

Last Revised: May 1, 2017

RxSpark Affiliate Partner Program Agreement

RxSpark provides a Patient Discount Prescription Program and other related services to consumers via a range of channels including the RXS SITE, direct mailing, and a referral program.

RxSpark is pleased to offer Authorized Partners access to our APIs and a range of different marketing channels which allow our Partners to earn on a revenue share basis. Partners earn when their referred customers make purchases through the RxSpark web platform or use their Discount Savings Card when purchasing prescription medications. Below are the general Terms and Conditions governing the RxSpark Affiliate Partner Program. You will need to read and agree to abide by these before you submit your application to become an Affiliate Partner.

The RxSpark.com website ("RXS SITE"), content and brand are created, owned and operated by PS Deals, Inc. (under its RxSpark division) ("RXS").

Through the RXS SITE, authorized Affiliate Partners for RXS ("PARTNERS") may access and use the application programming interfaces ("APIs") developed by RXS as well as a range of other marketing channel opportunities ("the APPLICATION") to promote RXS products and services and receive remuneration. By entering into a separate MARKETING AGREEMENT (as defined in a separate agreement available upon request), PARTNERS may also have the opportunity to promote their own products and services via the APPLICATION and the RXS SITE.

To become an authorized PARTNER, you must successfully enroll in the RxSpark Affiliate Partner Program (the "PROGRAM") and agree to abide by the terms and conditions of this Partner Program Agreement.

This document contains the complete terms and conditions under which you may access and use the APPLICATION. This document incorporates the RXS PRIVACY POLICY and the Schedules and Annexes hereto, as they each may be amended from time to time, into one comprehensive document, hereinafter called the "AGREEMENT".

By signing up for the PROGRAM, you indicate your acceptance of this AGREEMENT and all of its terms and conditions.

Please read this AGREEMENT carefully before registering and using the APPLICATION.

SECTION 1. ENROLLMENT IN THE PROGRAM

To enroll, you must first submit a completed PROGRAM application through the RXS SITE.

We will evaluate your application in good faith to ensure you comply with all our rules and agreements. We may reject your application if we determine that your business or website is unsuitable for the PROGRAM for any reason, including, but not limited to, if your site incorporates images or content, or promotes products, services or materials that are unlawful, defamatory, obscene, harassing or otherwise objectionable, including, without limitation, businesses or sites that facilitate illegal activity, promote or assist others in promoting violence, copyright infringement, spyware, adware and/or other malicious programs, unsolicited mass distributions of email, webspam or other similar activities (collectively, "CONTENT RESTRICTIONS").

You will be notified of our decision to accept or reject your application by email to the email address provided.

SCHEDULE 1, as mentioned throughout this agreement, will be sent to you separately by email upon successful application to the PROGRAM. SCHEDULE 1 will outline the commercial terms including TERRITORY, PARTNER COMMISSION rates and PARTNER MARKETING PLAN.

We may need to contact you in person to clarify any points before making a decision.

SECTION 2. DEFINITIONS AND INTERPRETATIONS

2.1 In this AGREEMENT, unless the context otherwise requires, the following words shall have the following meanings:

"ADVERTISEMENTS" means privately branded sponsorship messages, banner advertisements, interstitials, buttons and the like developed by PARTNER promoting the APPLICATION for on-line or off-line promotions executed by PARTNER on the PARTNER SITE.

"AGREEMENT" means this agreement (including the RXS Privacy Policy and any Schedule or Annexes hereto), as each may be amended from time to time.

"API KEY" means the unique software code that RXS provides to PARTNER to enable PARTNER to use the APPLICATION.

"APPLICATION" means the RxSpark.com prescription aggregation (and related services) website application, including any modifications, enhancements, or replacements of, or additions thereto, from time to time.

"BUSINESS DAY" means a day (other than a Saturday or a Sunday) on which commercial banks are open for business.

"CLAIMS" has the meaning set forth in Section 11 of this Agreement.

"COMMISSION" means the total commission actually received by RXS from the PBM (Pharmacy Benefit Management company) in connection with each TRANSACTION completed with a CUSTOMER via the APPLICATION.

"CONFIDENTIAL INFORMATION" means any information disclosed by a PARTY under this AGREEMENT which is marked as confidential or which is reasonably apparent as confidential in nature, including all commercial or technical information relating to the disclosing PARTY's business.

"CONTENT RESTRICTIONS" has the meaning set forth in Section 1 of this Agreement.

"CUSTOMER" means a USER or PATIENT situated in the TERRITORY who purchases a OFFER/SERVICE through the APPLICATION.

"PBM" means A Pharmacy Benefit Management Company, related merchant or other entity that has entered into a MARKETING AGREEMENT with RXS pursuant to which it is authorized to offer its goods and services to USERS via the APPLICATION .

"OFFERS/SERVICES" means products and services offered or promoted by one or more PBM or other qualifying merchant added from time to time.

"RXS" means RxSpark (the brand/subdivision of PS Deals, Inc.) including any successor or permitted assign.

"RXS PRIVACY POLICY" means the RXS Privacy Policy posted on the RXS SITE, as amended and restated from time to time.

"RXS SITE" has the meaning set forth in the preamble to this Agreement.

"EFFECTIVE DATE" means the date a fully-executed copy of this AGREEMENT is accepted in writing (including by email or other electronic means) by an authorized signatory of RXS, whereupon this AGREEMENT shall become effective between the PARTIES.

"FIRST TIER MEMBER" means a FULLY ACTIVATED USER while logged onto the RXS SITE or APPLICATION.

"FORCE MAJEURE EVENT" means an event beyond the reasonable control of a PARTY, including, but not limited to, any failure of performance or equipment as a result of, the following: (i) acts of God; fire, flood, earthquake, tsunami, storm other catastrophes; (ii) any law, order, regulation, direction, action or request of any governmental entity or agency, or any civil or military authority; (iii) national emergencies, insurrections, riots wars or acts of terrorism; (iv) unavailability of rights of way or materials; (v) power outages, Internet outages or failures of Internet providers; or (vi) strikes, lock-outs, work stoppages or other labor difficulties (except in relation to a PARTY's own workforce). No event shall be treated as a FORCE MAJEURE EVENT if it is attributable to a willful act or omission or any failure to take reasonable precautions by a PARTY or any failure to take reasonable steps to overcome the event.

"FULLY ACTIVATED USER" means a USER inquiry submitted via a PARTNER's API KEY to the RXS SITE that results in a full and complete opted-in registration for the APPLICATION.

"INITIAL TERM" means the period of 12 months from the EFFECTIVE DATE.

"INTELLECTUAL PROPERTY RIGHTS" means copyright and related rights, trademarks and service marks, trade names and domain names, patents, rights to inventions, rights in get-up, rights to goodwill and to sue for passing off and unfair competition, rights in designs, rights in computer software, the look and feel of any websites, database rights, rights in CONFIDENTIAL INFORMATION (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

"LOSSES" has the meaning set forth in Section 11 of this Agreement.

"PARTIALLY REGISTERED USER" means a USER inquiry submitted via a PARTNER's API KEY to RXS SITE that results in a basic but not fully opted-in registration for the APPLICATION.

"PARTNER" means a person or entity who has successfully enrolled in the PROGRAM and whose participation has not been terminated pursuant to Section 14 (Termination) of this Agreement.

"PARTNER ADMINISTRATION PAGE" means the online page managed by RXS to administer payments due to PARTNER pursuant to this AGREEMENT.

"PARTNER COMMISSION" means that portion of the COMMISSION to be allocated to Partner in connection with a TRANSACTION.

"PARTNER MARKETING PLAN" means the plan for the PARTNER to promote the APPLICATION and related services to the PARTNER's contacts, clients and customers.

"PARTNER SITE" means the website described in the prospective partner's PROGRAM application submitted through the RXS SITE, or such other site as agreed between the PARTIES.

"PARTY" or PARTIES" means RXS and/or each PARTNER bound by this AGREEMENT.

"PROGRAM" means the RxSpark Affiliate Partner Program, the terms and conditions of which are set forth in this AGREEMENT.

"RELEVANT EMPLOYEE" has the meaning set forth in Section 13 (Non-Solicitation) of this Agreement.

"SECOND TIER MEMBER" means a referred contact of a FULLY ACTIVATED USER, while the referred contact is logged on to the APPLICATION.

"TERRITORY" means the limited area of business, whether designated by geography, industry and/or other metric, as defined in the territory field in Schedule 1 (Commercial Terms) hereto.

"TRANSACTION" means a transaction for the supply of goods or services between a USER and a PBM concluded via the APPLICATION when the USER is logged in.

"USER" means an individual submitted via a PARTNER's API KEY who uses the APPLICATION but may not have completed a full, opted-in registration.

"YEAR" means a period of twelve (12) months from the EFFECTIVE DATE or an anniversary of such date.

2.2 In this AGREEMENT, unless the context otherwise requires:

a) words in the singular include the plural and vice versa and words in one gender include all genders;

b) a reference to a statute or statutory provision includes any statute or statutory provision which modifies, consolidates, re-enacts or supersedes it whether such statute or statutory provision comes into force before or after the date of this AGREEMENT;

c) a reference to:

i) any PARTY includes its successors in title and permitted assigns; and

ii) a PARTY, clause or schedule is to a PARTY to, a clause of, or a schedule to this AGREEMENT;

f) the words "includes" or "including" shall be construed as illustrative only and shall not limit the generality of the preceding words;

g) if there is any conflict or inconsistency between any clause of this AGREEMENT and any Schedule or Annex to this AGREEMENT, the clause in this AGREEMENT shall prevail; and

h) the headings in this AGREEMENT are inserted for convenience only and shall not affect the interpretation of

this AGREEMENT.

SECTION 3. REPRESENTATIONS AND WARRANTIES

3.1 Each PARTY represents and warrants to the other that:

- a) it has the power and authority to enter into this AGREEMENT and to perform its obligations under this AGREEMENT;
- b) it is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation;
- c) it is duly qualified and is in good standing in each jurisdiction in which the conduct of its business, provision of its goods and/or services, or the ownership of its property requires such qualification;
- d) this AGREEMENT constitutes a legal, valid, binding and enforceable agreement;
- e) it shall comply with all laws applicable to its obligations under this AGREEMENT (including, without limitation, any laws, rules or regulations relating to the collection or payment of any local, state or federal taxes associated with its activities under this AGREEMENT);
- f) it has the ability and experience to carry out the obligations assumed by it under this AGREEMENT;
- g) by virtue of entering into this AGREEMENT, it is not, and will not be, in breach of any express or implied obligation to any third party binding upon it; and
- h) all content provided in connection with its business and/or any representations about its business do not and will not infringe, misappropriate, or otherwise violate, any INTELLECTUAL PROPERTY RIGHT or right of privacy or publicity of any third party.

3.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE APPLICATION IS PROVIDED TO PARTNER BY RXS "AS IS", "WITH ALL FAULTS" AND "AS AVAILABLE", AND RXS DOES NOT WARRANT OR GUARANTEE THAT PARTNER'S USE OF THE APPLICATION WILL BE ERROR FREE, UNINTERRUPTED, SECURE OR TIMELY, OR THAT USE OF THE APPLICATION WILL RESULT IN ANY REVENUE OR PROFIT FOR PARTNER. PARTNER ACKNOWLEDGES THAT THE USE OF THE APPLICATION MAY BE SUBJECT TO LIMITATIONS, DELAYS, OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND OTHER FORCE MAJEURE EVENTS AND RXS IS NOT RESPONSIBLE FOR DELAYS, DELIVERY FAILURES, DATA LOSS OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

SECTION 4. APPOINTMENT

Subject to the terms and conditions of this AGREEMENT, RXS hereby appoints PARTNER to be a non-exclusive partner of RXS for the promotion of the APPLICATION in the TERRITORY.

SECTION 5. DURATION

This AGREEMENT shall commence on the EFFECTIVE DATE and (unless terminated at an earlier date in

accordance with Section 14 (Termination)) shall continue in force for the INITIAL TERM and after that continue unless and until either PARTY gives the other PARTY notice in writing of not less than three (3) months (the "TERM").

SECTION 6. LICENSE

6.1 Subject to the terms of this AGREEMENT, RXS grants to PARTNER a non-exclusive, revocable, non-transferable, non-sublicensable, license to:

- a) access and use the APPLICATION;
- b) display the APPLICATION and any other content provided by RXS on the PARTNER SITE and Internet connected applications for mobile devices; and
- c) reproduce and display the RXS name, trademark and logo in connection with PARTNER's use of the APPLICATION; and
- d) upon mutual acceptance of the terms and conditions set forth in Schedule 1 (Commercial Terms) to this AGREEMENT, may provide promotional opportunities for PARTNER's products and services.

For the avoidance of doubt, any rights not expressly granted to PARTNER pursuant to this Section are reserved by RXS.

6.2 PARTNER shall not (and shall not assist or enable others to):

- a) sell, lease or sub-license the APPLICATION to any other individual or organization;
- b) reverse engineer, decompile or otherwise endeavor to obtain the source code to the software comprising the APPLICATION or access the APPLICATION, the RXS Site or any other deliverables in order to copy any ideas, features, content, functions or graphics of the APPLICATION, the RXS Site or any other deliverables; or
- c) deliver possession of any copies of or provide access to the APPLICATION to any third party.

6.3 Within ten (10) days after the execution of this AGREEMENT, RXS shall provide PARTNER with a unique API KEY. RXS will then notify PARTNER promptly in the event that RXS releases any modifications, enhancements or replacements of, or additions to, the APPLICATION.

6.4 When integrating the API KEY, PARTNER shall reproduce RXS's copyright, proprietary notices and disclaimers on every such integration.

SECTION 7. DUTIES AND OBLIGATIONS OF PARTNER

PARTNER shall:

- a) create marketing material and content for the purpose of generating FULLY ACTIVATED USERS for the APPLICATION;
- b) actively promote and market the APPLICATION during the INITIAL TERM of this AGREEMENT as described in this Section, to include offering the APPLICATION on the PARTNER SITE and, if applicable, Internet connected applications for mobile devices;

- c) adhere to the agreed marketing activities outlined in this AGREEMENT and/or any Schedules and Annexes to this AGREEMENT from time to time;
- d) use all commercially reasonable efforts to ensure that all FULLY ACTIVATED USERS received and delivered to RXS are accurate;
- e) use its reasonable endeavors to promote the distribution of the APPLICATION throughout the TERRITORY;
- f) promptly inform RXS of any facts, opinions or malfunctions of which PARTNER becomes aware likely to be relevant in relation to the commercial exploitation of the APPLICATION and which are advantageous or disadvantageous to the interests of RXS;
- g) at all times conduct its business in a manner that will reflect favorably on the APPLICATION and on the good name and reputation of RXS;
- h) not by itself or with others participate in any illegal, deceptive, misleading or unethical practices including, but not limited to, disparagement of the APPLICATION or RXS or other practices that may be detrimental to the APPLICATION, RXS or the public interest;
- i) not make any misrepresentations in relation to the APPLICATION;
- j) not during the term of this AGREEMENT actively market the APPLICATION outside the TERRITORY without the prior written consent of RXS provided always that nothing in this AGREEMENT shall prevent PARTNER from responding to unsolicited requests for the APPLICATION from outside the TERRITORY;
- k) not during the term of this AGREEMENT (whether alone or jointly and whether directly or indirectly) be concerned or interested in the marketing, distribution, licensing or sale of any software products/applications which are similar to, or competitive, with the APPLICATION, or which perform the same or similar functions;
- l) not make any promises or representations, or give any warranties or guarantees, in respect of the APPLICATION except as expressly authorized by RXS in writing;
- m) not supply the APPLICATION to any person;
- n) use RXS's trademarks, trade names, service marks and logos relating to the APPLICATION in all ADVERTISEMENTS in accordance with the registered or agreed style in connection with the distribution of the APPLICATION and shall not use such trademarks, trade names, service marks or logos in connection with any other products or services or as part of the corporate or any trade name of PARTNER. (RXS reserves the right to approve the form and placement of its trademarks, trade names, service marks and logos on the PARTNER SITE, in the ADVERTISEMENTS, and in any materials used to promote the APPLICATION, such approval shall not to be unreasonably withheld or delayed); and

SECTION 8. OBLIGATIONS OF RXS

RXS shall:

- a) be solely responsible for the aggregation of the OFFERS/SERVICES promoted on the RXS SITE (or any successor site) from the PBMs (OFFERS/SERVICES shall be presented together with (i) any information provided by the PBMs pertaining to the details of the OFFERS/SERVICES and (ii) the terms and conditions as provided by the PBMs);
- b) process and fulfill FULLY ACTIVATED USERS for RXS's services within a reasonable time period following receipt of a FULLY ACTIVATED USER from PARTNER;
- c) track and report (via the applicable PARTNER ADMINISTRATION PAGE) all TRANSACTIONs and COMMISSIONs earned from FULLY ACTIVATED USERS;
- d) provide PARTNER with such marketing and technical assistance as RXS may in its discretion consider necessary to assist PARTNER with the promotion of the APPLICATION;
- e) endeavor to answer as soon as possible all technical queries raised by PARTNER concerning the use and functioning of the APPLICATION;
- f) give PARTNER reasonable advance written notice of any change in or modification of the APPLICATION or of any intention to discontinue licensing the APPLICATION in the TERRITORY;
- g) provide PARTNER promptly with all information and assistance necessary to enable PARTNER to perform its obligations under this AGREEMENT in respect of any modified, enhanced or replacement version of, or addition to, the APPLICATION;
- h) manage the CUSTOMER support services provided to USERS with respect to the APPLICATION, including, without limitation, account maintenance and payments with respect to the APPLICATION (CUSTOMER support activities in respect of purchases will be provided by one or more PBMs); and
- i) remit any PARTNER COMMISSIONs earned by PARTNER in accordance with Section 9 (Remuneration) of this AGREEMENT.

SECTION 9. REMUNERATION

- 9.1 As material consideration for PARTNER's marketing commitment, set forth in Section 7 (Duties and Obligations of Partner), in respect of each TRANSACTION, RXS shall pay to PARTNER a PARTNER COMMISSION at the rate defined in Schedule 1 (Commercial Terms) of this AGREEMENT.
- 9.2 The PARTNER COMMISSION shall become due on the date RXS actually receives the COMMISSION from the PBM in relation to each TRANSACTION.
- 9.3 RXS shall send PARTNER a statement of the PARTNER COMMISSIONS due not later than the seventh (7th) day of the month following the month in which the PARTNER COMMISSION became due.
- 9.4 PARTNER COMMISSIONS due shall be paid via check or, if available, electronic funds transfer, in accordance with the terms out in Schedule 1 (Commercial Terms) of this AGREEMENT.
- 9.5 Unless otherwise agreed, the currency of payment for PARTNER COMMISSIONS shall be US Dollars.
- 9.6 RXS may offset amounts refunded to a USER, PBM/merchant or other third party on a pro-rata basis against the amounts that are - or in the future will be - payable to PARTNER under Schedule 1 (Commercial

Terms). If an offset amount is greater than amounts due to PARTNER, RXS may invoice PARTNER for the difference. RXS may also invoice PARTNER for amounts refunded to a USER, PBM/merchant or third party, including refunds made after termination or expiration of this Agreement. PARTNER shall immediately pay in full all RXS invoices with respect to USER, PBM/merchant or third party refunds. If RXS makes a refund to a USER or other third party after paying PARTNER a PARTNER COMMISSION in connection with a TRANSACTION that is the subject of the refund, PARTNER shall promptly pay RXS for the refunded amount less any applicable RXS commission that was paid (if applicable).

9.7 RXS agrees to maintain complete and accurate financial books and records to substantiate RXS's payments to PARTNER under Schedule 1 (Commercial Terms). RXS shall preserve such books and records for a period of at least two years from the time each payment is made to PARTNER, or such longer period as may be required by applicable law.

9.8 PARTNER shall have the right, at its own cost and expense, to audit RXS's books and records from time-to-time during the Term, but solely to verify the payments made by RXS under this AGREEMENT and in any case no more frequently than once every 12 months. The audit period may only be up to 60 days prior to the audit date to allow for any third party merchant amendments to be effective. Any review of RXS's books and records shall be conducted at RXS's designated location during RXS's normal business hours upon not less than 30 days' prior written notice to RXS. PARTNER shall cause its representative or agent to employ such reasonable procedures and methods as are necessary and appropriate in the circumstances to minimize interference with RXS's normal business operations. PARTNER shall have access to such books and records for purposes of audit, through its own representatives or through an accounting firm selected and paid for by PARTNER. If the audit demonstrates that RXS underpaid PARTNER during the audit period, RXS shall pay PARTNER the underpaid amount within 30 days following the conclusion of the audit. If the underpayment exceeds 10% percent of the amount that should have been paid, then RXS shall also reimburse PARTNER for the reasonable costs of the audit. If the audit demonstrates that RXS overpaid PARTNER, then PARTNER shall reimburse RXS for overpayment within 30 days of the conclusion of the audit.

9.9 PARTNER acknowledges that with respect to any TRANSACTION under this AGREEMENT, RXS is acting as an agent only, and not as a principal or guarantor, and RXS shall have no liability (a) to any USER for any goods or services due to such USER if the applicable PBM or merchant fails to honor or perform its obligations in connection with the TRANSACTION, and (b) to PARTNER for any COMMISSION due to PARTNER from a TRANSACTION in which the applicable PBM or merchant fails to honor or perform its obligations in connection with the TRANSACTION.

9.10 Other than with respect to any COMMISSION received by RXS after termination of this AGREEMENT in relation to a TRANSACTION concluded prior to the date of such termination, PARTNER shall not be entitled to any PARTNER COMMISSION, compensation, fee or other payment in respect of or in connection with the termination of this AGREEMENT.

9.11 Unless otherwise agreed, any PARTNER COMMISSIONS paid to PARTNER by RXS under this AGREEMENT shall represent PARTNER's sole remuneration for its activities under this AGREEMENT.

SECTION 10. INTELLECTUAL PROPERTY RIGHTS

10.1 The APPLICATION, the RxSpark name, trademark and logo, and all INTELLECTUAL PROPERTY RIGHTS in them, or relating to them, are and shall remain the property of RXS (and/or its third party licensors), and nothing in this AGREEMENT shall transfer or grant any rights in relation to the APPLICATION, the RXS name, trademark or RXS logo, other than the limited license expressly set out in this AGREEMENT.

10.2 PARTNER shall notify RXS immediately if PARTNER becomes aware of any unauthorized use of the APPLICATION, the RXS name, trademark or logo, or any of the INTELLECTUAL PROPERTY RIGHTS in them or relating to them and will assist RXS (at RXS's expense) in taking all steps to defend RXS's rights in them.

10.3 PARTNER shall not use, reproduce or deal in the APPLICATION, the RXS name, trademark or logo or any copies of them except as expressly permitted by this AGREEMENT.

10.4 RXS shall indemnify PARTNER against any claim that the normal use or possession of the APPLICATION by PARTNER in accordance with the terms of this AGREEMENT infringes the INTELLECTUAL PROPERTY RIGHTS of any third party in the TERRITORY provided that RXS is given immediate and complete control of such claim, that PARTNER does not prejudice RXS's defense of such claim, that PARTNER gives RXS all reasonable assistance with such claim, and that the claim does not arise as a result of the use of the APPLICATION in combination with any software, hardware, equipment or technology not supplied or approved by RXS. RXS shall have the right to (i) change all or any part of the APPLICATION in order to avoid any infringement; (ii) obtain for PARTNER a license to continue using the APPLICATION; or (iii) if neither (i) or (ii) are commercially reasonable, terminate this AGREEMENT. The foregoing states the entire liability of RXS to PARTNER in respect of the infringement of the INTELLECTUAL PROPERTY RIGHTS of any third party.

10.5 PARTNER shall indemnify RXS against any claim that the normal use or possession of the APPLICATION by PARTNER in accordance with the terms of this AGREEMENT infringes the INTELLECTUAL PROPERTY RIGHTS of any third party in the TERRITORY if and to the extent that the claim arises as a result of the use of the APPLICATION in combination with any software, hardware, equipment or technology used by PARTNER that are not supplied or approved by RXS. PARTNER will not agree to any settlement of any matter arising out of this Section that imposes any obligation on RXS without RXS's prior written consent.

SECTION 11. INDEMNIFICATION

11.1 Each PARTY, at its sole cost and expense, shall defend, indemnify and hold the other PARTY, its affiliated and related entities, and any of their respective officers, directors, agents and employees, harmless from and against any third party claims, lawsuits, actions, proceedings or investigations (collectively, "CLAIMS") from and against any fees, costs, sanctions, penalties, damages, losses or expenses (including but not limited to attorney's fees and costs) (collectively, "LOSSES") arising out of or relating to:

- a) such PARTY's fraud, willful misconduct, or gross negligence;
- b) such PARTY's breach or alleged breach of this AGREEMENT;
- c) any claims for any local, state or federal tax obligations (including any penalties, interest or other additions to tax) arising from any COMMISSIONS received pursuant to this AGREEMENT;
- d) any content provided by such PARTY; and
- e) any infringement, misappropriation, or other violation, of any patent, trademark, copyright, publicity, privacy, trade secret, or other right of any third party by such PARTY, its content or the use thereof.

11.2 The PARTY seeking indemnification under this Section shall promptly notify the other PARTY in writing

of any CLAIM for which it seeks indemnification; provided that such indemnified PARTY's failure to timely provide such notice shall not relieve the indemnifying PARTY of its indemnification obligations unless it can demonstrate actual prejudice as a result of such failure. The indemnifying PARTY shall have the right to, upon written notice to the indemnified PARTY, elect to assume control of the defense and settlement of any such CLAIM, and the indemnified PARTY shall have the right to participate and be represented in the defense of such CLAIM by its own counsel and at its own expense. The indemnifying PARTY shall not settle any CLAIM on behalf of the indemnified PARTY without the indemnified PARTY's prior written consent.

SECTION 12. CONFIDENTIALITY

12.1 During the term of this AGREEMENT and for a period of three (3) YEARS after termination or expiration of this AGREEMENT, each PARTY shall:

- a) treat as strictly confidential all CONFIDENTIAL INFORMATION received from the other PARTY; and
- b) only use the CONFIDENTIAL INFORMATION received from the other PARTY for the purpose of fulfilling its obligations and exercising its rights under this AGREEMENT.

12.2 The terms of Section 12.1 shall not apply to the disclosure or use of CONFIDENTIAL INFORMATION:

- a) with the consent of the disclosing PARTY;
- b) as required by law, a court order or by the rules of any relevant stock exchange or by any relevant regulatory or government authority; or
- c) to the extent that information has come into the public domain through no fault of the receiving PARTY.

12.3 In the event that a PARTY is required by applicable law, rule or regulation, or pursuant to the order of any court or governmental authority of competent jurisdiction, to disclose CONFIDENTIAL INFORMATION of the other PARTY, such PARTY shall use commercially reasonable efforts to (i) provide the other PARTY with at least ten (10) BUSINESS DAYS prior written notice of such disclosure (where such notice is reasonably possible without violating any law or regulation); and (ii) limit such disclosure to the extent practicable.

SECTION 13. NON-SOLICITATION

13.1 Each PARTY undertakes to the other PARTY that, during the term of this AGREEMENT and for the period of twelve (12) months after termination of this AGREEMENT, each PARTY shall not without the prior written consent of the other PARTY:

- a) make any offer of employment or enter into any discussion or negotiations with a view to making any offer of employment to any person employed by the other PARTY at any time during the term of this AGREEMENT (a "RELEVANT EMPLOYEE"); or
- b) solicit or attempt to solicit services from any RELEVANT EMPLOYEE on their own account or entice or attempt to entice any RELEVANT EMPLOYEE away from the other PARTY.

13.2 Neither PARTY shall be deemed to be in breach of Section 13.1 to the extent that the relevant act occurs in response to a bona fide general advertisement or other unsolicited communication (during the term of this AGREEMENT or in the period of twelve (12) months after termination of this AGREEMENT).

13.3 In the event that a RELEVANT EMPLOYEE is employed by the other PARTY in breach of this Section,

the breaching PARTY shall pay to the other PARTY a sum equivalent to the greater of: (i) the RELEVANT EMPLOYEE's salary for his first twelve (12) months' work for the breaching PARTY or (ii) the RELEVANT EMPLOYEE's salary with the non-breaching PARTY for the twelve (12) months preceding his employment by the breaching PARTY. The PARTIES agree that this sum, paid by way of liquidated damages, would represent a fair estimate of the cost of recruiting a suitable replacement for that RELEVANT EMPLOYEE.

SECTION 14. TERMINATION

14.1 Without prejudice to any other rights or remedies, either PARTY may, by written notice to the other, terminate this AGREEMENT (in whole or in part) with immediate effect if:

- a) the other PARTY commits a material breach of this AGREEMENT which is incapable of remedy;
- b) the other PARTY commits a material breach of this AGREEMENT which is capable of remedy and fails to remedy such material breach within twenty (20) BUSINESS DAYS after receiving written notice requiring it to remedy that material breach;
- c) the other PARTY suspends, or threatens to suspend payment of its debts or is deemed unable to pay its debts;
- d) the other PARTY suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- e) the voluntary or involuntary insolvency of, or the institution of proceedings by or against, the other PARTY under any federal or state bankruptcy or insolvency law that is not dismissed within thirty (30) calendar days;
- (f) an assignment by the other PARTY for the benefit of all or substantially all of its creditors;
- g) a receiver, administrative receiver, administrator or any similar officer is appointed in respect of the other PARTY, or any step is taken towards the appointment of any such officer;
- h) the other PARTY commences negotiations in relation to, or enters into, any arrangement, compromise or composition with its creditors or any class of them (with or without first having sought or obtained a moratorium); or
- i) any event occurs, or proceeding is taken, with respect to the other PARTY in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Sections 14(c)-(i) inclusive.

14.2 RXS may terminate this AGREEMENT (in whole or in part) upon written notice to PARTNER with effect from the date specified in such notice if PARTNER:

- a) undergoes a change of control where the entity acquiring control is a competitor of RXS (as determined by RXS in its sole and absolute discretion);
- b) challenges or disputes the validity of any of RXS's INTELLECTUAL PROPERTY RIGHTS; or
- c) purports to assign any of its rights or obligations under this AGREEMENT save as in accordance with Section 20 (Assignment and Subcontracting).

SECTION 15. CONSEQUENCES OF TERMINATION

15.1 All rights and obligations of the PARTIES shall cease to have effect immediately on termination of this

AGREEMENT, except that termination shall not affect:

- a) the accrued rights and obligations to the PARTIES at the date of termination;
- b) the right to claim damages for losses whenever they occur provided that they arise out of an event occurring on or before termination of this AGREEMENT; and
- c) the accrued existence and the validity of the rights and obligations of the PARTIES and any provisions of this AGREEMENT necessary for the interpretation or enforcement of this AGREEMENT.

15.2 On termination or expiration of this AGREEMENT for any reason:

- a) all licenses granted by RXS to PARTNER under this AGREEMENT shall terminate;
- b) PARTNER shall at its own expense within thirty (30) days return to RXS or otherwise dispose of in accordance with the directions of RXS all copies of the APPLICATION and all documentation of any nature whatsoever relating to the APPLICATION in its possession or control; and
- c) certify in writing to RXS that PARTNER has taken the actions set forth in Section 15.2(b).

SECTION 16. FORCE MAJEURE

Neither PARTY shall be deemed to be in breach of this AGREEMENT, nor otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this AGREEMENT to the extent that, and for so long as, such delay or non-performance is due to a FORCE MAJEURE EVENT.

SECTION 17. LIMITATION OF LIABILITY

17.1 Nothing in this AGREEMENT excludes the liability of either PARTY:

- a) for death or personal injury caused by its negligence;
- b) for fraud or fraudulent misrepresentation; or
- c) for any other matter to the extent that such liability may not by applicable law be limited or excluded.

17.2 Subject to Section 17.1, RXS shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for:

- a) loss of profits (whether direct or indirect), loss of business, anticipated savings or similar losses;
- b) damage to reputation or goodwill;
- c) loss or corruption of data or information; or
- d) any special, indirect or consequential loss or damage.

17.3 Except for the liabilities accepted under Section 17.1, RXS's aggregate liability for all and any events arising in any YEAR of this AGREEMENT shall be limited to an amount equal to the amount paid by RXS to PARTNER under this AGREEMENT in respect of the previous twelve (12) months.

SECTION 18. ELECTRONIC COMMUNICATIONS AND NOTICES

18.1 The PARTIES acknowledge that communications between them will often involve electronic means. For contractual purposes, the PARTIES hereby consent to receive communications from each other in an electronic form and agree that all terms and conditions, agreements, notices, disclosures, and other communications that either PARTY provides to the other electronically shall satisfy any legal requirement that such communications would satisfy if it were in writing and signed by both PARTIES. The foregoing does not affect any PARTY's statutory rights.

18.2 Any notice to be given to a PARTY under this AGREEMENT shall be in writing (which includes email) signed or sent by or on behalf of the PARTY giving it, and shall be deemed effectively given: (i) upon personal delivery to the PARTY to be notified; (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day; or (iii) two (2) days after deposit with a national or internationally recognized overnight courier, specifying guaranteed next or second day delivery, with written verification of receipt. All communications shall be sent to the respective PARTIES at the addresses set forth in Schedule 1 (Commercial Terms) hereto (or at such other addresses as shall be specified by notice given in accordance with this Section).

SECTION 19. RELATIONSHIP OF THE PARTIES

The PARTIES are independent contractors. Nothing in this AGREEMENT (including, without limitation, any inference that may arise from the nomenclature of referring to a PARTY as a "PARTNER") is intended to, or shall operate to, create a joint venture, partnership, franchise, or agency relationship between the PARTIES. Neither PARTY shall have authority to act in the name of or on behalf of the other, or to enter into any commitment or make any representation or warranty or otherwise bind the other in any way.

SECTION 20. ASSIGNMENT AND SUBCONTRACTING

20.1 PARTNER may not assign, transfer, charge or otherwise encumber, declare a trust over, or deal with in any other manner this AGREEMENT or any right, benefit or interest under it, or subcontract any of its obligations under it, without the prior written consent of RXS.

20.2 RXS may at any time assign, transfer, charge or otherwise encumber, declare a trust over, or deal with in any other manner this AGREEMENT or any right, benefit or interest under it, or subcontract any of its obligations under it.

SECTION 21. CUMULATIVE REMEDIES

Save as expressly provided in this AGREEMENT, the rights and remedies provided under this AGREEMENT are in addition to, and not exclusive of, any rights or remedies provided by law.

SECTION 22. EXCLUSION OF THIRD PARTY RIGHTS

Unless expressly provided in this AGREEMENT, no term of this AGREEMENT is enforceable by any person who is not a PARTY to it.

SECTION 23. SEVERENCE

23.1 If any court or competent authority finds that any provision of this AGREEMENT (or part of any provision) is invalid, illegal or unenforceable, that provision (or part) shall, to the extent required, be deemed to

be deleted, and the validity and enforceability of the other provisions of this AGREEMENT shall not be affected.

23.2 If any invalid, unenforceable or illegal provision of this AGREEMENT would be valid, enforceable and legal if some part of it were deleted, the PARTIES shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the PARTIES' original commercial intention.

SECTION 24. AMENDMENT

No purported amendment of this AGREEMENT shall be valid unless it is in writing (which includes by email or other electronic means) and signed or sent by or on behalf of each PARTY. The PARTIES acknowledge and agree that this AGREEMENT will be amended from time to time to reflect legal developments, changes in the business relationship between the PARTIES, and/or other matters. PARTNER hereby authorizes RXS to send amendments to this AGREEMENT to PARTNER by electronic means, and PARTNER hereby authorizes RXS to rely on PARTNER's acceptance of such amendments by electronic means as if such acceptance had been delivered in writing and signed by both PARTIES. The foregoing does not affect any PARTY's statutory rights.

SECTION 25. WAIVER

No failure or delay by a PARTY to enforce or exercise any right or remedy under this AGREEMENT or by law shall be deemed to be a waiver of that or any other right or remedy, nor shall it operate so as to bar the enforcement or exercise of that or any other right or remedy at any time subsequently. Any waiver of any breach of this AGREEMENT shall not be deemed to be a waiver of any subsequent breach.

SECTION 26. ENTIRE AGREEMENT

26.1 This AGREEMENT constitutes the entire AGREEMENT and understanding of the PARTIES with respect to the subject matter of this AGREEMENT and supersedes any prior agreements, representations, understandings or arrangements between the PARTIES (oral or written) in relation to such subject matter. Each PARTY acknowledges that:

- a) upon entering into this AGREEMENT, it does not rely, and has not relied, upon any representation (whether negligent or innocent), statement or warranty made or agreed to by any person (whether a PARTY to this AGREEMENT or not) except those expressly set out in this AGREEMENT; and
- b) the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a claim for breach of contract under this AGREEMENT.

26.2 Nothing in this Section shall limit or exclude any liability for fraud.

SECTION 27. FURTHER ASSURANCE

At its own expense, each PARTY shall, and shall use reasonable endeavors to procure that any necessary third party shall, promptly execute all such documents and do all such other acts as are necessary to give full effect to this AGREEMENT.

SECTION 28. GOVERNING LAW AND JURISDICTION

28.1 This AGREEMENT was formed in Alpharetta, Georgia, USA. Any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it, its subject matter or formation shall be governed by

and construed by the laws of the State of Georgia, USA, without regard to the conflicts of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this AGREEMENT.

28.2 Each PARTY irrevocably agrees that the state courts residing in Fulton County, the State of Georgia, USA, and the United States District Court for the Northern District of the State of Georgia, USA, shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) arising out of or in connection with this AGREEMENT, its subject matter or formation, and that each PARTY hereby submits to the personal jurisdiction of the state and federal courts located in the State of Georgia, USA.

28.3 Except as otherwise provided within this AGREEMENT, each PARTY shall pay its own legal, accounting, out-of-pocket and other expenses incident to this AGREEMENT and to any action taken by such PARTY in preparation for performing its obligations under this AGREEMENT.

SECTION 29. SURVIVAL

Section 3 (Representations and Warranties), Section 10 (Intellectual Property Rights), Section 11 (Indemnification), Section 17 (Limitation of Liability) and this Section 29 (Survival) will survive any expiration or termination of this AGREEMENT for any reason.