

MERCHANT MARKETING AGREEMENT

Ariba Contract Request Nr.



BETWEEN

MasterCard Europe SA, with Belgian enterprise number RPR 0448038446, having its registered office at 198A, Chaussée de Tervuren, 1410 Waterloo, Belgium, acting through its branch office in Czech Republic with offices at Palladium, Na Porici 1079, 110 00 Prague 1, Czech Republic and with VAT registration number CZ69345724 (“**MasterCard**”)

AND

, having its registered office at (“**Merchant**”)

Whereas,

- (A) Merchant is launching a marketing campaign as defined in Exhibit B (the “Marketing Initiative”) in aimed at , which will cost an estimated amount in aggregate of (the “Initiative Costs”).
- (B) MasterCard recognizes the interest of such Marketing Initiative for the purpose of increasing the MasterCard brand awareness and usage in , and therefore is prepared to contribute to the Marketing Initiative, as set forth below.

NOW, THEREFORE, MasterCard and Merchant (the “Parties” or each individually a “Party”) agree as follows:

1. MasterCard Contribution. Subject to the conditions stated herein and compliance by Merchant with its obligations stated in paragraph 2 below, MasterCard will provide the support in cash and/or in kind described in Exhibit A-1 or Exhibit A-2 attached hereto (the “MasterCard Contribution”) for use in the framework of the Marketing Initiative.

2. Merchant Commitments. Merchant agrees to observe and timely perform during the Term, each and all of its obligations provided in Exhibit C attached hereto. Merchant also agrees to use the MasterCard Contribution exclusively for the Marketing Initiative set forth in Exhibit B. In the event of any MasterCard Contribution that is unused for any reason, Merchant shall immediately notify MasterCard and promptly return or reimburse such support in kind or reimburse such funds.

3. Standard and Specific Terms and Conditions; Exhibits. This Agreement shall be subject to the standard terms and conditions set forth in Exhibit C attached hereto. Each Exhibit attached hereto is incorporated herein by reference to this Agreement and is an integral part hereof.

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This Agreement is signed by the duly authorized representatives of the parties, who each acknowledge having received a duly executed copy.

ACCEPTED AND AGREED:

MASTERCARD EUROPE SA

By: _____
Print name:
Print title:
Date:

By: _____
Print name:
Print title:
Date:

By: _____
Print name:
Print title:
Date:

THIS AGREEMENT IS APPROVED AS TO LEGAL FORM BY THE MASTERCARD LAW DEPARTMENT FOR USE WITHOUT ANY MODIFICATION OF THE TERMS AND CONDITIONS.

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EXHIBIT A-1

MasterCard Contribution **(in cash)**

MasterCard will contribute to the Marketing Initiative as follows (the “MasterCard Contribution”):

1.1 MasterCard shall contribute to the Marketing Initiative with a (maximum) amount of . Payment shall be made in accordance to clause 7 of Exhibit C, subject to Merchant sending an invoice as soon as possible after and subject to clause 1.2 below.

1.2 At latest on Select month , Merchant shall provide MasterCard with appropriate and adequate evidence that a sum equal to the MasterCard Financial Contribution that would be due by MasterCard under section 1.1 is being or has been spent by Merchant on the Marketing Initiative during the Marketing Initiative Period, by providing MasterCard with any suitable proof of its marketing, advertising and general program launch costs, e.g. marketing plans, copies of the executions and invoices related to its marketing and advertising campaigns (which may include developing and executing Above-the-Line and Below-the-Line marketing campaigns, i.e. brochures, posters, mailing, advertising through direct media, television and the written press). Any part of the MasterCard Contribution that cannot be properly justified as being spent as referred to above shall cease to be due by MasterCard. Any such part that would have been paid already shall be reimbursed by Merchant. In that case, Merchant shall provide a credit note for that amount complying with clause 7 of Exhibit C.

1.3 MasterCard will never reimburse expenses which would have been incurred prior to the Effective Date of the Agreement.

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EXHIBIT A-2

MasterCard Contribution **(in kind)**

MasterCard will contribute to the Marketing Initiative as follows (the “MasterCard Contribution”):

Via its Marketing Agency,

MasterCard shall contribute to the Marketing Initiative by providing the following to Merchant for a total value of Euro:

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EXHIBIT B

Merchant Commitments

Marketing Initiative: Merchant shall perform _____ as described in section 1.1 in _____ in view of _____ (the "Marketing Initiative").

1.1 Description of the Promotion and/or Special Event and/or Advertising/other:

1.2 Effective Date:

1.3 Preparation Period:

1.4 Marketing Initiative Period:

1.5 Total Marketing Initiative Costs:

1.6 Merchant investment (in cash/kind):

1.7 Use that will be made of the MasterCard Contribution:

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Exhibit C Standard Terms and Conditions

1. **Definitions.** Capitalized terms used in the Agreement and not otherwise defined therein shall have the meanings set forth below:

“**Card**” shall include, without limitation, (1) any bank card, credit cards, charge card, travel and entertainment card, commercial card, debit card, ATM card, prepaid card, smart card, stored-value card, any co-branded card, virtual card, or any other payment card and (2) the account associated with same.

“**MasterCard/Maestro Card**” means a Card bearing the MasterCard/Maestro name, logotype, hologram of MasterCard International or any of its group companies with the functionalities associated with this brand.

“**Competing Brand**” means American Express, JCB, Diners Club, Discover, Visa and any other name, logo or mark identifying or in any way associated with a payment service that MasterCard deems to be competitive with any MasterCard product or program;

“**Competing Card**” means any Card bearing a Competing Brand and providing the functionality associated with such Competing Brand;

“**Confidential Information**” means all information in any medium or form (whether marked “confidential” or not) that a Party receives from the other Party, either directly or from the Party’s affiliates, and which concerns the business, operations or customers of the other Party, or any of its affiliates, and shall include all the terms and conditions of this Agreement;

“**Effective Date**” means the date stipulated in Exhibit B, and in the absence of such date, the Signature Date.

“**Force Majeure Event**” means any event or circumstance that is (i) unforeseeable and (ii) beyond the control of a Party, including, without limitation, fire, flood, earthquake, elements of nature, acts or regulations of government bodies, court orders, acts of war, terrorism, riots, civil disorders, rebellions or revolutions and renders it impossible for a Party to timely perform its contractual obligations

“**Signature Date**” means the date on which the last party has signed the Agreement.
2. **Liability.** Unless otherwise agreed, MasterCard’s commitments and liability under this Agreement shall only relate to and be limited to the fulfillment of the MasterCard Contribution. Merchant shall comply with all relevant provisions of any applicable legislation related to the organization of the Marketing Initiative as contemplated herein (including, but not limited to, provisions regarding (un)fair competition, data protection and privacy, consumer protection, taxation, requirements of prior filings with or authorizations from any regulatory authority) and shall not, as far as is practicable, knowingly do anything, or permit anything to be done, which might lead to a breach of any such legislation. For sake of clarity and unless otherwise provided, MasterCard takes no liability for the legal compliance with local laws of any material created by a MasterCard marketing agency and provided to Merchant under the Agreement, such as terms and conditions of a promotion (including the mechanics themselves), flyers, etc...)
3. **Indemnity.** Merchant shall indemnify and hold harmless MasterCard from and against any and all actions, proceedings, losses, costs, expenses (including, without limitation, the reasonable fees and expenses of counsel for MasterCard), proceedings, claims and/or demands in any way arising out of the acts or omissions and/or the performance or failure to perform by Merchant or any third party providers to Merchant in connection with the matters set forth in this Agreement.
4. **Subcontracting.** If it becomes necessary for Merchant to contract any third party in order to comply with any part of the commitments assumed by Merchant under this Agreement, Merchant shall be responsible for contracting any third party providers directly, including getting their commitments to the obligations herein, and providing for MasterCard as the paying agent with enforceability rights. MasterCard shall not enter into any direct contractual relationship with any such third party provider. Merchant is only entitled to sub-contract its obligations under this Agreement with the prior written consent of MasterCard and without relieving itself from any of its obligations to MasterCard under this agreement, in particular pursuant to the anti-bribery and corruption clause. In the event of Merchant using a sub-contractor approved by MasterCard, Merchant agrees to submit to MasterCard copies of the invoices received by the Merchant from such sub-contractor upon request, which invoices shall be consistent with clause 7. The Merchant will not enter into any agreement with any subcontractor in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in the anti-corruption clause and subcontractor is required to comply with all provisions of this agreement as if it were the contracting party.
5. **Approvals.** Merchant and MasterCard shall mutually agree as to MasterCard’s brand presence in any materials for which MasterCard Contribution is provided hereunder. Merchant undertakes to respect the MasterCard branding and communication guidelines, as documented in the MasterCard brand centre (to be found under www.mastercardbrandcenter.com) and any and all other applicable MasterCard Rules and Policies on the use of the MasterCard brands. Unless otherwise agreed, Merchant shall submit all materials for prior written approval of MasterCard.
6. **Reporting.** Merchant shall provide, at the date determined in Exhibit B or, by default, at the end of the Promotion Period, reports, accountings and other supporting documentation (in form, time and substance satisfactory to MasterCard) evidencing its compliance with the Merchant Commitments, including how the MasterCard Contribution was used. Any Support in

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cash or the value of any Support in kind which has been prepaid or delivered upfront and which has been used for any purpose other than as permitted hereunder or for which no evidence of expense in line with this Agreement can be presented shall be immediately refunded to MasterCard by the Merchant via a credit note in the event MasterCard has prepaid any part of such MasterCard Contribution.

7. **Invoicing and Payment Term.** In case MasterCard contributes in cash, Merchant will raise an invoice to MasterCard as notification for the sums payable and no sum shall be considered to be due before MasterCard receives such invoice issued in accordance with this Clause 7. All invoices submitted to MasterCard for payment must (a) sufficiently detail the services or goods delivered under the Agreement as agreed by the Parties, (b) be accompanied by all necessary evidence to support the invoicing, (c) must reflect the true nature and purpose of the services as agreed between the Parties under this Agreement. If in MasterCard's judgment, an invoice or evidence received does not provide sufficient detail to demonstrate services/good received under the Agreement, MasterCard reserves the right to request additional documentation to demonstrate the above, and will not to pay for invoices unless and until such additional documentation is received to MasterCard's satisfaction. Any delay in payment of the invoices in such a case will not give the Merchant the right to claim any late penalties or fees associated with the delay. MasterCard will pay the invoice within forty-five (45) days calculated as from the date on which MasterCard received the invoice. In order for MasterCard to process the invoices/credit notes in a correct and timely manner, Merchant will indicate the following elements on the invoice/credit note:
- Merchant's name and registered address
 - Merchant's VAT number (if appropriate)
 - Invoice/credit note date and number
 - Agreement reference number: (see footer of the first page of the Agreement)
 - PO Number (if applicable – to be communicated by MasterCard)
 - MasterCard's name and address (MasterCard Europe Czech Republic branch office, Accounts Payable, Palladium, Na Porici 1079, 110 00 Prague 1, Czech Republic)
 - MasterCard's VAT number (CZ69345724)
 - MasterCard's bank account details: IBAN BE82 8252 8043 0068 Swift DEUTBEBE
 - Customer's details for the payment (complete IBAN code, complete SWIFT message & bank name of the account beneficiary);
 - In case of a credit note, the invoice(s) to which it relates

8. **VAT.** All amounts, consideration and services arising out or in connection with this Agreement shall be deemed exclusive of all VAT and free of any other applicable taxes. In the event that any such VAT or tax is levied by Merchant, the amount of such VAT or tax shall be deemed to be included in the amount due (retrospectively if necessary) and shall be due and payable in the same manner and at the same time as

the amount due so that the amount received by Merchant shall be including such VAT or tax, whereby no additional amount is owing to Merchant from MasterCard as a result of the levy of such VAT or tax. Nothing in this clause shall be construed as obligating the Parties to breach any applicable laws.

9. **Term and Termination.** The Agreement shall commence on the Effective Date and shall remain in effect until both Parties have fulfilled their respective obligations. Either party shall be entitled forthwith to terminate this Agreement by written notice to the other if:

- That other party commits any breach of the provisions of this Agreement and, in the case of a breach capable of remedy, fails to remedy the same within 5 working days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
- That other party (a) becomes insolvent; (b) is declared bankrupt; (c) makes an assignment for the benefit of creditors; or (d) commences any proceedings for the winding up of its business, dissolution or liquidation.

10. **Confidentiality**

Each Party shall:

- Treat all Confidential Information as confidential and shall not disclose the same to any third party, except that Group Companies shall not be considered as a third party if they have agreed to comply with the confidentiality obligations comprised in this clause 10; and
- Ensure that all Confidential Information shall only be disclosed to officers, employees and contractors, legal advisers and accountants on a need to know basis; and
- Not use Confidential Information other than is necessary for the purpose of performing its commitments or exercising its rights under this Agreement.

Such confidentiality obligation shall apply until the Confidential Information:

- falls into the public domain or is publicly available or becomes publicly available otherwise than through a breach of this Agreement;
- is subsequently lawfully obtained by the receiving Party from a third party;
- was known to the receiving Party prior to such disclosure or is independently developed by a member of the receiving Party's staff to whom no Confidential Information was disclosed or communicated;
- is required to be disclosed by applicable law, regulation or court order in which event the receiving Party shall promptly notify the disclosing Party of the requirement for such disclosure and co-operate through all reasonable and legal means, at the disclosing Party's expense, in any attempts by the disclosing Party to prevent or otherwise restrict disclosure of such Confidential Information.

The Parties acknowledge that, in the event of a breach of this clause 10, any non-breaching Party will likely

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suffer irreparable damage that cannot be fully remedied by monetary damages. Therefore, in addition to any remedy which a non-breaching Party may possess pursuant to applicable law, such non-breaching Party retains the right to seek and obtain injunctive relief against any such breach in any court of competent jurisdiction. In the event any such breach results in a claim by any third party, the breaching Party shall indemnify, defend and hold harmless the non-breaching Parties from any claims, damages, interest, attorney's fees, penalties, costs and expenses arising out of such third-party claim(s).

Neither Party shall issue any public announcements or make any published statements regarding this Agreement or the subject matter thereof without the prior written consent of the other Party, and any such agreed announcements or statements shall be reviewed and approved by both Parties prior to its issuance or publication.

11. **Anti-Bribery and Corruption Laws and Compliance**

The Parties recognize that MasterCard and any person or entity acting on its behalf must comply with international laws related to anti-bribery and corruption. Merchant shall comply, and shall ensure that each of its subcontractors (if so approved or permitted) and personnel complies, with all applicable anti-bribery and corruption laws including, but not limited to, the U. S. Foreign Corrupt Practices Act, the UK Bribery Act and all comparable local anti-bribery and corruption laws applicable to business dealings, including with government officials (as defined below), and any implementing regulations in respect of any such laws. "Government official" is defined as any employee or officer of a government of a country, state or region, including any federal, regional or local government or department, agency, enterprise owned or controlled by the such government, any official of a political party, any official or employee of a public international organization, any person acting in an official capacity for, or on behalf of, such entities, and any candidate for political office.

It is the intent of the Parties that no payments or transfers of value or other advantage shall be made or undertaken or any attempt thereat which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business for any person. Merchant warrants, represents and covenants to MasterCard that Merchant (and each of its employees, subcontractors and personnel) has not and shall not, in connection with the activities contemplated by this Agreement, [the broader project of which this Agreement is a part, or] in connection with any other business activities involving MasterCard, make, promise or offer to make any payment or transfer of anything of value or any other advantage directly or indirectly through a representative, intermediary agent or otherwise : (i) to any government official; (ii) to any political party; or (iii) to any other person for the purpose of improperly influencing any act, omission to act or decision of such

official, political party or individual or securing an improper advantage to assist the Parties in obtaining or retaining business. Merchant also warrants, represents and covenants to MasterCard that Merchant and each of its employees, subcontractors and personnel shall not, in connection with any business activities involving MasterCard, accept anything of value from any third party seeking to influence any act or decision of Merchant or in order to secure an improper advantage to that third party.

Merchant shall notify MasterCard as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware. Failure by Merchant to comply with the terms of this clause will constitute a material breach of this Agreement and will give the right to MasterCard to recover any and all losses associated with this breach. Any clause limiting Merchant's liability in this Agreement does not apply to this clause.

12. **Assignment.** Merchant shall not have the right to assign or transfer this Agreement and/or any of its rights and/or obligations under this Agreement without the prior written consent of MasterCard. MasterCard shall not have the right to assign or transfer this Agreement and/or any of its rights and/or obligations under this Agreement without the prior written consent of Merchant, except to its Group Companies.

13. **Miscellaneous.** MasterCard shall not have the right to assign or transfer this Agreement and/or any of its rights and/or obligations under this Agreement without the prior written consent of Merchant, except to its Group Companies. A failure or delay of either party to enforce any provision of or exercise any right under this Agreement shall not be construed to be a waiver. No waiver by a party shall be effective unless expressly made in writing. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or invalid in any respect, such unenforceability or invalidity shall not affect any other provision of this Agreement, and this Agreement shall then be construed as if such unenforceable or invalid provisions had never been a part of this Agreement. Any provisions that, by their terms, should survive termination of this agreement shall survive the termination hereof. This Agreement evidences the entire agreement and understanding between MasterCard and Merchant with respect to the transactions contemplated by this Agreement and supersedes all prior agreements between the parties in respect thereof. This Agreement and the respective rights and obligations of the parties hereto shall be governed by the laws of Belgium without reference to its conflict-of-laws or similar provisions that would mandate or permit application of the substantive law of any other jurisdiction. The courts of Brussels shall have exclusive jurisdiction and both parties hereby expressly waive any other jurisdiction that may correspond to them by reason of its present and/or future domicile or otherwise. *The present document is only valid and enforceable if it signed and executed in two originals by both Parties.*