

## MASTER SUBSCRIPTION AGREEMENT FOR NON-HOSTED SERVICES

This MASTER SUBSCRIPTION AGREEMENT FOR NON-HOSTED SERVICES (this "**Agreement**") is made by and between Early Impact, Inc., a California corporation ("**Early Impact**"), and the undersigned merchant ("**Merchant**") effective as of the date of acceptance of this Agreement by Merchant (the "**Effective Date**"). (Early Impact and Merchant may each be referred individually as a "**Party**" or **party**, and collectively as the "**Parties**" or **parties**).

### RECITALS

WHEREAS, Early Impact has developed an online subscription management software platform and related Web-based applications called SubscriptionBridge ("**SubscriptionBridge**") to enable online merchants manage subscriptions and related customer service tasks, including but not limited to recurring payments, and notifications about credit card and trial periods expirations (the "**Services**").

WHEREAS, Merchant offers certain subscription-based products or services to its registered users (each, a "**User**") and intends to use and make available to its Users the Services that Early Impact offers through SubscriptionBridge and to which Merchant intends to subscribe.

WHEREAS, Merchant intends to make the Services available to Users directly through Merchant's Website.

WHEREAS, in furtherance of the objectives set forth above, the parties hereto desire to enter into this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Early Impact and Merchant, intending to be legally bound, hereby agree as follows:

#### **Section 1. CERTAIN DEFINITIONS**

**1.1. "Intellectual Property Rights"** means all inventions, discoveries, trademarks, patents, trade names, copyrights, moral rights, jingles, know-how, intellectual property, software, shop rights, licenses, developments, research data, designs, technology, trade secrets, test procedures, processes, route lists, computer programs, computer discs, computer tapes, literature, reports and other confidential information, intellectual and similar intangible property rights, whether or not patentable or copyrightable (or otherwise subject to legally enforceable restrictions or protections against unauthorized third party usage), and any and all applications for, registrations of and extensions, divisions, renewals and reissuance of, any of the foregoing, and rights therein, including without limitation (a) rights under any royalty or licensing agreements, and (b) programming and programming rights, whether on film, tape or any other medium which Early Impact owns or which has a right to use.

**1.2. "Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

**1.3. "Order Form"** means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between the parties from time to time. Order Forms shall be deemed incorporated herein by reference.

**1.4. "Prohibited Activities"** means to: (a) offer, permit or promote gambling; (b) display, transmit or otherwise make available material that is pornographic, obscene, lewd, indecent, or vulgar; (c) display, transmit or otherwise make available material that is infringing, threatening, harassing, libelous, hateful, racially or ethnically objectionable, unlawful, tortious, harmful to children, invasive of another's privacy or violative of third party privacy rights; or (d) display or transmit on material promoting or providing instructional information about illegal activities, promoting physical harm or injury against any group or individual, or promoting any act of cruelty to animals, including, but is not limited to, instructions on how to assemble bombs, grenades, and other weapons, and "Crush" the Services.

**1.5. "Terms of Use"** means the terms of use located at <http://www.subscriptionbridge.com/termsfuse.html> or such other locations as Early Impact may specify from time to time.

## **Section 2. EARLY IMPACT SERVICES**

**2.1. Services.** Merchant shall subscribe to the Services, and Early Impact shall provide the Services to Merchant through SubscriptionBridge as more fully set forth in the Order Form in *Exhibit A* attached hereto and incorporated herein in order to enable Merchant to manage subscriptions and customer service tasks, including but not limited to recurring payments, and notifications about credit card and trial periods expirations.

**2.2. License Grant and Restrictions.** Early Impact hereby grants Merchant a non-exclusive, non-transferable, revocable worldwide right to use the Services subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Early Impact.

**2.3. Free Trial.** Early Impact may make one or more Services available to Merchant on a trial basis free of charge as set forth in the Order Form. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

ANY DATA MERCHANT ENTERS INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR MERCHANT, DURING THE FREE TRIAL WILL BE PERMANENTLY LOST UNLESS AT THE END OF THE FREE TRIAL PERIOD MERCHANT PURCHASES A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL.

NOTWITHSTANDING SECTION 9 (WARRANTIES AND DISCLAIMERS), DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

**2.4. Provision of Services.** Early Impact shall make the Services available to Merchant pursuant to this Agreement and the relevant Order Forms during a subscription term, as specified in the Order Form. Merchant agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Early Impact regarding future functionality or features.

**2.5. Users.** Unless otherwise specified in the applicable Order Form, Services are purchased pursuant to a Merchant subscription and may be accessed by Users that register for the Services and agree to the Terms of Use, as amended from time to time.

**2.6. Changes to Services.** Early Impact may modify the Services from time to time in Early Impact's sole discretion, provided that Early Impact shall make commercially reasonable efforts to ensure that such modifications shall not materially diminish the functionality of the Services.

**2.7. Privacy.** Merchant acknowledges and agrees that in the course of providing the Services, Early Impact may capture transaction and user information of Merchant and/or Users (collectively, the "**Data**"). Merchant agrees to provide to Early Impact, and Early Impact shall capture, only the Data that is necessary for Early Impact to provide the Services. Early Impact shall not disclose the Data to third parties or use the Data, except that Early Impact shall have the rights (i) to use the Data as necessary to perform the Services contemplated in this Agreement (including distributing the Data to third parties providing services requested by Merchant); (ii) to maintain the Data internally for record keeping or to disclose the Data as required by law.

**2.8. Secure Transactions.** Early Impact has implemented and will maintain security systems for the transmission of the Data, consisting of encryption and "firewall" technologies that are understood in the industry to provide adequate security for the transmission of such information over the Internet. Early Impact does not guarantee the security of the Services or the Data, and Early Impact will not be responsible in the event of any infiltration of the security systems where SubscriptionBridge is hosted. Merchant further acknowledges and agrees that Early Impact is not responsible for the security of the Data or information or any other information stored on Merchant's servers or any other party's servers.

**2.9. Services Availability.** Early Impact shall use commercially reasonable efforts to (i) make the Services available 24 hours a day, 7 days a week, except for: (a) planned downtime, or (b) any unavailability caused by circumstances beyond its reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays, and (ii) provide the Services only in accordance with applicable laws and government regulations.

**2.10. Usage Limitations.** Services may be subject to other limitations, such as, for example, limits on disk storage space, on the number of calls Merchant is permitted to make against Early Impact application programming interface, or the number of page views. Additional limitations may apply in Early Impact's sole discretion based on the availability of third party data storage and server hosting services.

**2.11. Technical and Customer Support.** Early Impact shall provide technical and customer support only as set forth in *Exhibit B* attached hereto and incorporated herein.

### **Section 3. MERCHANT OBLIGATIONS**

**3.1. Merchant Website.** Merchant shall be solely responsible for the establishment, hosting and maintenance of its Website(s) and its connection to the Internet (the “**Merchant Website(s)**”), for fulfilling all orders for products and services sold by Merchant to its users on the Merchant Website(s) or otherwise, including without limitation transmitting Merchant’s registration information and Data to Early Impact, and for ensuring that the Data transmitted in conjunction with the Services and for enrolment for the Services is accurate, complete and in the form as requested by Early Impact, and is not corrupted due to Merchant’s systems. Merchant is also responsible for reviewing its account on a regular basis and for notifying Early Impact promptly of suspected unauthorized activity.

**3.2. Use of Services.** Merchant shall (i) be responsible for Users’ compliance with this Agreement, (ii) be solely responsible for the accuracy, quality, integrity and legality of Data and of the means by which Data were acquired, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Early Impact promptly of any such unauthorized access or use, (iv) keep any user name and password confidential, (v) notify Early Impact immediately upon learning of any unauthorized use of user name or password, (vi) maintain commercially reasonable business practices in conjunction with use of the Services and comply with all applicable use policies, laws and regulations with respect to the use of the Services, including but not limited to the Terms of Use, (vii) not use the Services for any Prohibited Activities, and (viii) use the Services only in accordance with applicable use policies, laws and government regulations. Merchant shall not (a) make the Services available to anyone other than Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

### **Section 4. MERCHANT HOSTING**

**4.1. Activation Page.** The activation page of new User subscriptions shall be hosted on a page on the Merchant’s Website (the “**Activation Page**”), which shall connect to SubscriptionBridge through the SubscriptionBridge Application Programming Interface (the “**API Service**”), so long as Merchant’s subscription for the Services is in effect in accordance with and subject to the terms of this Agreement.

**4.2. API Service License.** Early Impact grants Merchant a limited, revocable, non-exclusive, non-transferable, non-assignable, non-sublicenseable license to use the API Service to connect the Merchant’s Website with SubscriptionBridge and develop applications that interoperate with SubscriptionBridge, on the terms set forth in this Agreement. The license shall continue for as long as Early Impact makes the API Service available to Merchant, provided, however, that this license will terminate immediately if Merchant violates the terms of

this Agreement or if Merchant installs or uses the API Service for purposes other than connecting Merchant's website with SubscriptionBridge, or in connection with or to promote Prohibited Activities. Early Impact may, in its sole discretion, with or without cause, modify, enhance, suspend, terminate or discontinue this license, or restrict Merchant's access to all or any part of the API Service at any time without liability to Merchant or anyone else. The API Service may contain technical inaccuracies or typographical errors, and Early Impact does not undertake any obligation or responsibility to update or amend the API Service, or to provide support for Merchant's use of the API Service except as set forth in this Agreement. All data obtained by Merchant via the authenticated API may not be published or distributed.

**4.3. End User Terms.** The Terms of Use apply to all Users of Services. In the Activation Page, Merchant must provide a scrollable text box containing the Terms of Use and an opt-out feature that requires each User to accept the Terms of Use as a condition to completing registration of a new User for the Services.

**4.4. Merchant Customer Service.** In connection with Merchant's hosting of the Activation Page, Merchant shall also host a customer service page where Users of the Service can be directed. Merchant shall be solely responsible for providing customer service to Users in connection with the Services, and Early Impact shall not be responsible for providing any customer service to Users in connection with the Services.

## **Section 5. PROPRIETARY RIGHTS**

**5.1. Exclusive Ownership.** Early Impact is and at all times shall be the sole and exclusive owner of SubscriptionBridge and of all hardware and software that Early Impact has developed, uses or makes available to provide the Services, and of any development thereof.

**5.2. Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Early Impact reserves all rights, title and interest in and to the Services, including all related Intellectual Property Rights. No rights are granted to Merchant hereunder other than as expressly set forth herein.

**5.3. Restrictions.** Except as permitted in this Agreement, Merchant may not access the Services for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes. Merchant shall not (i) permit any third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services, (iii) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services in any way; or (iv) reverse engineer or access the Services in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Services.

**5.4. Ownership of Data.** Unless otherwise provided herein, as between Early Impact and Merchant, and except as otherwise provided in this Agreement, Merchant exclusively owns all rights, title and interest in and to all of Merchant's Data.

**5.5. Suggestions.** Early Impact shall have a royalty-free, non-revocable, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into

the Services any suggestions, enhancement requests, recommendations or other feedback provided by Merchant, including Users, relating to the operation of the Services.

**5.6. Federal Government End Use Provisions.** Early Impact may provide the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with Early Impact to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

## **Section 6. SERVICE FEES**

**6.1. Service Fees.** Merchant shall pay to Early Impact the service fees (collectively, the **Service Fee**) specified in all Order Forms hereunder. Except as otherwise specified herein or in an Order Form, (i) fees are quoted and payable in United States dollars, (ii) fees are based on number of registered Users at the end of each billing period, plus a minimum recurring fixed fee, (iii) payment obligations are non-cancelable and fees paid are non-refundable, and (iv) the number of User subscriptions purchased cannot be decreased during each billing period. Early Impact follows a monthly billing period. The Service Fee is based on the number of registered Users at the end of the prior billing period; therefore, any increases or decreases in the number of registered Users in the middle of a monthly period will be netted out and calculated in the Service Fee for the next billing period.

**6.2. Invoicing and Payment.** Merchant will provide Early Impact with valid and updated credit card information. Merchant authorizes Early Impact to charge such credit card for all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. Merchant is responsible for maintaining complete and accurate billing and contact information in the Services.

**6.3. Suspension of Service and Acceleration.** If any amount owing under this or any other agreement for Services is ten or more days overdue, Early Impact may, without limiting its other rights and remedies, accelerate any and all unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend the Services to Merchant until such amounts are paid in full.

**6.4. Taxes.** Unless otherwise stated, Early Impact's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "**Taxes**"). Merchant is responsible for paying all Taxes

associated with purchases or provision of Services hereunder. In the event that Early Impact has the legal obligation to pay or collect Taxes for which Merchant is responsible under this paragraph, the appropriate amount shall be invoiced to and paid by Merchant, unless Merchant provides a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, Early Impact is solely responsible for taxes assessable against it based on its income, property and employees.

**6.5. Payment of Invoices.** Early Impact shall regularly, and at least on a quarterly basis, invoice Merchant for the Service Fee and any other payment due Early Impact under this Agreement. Payments by Merchant on all invoiced amounts that have not already been paid as described in Section 6.2 of this Agreement shall be due no later than fifteen days from date of invoicing.

## **Section 7. CONFIDENTIALITY**

**7.1. Definition of Confidential Information.** As used herein, "**Confidential Information**" means all confidential information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Merchant's Confidential Information shall include the Data; Early Impact's Confidential Information shall include the Services; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Order Forms, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information (other than Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

**7.2. Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein.

**7.3. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing

Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information. Each party agrees to take all action and cooperate as is reasonably necessary, at the other party's request and expense, to protect the other's respective rights, titles, and interests specified in this Section 7 and further agrees to execute any documents that might be necessary to perfect each party's ownership of such rights, titles, and interests.

## **Section 8. WARRANTIES AND REPRESENTATIONS**

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

- (a) it has the full power and authority to enter into and fully perform this Agreement.
- (b) it will not transmit to Early Impact any Malicious Code.

**8.2. Early Impact Warranties.** Early Impact represents and warrants that:

- (a) it has the full power and authority to enter into and fully perform this Agreement.
- (b) the Services shall perform materially in accordance with this Agreement. For any breach of either such warranty, Merchant's exclusive remedy shall be as provided in Section 12.3 (Termination for Cause) and Section 12.4 (Refund or Payment upon Termination) below.

## **Section 9. WARRANTIES AND DISCLAIMERS**

**9.1.** Early Impact represents and warrants that the Services shall conform in all material respects to the applicable documentation provided by Early Impact to Merchant. Merchant's sole remedy for Early Impact's breach of this warranty shall be Early Impact's reasonable efforts to repair or replace the Services. EXCEPT AS EXPRESSLY SET FORTH ABOVE AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, EARLY IMPACT MAKES NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SERVICES OR SOFTWARE, AND ALL SUCH WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY DISCLAIMED BY EARLY IMPACT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MERCHANT ACKNOWLEDGES THAT EARLY IMPACT HAS NOT REPRESENTED OR WARRANTED THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR FREE OR WITHOUT DELAY OR WITHOUT COMPROMISE OF THE SECURITY SYSTEMS RELATED TO THE SERVICES.

**9.2.** Merchant represents and warrants that it shall comply with all applicable privacy, consumer and other laws and regulations with respect to its (i) provision, use and disclosure of the Data; (ii) dealings with the Users providing the Data; and (iii) use of the Services.



## **Section 10. INDEMNIFICATION**

Merchant will indemnify, defend and hold harmless Early Impact, its officers, directors, agents and employees, from and against any and all claims, losses, demands, liabilities, damages, costs and expenses (including reasonable attorneys' fees), either arising out of or relating to (i) the breach of any representation or warranty by Merchant, (ii) the sale or use of any product or services sold by Merchant, (iii) claims brought or damages suffered by any User, or prospective User of Merchant relating to Merchant's or its agents' misuse of the Services, or (iv) the breach of this Agreement or any representation or warranty by Merchant.

## **Section 11. LIMITATIONS ON LIABILITY**

Merchant acknowledges that Early Impact is not a retailer or e-commerce website. Early Impact is responsible only for providing Services to facilitate data management by Merchant and is not responsible for payment, order and data processing, the operation of web sites of Merchant or the availability or performance of the Internet, or for any damages or costs Merchant suffers or incurs as a result of any instructions given, actions taken or omissions made by Merchant, Merchant's Users, financial processor(s), Merchant's financial institutions or any ISP. IN NO EVENT WILL EARLY IMPACT'S LIABILITY EXCEED THE FEES PAID TO EARLY IMPACT BY MERCHANT HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM FOR DAMAGES. IN NO EVENT WILL EARLY IMPACT HAVE ANY LIABILITY TO MERCHANT OR ANY OTHER PARTY FOR ANY LOST OPPORTUNITY OR PROFITS, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY (INCLUDING NEGLIGENCE), AND WHETHER OR NOT EARLY IMPACT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. Notwithstanding the above, the limitations set forth above shall be enforceable to the maximum extent allowed by applicable law.

## **Section 12. TERM, TERMINATION AND REMEDIES**

**12.1. Term of Agreement.** This Agreement commences on the date of acceptance by Merchant and continues until all User subscriptions granted in accordance with this Agreement have expired or have been terminated. Notwithstanding this provision Early Impact may terminate this Agreement at any time in its sole discretion without any obligations to Merchant, as permitted by this Agreement. If Merchant elects to use the Services for a free trial period and does not purchase a subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

**12.2. Term of Purchased User Subscriptions.** User subscriptions purchased by Merchant commence on the date when a User first registers for the Services offered by a Merchant and continue until the earlier of User deregistration or termination of this Agreement. For purposes of billing, User subscriptions will be calculated toward the Service Fee calculation for the billing period immediately following any given month in which the User subscription was

activated, either partially or fully, regardless of when during the preceding month a User subscription is activated or terminated. As its exclusive audit measure, Merchant retains the right to ask Early Impact once during each twelve month period for a report on User subscription activations and terminations for the preceding twelve months.

**12.3. Termination for Cause.** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

**12.4. Refund or Payment upon Termination.** Upon any termination for cause by Merchant, Early Impact shall refund Merchant any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Early Impact, Merchant shall pay any unpaid fees through the date of termination. In no event shall any termination relieve Merchant of the obligation to pay any fees payable to Early Impact for the period prior to the effective date of termination.

**12.5. No Return of Data.** Early Impact does not have an obligation to maintain Data on behalf of Merchant or Users. On the effective date of termination of this Agreement, unless legally prohibited, Early Impact will delete all Data in its systems or otherwise in its possession or under its control.

**12.6. Surviving Provisions.** Section 5 (Proprietary Rights), 6 (Service Fees and Payment for Purchased Services), 7 (Confidentiality), 9 (Warranties and Disclaimers), 10 (Indemnification), 11 (Limitations on Liability), 12.4 (Refund or Payment upon Termination), 13 (Governing Law and Jurisdiction) and 14 (General) shall survive any termination or expiration of this Agreement.

### **Section 13. GOVERNING LAW AND JURISDICTION**

**13.1. Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State.

**13.2. Jurisdiction.** Each party hereto irrevocably submits to the exclusive jurisdiction of (a) the Supreme Court of the State of California, Orange County, or (b) the United States District Court for the Southern District of California, for the purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby or thereby. Each of Merchant and Early Impact agrees to commence any such action, suit or proceeding either in the United States District Court for the Southern District of California or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the Superior Court of the State of California, Orange County. Each of Merchant and Early Impact further agrees that service of any process, summons, notice or documents by U.S. registered mail to such party's respective address set forth above shall be effective service of process for any action, suit or proceeding in California with respect to any matters to which it has

submitted to jurisdiction in this Section 14.2. Each of Merchant and Early Impact irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby and thereby in (i) the Supreme Court of the State of California, Orange County, or (ii) the United States District Court for the Southern District of California, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

**13.3. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the first business day after sending by email (provided email shall not be sufficient for notices of termination or an indemnifiable claim).

**13.4. Agreement to Governing Law and Jurisdiction.** Each party agrees to the applicable governing law above without regard to choice or conflicts of law rules, and to the exclusive jurisdiction of the applicable courts above.

**13.5. Waiver of Jury Trial.** To the extent permitted by law, each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

## **Section 14. GENERAL**

**14.1. Export Compliance.** Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Services. Without limiting the foregoing, (i) each party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) Merchant shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

**14.2. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**14.3. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**14.4. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

**14.5. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to 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 Agreement shall remain in effect.

**14.6. Attorney Fees.** Merchant shall pay on demand all of Early Impact reasonable attorney fees and other costs incurred by Early Impact to collect any fees or charges due Early Impact under this Agreement following a breach of Section 6.2 (Invoicing and Payment).

**14.7. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**14.8. Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail.

**14.9. Counterparts.** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more such counterparts have been signed by each of the parties and delivered to each of the other parties.

**14.10. Amendment.** This Agreement may be amended at any time by Early Impact in its sole discretion, provided that Early Impact shall provide notice of any such amendment by posting the latest amended version of this Agreement under the domain [www.subscriptionbridge.com](http://www.subscriptionbridge.com).

**14.11. Headings.** The headings contained in this Agreement or in any Exhibit hereto, as applicable, are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All Exhibits annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit but not otherwise defined therein, shall have the meaning as defined in this Agreement. When a reference is made in this Agreement to a Section or Exhibit, such reference shall be to a Section of or an Exhibit to this Agreement unless otherwise indicated.

[Remainder of this page intentionally left blank]

Exhibit A

## **Order Form**

### **1) Services**

- a) SubscriptionBridge helps companies sell and manage subscriptions and related recurring payments. A detailed explanation of what SubscriptionBridge is and which services it provides can be found on the Early Impact Web site at <http://www.earlyimpact.com/subscriptionbridge> and at <http://www.subscriptionbridge.com>
- b) When you order a subscription to SubscriptionBridge from Early Impact or an Early Impact authorized reseller, and your order is processed, you will have access to the following services:
  - i) One (1) SubscriptionBridge Merchant Center account
  - ii) Use of the SubscriptionBridge shopping cart for any of the Stores
  - iii) Use of the SubscriptionBridge API for any of the Stores
  - iv) Features as described at <http://www.earlyimpact.com/subscriptionbridge/subscription-management-features.asp>

### **2) Service Fees**

- a) Service fees are charged per Subscriber, per Month, calculated as described at <http://www.earlyimpact.com/subscriptionbridge/pricing.asp> and payable under the terms of Section 6 of this Agreement.

### **3) Trial Period**

- a) If you cancel your SubscriptionBridge subscription within the first 30 days of use of the Services, no Service Fees will be charged.
- b) Additional discounts and other terms may apply to new Merchants as described at <http://www.earlyimpact.com/subscriptionbridge/pricing.asp>
- c) Section 2.3 of this Agreement contains additional terms concerning the Trial period.

### **4) SubscriptionBridge Nomenclature**

- a) For a definition of the terms Merchant Center, Subscription, Store, and other words used on this Order Form to describe SubscriptionBridge Services, please refer to the SubscriptionBridge documentation at <http://wiki.subscriptionbridge.com/glossary>

### **5) Changes to These Terms**

You agree that the terms and conditions set above may change at any time. Early Impact will provide written notice via electronic mail to the e-mail address associated with your SubscriptionBridge Merchant Center account of any such changes at least 30 days before the changes take effect. If you disagree with such changes, you may terminate this Agreement as per Section 12 (TERM, TERMINATION AND REMEDIES).

## Exhibit B

### **Technical and Customer Support**

#### **1) Support Resources**

- a) Free technical support resources are available at <http://wiki.subscriptionbridge.com>

#### **2) E-mail Support**

- a) E-mail support through Early Impact's support ticket system is available free of charge for the first 60 days of use of the Services.
- b) After the first 60 days, e-mail support is provided according to the following terms:
  - i) Free e-mail support through Early Impact's support ticket system for any month in which the total Service Fees paid by the Merchant for the last billing period were \$150 or above.
  - ii) \$45 per support ticket for any month in which the total Service Fees paid by the Merchant for the last billing period were below \$150. If a support ticket is determined to have been initiated due to a technical flaw in the SubscriptionBridge system, the \$45 per ticket fee will be refunded.

#### **3) What is Supported**

- a) SubscriptionBridge features as described in the SubscriptionBridge documentation at <http://wiki.subscriptionbridge.com>. If a feature is not behaving as described, Early Impact will use its best efforts to address the issue in a timely manner.

#### **4) What is NOT Supported**

- a) SubscriptionBridge features not included or not as described in the SubscriptionBridge documentation at <http://wiki.subscriptionbridge.com>
- b) Assistance with the addition of SubscriptionBridge Package Links (e.g. "subscribe now" link) into a Merchant's own Web pages or other software applications.
- c) Assistance with the integration of SubscriptionBridge with the Merchant's Web site or other software application through the SubscriptionBridge API, beyond the documentation for the API provided at <http://wiki.subscriptionbridge.com>
- d) Any billing, technical, or other issues pertaining to the Merchant's relationship with its Payment Gateway (recurring payment provider such as Authorize.net or PayPal) and not related to the integration of such Payment Gateway with SubscriptionBridge.

#### **5) Changes to These Terms**

- a) You agree that these Technical and Customer Support terms and conditions may change at any time. Early Impact will provide written notice via electronic mail to the e-mail address associated with your SubscriptionBridge Merchant Center account of any such changes at least 30 days before the changes take effect. If you disagree with such changes, you may terminate this Agreement as per Section 12 (TERM, TERMINATION AND REMEDIES).