

SNAPPY SUBSCRIPTION TERMS

These terms, including any attached exhibits (collectively, “**Terms**”) are entered into as of the effective date listed on the Order Form (the “**Effective Date**”) between Snappy App, Inc., a Delaware corporation having its principal place of business at 33 Irving Place, #5021, New York, NY 10003 (“**Snappy**” or “**Party**”), and the customer identified on the Order Form (“**Customer**” or “**Party**”), collectively the “**Parties**.”

In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

1. **Background.** Snappy has developed certain gifting enablement Software (defined below), to which it provides as part of its Services (defined below). Customer wishes to enter into this Agreement for a subscription to the Services identified on an Order Form. Snappy desires to make those Services available to Customer subject to the terms of this Agreement.
2. **Definitions.**
 - 2.1. “**Account Balance**” means a pre-paid account balance which is drawn against for Customer’s purchase of Gifts.
 - 2.2. “**Annual Fees**” means the agreed-upon annual fees subscribed to by a Customer for its access to the Snappy Services as set forth in the applicable Order Form. Annual Fees are non-refundable.
 - 2.3. “**Agreement**” means, collectively, the terms of the Order Form and these Terms, and any exhibits attached thereto.
 - 2.4. “**Authorized User**” means any individual who is authorized by virtue of such individual’s relationship to, or permissions from, Customer, to access and receive the Customer Content and use the Services on Customer’s behalf pursuant to Customer’s rights under this Agreement.
 - 2.5. “**Batch Gifts**” means Gift programs in which Customer sends Gifts to multiple Recipients within a seven (7) day period, with an aggregate value of more than \$20,000.
 - 2.6. “**Customer Content**” means any content created by or on behalf of Customer or an Authorized User in connection with the Services.
 - 2.7. “**Customer Data**” means the personally identifiable information provided by Customer to Snappy regarding natural persons.
 - 2.8. “**Data Center Regions**” means a location in which Snappy or its affiliates maintain data processing operations, including the United States, Israel, the European Union and the United Kingdom.
 - 2.9. “**Documentation**” means online user guides provided and updated by Snappy via meetsnappy.com in connection or as described on the applicable Order Form.
 - 2.10. “**Enhancements**” means the following: minor modifications, revisions, and corresponding Documentation with respect to the Services, including the addition of enhancements or improved performance made available by Snappy to the Services. Enhancements do not include the addition of New Features not originally included as part of the Services described on a particular Order Form.
 - 2.11. “**Gift**” means a product or service selected in the Service by Customer, its Authorized User or its Recipients.
 - 2.12. “**Gift Fees**” means (i) the agreed-upon fees charged based on the value of the Gifts sent by Customer to its Recipient, as set forth in the applicable Order Form, plus (ii) the Snappy Service Fee. Unless otherwise set forth on the Order Form, Gift Fees are billed monthly in arrears, except the Gift Fees for Batch Gifts must be paid in advance.
 - 2.13. “**Maintenance Modifications**” means bug fixes, patches, modifications, or revisions to the Services that correct errors therein. Maintenance Modifications do not include New Features not originally included as part of the Services described on a particular Order Form.
 - 2.14. “**Order Form**” means the order form document signed by both Parties that is attached to and governed by these Terms (including via URL)
 - 2.15. “**Recipients**” means those individuals who receive a Gift from Customer or its Authorized Users through the Services.
 - 2.16. “**Services**” means (a) Snappy’s proprietary Software offerings, and (2) any professional services that are specified on the Order Form.
 - 2.17. “**Set-Up Fees**” means the agreed-upon one-time fee payable by the Customer for its initial setup in the Snappy Services. Set-Up Fees are due upon receipt of invoice by Customer, which shall be issued promptly by Snappy upon execution of this Agreement and are deemed fully earned by Snappy upon the Customer’s first Gift sent from its account. Set-Up Fees are non-cancelable and non-refundable.
 - 2.18. “**Site**” means login.meetsnappy.com and all associated Snappy mobile applications that utilize Snappy’s Software.
 - 2.19. “**Snappy Service Fee**” means a specified percentage of the Gift Fees as set forth on the Order Form.
 - 2.20. “**Software**” means Snappy’s proprietary software programs and associated user interfaces and related technology that Snappy uses to provide the Services, and that Snappy makes available pursuant to this Agreement, including any Enhancements and Maintenance Modifications thereto.
3. **Provision of Services & Responsibility**
 - 3.1. **Software Services.** Subject to the terms of this Agreement (including payment of Fees), Snappy will provide Customer with access to the Services during the Term. Customer, via its administrators, may access and use the Services only for its intended purposes, in accordance with the specifications set forth in this Agreement or any related documentation, and for Customer’s internal business use only. Subject to Customer’s payment of the Fees set forth on the Order Form, Snappy shall provide to Customer the necessary passwords, security protocols and policies, and network links or connections to allow Customer to use the Services.
 - 3.2. **Limitations.** Customer shall not, and shall not authorize or permit any of its Authorized Users or Recipients to (a) rent, loan, or license rights to access and/or use the Services and/or the Software (except as specifically provided herein); (b) copy, modify, disassemble, decompile or reverse engineer software included as part of the Services; (c) share identification or password codes with persons other than Authorized Users, or permit Customer’s account to be accessed by individuals who are not Authorized Users; (d) access, use or permit a third party to access or use the Services or

Software for purposes of competitive analysis, including the development, provision, or use of a competing software or services or for any other purpose that may be to Snappy's detriment or commercial disadvantage; (e) use the Services in any way not expressly provided for in this Agreement; (f) use the Services in a manner that infringes the intellectual property, privacy, or other rights of third parties; (g) remove any title, trademark, copyright, or restricted rights notices or labels from the Services; (h) interfere with or disrupt the integrity or performance of the Services; or (i) expose Snappy to any malware, including viruses, worms, or other malicious computer programming codes that may damage Snappy or third-party systems or data. Customer shall be responsible for all activities that occur under Customer's account and for all actions of Customer or its Authorized users and both Customer and Authorized Users shall use the Site and the Services in accordance with this Agreement. Customer shall notify Snappy of any unauthorized use of Customer's passwords or account, or any other breach of security that is known or suspected by Customer. Customer and its Authorized Users shall abide by all applicable local, state, national, and foreign laws and regulations in connection with their use of the Services. Customer shall be responsible for any breach of this Agreement by its Authorized Users and agrees to enter into agreements with its Authorized Users that contain terms that impose restrictions in all material respects no less than those imposed on Customer herein, including, but not limited to, the provision regarding the use of the Services and protection of Snappy's intellectual property, and that include additional terms as reasonably requested by Snappy.

- 3.3. Customer Content.** Snappy will process Customer Content in order to provide and enhance the Services and Software. The Parties acknowledge that the Customer is at all times the data controller and Snappy is the data processor. Customer represents and warrants that it has all necessary rights in the Customer Content to grant Snappy the right to use, and Customer hereby grants Snappy a non-exclusive, worldwide, royalty-free, transferable, and fully paid license to use, modify and distribute the Customer Content as necessary for Snappy to provide and enhance the Services. All rights in and to the Customer Content not expressly granted to Snappy in this Agreement are reserved by Customer. Customer represents and warrants that any Customer Content hosted by Snappy as part of the Services will not (a) infringe or violate the rights of any third party (b) be deceptive, defamatory, obscene or unlawful. Customer acknowledges that any use of the Services by Customer or Authorized Users contrary to or in violation of the representations and warranties of Customer in this section constitutes unauthorized and improper use of the Services. Customer shall have the sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Content. Customer acknowledges and agrees that the Customer Content may be transferred or stored in a Data Center Region. Customer acknowledges and agrees that the Customer Content may be shared with third parties as necessary to provide and enhance the Services.
- 3.4. Customer Data.** Snappy will process the Customer Data as needed to provide the Services. The Parties acknowledge and agree that the Customer is at all times the data controller and Snappy is a data processor. Customer represents and warrants that Customer shall only provide to Snappy the minimum amount of personally identifiable information, the extent of which is determined and controlled by Customer in its sole discretion, for each Authorized user, to enable the Authorized User to enjoy the benefit of this Agreement. Customer represents and warrants that Customer is entitled to transfer relevant Customer Data to Snappy so that Snappy may lawfully use, process, and transfer the Customer Data in accordance with this Agreement on Customer's behalf and Customer shall ensure the same. Customer shall ensure that the relevant third parties, including data subjects, have been informed of, and have given their consent to, such use, processing and transfer as required by all applicable data protection legislation. Customer acknowledges that Snappy is reliant on Customer for direction as to the extent to which Snappy is entitled to use and process the Customer Data. Snappy shall process the Customer Data only in accordance with the terms of this Agreement and any written instructions given by Customer. Customer acknowledges and agrees that the Customer Data may be transferred or stored in a Data Center Region. Customer acknowledges and agrees that the Customer Data may be shared with third parties as necessary to provide and enhance the Services. Snappy shall not be liable for any claim brought by an Authorized User arising from any action or omission by Snappy, to the extent that such action or omission resulted from Customer's instructions.
- 3.5. Fulfillment & Terms of Sale**
- 3.5.1. Gift Selection.** Customer, through the Service, may select a Gift at a specified budget for its Recipients. Recipient will receive notice of the Gift via electronic notification from Snappy, and Recipient will have the option of (i) accepting the Gift, or (ii) selecting an alternate Gift within the same budget (or less) than the Gift Fee associated with the original Gift. The selected Gift will be shipped to the physical or e-mail address Recipient provides to Snappy via the Service; Customer will be billed or debited for the Gift Fee of the product or service ultimately claimed by the Recipient.
- 3.5.2. Gift Terms.** All Gifts are subject to the terms of the applicable vendor's terms for such Gift. All images of Gifts are for illustrative purposes only, and Gifts may vary from the pictures. Gifts are subject to availability. Although Snappy uses its best efforts to ensure that the availability, colors and details of the gift are correct, Snappy does not guarantee that it will match in every instance.
- 3.5.3. Physical Goods.** All Gifts will be delivered in accordance with the applicable retailers' terms for such Gift, and the delivery of the Gift will be handled by a carrier. Snappy does not control the delivery time or method of any Gift, and Snappy is not liable for any delivery or shipping issues or delays.
- 3.5.4. Electronic Goods and Services.** The Services and certain Gifts may include links to third-party websites, resources or services. Customer acknowledges and agrees that Snappy is not responsible or liable for (i) the availability, terms or practices of such websites, resources or services, or (ii) the content, products or services available on or through such websites, resources or services, including that any information provided is complete, accurate or up-to-date. Links to such websites, resources or services do not imply any endorsement by Snappy of such websites, resources or services, or the content, products or services available on or through such websites, resources or services. Customer acknowledges sole responsibility for and assumes all risk arising from Customer's use of any such websites, resources or services, or the content, products or services available on or through such websites or services.

4. Payment / Fees

- 4.1. **Breakdown of Payments.** Customer's fees for the Snappy Services has the following components: (1) Set-Up Fee, a one-time fee assessed upon Customer's first entering into the Agreement with Snappy for Customer's initial set up with the Services; (2) Annual Fees, billed for a twelve-month license to access the various Services as set forth on the applicable Order Form; and (3) Gift Fees, for Customer's purchase of inventory, pick and pack services, shipping and handling in connection with its orders via the Service, duties, VATs, customs and other taxes (except as set forth below). Gift Fees include the Snappy Service Fee as listed on the applicable Order Form. The Set Up Fee, Annual Fees and Gift Fees are collectively "Fees."
 - 4.2. **Set Up Fees and Annual Fees.** Customer shall pay Snappy upon receipt of invoice for any Set Up Fees or Annual Fees, unless otherwise stated on the Order Form.
 - 4.3. **Gift Fees.** Unless otherwise set forth on the Order Form, all Gift Fees other than Fees for Batch Gifts are billed monthly in arrears. Fees for Batch Gifts must be paid upfront. If there is not a sufficient amount of money in Customer's Account Balance at the time Customer sends a Batch Gift, Snappy may, in its discretion (i) refuse to complete the requested send, or (ii) bill Customer at such time for the required Fees.
 - 4.4. **Billing and Payment.** Customer shall Snappy all Fees specified on the Order Form upon receipt of invoice unless otherwise stated on the Order Form. Overdue payments will be subject to a late fee of 1.5% for each month or fraction thereof that the payment is overdue, or the highest interest rate permitted by applicable law, whichever is lower. In addition to all other remedies available to Snappy, Snappy shall be entitled to discontinue provision of the Services until all overdue amounts due are paid in full. Except as expressly provided in this Agreement, all payments to Snappy are non-refundable and non-cancelable. Customer shall reimburse snappy for Snappy's collection costs incurred in attempting to collect any late payments, including reasonable attorneys' fees.
 - 4.5. **Billing Disputes.** Customer agrees that it shall notify Snappy within 60 days of receipt of an invoice from Snappy if it intends to dispute the amounts owed under such invoice, and that after 60 days all undisputed invoices will be deemed to have been accepted.
 - 4.6. **Taxes.** The Fees listed on the Order Form for any Services are exclusive of any federal, state, or other governmental taxes, duties, fees, excises, or tariffs ("Taxes") now or hereafter imposed on the Services. Customer shall be responsible for, and if necessary, shall reimburse Snappy for all Taxes on any amounts payable by Customer hereunder; Customer shall not be responsible for any taxes imposed on Snappy's net income. If Snappy has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, Snappy will add such Taxes to the amount invoiced to Customer.
5. **Term & Termination**
 - 5.1. **Term.** This Agreement is effective as of the Effective Date. The Services will commence on the Service Start Date listed on the initial Order Form and will remain in effect for a period of one year ("Initial Term"), unless earlier terminated as provided herein. Upon the expiration of the Initial Term, this Agreement will automatically be renewed for one year (each such period a "Renewal Term") unless one Party gives notice to the other Party at least thirty (30) days prior to the end of the Initial Term. The Experience Level Annual Fees must be paid on or before the start of the Renewal Term in order to avoid a termination of Services.
 - 5.2. **Termination for Cause.** Either Party may terminate this Agreement upon: (1) any material breach of this Agreement by the other Party that is not cured within thirty (30) days following written notice thereof; (2) the other Party becoming insolvent or bankrupt, liquidating or being dissolved, or ceasing substantially all of its business; or (3) a breach by the other Party of Section 11.3.
 - 5.3. **Termination for Convenience.** Notwithstanding anything to the contrary in Section 5.2, either Party may terminate this Agreement upon seven (7) days' written notice to the other Party. If Snappy terminates this Agreement for convenience under this subsection, Snappy shall promptly refund to Customer prorated pre-paid, unused Experience Level Annual Fees calculated on a straight-line basis over a 365-day period.
 - 5.4. **Refunds on Termination.** Upon termination of this Agreement, Snappy shall promptly refund to Customer any Fees paid to Snappy for Gifts that are unclaimed and canceled at the time of termination, and any excess amounts in Customer's Account Balance.
 6. **Proprietary Rights**

Snappy will retain all worldwide right, title, and interest (including intellectual property rights) in and to the Site and the Services, the look and feel of the Site, and all copyrights in and to its content. The Site is copyrighted, trademarked, or otherwise protected, and owned or licensed by Snappy. Nothing in this Agreement grants Customer or any Authorized User an express or implied right to use any Snappy intellectual property except as set forth in Section 3.1 above. All proprietary rights in the Services, including the Software and any aggregate usage data, traffic patterns and similar collected by Snappy in connection with use of the Services, will be the sole and exclusive property of Snappy. Snappy retains the royalty-free right to sue any suggestions, ideas, feedback, or other recommendations provided by Customer or Authorized users relating to the Services. Customer hereby grants Snappy the right to contact Customer and Authorized Users in connection with their use of the Services unless otherwise stated on the Order Form. Snappy may use Customer's name and/or its logo on Snappy's website and in its marketing materials to indicate that Customer is a client of Snappy. All other rights not expressly granted in this Agreement are reserved by Snappy.
 7. **Warranties & Liability**
 - 7.1. **Limited Warranty.** Each Party warrants that it has all necessary authority to enter into and perform its obligations under this Agreement. Snappy represents and warrants that (a) the Services will perform substantially in accordance with the Documentation under normal circumstances and when used in accordance with this Agreement and applicable Documentation, and (b) the Services provided hereunder will be performed in a professional manner in accordance with prevailing industry standards. Customer represents and warrants that (x) Customer Content does not infringe upon any third party's proprietary rights, including intellectual property rights, (y) Customer will use the Services in connection with all applicable laws and regulations, including laws applicable to the jurisdictions in which they send Gifts via the Services, and any corporate gifting policies to which its Recipients are subject.
 - 7.2. **Disclaimer.** The Services are provided "as is." Except as specifically provided in this Agreement, Snappy disclaims all other warranties and conditions, express or implied. Snappy expressly disclaims any implied

warranties, including the warranties of merchantability, fitness for a particular purpose, title and non-infringement. Snappy does not warrant that the operation of the Services will be interrupted or error-free or that Customer will achieve any particular business results by use of the Services.

- 7.3. **Liability.** Snappy will not be liable for any special, indirect, exemplary, punitive, incidental, or consequential damages of any nature. In any event, aside from its obligations in Section 8, Snappy's total maximum liability arising out of or in any way connected to this Agreement will not exceed the amount of Annual Fees plus Snappy Service Fees paid to Snappy by Customer during the twelve-month period immediately preceding such claim. These limitations will apply whether a claim arises under contract, tort or any other theory of liability. Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply. In these jurisdictions, Snappy's liability will be limited to the greatest extent permitted by law. The limitations set forth in this Section 7 will survive and apply even if the limited remedy specified in this Agreement is found to have failed of its essential purpose. The Parties acknowledge and understand that the disclaimers, exclusions, and limitations of liability set forth herein form an essential basis of the agreement between the Parties, reflect an allocation of risk between the Parties, and absent these disclaimers, exclusions, and limitations of liability, the terms and conditions of this Agreement would be substantially different.

8. **Indemnity.**

8.1. **Indemnification by Snappy.** During the Term, Snappy shall defend, indemnify, and hold harmless Customer from any loss or damages finally awarded or agreed in settlement arising from a third-party action claiming that the Services infringe on any duly issued U.S. patent, copyright, or trademark or misappropriate any trade secret. In addition, if the use of the Services infringes or is enjoined, or Snappy believes it is likely to infringe or be enjoined, Snappy may, at its sole option: (a) procure for Customer the right to continue use of the Services as furnished; (b) modify the Services to make them non-infringing, provided that they still substantially conform to the applicable Documentation; or (c) if Snappy, after using commercially reasonable efforts, is unable to accomplish the foregoing remedies, terminate this Agreement and refund to Customer any prepaid but unused Annual Fees calculated on a straight-line prorated basis for the remainder of the then-current Term. The intellectual property indemnity provided herein does not apply to the extent the alleged infringement arises from (x) any use of the Services not in accordance with this Agreement or as specified in the Documentation, (y) any combination of the Services and third-party applications, or (z) any unauthorized modification of the Services. This section states Snappy's sole and exclusive liability and Customer's sole remedies for any threatened or actual infringement of proprietary rights.

8.2. **Indemnification by Customer.** During the Term, Customer shall defend, indemnify and hold harmless Snappy and its officers, directors, employees, agents, successors, and assigns from and against any claims, damages, liabilities, judgments, settlements, losses, costs or expenses of any kind, including reasonable attorneys' fees, for a third-party action arising out of (a) processing of Customer Data within the scope of this Agreement; (b) Customer's misuse of the intellectual property rights of any third party; (c) any Customer Content that may violate Section 3.3 of this Agreement; and (d) Customer or an Authorized User violating Section 11.3 of this Agreement.

9. **Confidentiality.** The Parties and Authorized Users shall, during and after the existence of this Agreement, hold in strictest confidence and will not use for any purpose unrelated to its performance of this Agreement or disclose to any third party, any Confidential Information of the other Party. The term "Confidential Information" means all non-public information that the other Party designates as being confidential, or which, under the circumstances of disclosure, ought to be reasonably understood to be confidential. Confidential Information includes, but is not limited to, information concerning business methods, pricing, business plans, new product launches, new product development, customer and vendor information, internal policies and procedures, other financial information, technical information and design, and the terms and conditions of this Agreement. Neither Party shall disclose the other Party's Confidential Information without the prior written consent of such other Party, except to its employees, contractors or agents who have a specific need to know such information and are under a written obligation of confidentiality at least as restricted as contained in this section. Information will not be deemed confidential if it (a) was known of the receiving Party and was acquired through proper methods, prior to its receipt from the disclosing Party, as evidenced by written records of the receiving party; (b) is now or later becomes (through no act or failure on the part of the receiving party) generally known through no breach of this Agreement by the receiving Party; (c) is supplied to the receiving party by a third party that is free to make that disclosure without restriction; or (d) is independently developed by the receiving Party without use of or reference to any Confidential information provided by the disclosing party. The restrictions on disclosure imposed by this section do not apply to information that is required by law or order of a court, administrative agency, or other governmental body to be disclosed by the receiving Party, provided that in each such case the receiving Party provides the disclosing party with prompt written notice of such order or requirement and reasonably assists the disclosing party, at the disclosing Party's expense, in seeking a protective order or other appropriate relief. Upon termination of this Agreement, each Party shall promptly cease all further use of Confidential Information, return to the other Party all physical materials containing Confidential Information, whether the materials were originally provided by the disclosing party or copied or otherwise prepared by the receiving Party, and erase or otherwise destroy any Confidential Information kept by either Party in electronic or other non-physical form. The Parties acknowledge that the receiving Party will not be required to return to the disclosing party or destroy those copies of Confidential Information residing on the receiving Party's backup or disaster recovery systems, or which must be maintained for regulatory or policy purposes; provided that such party continues to abide by its obligations under this section. Termination or expiration of this Agreement will not affect each Party's continuing obligations under this section.

10. **Privacy.** The Snappy "Privacy Policy" is located at <https://www.meetsnappy.com/privacy> and may be amended from time to time. Any updates to the Privacy Policy will be posted to the Site and will be effective immediately upon posting to the Site. Snappy will provide a notification to Customer, via the Site, of updates to the Privacy Policy. It is Customer's responsibility to review updates to the Privacy Policy to ensure that Customer acknowledges that Snappy processes Customer Data in accordance with the Privacy Policy. If there is any conflict between the Privacy Policy and this Agreement, this Agreement will govern.

11. **General**

- 11.1. Waiver/Amendment.** These terms may be amended by Snappy from time to time in its sole discretion. In the event of such an amendment, Snappy will notify Customer of such update via email and provide Customer 30 days to object to such amendment. If Customer does not object within such period, the amended terms will be effective with respect to Customer upon the end thereof. If Customer does object, the terms in effect immediately prior to such amendment will remain in effect until the end of the then-current Term, and the amended terms will go into effect upon the beginning of the next Renewal Term, if the Agreement is renewed.
- 11.2. Assignment.** Neither Party may assign, delegate, or otherwise transfer this Agreement, in whole or in part, voluntarily, involuntarily, by operation of law, or otherwise without the other Party's prior written consent; except that either Party may assign, delegate, or otherwise transfer this Agreement without such consent to an affiliate or in connection with any merger, consolidation, reorganization, amalgamation, sale of assets, or any similar transaction. Any attempt to assign, delegate or otherwise transfer this Agreement other than in accordance with this provision will be void.
- 11.3. Compliance with Laws.** Both Parties shall comply with all applicable local, state, national and foreign laws, rules, and regulations, including all applicable export and import laws and regulations in connection with their performance, access, and/or use of the Services under this Agreement. Customer represents that Customer, and its directors, officers, employees, and agents, have not taken, and during the term of this Agreement, will not take any action that would constitute a violation of the Foreign Corrupt Practices Act of 1977, as amended, the UK Bribery Act 2010, or any other anti-bribery or anti-corruption legislation of the United States, or any other jurisdiction in which Customer or Snappy conducts business.
- 11.4. Data Controller; Export.** Customer shall comply with all legal duties applicable to Customer including obligations as data controller by virtue of Customer's role in determining Authorized Users. Specifically, Customer shall provide relevant persons and/or participants with all information Customer is required by law to provide, and, if necessary, shall obtain the consent of these persons. The Services and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Customer represents that it is not named on any U.S. government denied-party list. Customer shall not permit Authorized Users to access or use the Services in a U.S. embargoed country (currently Cuba, Iran, North Korea, Syria or Crimea) or in violation of any U.S. export law or regulation.
- 11.5. Class Action Waiver.** Both Parties agree that all claims brought against the other must be brought in such Party's individual capacity, and not as a plaintiff or class member in any purported class action, collective action, private attorney general action or other representative proceeding, except to the extent such restriction is prohibited by applicable law.
- 11.6. Governing Law; Attorneys' Fees.** The rights of the Parties hereunder will be governed by the laws of the State of New York, without regard to its principles of conflicts of law. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Any suits brought hereunder shall be brought exclusively in the federal and state courts serving the Borough of Manhattan, in the City and State of New York. In the event of any claim, action, or judicial proceeding arising under this Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and expenses incurred in resolving such claim, action or judicial proceeding.
- 11.7. Severability; Notice.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement will remain in full force. Any notice, consent, or other communication hereunder must be in writing, and must be given personally, or sent via overnight delivery or via email with confirmation of receipt, to either Party at its respective address set forth in the Order Form (or such other address as provided by that Party), or by Snappy to Customer via notification from the Services. In addition, Customer shall provide Snappy with email notice at legalnotices@meetsnappy.com. Notices will be deemed given when delivered.
- 11.8. Independent Contractors.** The relationship of the Parties is that of independent contractors and nothing contained in this Agreement will be construed to make either Party an agent, partner, joint venturer, or representative of the other for any purpose. This Agreement is for the sole benefit of the Parties and their respective permitted successors and assigns, and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit, or remedy under or by reason of this Agreement.
- 11.9. Force Majeure.** Nonperformance by either Party (other than Customer's payment obligations) will be excused to the extent failure to perform is beyond the reasonable control of the non-performing Party.
- 11.10. Entire Agreement; Survival.** This Agreement, together with any URLs contained herein, any exhibits and the Order Form(s), constitutes the entire agreement between the Parties with respect to the subject matter hereof and replaces any prior understandings, written or oral. Further, under no circumstances will the provisions of any document issued by Customer (including, but not limited to, any request for quotes or proposals, purchase orders, non-disclosure agreements, Customer exhibits to this Agreement, and vendor forms or registrations with terms that conflict with this Agreement) be deemed to modify, alter, or expand the rights, duties, or obligations of the Parties under this Agreement, regardless of any failure of Snappy to object to such terms, provisions or conditions. If there is any conflict between the terms of this Agreement and the Order Form, the Order Form will prevail. In addition to any rights that accrued prior to termination, the provisions of Sections 4 and 6 - 11 will survive any termination of this Agreement.