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## TERMS AND CONDITIONS ("Terms")

Last updated: May 15<sup>th</sup>, 2018

**IMPORTANT NOTICE. PLEASE READ CAREFULLY BEFORE PLACING YOUR ORDER AND BEFORE SUBMITTING ANY PERSONAL INFORMATION VIA THIS WEBSITE.** By using this Website, placing an order with 2Checkout on this Website or through other means, clicking the "buy" button, or checking the terms and conditions box, you agree to the 2Checkout Terms and Conditions set forth below, including, without limitation, the 2Checkout Privacy Policy.

### 1. Scope

1.1 Avangate B.V., Avangate Inc. or any of their affiliates (each "2Checkout," "We," "Us" or "Our") provides ecommerce solutions for the electronic distribution of software and services, including, without limitation, purchases for licenses of software and digital content, such as download links, license keys, electronic codes, software as a service, subscriptions, eBooks and back-up media products (the "Products"), thereby enabling manufacturers, distributors, owners, software and shareware authors, and others worldwide to sell or license their Products online via 2Checkout.

1.2 These 2Checkout Terms and Conditions, including, without limitation, the 2Checkout Privacy Policy, as amended from time to time, are collectively known as the "Agreement." The Agreement applies to all purchases of Products made or confirmed through this website and/or through Our mobile app (individually and collectively, the "Website") or made or confirmed through other mutually agreed upon means. You understand and agree that this Agreement is enforceable against you and any entity with which you are employed or affiliated and on whose behalf the Products are used. If you are entering into this Agreement on behalf of yourself and such entity, you represent that you have the authority to bind the entity to this Agreement. The terms "You" and "Your" refer to you, individually, and to each such entity. You hereby represent and warrant that You have CAREFULLY read and understood this Agreement, that You are of legal age under the laws of Your country (e.g., eighteen years of age or older in the European Union and United States), and that You accept this Agreement freely, voluntarily, and with full knowledge and understanding of its terms and conditions.

1.3 The 2Checkout Privacy Policy is part of this Agreement.

### 2. Order

2.1 2Checkout cannot guarantee that the Products are in stock. 2Checkout reserves the right to reject Your submission of an order to purchase Products ("Order") at any time and without any liability to 2Checkout if, in 2Checkout's sole discretion, it is unable to process or fulfill Your Order. 2Checkout shall have this right of rejection even if You should receive a notice via the Website that the Order was successfully submitted or completed (or similar language).



2.2 Promptly following any rejection by 2Checkout of Your Order, 2Checkout will refund any prior payments that You have made for the Products included in that Order.

2.3 You confirm that all information provided by You when placing an Order is complete, accurate and up-to-date so as to allow 2Checkout to fulfill Your Order, and You will promptly update such information to keep it complete and accurate. You may update Your information via 2Checkout myAccount.

2.4 If You provide any information that is untrue, inaccurate, or incomplete, or if 2Checkout has reason to believe that the information You provided is untrue, inaccurate, or incomplete, 2Checkout may: (a) suspend or terminate Your account; (b) if permitted by applicable law, use electronic self-help means to terminate Your ability to access the Products; and/or (c) terminate this Agreement.

2.5 You will maintain the confidentiality of Your password, user ID, and other account credentials. You shall immediately notify 2Checkout of any unauthorized use of Your account credentials, or any other breach of security that is known or suspected by You.

2.6 You consent to the use of electronic communications in transacting business with 2Checkout, including, without limitation, the electronic delivery of notices and other documents to You. If at any time You would like to cease doing business electronically with 2Checkout, You will need to provide 2Checkout with written notice of Your withdrawal of Your consent to do business electronically, which will then terminate this consent. Thereafter, You shall not use this Website to place any Orders, and any notices and documents from 2Checkout will be provided to You on paper.

### **3. Price and Payment**

3.1 Prices are as specified on the Website; however, 2Checkout reserves the right to adjust prices in its sole discretion due to increases in costs (including, without limitation, delivery costs or costs of any materials), the increase or imposition of any tax, duty or other levy, any variation in exchange rates, or any programming, data or other errors. Prices for the Products are exclusive of shipping, handling, duties, and taxes, all of which shall be paid by You.

3.2 Prior to Product delivery, 2Checkout will notify You in writing via email of any price increases (a "Notification Email"). The Notification Email will be sent to You at the email address that We have in Our records for You. By no later than the deadline set forth in the Notification Email, You may cancel Your Order for the Product for which the price was increased (a) via 2Checkout myAccount or (b) by sending a reply email to the Notification Email. If You do not so cancel Your Order within said deadline, You accept the new prices and conditions for the Product as set forth in the Notification Email.

3.3 You shall make payment for Your Order prior to Product delivery and by one of the methods that are indicated on the Website (or by such other method as may be mutually agreed upon in writing by You and 2Checkout). When You place Your Order, 2Checkout will charge the credit or debit card that You provided to 2Checkout. If You do not pay applicable taxes to 2Checkout for the Product, You must report and pay any applicable taxes to the appropriate governmental agencies.

3.4 2Checkout reserves the right to verify Your credit or debit card payments. In case of any non-payment to 2Checkout following Product delivery, 2Checkout may, without



notification to You, transmit claims to the parties for which 2Checkout acted as a reseller (the "Vendor"), and the Vendor or 2Checkout shall have the right to repossess and resell such Products, and You hereby grant 2Checkout, the Vendor, and their designated agents all rights available under applicable law, including, without limitation, the right to use electronic self-help means to terminate Your ability to access the Products, or otherwise repossess or reclaim the Products from You.

3.5 As between You and 2Checkout, You shall be responsible for any fraudulent or unauthorized transactions made through the Website, including, without limitation, using Your account credentials, credit card or debit card.

#### **4. Delivery; Risk of Loss; Title**

4.1 All delivery dates (whether provided on the Website, in an Order confirmation, or elsewhere) are estimates only and not a guarantee that any the Products will be delivered by a given date.

4.2 Delivery will be made to the address You provided to 2Checkout for Your Order. You must immediately notify 2Checkout via 2Checkout myAccount of any errors or omissions in the 2Checkout Order confirmation notice at the Website or in the 2Checkout payment notification that is sent to You at the email address that We have in Our records for You. 2Checkout reserves the right, in its sole discretion, to impose additional charges for any adjustments You make to an Order (e.g., delivery address) after You submit an Order.

4.3 All risk of loss for the Products shall pass to You upon delivery of the Products to the location specified in Your Order (even if no signature is required for delivery). For the avoidance of doubt, the delivery of downloaded Products occurs when the Products are downloaded. If You should refuse or fail to take delivery of the Products, all risk of loss for the Products will thereupon pass to You and, upon the demand of 2Checkout, You shall pay 2Checkout for the Products plus any additional amounts incurred by 2Checkout as a result of Your refusal or failure to take delivery of the Products, including, without limitation, attempting delivery of the Products by any reasonable means, or storing the Products. 2Checkout will be entitled to dispose of the Products in such manner as it sees fit if You have not taken delivery of the Products within thirty (30) days after (a) the scheduled date of delivery or (b) the date on which delivery was first attempted, whichever is later.

4.4 Except as Clause 3.2 or 12.1 may apply to Your Order, or as described by 2Checkout in the Order form for Your Order, You are not entitled to revoke or cancel in whole or in part any Order.

4.5 Title to the Products (or, if licensed, Your copy of the Products) will pass to You when 2Checkout receives payment in full for the Products (including, without limitation, any interest and other amounts due for the Products).

4.6 Unless and only to the extent permitted by the EULA or applicable law, if You are a consumer, You shall not resell the Products until after title therein has passed to You.

#### **5. Conditions for the Products**



5.1 The Products delivered by 2Checkout are subject to the terms and conditions of this Agreement and the terms and conditions of an end user license agreement or other agreement from the Vendor of the Products (collectively, the "EULA"). If You do not agree to the EULA, You are not authorized to use the Product and shall immediately notify 2Checkout via 2Checkout myAccount. Unless otherwise expressly agreed in writing by the Vendor, the Products are licensed and not sold to You, irrespective of any use of the words "purchase," "sale," "reseller" or similar terms in this Agreement or at the Website. Unless and only to the extent permitted by the EULA or applicable law, You represent and warrant that You shall use the Products in accordance with the EULA and will not use the Products for any unlawful purpose. In addition to and without limiting the foregoing, You shall:

- 5.1.1 keep the Products in confidence and not disclose or make them available to any third party;
- 5.1.2 not rent, lease, loan, license, sublicense, distribute, make available, transfer, assign, sell, reproduce, adapt, translate, disclose, display, publish, exploit for commercial purposes, or modify the Products, or any components thereof;
- 5.1.3 use the Products solely for internal business purposes and not in the operation of a service bureau or shared services environment;
- 5.1.4 not create derivative works based on the Products or any components thereof, or combine the Products with any other software;
- 5.1.5 not remove, obscure, or alter the copyright notices, trademarks, or other proprietary rights notices that appear in the Products;
- 5.1.6 obtain, at Your own cost and expense, all software and equipment necessary to use the Products;
- 5.1.7 obtain, at Your own expense, all licenses and authorizations required for the acquisition, delivery or use of the Products; upon 2Checkout's request, You will provide 2Checkout with evidence of such licenses or authorizations; and You will be liable to 2Checkout for all expenses or charges incurred by 2Checkout as a result of Your failure to obtain such licenses or authorizations;
- 5.1.8 not reverse engineer, decompile, reverse assemble, or attempt in any manner to discover the source code of the Products;
- 5.1.9 have no right, title or interest in any of the intellectual property in or associated with the Products or the Website, including, without limitation, patent, copyright, trademark, trade secret, know-how, ideas, technical information, user interfaces, processes, "look and feel," improvements and modifications (collectively "IP Rights"), and You acknowledge and agree that 2Checkout or the Vendors retain all of the IP Rights;
- 5.1.10 not export or re-export the Products; and
- 5.1.11 comply with all laws, rules and regulations applicable to the Products, including, without limitation, the restrictions, controls, customs duties, laws, rules and regulations of the territory to where delivery of the Products was ordered, or the territory where the Products are used.

5.2 Subject to Clause 11 (Inspection; Complaints), Clause 12 (Consumer Revocation of an Order) and Clause 13 (Refunds) of this Agreement, the remedies set forth in the EULA shall be Your sole and exclusive remedies with regard to the Products.



## **6. Automatic Renewal**

With respect to certain of the Products, We may provide You with an option to automatically renew the Product license or subscription. If You elect automatic renewal, each renewal term for the Products will be equal in duration to the initial term for such Products. At any time during a renewal term, You may elect to not renew the Product license or subscription for the forthcoming renewal term, in which case this Agreement with regard to such non-renewed Products shall be terminated upon the expiration of the then-current renewal term. Upon any termination of this Agreement, You shall uninstall and destroy all copies of the Products and discontinue all use of the Products, unless and only to the extent You are permitted by the EULA or applicable law to retain copies of the Products.

## **7. Feedback**

From time to time, 2Checkout or a third party engaged by 2Checkout may request feedback and other information from You about such topics as the Products or Your experiences with the Products ("Feedback"). Providing 2Checkout with Feedback is optional. By providing Feedback to 2Checkout, You grant 2Checkout a nonexclusive, royalty-free, worldwide, perpetual, irrevocable, transferable and fully sublicensable right to use the Feedback for any lawful purpose, including, without limitation, the right to reproduce, adapt, publish, translate, distribute, and display all or parts of the Feedback in any medium whatsoever along with Your first name and last initial, and local geographic area, as determined by 2Checkout in its sole discretion. 2Checkout may also use the Feedback in anonymous and aggregate reviews.

## **8. Warranty Disclaimer**

Legal guarantee for tangible good is 2 years. To exercise your right for a guarantee please send a written request to 2Checkout as per section 14. If your Product is a digital product or intangible good you are entitle to cancel your order in 15 days as per section 12 or ask for a refund as per section 13.

AS BETWEEN YOU AND 2Checkout, THE PRODUCTS ARE DELIVERED "AS IS" AND YOU USE THE PRODUCTS AT YOUR OWN RISK. THE WEBSITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. 2Checkout DOES NOT MAKE ANY REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND WHATSOEVER. TO THE MAXIMUM EXTENT PERMITTED BY LAW, 2Checkout HEREBY DISCLAIMS, AND YOU HEREBY WAIVE, ALL WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, OR ANY WARRANTY THAT MAY ARISE BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE OF THIS AGREEMENT.



## **9. Limitation of Liability; Indemnification; Release**

9.1 IN NO EVENT SHALL 2Checkout OR ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS, LOSS OF REVENUE OR PROFITS, BUSINESS INTERRUPTION, OR LOSS OF DATA) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF EVEN IF 2Checkout HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, IF 2Checkout SHOULD BE HELD LIABLE FOR ANY DAMAGES NOTWITHSTANDING THE TERMS AND CONDITIONS OF THIS AGREEMENT, THE ENTIRE LIABILITY OF 2Checkout (INCLUDING ITS AFFILIATES) WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE, FOR ANY REASON AND UPON ANY CAUSE OF ACTION, REGARDLESS OF THE NUMBER OF ACTIONS OR NUMBER OF LICENSED COPIES OF THE PRODUCTS (AND WHETHER BASED IN CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE) SHALL NOT EXCEED, IN THE AGGREGATE, ONE HUNDRED DOLLARS (\$100.00 USD). NO CAUSE OF ACTION WHICH ACCRUED MORE THAN ONE (1) YEAR PRIOR TO THE FILING OF A SUIT ALLEGING SUCH CAUSE OF ACTION MAY BE ASSERTED AGAINST 2Checkout OR ITS AFFILIATES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES OR LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO CERTAIN OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. NO OTHER LIMITATION CONTAINED IN THIS AGREEMENT SHALL LIMIT 2Checkout'S LIABILITY TO YOU, TO THE EXTENT SUCH LIMITATION IS PROHIBITED BY APPLICABLE LAW. THE LIMITATIONS OF LIABILITY IN THIS AGREEMENT SHALL SURVIVE EVEN IF ANY EXCLUSIVE OR LIMITED REMEDIES PROVIDED IN THIS AGREEMENT SHOULD FAIL OF THEIR ESSENTIAL PURPOSE.

9.2 You shall indemnify, defend and hold harmless 2Checkout and its affiliates, and each of their officers, directors, shareholders, agents, representatives, licensees and employees (each, an "Indemnified Party"), from and against any and all claims, losses, liabilities, damages, actions, lawsuits and other proceedings, judgments and awards, and costs and expenses (including, without limitation, court costs and reasonable attorneys' and consultancy fees), arising directly or indirectly, in whole or in part, out of: (a) any breach or threatened breach of this Agreement by You; (b) Your use of the Products; or (c) Your negligence, gross negligence or willful misconduct. An Indemnified Party may participate in the defense by counsel of its own choosing, at its own cost and expense. You shall not settle any claim that adversely affects an Indemnified Party or imposes any obligation or liability on an Indemnified Party without the Indemnified Party's prior written consent.

9.3 TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU HEREBY RELEASE EACH INDEMNIFIED PARTY FROM ALL DAMAGES (WHETHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE), LOSSES, LIABILITIES, COSTS AND EXPENSES OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, ARISING



OUT OF OR IN CONNECTION WITH DISPUTES BETWEEN YOU AND THIRD PARTIES (INCLUDING VENDORS) CONCERNING THE PRODUCTS, THE WEBSITE OR THIS AGREEMENT. IN CONNECTION WITH THE FOREGOING RELEASE, YOU HEREBY WAIVE CALIFORNIA CIVIL CODE 1542 (AND ANY OTHER APPLICABLE LAW OR STATUTE) WHICH SUBSTANTIALLY STATES:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

## **10. Termination**

10.1 In addition to and not in lieu of 2Checkout's other rights, 2Checkout may, upon written notice to You via email, suspend or cancel Your Order for delivery of the Products, use electronic self-help means to terminate Your ability to access the Products (if permitted by applicable law), or terminate this Agreement, if:

- 10.1.1 any step, process, application, filing in court, order, proceeding, notice or appointment is taken or made by or in respect of You for a moratorium, composition, compromise or arrangement with creditors, administration, liquidation, dissolution, receivership (administrative or otherwise), distress or execution;
- 10.1.2 You become insolvent or We deem You unable to pay Your debts as they come due;
- 10.1.3 anything similar to the foregoing occurs; or
- 10.1.4 You fail to comply with any terms and conditions of this Agreement or the EULA.

10.2 This Clause 10.2 and the following provisions will survive any termination of the Agreement: Clauses 1 (Scope), 5 (Conditions for the Products), the last sentence of Clause 6 (Automatic Renewal), 8 (Warranty Disclaimer), 9 (Limitation of Liability; Indemnification; Release), 14 (Notices), 15 (Governing Law), 16 (Disputes) and 18 (General). In addition, any provisions which by their nature contemplate effectiveness beyond the termination of this Agreement shall survive any such termination. 2Checkout's remedies under this Agreement are cumulative and not exclusive and are in addition to all remedies available at law or in equity.

## **11. Inspection; Complaints**

11.1 Upon delivery of the Products, You should inspect the Products and verify that the Products as delivered are in accordance with Your Order, including, without limitation, verifying that no items are missing from Your Order.

11.2 Within fifteen (15) days after the Products are delivered, You must provide written notice to 2Checkout if any of the Products as delivered are not in accordance with Your Order. Such written notice shall be sent by You to 2Checkout as specified in Clause 14 (Notices). If delivery of such Products was made by the Vendor of the Products, You must also, within said fifteen (15) days, provide written notice to that party in accordance with the terms of the EULA.



## **12. Consumer Revocation of an Order (RIGHT OF WITHDRAWAL)**

12.1 IF YOU ARE A CONSUMER PURSUANT TO THE APPLICABLE LAW OF THIS AGREEMENT AS IT PERTAINS TO YOU AND YOUR ORDER, THEN IN ADDITION TO AND NOT IN LIEU OF YOUR OTHER RIGHTS UNDER THIS AGREEMENT, YOU WILL HAVE A PERIOD OF FIFTEEN (15) DAYS AFTER DELIVERY OF THE PRODUCTS DURING WHICH YOU MAY CANCEL YOUR ORDER, IN WHOLE OR IN PART, FOR ANY REASON BY SENDING WRITTEN NOTICE TO 2Checkout AS SPECIFIED IN CLAUSE 14 (NOTICES) AND RETURNING YOUR PRODUCT TO 2Checkout. NOTWITHSTANDING ANYTHING TO THE CONTRARY, SAID RIGHT OF CANCELLATION SHALL NOT APPLY IF YOU HAVE BROKEN THE SEAL OF THE PRODUCT; DOWNLOADED THE PRODUCT; OR THE NATURE OF THE PRODUCT IS SUCH THAT A RETURN IS NOT FEASIBLE, WHICH FEASIBILITY SHALL BE AS DETERMINED BY 2Checkout IN ITS SOLE DISCRETION (E.G., PRODUCT WAS CUSTOMIZED FOR YOU). FOR THE AVOIDANCE OF DOUBT THIS SECTION IS NOT APPLICABLE TO SOFTWARE PRODUCTS WHERE THE SEAL WAS BROKEN BY YOU AND DIGITAL CONTENT ALREADY DOWNLOADED.

12.2 If You exercise Your right of cancellation pursuant to Clause 12.1, You shall, within the same period of fifteen (15) days set forth in Clause 12.1, return the relevant Products to 2Checkout and 2Checkout will thereafter refund any prior payments that You made for such returned Products. Return shipping of the relevant Products will be at Your own expense; however, 2Checkout will bear the return shipping expense if such Products are being returned because such Products, as delivered, are not in accordance with the Order. Any return of the relevant Products by You shall be made to the mailing address specified by 2Checkout in the delivery details that accompanied the Products.

12.3 If (a) You do not exercise Your right of cancellation pursuant to Clause 12.1 and return the Products pursuant to Clause 12.2; or (b) You exercise Your right of cancellation pursuant to Clause 12.1 but the Products as received by 2Checkout were damaged after they were delivered to You, Your Order shall not be deemed cancelled and You shall pay 2Checkout in full for the Products within thirty (30) days after You provided 2Checkout with Your written notice of cancellation pursuant to Clause 12.1.

## **13. Refunds**

13.1 All refund and exchange requests are managed by 2Checkout and are made pursuant to the 2Checkout Refund Policy.

## **14. Notices**

14.1 Any notice to 2Checkout that is required or permitted by this Agreement shall be in writing and shall be deemed given: (a) if sent by mail to the applicable 2Checkout office identified in the "Contact Us" section of the Website, five (5) Business Days after deposit in the mail, postage prepaid; (b) if sent by fax to the fax number identified in the "Contact Us" section of the Website, upon Your receipt of electronic confirmation thereof; (c) if sent





by email to [info@2checkout.com](mailto:info@2checkout.com), upon 2Checkout's receipt of the email; or (d) if sent by next day delivery service to the address identified in the "Contact Us" section of the Website, upon such delivery.

14.2 Any notice to You that is required by this Agreement shall be in writing and shall be deemed given: (a) if sent by email to the email address that We have in Our records for You, upon the earlier of Your receipt of the email, or two (2) Business Days after We sent the email (provided that We did not receive a message indicating that the delivery of the email was unsuccessful); (b) if sent by mail to mailing address that We have in Our records for You, five (5) Business Days after deposit in the mail, postage prepaid; (c) if sent by fax to the fax number We have in Our records for You, upon Our receipt of electronic confirmation thereof; or (d) if sent by next day delivery service to the address We have in Our records for You, upon such delivery.

14.3 You may submit any consumer complaints concerning 2Checkout to [info@2checkout.com](mailto:info@2checkout.com), or by mail to the applicable 2Checkout office identified in the "Contact Us" section of the Website.

## **15. Governing Law**

15.1 With regard to the Products You purchased from Avangate Inc.:

- 15.1.1 this Agreement shall be governed by, construed and enforced in accordance with the laws of the United States and the State of California, without giving effect to any conflict of laws provisions, and the application to this Agreement of the United Nations Convention of Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act is expressly excluded;
- 15.1.2 subject to Clause 16 (Disputes), the exclusive jurisdiction and venue for all legal actions arising out of this Agreement shall be in an appropriate Northern District of California federal court sitting in San Francisco, California or in a state court sitting in San Francisco, California, and You hereby consent to the exclusive jurisdiction of such courts; and
- 15.1.3 You and Avangate Inc. expressly waive any rights to contest the jurisdiction, venue or convenience of any such federal or state court.

15.2 With regard to the Products You purchased from Avangate B.V.:

- 15.2.1 this Agreement shall be governed by, construed and enforced in accordance with the laws of The Netherlands, without giving effect to The Netherlands' conflict of laws provisions, and the application to this Agreement of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded;
- 15.2.2 subject to Clause 16 (Disputes), the exclusive jurisdiction and venue for all legal actions arising out of this Agreement shall be in an appropriate court sitting in Amsterdam, The Netherlands, and You hereby consent to the exclusive jurisdiction of such court;
- 15.2.3 You and 2Checkout BV expressly waive any rights to contest the jurisdiction, venue or convenience of any such court sitting in Amsterdam, The Netherlands; and
- 15.2.4 the application of Sections 6:227b, 6:227c, and Section 7:16 up to and including Section 7:24 of the Dutch Civil Code is expressly excluded with respect to non-consumer purchases.



15.3 You agree and acknowledge that any breach or threatened breach by You of this Agreement may cause 2Checkout irreparable injury for which the recovery of money damages would be inadequate. Therefore, in addition to any other remedies that may be available at law, in equity, or otherwise, 2Checkout shall be entitled to obtain injunctive relief against the breach or threatened breach of this Agreement, without the necessity of proving actual damages, or posting a bond, even if otherwise normally required.

## **16. Disputes**

16.1 With the exception of injunctive relief (which either party may seek as they deem necessary to avoid irreparable damage or preserve the status quo), any dispute between the parties arising out of or related to this Agreement shall be resolved as follows:

- 16.1.1 Upon the written request of either party, each party will appoint a designated representative whose task it will be to meet for the purpose of resolving such dispute. Each designated representative shall have the authority to reach a binding resolution of the dispute through amiable discussions, the exchange of documents, and/or meetings. The designated representatives shall negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto.
- 16.1.2 All disputes that have not been resolved by the designated representatives within thirty (30) days after said initial written request by one of the parties to appoint a designated representative, shall be resolved by (a) the courts specified in Clause 15.1 with regard to the Products You purchased from Avangate Inc., upon the filing of an action by either party with said courts; and (b) the courts specified in Clause 15.2 with regard to the Products You purchased from Avangate B.V., upon the filing of an action by either party with said courts.

16.2 Notwithstanding any terms and conditions of this Agreement to the contrary, the prevailing party in any proceeding arising out of or related to this Agreement shall be entitled to recover its reasonable expenses and costs, including outside and in-house attorneys' fees, from the other party.

## **17. U.S. Government End Users/Restricted Rights**

The Product is a "commercial item," as that term is defined in 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. § 12.212 or 48 C.F.R. §§ 227.7202-1 through § 227.7202-4, as applicable. Consistent with 48 C.F.R. § 12.212 or 48 C.F.R. §§ 227.7202-1 through 227.7202-4, as applicable, the Product is being licensed to all end users of the U.S. Government or any of its agencies as commercial items only and with only those rights as are granted to all other end users pursuant to the terms and conditions of this Agreement and the EULA. Product manufacturer is as stated in the Order confirmation or EULA.

## **18. General**



18.1 2Checkout's failure or delay in the performance of any of its obligations under this Agreement shall be excused to the extent and for the duration that such failure or delay is occasioned by a force majeure event which shall include, without limitation, acts of God, acts of war, earthquakes, fires, floods, terrorism, riots, civil disorders, rebellions, labor disputes, or any circumstances beyond 2Checkout's reasonable control.

18.2 In the event of invalidity of any provision of this Agreement, the parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, which shall remain in full force and effect. Your Order and this Agreement set forth the entire understanding between You and 2Checkout relating to the subject matter of Your Order and this Agreement, and supersede all prior or contemporaneous negotiations, understandings, agreements, proposals and representations, written or oral, between the parties related to Your Order and this Agreement. In the event of a conflict among the terms and conditions of this Agreement and the terms and conditions of any Order, the terms and conditions of this Agreement shall prevail. You agree that the terms and conditions of any purchase order, shrinkwrap, clickwrap, browse-wrap or other documents (even if accepted by 2Checkout) used by You in connection with the Products or this Agreement shall be for administrative purposes only and shall have no legal force or effect, notwithstanding any language to the contrary in any such documents.

18.3 2Checkout reserves the right to change this Agreement at any time by posting notice of the changes on the Website. You will be deemed to have been made aware of, and will be subject to, the changes to this Agreement after such notice has been posted. Your continued use of the Products, the Website, or any materials or services accessible through the Website, shall constitute Your acceptance of the changes. If You do not agree to the changes, Your sole remedy shall be to discontinue use of the Products and not place new Orders for Products. No delay or failure by 2Checkout in exercising or enforcing any of its rights or remedies under this Agreement, in whole or in part, and no course of dealing or performance, shall constitute a waiver by 2Checkout of any provision of this Agreement.

18.4 Your Order and this Agreement are personal to You. You shall not assign Your rights or delegate Your obligations under this Agreement, in whole or in part, without the prior written consent of 2Checkout. Any attempted assignment or delegation by You shall be voidable ab initio by 2Checkout. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.

18.5 This Agreement shall not be construed as creating any agency, partnership or joint venture between 2Checkout and You.

18.6 The headings contained in this Agreement are intended solely for convenience of reference and are not intended to be part of or affect the meaning or interpretation of this Agreement. The words "shall," "agree" and "will" are mandatory, the word "may" is permissive, the word "or" is not exclusive, and the singular includes the plural and vice versa. "Business Day" shall mean Monday through Friday, excluding New Year's Day, Christmas Day, and other 2Checkout holidays. All time period references in the Agreement to "days" other than "Business Days" shall be deemed to refer to calendar days. All references to "days" or "Business Days" shall mean consecutive days or Business Days. This Agreement is executed in the English language. In the event this Agreement is translated into another language, and any inconsistency or discrepancy in



meaning or interpretation results therefrom, the English language version shall prevail and control.