, this Merchant Agreement and any applicable Order Form(s) will be binding on the parties and their respective successors and permitted assigns.

9.3 Relationship. Each party is an independent contractor in the performance of each and every part of this Merchant Agreement. Nothing in this Merchant Agreement is intended to create or will be construed as creating an employer-employee relationship or a partnership, agency, joint venture, or franchise. Each party will be solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith and for any and all claims, liabilities, damages, or debts of any type whatsoever that may arise on account of its activities, or those of its employees and agents, in the performance of this Merchant Agreement. Neither party has the authority to commit the other party in any way and will not attempt to do so or imply that it has the right to do so.

9.4 No Third-Party Beneficiaries. This Merchant Agreement does not confer any benefits on any third party (including your End Users or

an Affiliate) unless it expressly states that it does.

9.5 Notices. Notices to oneapp will be provided via email to legalnotices@withoneapp.com. All notices to you will be provided via email to the relevant contact(s) you designate in your account.

9.6 Governing Law and Attorneys' Fees. This Merchant Agreement will be governed by and interpreted according to the laws of the applicable state or country identified below without regard to conflicts of laws and principles that would cause the application of the laws of another jurisdiction. This Merchant Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Except as provided in Section 9.7 (Dispute Resolution), any legal suit, action, or proceeding arising out of or relating to this Merchant Agreement or the SaaS will be instituted in the applicable courts identified below and the parties hereby consent to the personal jurisdiction of these courts. In the event of any adjudication of any dispute under this Merchant Agreement, the prevailing party in such legal suit, action, or proceeding will be entitled to reimbursement of its attorneys' fees and related costs by the non-prevailing party.

| If you are domiciled in: | Governing law: | Courts with personal jurisdiction: |
|---|---|---|
| The United States | State of Delaware | State or federal courts of Delaware, United States of America |

9.7 Dispute Resolution. In the event of any dispute, claim, or controversy in connection with this Merchant Agreement (other than for disputes, claims, or controversies related to the intellectual property of a party) (collectively, "Disputes"), each party's senior representatives will, in good faith, attempt to resolve a Dispute. If the parties are unable to resolve a Dispute within thirty (30) days or within such other time period as the parties may agree in writing, then the parties may commence binding arbitration under JAMS' Comprehensive Arbitration Rules and Procedures. The parties will share equally the fees and expenses of the JAMS arbitrator. The arbitration will be conducted by a sole arbitrator mutually agreed to between the parties or, failing that, by JAMS under its then prevailing rules. Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction. The arbitrator will have the authority to grant specific performance or any other equitable or legal remedy, including provisional remedies. Each party will be responsible for its own incurred expenses arising out of any dispute resolution procedure. Any arbitration proceedings will take place in the English language in (a) New York, New York, if you are domiciled in The United States and any country outside of the United States.

9.8 Force Majeure. No failure, delay, or default in performance of any obligation of a party will constitute an event of default or breach of this Merchant Agreement to the extent that such failure to perform, delay, or default arises out of a cause, existing or future, that is beyond the control and without negligence of such party, including action or inaction of governmental, civil or military authority, fire, strike, lockout, or other labor dispute, flood, terrorist act, war, riot, theft, earthquake, or other natural disaster (collectively, "Force Majeure Events"). The party affected by a Force Majeure Event will take all reasonable actions to minimize the consequences of any such event.

9.9 Waiver and Order of Precedence. No failure or delay by either party in exercising any right or enforcing any provision under this Merchant Agreement will constitute a waiver of that right or provision, or any other provision. Titles and headings of sections of this Merchant Agreement are for convenience only and will not affect the construction of any provision of this Merchant Agreement. In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (1) the applicable Order Form(s), (2) the oneapp Data Protection Addendum, (3) the terms set forth in the body of this Terms of Service, (4) the oneapp Acceptable Use Policy, (5) any other terms incorporated by reference herein or any other exhibits or attachments hereto, and (6) the applicable Documentation.

9.10 Severability. In the event that any provision of this Merchant Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be limited or eliminated to the minimum extent necessary to render such provision enforceable and, in any event, the remainder of this Merchant Agreement will continue in full force and effect.

9.11 Entire Merchant Agreement. This Merchant Agreement (including all exhibits and attachments hereto) will constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, proposals, statements, sales materials, presentations, or non-disclosure or other agreements, whether oral or written.

No oral or written information or advice given by oneapp, its agents, or its employees will create a warranty or in any way increase the scope of the warranties or obligations in this Merchant Agreement. The parties agree that any term or condition stated in your Order Form(s) or registration portal or in any purchase order document or similar document will be construed solely as evidence of your internal business processes and the terms and conditions contained therein will be void and have no effect with regard to this Merchant Agreement, even if accepted by oneapp or executed by the parties after the Effective Date.

# 10. Additional Terms

10.1 Private Beta Offerings. Any Private Beta Offerings made available to Merchant are strictly for testing and experimentation purposes only. Merchant acknowledges that, by their nature, Private Beta Offerings may (a) not meet speed or performance benchmarks or expectations; (b) have gaps in functionality; and (c) contain bugs. The oneapp SLA does not apply to Private Beta Offerings. Private Beta Offerings, and any information related to such Private Beta Offerings, including their existence, are considered oneapp's Confidential Information.

10.6 Partner Program. If you are joining or participating in any oneapp partner program, the following terms apply:

10.6.1 Partner Program Acceptance Conditions. Your acceptance into the applicable Partner Program is conditioned on (a) oneapp's approval of your completed application to join such applicable Partner Program, if applicable; (b) your satisfaction of all Partner Program acceptance qualifications and requirements that are communicated to you in writing by oneapp; and (c) your acceptance and compliance with the terms of this Merchant Agreement.

10.6.2 Partner Program Guides and Policies. You will comply with the applicable Partner Program guides and policies as they are made available to you.

10.6.3 Use of Marks and Publicity. Each party ("Licensor") grants the other party ("Licensee") the right to use and display Licensor's trademarks, service marks, names, logos, images, Partner Program participation badges, collateral, or similar materials ("Brand Elements") (a) to identify the parties' relationship and (b) for marketing activities relating to the applicable Partner Program. Any Brand Elements will be used in accordance with Licensor's then-current Brand Elements and guidelines. oneapp's Brand Elements and guidelines are available at http://legal.withoneapp.com/#trademarks. oneapp's Brand Elements are non-transferrable, and oneapp may revoke your right to use and display oneapp's Brand Elements at any time upon written notice to you. Neither party will issue any press releases or public announcements relating to the Partner Program, or your participation in the Partner Program, without the other party's prior written approval.

10.6.4 Partner Program Removal. oneapp may, for any reason or no reason, remove you from the applicable Partner Program, or your access to the applicable Partner Program account portal, upon thirty (30) days prior written notice to you.