

Terms and Conditions of use of Vendor-Link

G9 Smart Solutions LLC (“G9”) provides Vendor-Link, a cloud-based electronic data service that among other things delivers point-of-sales transaction and inventory data of retailers in the United States exclusively to authorized suppliers and manufacturers by access to a designated internet domain.

THIS MASTER SUBSCRIPTION AGREEMENT (“AGREEMENT”) GOVERNS YOUR PURCHASE OF OUR SERVICES.

BY ELECTRONICALLY ACCEPTING THIS AGREEMENT EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THE LEGAL ENTITY AND/OR ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT SELECT “I AGREE” AND/OR “SUBMIT” AND MAY NOT USE THE SERVICES.

AGREEMENT

In consideration of the mutual promises contained in this Agreement, the parties agree as follows:

1. DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings:

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Order Form**” means the ordering documents for purchases hereunder, including addenda thereto, that are entered into between You and Us from time to time. Order Forms shall be deemed incorporated herein by reference.

“**Purchased Services**” means Services that You or Your Affiliates purchase under an Order Form.

“**Retailer**” means a retailer that is in the business of selling merchandise or to consumers.

“**Retailer POS Information**” means a Retailer’s sales transaction and inventory data of products sold by You directly or indirectly to the Retailer.

“**Services**” means Vendor-Link, the online, Web-based applications and platform provided by Us via designated websites.

“**Users**” means individuals who are authorized by You to use the Services, for whom subscriptions to a Service have been purchased, and who have been supplied user identifications and passwords by Us. Users may only include Your employees.

“**We**,” “**Us**” or “**Our**” means G9.

“**You**” or “**Your**” means the company or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

2. PURCHASED SERVICES

a. Provision of Purchased Services. We shall make the Purchased Services available to You pursuant to this Agreement and the applicable Order Form(s) during the subscription term set forth in the applicable Order Forms. You agree that Your purchases are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features. You acknowledge that the Purchased Services depend upon Your providing us with updated, complete and accurate item master lists.

b. User Subscriptions. Unless otherwise specified in the applicable Order Form, Services are purchased as per User subscriptions on a per User basis and may be accessed by no more than the specified number of Users. User subscriptions are for designated Users and cannot be shared or used by more than one User but may be reassigned to new Users replacing former Users who no longer require ongoing use of the Services.

3. USE OF THE SERVICES

a. Our Responsibilities. We shall: (i) provide to You basic support (via email) for the Purchased Services at no additional charge, (ii) use commercially reasonable efforts to make the Purchased Services available 24 hours a day, 7 days a week, except for: (a) planned downtime and emergency maintenance, or (b) any unavailability caused by circumstances beyond Our 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 (iii) provide the Purchased Services only in accordance with applicable laws and government regulations.

b. Your Responsibilities. You shall (i) be responsible for all activities conducted under Your User logins and each of Your User’s compliance with this Agreement and our policies and instructions regarding the Service that we may provide You and Your Users from time to time, (ii) use commercially reasonable best efforts to prevent unauthorized sharing of log-ins and passwords and access to or use of the Services, and notify Us promptly of any such unauthorized access or use, (iii) keep the Retailer POS Information confidential (as per Section 6 “Confidentiality”) and not share any part of such information with any third-party, (iv) use the Services only for your business purpose and in accordance with applicable laws and government regulations, and (v) provide us with updated, complete and accurate item master lists. You shall not (1) make the Services available to anyone other than Users, (2) sell, resell, rent or lease the Services, (3) 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, (4) use the Services to store or transmit viruses, Trojan horses, or any other type of malware or destructive or malicious code (“Malicious Code”), (5) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (6) attempt to reverse engineer or gain unauthorized access to the Services underlying technology or their related systems or networks, or (7) access the Services for the purpose of building a competitive product or service or copying its features or user interface.

c. Hardware, Software and Internet Connectivity Required. You understand and acknowledge that Users will need adequate hardware, software, network and Internet connectivity to allow for the proper function of the Services. This shall include (1) access to personal computer and an Internet browser which operates at least at 128 Bits, and (2) access to high-speed dedicated access Internet service.

4. FEES AND PAYMENT FOR PURCHASED SERVICES

a. User Fees. You shall pay all fees as and when specified in all Order Forms. 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 services purchased and not actual usage, and (iii) payment obligations are non-cancelable and fees paid are non-refundable. User subscription fees are based on monthly periods that begin on the first day of the month of the subscription start date and the first day of each month thereafter; therefore, fees for User subscriptions added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the subscription term.

b. Invoicing and Payment. You will provide Us on the Order Form with either (1) valid and updated credit card information or (2) electronic payment information. For all Services listed in the Order Form for the initial subscription term and any renewal subscription term(s), (i) You authorize Us to charge such credit card, or (ii) You authorize your bank or financial institution to make preauthorized electronic payments to Us by debiting the account for which You provided information. Purchased Services will commence following receipt of Your first payment by credit card or electronic payment. After that, we will process payments on or after the business day immediately following the last day of the previous billing cycle. Such charges shall be made in advance, either monthly, annually or in accordance with any different billing frequency stated in the applicable Order Form. If your bank or financial institution rejects any transfer for any reason, We may, at our discretion, charge a return fee of up to \$25 and you consent to our charging the return fee. You further acknowledge and agree that We may initiate reprocessed payment(s), meaning a transfer from your bank, if a transfer is refused or declined for any reason. The amount of the reprocessed payment will equal the amount of the declined or refused transfer, plus a return fee (if any). We may initiate multiple reprocessed payments in a billing cycle. You acknowledge and agree that We will not give you prior notice of any reprocessed payment, and by signing up for the electronic payment option, you waive any and all rights to such notice and any waiting period prior to Our initiating a reprocessed payment. We are not responsible for any fees your financial institution may charge you for returned or rejected payments.

c. Overdue Charges. If any charges are not received from You by the due date, then at Our discretion, but without limiting our remedies, (a) You will be assessed a one-month handling fee to be paid on the next invoice date, or in the case of a credit card payment, be charged immediately and/or (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in section “Invoicing and Payment.”

d. Suspension of Service. If any amount owing by You under this or any other agreement for Our services is 10 or more days overdue we may, without limiting Our other rights and remedies, suspend Our services to You until such amounts are paid in full.

e. Payment Disputes. We shall not exercise Our rights under Section 4(c) "Overdue Charges" or Section 4(d) "Suspension of Service" if the applicable charges are under reasonable and good-faith dispute and You are cooperating diligently to resolve the dispute. You shall pay on demand all of Our reasonable attorney fees and other costs incurred by Us to collect any fees or charges due Us under this Agreement following Your breach of Section 4(b) above.

f. Taxes. Unless otherwise stated, Our 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"). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this paragraph, the appropriate amount shall be invoiced to and paid by You, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

5. PROPRIETARY RIGHTS

a. Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all rights, title and interest in and to the Services and the Retailer POS Information, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth herein.

b. Restrictions. You shall not (i) permit any unauthorized person or third party to access the Services except as permitted herein or in an Order Form, (ii) create derivative works based on the Services, (iii) copy, frame or mirror any part or content of the Services, other than copying or framing on Your own intranets or otherwise for Your own internal business purposes, (iv) reverse engineer the Services, or (v) access the Services in order to (A) build a competitive product or service, or (B) copy any features, functions or graphics of the Services.

c. Suggestions. We shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Services any suggestions, enhancement requests, recommendations or other feedback provided by You, including Users, relating to the operation of the Services.

6. CONFIDENTIALITY

a. 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. Our Confidential Information shall include, without limitation, the technology underlying the Services and (as between You and Us) the Retailer POS Information. 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 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) is independently developed by the Receiving Party.

b. 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 and contractors who need such access for purposes consistent with this Agreement.

c. 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.

7. PROMOTION

We may use Your name and logo in Our customer listings and may place Your name and logo on Our website and in collateral marketing materials relating to Our products and services. You hereby grant Us a limited license to use Your trademarks for such uses. You also agree to: (a) collaborate on a joint press releases announcing and promoting the relationship; (b) serve as a reference; and (3) collaborate on case studies or other marketing collateral as Customer realizes a return on investment following successful deployment.

8. REPRESENTATIONS AND WARRANTIES; DISCLAIMERS

a. Mutual Warranties. Each party represents and warrants that (i) it has the legal power to enter into this Agreement, and (ii) it will not transmit to the other party any Malicious Code.

b. Our Warranties. We represent that We have received written permission authorizing Us to share the Retailer POS Information with You. We warrant that the Services will be provided in a professional and workman-like manner in conformance with industry standards for similar services, and the functionality of the Services will not be materially decreased during a subscription term. We warrant that the Service will be available to You at least 98% of the time over any calendar month, excluding scheduled downtimes and emergency maintenance. For any breach of any of the above warranties, Your exclusive remedy shall be as provided in section "Termination for Cause" and section "Refund or Payment upon Termination" below.

c. Disclaimer. EXCEPT AS SET FORTH IN SECTION 9(b) ABOVE, THE SERVICES ARE PROVIDED "AS IS" AND G9 MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES OR THE FUNCTIONALITY, PERFORMANCE OR RESULTS OF USE OF THE SERVICES. WITHOUT LIMITING THE FOREGOING, G9 DOES NOT WARRANT THAT THE SERVICE IS OR WILL BE ACCURATE, ERROR-FREE OR UNINTERRUPTED OR MEETS OR WILL MEET YOUR REQUIREMENTS. G9 MAKES NO, AND HEREBY DISCLAIMS ANY, IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. G9 MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND WITH RESPECT TO THE ACCURACY OR COMPLETENESS OF INFORMATION AVAILABLE TO YOU THROUGH THE SERVICE OR WEBSITE.

d. Disclaimer of Actions Caused by and/or Under the Control of Third Parties. G9 DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM G9'S INTERNET HOSTS AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS CAUSED BY THESE THIRD PARTIES CAN PRODUCE SITUATIONS IN WHICH G9'S OR A RETAILER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF) MAY BE IMPAIRED OR DISRUPTED. ADDITIONALLY, G9 MAY NOT BE ABLE TO PREVENT THE SPREAD OF MALICIOUS CODE OR SIMILAR SITUATIONS ORIGINATING FROM EXTERNAL SOURCES OR FROM "HACKERS." ALTHOUGH G9 WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, G9 CANNOT GUARANTEE THAT THEY WILL NOT OCCUR. ACCORDINGLY, G9 DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

9. INDEMNIFICATION

a. Indemnification by You. You shall defend Us against any Claim made or brought against Us by a Retailer or any third party alleging that Your use of the Services in violation of this Agreement, infringes or misappropriates the copyright, trademark or trade secret of a third party or violates applicable law, and shall indemnify Us for any damages against, and for reasonable attorney's fees incurred by, Us in connection with any such Claim; provided, that We (a) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (provided that You may not settle any Claim unless the settlement unconditionally releases Us of all liability); and (c) provide to You all reasonable assistance, at Our expense.

b. Indemnification by Us. We shall defend You against any Claim made or brought against Us by any third party alleging that the Service infringes or misappropriates the copyright, trademark or trade secret of a third party or violates applicable law, and shall indemnify You for any damages against, and for reasonable attorney's fees incurred by, You in connection with any such Claim; provided, that You (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (provided that We may not settle any Claim unless the settlement unconditionally releases You of all liability); and (c) provide to Us all reasonable assistance, at Your expense.

c. Exclusive Remedy. This section (Indemnification) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of Claim described in this section.

10. LIMITATIONS OF LIABILITY

a. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE DISCLAIMER CONTAINED IN THIS SECTION 11(a) SHALL NOT APPLY TO MISUSE OF THE SERVICE OR EACH PARTY'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS, OR OTHERWISE TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

b. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE TOTAL AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT. THE FOREGOING SHALL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION "FEES AND PAYMENT FOR PURCHASED SERVICES." THE DISCLAIMER CONTAINED IN THIS SECTION 11(b) SHALL NOT APPLY TO MISUES OF THE SERVICE OR EACH PARTY'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS OR OTHERWISE TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

11. TERM AND TERMINATION

a. Term of Agreement. This Agreement commences on the date You accept it and continues until all User subscriptions granted in accordance with this Agreement and Order Form have expired or been terminated. If You are offered and elect to use the Services for a free trial period (as per the Order Form) and do not purchase a subscription before the end of that period, this Agreement will terminate at the end of such free trial period.

b. Term of Purchased User Subscriptions. User subscriptions purchased by You commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein. Except as otherwise specified in the applicable Order Form, all User subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant subscription term. The pricing during any such renewal term shall be the same as that during the prior term unless We have given You written notice of a pricing increase at least 60 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

c. Termination for Cause. A party may terminate this Agreement for cause: (i) upon 30 days' prior written notice to the other party of a material breach if such breach remains uncured at the expiration of such notice 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.

d. Refund or Payment upon Termination. Upon any termination for cause by You, We shall refund to You any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Upon any termination for cause by Us, You shall pay any unpaid fees covering the remainder of the term of all Order Forms after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Us for the period prior to the effective date of termination.

e. Surviving Provisions. The following provisions shall survive any termination or expiration of this Agreement: "Definitions" (Section 1), "Fees and Payment for Purchased Services" (Section 4), "Proprietary Rights" (Section 5), "Confidentiality" (Section 6), "Disclaimer" (Section 8(c)), "Disclaimer of Actions Caused by and/or Under the Control of Third Parties" (Section 8(d)), "Indemnification" (Section 9), "Limitations of Liability" (Section 10), "Refund or Payment upon Termination" (Section 11(d)), "General Provisions" (Section 12).

12. GENERAL PROVISIONS

a. 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). Notices to You shall be addressed to the system administrator designated by You for Your relevant Services account, and in the case of billing-related notices, to the relevant billing contact designated by You.

b. Agreement to Governing Law and Jurisdiction. Each party agrees to be governed by the applicable Federal and California State laws without regard to choice or conflicts of law rules, and to the exclusive jurisdiction and venue of the courts in Santa Clara County, California.

c. Waiver of Jury Trial. 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.

d. 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.

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

f. 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.

g. 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.

h. Assignment. You may not assign any of the rights or obligations hereunder, whether by operation of law or otherwise, without Our prior written consent (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, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets; provided, however, if a party assigns this Agreement to a direct competitor of the non-assigning party, the non-assigning party may terminate this Agreement upon written notice to the assigning 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.

i. Entire Agreement. This Agreement 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. To the extent of any conflict or inconsistency between this Agreement and any Order Form, the terms of the Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or other order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms and conditions shall be rejected, null and void.