# SECURITIES AND EXCHANGE COMMISSION

# **FORM 10-12B/A**

Initial general form for registration of a class of securities pursuant to Section 12(b) [amend]

Filing Date: **2015-05-14 SEC Accession No.** 0001193125-15-188285

(HTML Version on secdatabase.com)

# **FILER**

# PayPal Holdings, Inc.

CIK:1633917| IRS No.: 492989869 | State of Incorp.:DE | Fiscal Year End: 1231

Type: 10-12B/A | Act: 34 | File No.: 001-36859 | Film No.: 15864010

SIC: 7389 Business services, nec

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# UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

# Amendment No. 2 to FORM 10

GENERAL FORM FOR REGISTRATION OF SECURITIES
Pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934

# PayPal Holdings, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware	47-2989869
(State or Other Jurisdiction of	(I.R.S. Employer
Incorporation or Organization)	Identification No.)
2211 North First Street	
San Jose, California	95131
(Address of Principal Executive Offices)	(Zip Code)
	●] umber, including area code)
Securities to be registered purs	suant to Section 12(b) of the Act:
Title of each class	Name of each exchange on which
to be so registered	each class is to be registered
Common Stock	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Securities to be registered pursuant to Section 12(g) of the Act: None

Large accelerated filer		Accelerated filer	
Large accelerated filer	Ш	Accelerated filer	ш

Non-accelerated filer	☑ (Do not check if a smaller reporting company)	Smaller reporting company	

# PayPal Holdings, Inc.

# INFORMATION REQUIRED IN REGISTRATION STATEMENT CROSS-REFERENCE SHEET BETWEEN INFORMATION STATEMENT AND ITEMS OF FORM 10

Certain information required to be included herein is incorporated by reference to specifically identified portions of the body of the information statement filed herewith as Exhibit 99.1. None of the information contained in the information statement shall be incorporated by reference herein or deemed to be a part hereof unless such information is specifically incorporated by reference.

#### Item 1. Business.

The information required by this item is contained under the sections of the information statement entitled "Information Statement Summary," "Risk Factors," "Business," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Certain Relationships and Related Party Transactions," and "Where You Can Find More Information." Those sections are incorporated herein by reference.

#### Item 1A. Risk Factors.

The information required by this item is contained under the section of the information statement entitled "Risk Factors." That section is incorporated herein by reference.

# Item 2. Financial Information.

The information required by this item is contained under the sections of the information statement entitled "Unaudited Pro Forma Condensed Combined Financial Statements," "Selected Historical Combined Financial Data," and "Management's Discussion and Analysis of Financial Condition and Results of Operations." Those sections are incorporated herein by reference.

#### Item 3. *Properties*.

The information required by this item is contained under the section of the information statement entitled "Business." That section is incorporated herein by reference.

#### Item 4. Security Ownership of Certain Beneficial Owners and Management.

The information required by this item is contained under the section of the information statement entitled "Security Ownership of Certain Beneficial Owners and Management." That section is incorporated herein by reference.

#### Item 5. Directors and Executive Officers.

The information required by this item is contained under the sections of the information statement entitled "Directors" and "Management." Those sections are incorporated herein by reference.

# Item 6. Executive Compensation.

The information required by this item is contained under the sections of the information statement entitled "Compensation Discussion and Analysis" and "Executive Compensation." Those sections are incorporated herein by reference.

# Item 7. Certain Relationships and Related Transactions.

The information required by this item is contained under the sections of the information statement entitled "Management" and "Certain Relationships and Related Party Transactions." Those sections are incorporated herein by reference.

# Item 8. Legal Proceedings.

The information required by this item is contained under the section of the information statement entitled "Business–Legal and Regulatory Proceedings." That section is incorporated herein by reference.

# Item 9. Market Price of, and Dividends on, the Registrant's Common Equity and Related Stockholder Matters.

The information required by this item is contained under the sections of the information statement entitled "Dividend Policy," "Capitalization," "The Separation and Distribution," and "Description of PayPal's Capital Stock." Those sections are incorporated herein by reference.

#### Item 10. Recent Sales of Unregistered Securities.

The information required by this item is contained under the sections of the information statement entitled "Description of Material Indebtedness" and "Description of PayPal's Capital Stock–Sale of Unregistered Securities." Those sections are incorporated herein by reference.

#### Item 11. Description of Registrant's Securities to be Registered.

The information required by this item is contained under the sections of the information statement entitled "Dividend Policy," "The Separation and Distribution," and "Description of PayPal's Capital Stock." Those sections are incorporated herein by reference.

#### Item 12. Indemnification of Directors and Officers.

The information required by this item is contained under the section of the information statement entitled "Description of PayPal's Capital Stock-Limitations on Liability, Indemnification of Officers and Directors and Insurance." That section is incorporated herein by reference.

# Item 13. Financial Statements and Supplementary Data.

The information required by this item is contained under the section of the information statement entitled "Index to Financial Statements" and the financial statements referenced therein. That section is incorporated herein by reference.

#### Item 14. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

#### Item 15. Financial Statements and Exhibits.

#### (a) Financial Statements

The information required by this item is contained under the section of the information statement entitled "Index to Financial Statements" and the financial statements referenced therein. That section is incorporated herein by reference.

# (b) Exhibits

The following documents are filed as exhibits hereto:

Exhibit Number	Exhibit Description
2.1	Form of Separation and Distribution Agreement by and between eBay Inc. and PayPal Holdings, Inc.**
3.1	Form of Amended and Restated Certificate of Incorporation of PayPal Holdings, Inc.**
3.2	Form of Amended and Restated Bylaws of PayPal Holdings, Inc.**
10.1	Form of Operating Agreement by and between eBay Inc. and PayPal Holdings, Inc.**
10.2	Form of Transition Services Agreement by and between eBay Inc. and PayPal Holdings, Inc.**
10.3	Form of Tax Matters Agreement by and between eBay Inc. and PayPal Holdings, Inc.*
10.4	Form of Employee Matters Agreement by and between eBay Inc. and PayPal Holdings, Inc.**
10.5	Form of Intellectual Property Matters Agreement between eBay Inc. and PayPal Holdings, Inc.**
10.6	Form of Colocation Services Agreement between eBay Inc. and PayPal Holdings, Inc.**
10.7	Form of Indemnity Agreement between PayPal Holdings, Inc. and individual directors and officers**
10.8	Form of PayPal Employee Incentive Plan**
10.9	Form of PayPal Holdings, Inc. 2015 Equity Incentive Award Plan**
10.10	Form of Global Restricted Stock Unit Agreement (and Performance-Based Restricted Stock Unit Agreement) under the PayPal Holdings, Inc. 2015 Equity Incentive Award Plan**
10.11	Form of Global Stock Option Agreement under the PayPal Holdings, Inc. 2015 Equity Incentive Award Plan**
10.12	Form of Director Annual Award Agreement under the PayPal Holdings, Inc. 2015 Equity Incentive Award Plan**
10.13	Form of Electing Director Quarterly Award Agreement under the PayPal Holdings, Inc. 2015 Equity Incentive Award Plan**
10.14	Form of PayPal Holdings, Inc. Employee Stock Purchase Plan**
10.15	Form of PayPal Holdings, Inc. Deferred Compensation Plan**
10.16	Offer Letter dated September 29, 2014 between eBay Inc. and Daniel Schulman**
10.17	Amendment dated December 31, 2014 to Offer Letter between eBay Inc. and Daniel Schulman**
21.1	List of subsidiaries*
99.1	Information Statement of PayPal Holdings, Inc., preliminary and subject to completion, dated May 14, 2015**

<sup>\*</sup> To be filed by amendment.

<sup>\*\*</sup> Filed herewith.

# **SIGNATURES**

Pursuant to the requirements of Section 12 of the Securities Exchange Act of 1934, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized.

PayPal Holdings, Inc.

By: /s/ Daniel H. Schulman

Name: Daniel H. Schulman

Title: President and CEO-Designee

Date: May 14, 2015

# FORM OF

# SEPARATION AND DISTRIBUTION AGREEMENT

BY AND BETWEEN

EBAY INC.

AND

PAYPAL HOLDINGS, INC.

DATED AS OF [ ], 201[ ]

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#### **EXHIBITS**

Exhibit A Amended and Restated Certificate of Incorporation of PayPal Holdings, Inc.

Exhibit B Amended and Restated Bylaws of PayPal Holdings, Inc.

#### SEPARATION AND DISTRIBUTION AGREEMENT

This SEPARATION AND DISTRIBUTION AGREEMENT, dated as of [ ], 201[ ] (this "<u>Agreement</u>"), is by and between eBay Inc., a Delaware corporation ("<u>eBay</u>"), and PayPal Holdings, Inc., a Delaware corporation ("<u>PayPal</u>"). Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in <u>Article I</u>.

#### RECITALS

WHEREAS, the board of directors of eBay (the "eBay Board") has determined that it is in the best interests of eBay and its stockholders to create a new publicly traded company that shall operate the PayPal Business;

WHEREAS, in furtherance of the foregoing, the eBay Board has determined that it is appropriate and desirable to separate the PayPal Business from the eBay Business (the "Separation") and, following the Separation, make a distribution, on a pro rata basis, to holders of eBay Shares on the Record Date of all of the outstanding PayPal Shares owned by eBay (the "Distribution");

WHEREAS, PayPal has been incorporated solely for these purposes and has not engaged in activities except in preparation for the Separation and the Distribution;

WHEREAS, the transfer by eBay of the PayPal Assets and the PayPal Liabilities to PayPal (the "<u>Contribution</u>") and the Distribution, taken together, are intended to qualify as a transaction that is generally tax-free for U.S. federal income tax purposes under Section 355 and 368(a)(1)(D) of the Code;

WHEREAS, eBay expects to receive an opinion of outside legal counsel regarding the qualification of the Contribution and the Distribution, taken together, as a transaction that is generally tax-free for U.S. federal income tax purposes under Sections 355 and 368(a)(1)(D) of the Code (the "<u>Tax Opinion</u>");

WHEREAS, PayPal and eBay have prepared, and PayPal has filed with the SEC, the Form 10, which includes the Information Statement, and which sets forth disclosure concerning PayPal, the Separation and the Distribution; and

WHEREAS, each of eBay and PayPal has determined that it is appropriate and desirable to set forth the principal corporate transactions required to effect the Separation and the Distribution and certain other agreements that will govern certain matters relating to the Separation and the Distribution and the relationship of eBay, PayPal and the members of their respective Groups following the Distribution.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

# ARTICLE I DEFINITIONS

For the purpose of this Agreement, the following terms shall have the following meanings:

"Action" shall mean any demand, action, claim, counterclaim, dispute, suit, countersuit, arbitration, hearing, inquiry, subpoena, proceeding, examination or investigation of any nature (whether criminal, civil, legislative, administrative, regulatory, prosecutorial, appellate or otherwise) by or before any federal, state, local, foreign or international Governmental Authority or any arbitration or mediation tribunal.

"Affiliate" shall mean, when used with respect to a specified Person, a Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person. For the purpose of this definition, "control" (including with correlative meanings, "controlled by" and "under common control with"), when used with respect to any specified Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other interests, by contract or otherwise. It is expressly agreed that, prior to, at and after the Effective Time, for purposes of this Agreement and the Ancillary Agreements, (a) no member of the PayPal Group shall be deemed to be an Affiliate of any member of the eBay Group and (b) no member of the eBay Group shall be deemed to be an Affiliate of any member of the PayPal Group.

"Agent" shall mean the trust company or bank duly appointed by eBay to act as distribution agent, transfer agent and registrar for the PayPal Shares in connection with the Distribution.

"Agreement" shall have the meaning set forth in the Preamble.

"Ancillary Agreement" shall mean any agreements (other than this Agreement) entered into by the Parties or the members of their respective Groups (but as to which no Third Party is a party) in connection with the Separation, the Distribution, and the other transactions contemplated by this Agreement, including the Operating Agreement, the Transition Services Agreement, the Tax Matters Agreement, the Employee Matters Agreement, the Intellectual Property Matters Agreement, the Colocation Services Agreements, the Product Development Agreement, the Data Sharing Addendum and the Transfer Documents; provided, that no Commercial Agreement shall be an Ancillary Agreement.

"Approvals or Notifications" shall mean any consents, waivers, approvals, permits or authorizations to be obtained from, notices, registrations or reports to be submitted to, or other filings to be made with, any third Person, including any Governmental Authority.

"Arbitration Request" shall have the meaning set forth in Section 7.4(a).

"Arbitration Rules" shall have the meaning set forth in Section 7.4(a).

"Assets" shall mean, with respect to any Person, the assets, properties, claims and rights (including goodwill) of such Person, wherever located (including in the possession of vendors or other third Persons or elsewhere), of every kind, character and description, whether real, personal or mixed, tangible, intangible or contingent, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of such Person, including rights and benefits pursuant to any contract, license, permit, indenture, note, bond, mortgage, agreement, concession, franchise, instrument, undertaking, commitment, understanding or other arrangement.

"Cash Amounts" shall have the meaning set forth in Section 2.12.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Colocation Services Agreements" shall mean the Colocation Services Agreements to be entered into by and between eBay and PayPal or the members of their respective Groups in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.

"Commercial Agreements" shall mean the agreements entered into by the Parties or the members of their respective Groups (but as to which no Third Party is a party) set forth on Schedule 1.1.

"Contribution" shall have the meaning set forth in the Recitals.

"<u>Data Sharing Addendum</u>" shall mean the Data Sharing Addendum to be entered into by and between eBay and PayPal or the members of their respective Groups pursuant to the Operating Agreement and in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.

"Delayed eBay Asset" shall have the meaning set forth in Section 2.4(h).

"Delayed eBay Liability" shall have the meaning set forth in Section 2.4(h).

"<u>Delayed PayPal Asset</u>" shall have the meaning set forth in <u>Section 2.4(c)</u>.

"Delayed PayPal Liability" shall have the meaning set forth in Section 2.4(c).

"Disclosure Document" shall mean any registration statement (including the Form 10) filed with the SEC by or on behalf of any Party or any member of its Group, and also includes any information statement (including the Information Statement), prospectus, offering memorandum, offering circular, periodic report or similar disclosure document, whether or not filed with the SEC or any other Governmental Authority, in each case which describes the Separation or the Distribution or the PayPal Group or primarily relates to the transactions contemplated hereby.

"Dispute" shall have the meaning set forth in Section 7.1.

"Distribution" shall have the meaning set forth in the Recitals.

"<u>Distribution Date</u>" shall mean the date of the consummation of the Distribution, which shall be determined by the eBay Board in its sole and absolute discretion.

"<u>Distribution Ratio</u>" shall mean a number equal to [ ].

"eBay" shall have the meaning set forth in the Preamble.

"eBay Accounts" shall have the meaning set forth in Section 2.9(a).

"eBay Assets" shall have the meaning set forth in Section 2.2(b).

"eBay Board" shall have the meaning set forth in the Recitals.

"eBay Business" shall mean (a) the business, operations, products, platforms, services and activities of the Marketplaces segment of eBay conducted at any time prior to the Effective Time by either Party or any member of its Group, (b) any terminated, divested or discontinued businesses, operations and activities that, at the time of termination, divestiture or discontinuation, primarily related to the business, operations or activities described in clause (a) as then conducted, including those set forth on Schedule 1.2(b), and (c) the Enterprise Business.

"eBay Data Center Infrastructure" shall mean all: (a) eBay GPI Software; and (b) Information Technology that is (i) located as of the Effective Time at the data centers operated by eBay or any of its Subsidiaries located in: Denver, Colorado; Las Vegas, Nevada; Phoenix, Arizona; Reno, Nevada; and Salt Lake City, Utah and (ii) necessary to operate such data centers (which shall not, for clarity, be deemed to include any proprietary Technology of PayPal or any PayPal Group member).

"eBay GPI Software" shall mean the Software set forth on Schedule 1.3.

"eBay Group" shall mean eBay and each Person that is a Subsidiary of eBay (other than PayPal and any other member of the PayPal Group).

"eBay Indemnified Parties" shall have the meaning set forth in Section 4.2.

"eBay Liabilities" shall have the meaning set forth in Section 2.3(b).

"eBay Name and eBay Marks" shall mean the names, marks, trade dress, logos, monograms, domain names and other source or business identifiers of either Party or any member of its Group using or containing "eBay", either alone or in combination with other words or elements, and all names, marks, trade dress, logos, domain names and other source or business identifiers confusingly similar to or embodying any of the foregoing either alone or in combination with other words or elements, together with the goodwill associated with any of the foregoing.

"<u>eBay Patents</u>" shall mean: (a) the issued patents set forth on <u>Schedule 1.4</u>; (b) any patent issuing on any patent application set forth on <u>Schedule 1.4</u>; (c) any patent claims issuing on any patent application that claims priority from, and that cover exclusively subject matter that is entitled to priority to, any patent or patent application set forth on <u>Schedule 1.4</u>

(including any divisional, continuation, continuation-in-part, reissue, reexamination, or extension) with a priority date that is on or before the Distribution Date; and (d) any foreign counterpart of any of the foregoing patents and patent applications with a priority date that is on or before the Distribution Date.

"eBay Proceedings" shall mean the proceedings set forth in Schedule 1.5.

"eBay Shares" shall mean the shares of common stock, par value \$0.001 par per share, of eBay.

"eBay Specified Actions" shall mean those Actions set forth on Schedule 1.6.

"eBay Specified Persons" shall mean the Persons set forth on Schedule 1.7.

"eBay Stock Exchange" shall mean The NASDAQ Stock Market.

"Effective Time" shall mean 11:59:59 p.m., New York City time, on the Distribution Date.

"Employee Matters Agreement" shall mean the Employee Matters Agreement to be entered into by and between eBay and PayPal or the members of their respective Groups in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.

"Enterprise Business" shall mean all businesses, operations, products, platforms, services and activities (whether or not such businesses, operations or activities are or have been terminated, divested or discontinued) of the Enterprise segment of eBay conducted at any time prior to the Effective Time by either Party or any member of its Group.

"Escalation Committee" shall have the meaning as set forth in Section 7.2.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.

"Executable Code" shall mean the fully compiled version of a computer program that can be executed by a computer and used by an end user without further compilation.

"Force Majeure" shall mean, with respect to a Party, an event beyond the control of such Party (or any Person acting on its behalf), which event (a) does not arise or result from the fault or negligence of such Party (or any Person acting on its behalf) and (b) by its nature would not reasonably have been foreseen by such Party (or such Person), or, if it would reasonably have been foreseen, was unavoidable, and includes acts of God, acts of civil or military authority, embargoes, epidemics, pandemics, war, riots, insurrections, fires, explosions, earthquakes, floods, unusually severe weather conditions, labor problems or unavailability of parts. Notwithstanding the foregoing, the receipt by a Party of an unsolicited takeover offer or other acquisition proposal, even if unforeseen or unavoidable, and such Party's response thereto shall not be deemed an event of Force Majeure.

"Form 10" shall mean the registration statement on Form 10 filed by PayPal with the SEC to effect the registration of PayPal Shares pursuant to the Exchange Act in connection with the Distribution, as such registration statement may be amended or supplemented from time to time prior to the Distribution.

"Governmental Approvals" shall mean any Approvals or Notifications to be made to, or obtained from, any Governmental Authority.

"Governmental Authority" shall mean any nation or government, any state, municipality or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau, court, tribunal or other instrumentality, whether federal, state, provincial, local, domestic, foreign, supranational or multinational, exercising executive, legislative, judicial, regulatory, administrative or other similar functions of, or pertaining to, government and any executive official thereof, including The NASDAQ Stock Market and any similar self-regulatory body under applicable securities Laws.

"Group" shall mean either the PayPal Group or the eBay Group, as the context requires.

"Indemnifying Party" shall have the meaning set forth in Section 4.5(a).

"Indemnified Party" shall have the meaning set forth in Section 4.5(a).

"Indemnity Payment" shall have the meaning set forth in Section 4.5(a).

"Information" shall mean information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names and records, supplier names and records, customer and supplier lists, customer and vendor data or correspondence, communications by or to attorneys (including attorney-client privileged communications), memos and other materials prepared by attorneys or under their direction (including attorney work product), and other technical, financial, employee or business information or data, files, papers, tapes, keys, correspondence, plans, invoices, forms, product data and literature, promotional and advertising materials, technical data, operating manuals, instructional documents, quality records and regulatory and compliance records; provided, that "Information" shall not include Registered IP.

"Information Statement" shall mean the information statement to be made available to the holders of eBay Shares in connection with the Distribution, as such information statement may be amended or supplemented from time to time prior to the Distribution.

"Information Technology" shall mean all technology, hardware, computers, servers, workstations, routers, hubs, switches, data communication lines, network and telecommunications equipment, Internet-related information technology infrastructure and other information technology equipment, in each case, other than Software.

"Initial Notice" shall have the meaning set forth in Section 7.1.

"Insurance Administration" shall mean, with respect to each insurance policy maintained by eBay or any member of the eBay Group, the accounting for premiums, retrospectively-rated premiums, defense costs, indemnity payments, deductibles and retentions, as appropriate, under the terms and conditions of each such policy; discussions or negotiations with insurers and the control of any Actions relating to any such policy; the reporting to excess insurance carriers of any losses or claims which may cause the per-occurrence, per claim or aggregate limits of any such policy to be exceeded; and the distribution of Insurance Proceeds as contemplated by this Agreement.

- "Insurance Proceeds" shall mean those monies:
- (a) received by an insured from an insurance carrier; or
- (b) paid by an insurance carrier on behalf of the insured;

in any such case net of any costs or expenses incurred in the collection thereof to the extent such adjustment is demonstrably related to such proceeds and net of any applicable premium adjustments, including reserves and retrospectively rated premium adjustments (it being understood that Insurance Proceeds shall include amounts received under a captive insurance arrangement).

"Intellectual Property Matters Agreement" shall mean the Intellectual Property Matters Agreement to be entered into by and between eBay and PayPal or any members of their respective Groups in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.

"Intellectual Property Rights" shall have the meaning set forth in the Intellectual Property Matters Agreement.

"Joint Proceedings" shall mean the proceedings set forth in Schedule 1.8.

"Law" shall mean any national, supranational, international, federal, state, provincial, local or similar law (including common law), statute, code, order, ordinance, rule, regulation, treaty (including any Tax treaty), license, permit, authorization, approval, consent, decree, injunction, binding judicial or administrative interpretation or other requirement, in each case, enacted, promulgated, issued or entered by a Governmental Authority.

"LHO" shall have the meaning as set forth in Section 4.5(f).

"<u>Liabilities</u>" shall mean all debts, guarantees, assurances, commitments, liabilities, responsibilities, Losses, remediation, deficiencies, damages, fines, penalties, settlements, sanctions, costs, expenses, interest and obligations of any nature or kind, whether accrued or fixed, absolute or contingent, matured or unmatured, accrued or not accrued, asserted or unasserted, liquidated or unliquidated, foreseen or unforeseen, known or unknown, reserved or unreserved, or determined or determinable, including those arising under any Law, claim (including any Third-Party Claim), demand, Action, or order, writ, judgment, injunction, decree,

stipulation, determination or award entered by or with any Governmental Authority or arbitration tribunal, and those arising under any contract, agreement, obligation, indenture, instrument, lease, promise, arrangement, release, warranty, commitment undertaking or terms of employment, whether imposed or sought to be imposed by a Governmental Authority, another third Person, or a Party, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, or otherwise, in each case including all costs, expenses, interest, attorneys' fees, disbursements and expenses of counsel, expert and consulting fees and costs related thereto or to the investigation or defense thereof and any equitable relief that is imposed in connection therewith.

"<u>Licensed eBay Software</u>" shall mean: (a) solely those software programs listed in <u>Schedule 1.9(a)</u>, in both Executable Code and Source Code form, in the form such software programs exist as of the Effective Time; and (b) all documentation relating thereto, if any, provided by eBay to PayPal.

"<u>Licensed PayPal Software</u>" shall mean: (a) solely those software programs listed in <u>Schedule 1.10(a)</u>, in both Executable Code and Source Code form, in the form such software programs exist as of the Effective Time; and (b) and all documentation relating thereto, if any, provided by PayPal to eBay.

"Linked" shall have the meaning set forth in Section 2.9(a).

"Losses" shall mean actual losses, costs, damages, penalties and expenses (including legal and accounting fees and expenses and costs of investigation and litigation), whether or not involving a Third-Party Claim.

"Mediation Request" shall have the meaning set forth in Section 7.3.

"Mediation Rules" shall have the meaning set forth in Section 7.3.

"Operating Agreement" shall mean the Operating Agreement to be entered into by and between eBay and PayPal or the members of their respective Groups in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.

"Other Board Members" shall have the meaning as set forth in Section 7.2.

"Other IP" shall mean all Technology, other than Registered IP, that is owned by either Party or any member of its Group as of the Effective Time.

"Parties" shall mean the parties to this Agreement.

"PayPal" shall have the meaning set forth in the Preamble.

"PayPal, Inc. Contract" shall mean any contract or agreement to which PayPal, Inc. or any of its Subsidiaries entered into prior to the Effective Time and to which eBay and the other members of the eBay Group are not parties.

"PayPal Accounts" shall have the meaning set forth in Section 2.9(a).

"PayPal Assets" shall have the meaning set forth in Section 2.2(a).

"PayPal Balance Sheet" shall mean the pro forma combined balance sheet of the PayPal Business, including any notes and subledgers thereto, as of [ ], 201[ ], as presented in the Information Statement made available to the Record Holders.

"<u>PayPal Business</u>" shall mean (a) the business, operations, products, platforms, services and activities of the Payments segment of eBay conducted at any time prior to the Effective Time by either Party or any of their current or former Subsidiaries and (b) any terminated, divested or discontinued businesses, operations and activities that, at the time of termination, divestiture or discontinuation, primarily related to the business, operations or activities described in clause (a) as then conducted, including those set forth on <u>Schedule 1.11(b)</u>.

"PayPal Bylaws" shall mean the Amended and Restated Bylaws of PayPal, substantially in the form of Exhibit B.

"PayPal Certificate of Incorporation" shall mean the Amended and Restated Certificate of Incorporation of PayPal, substantially in the form of Exhibit A.

"PayPal Contracts" shall mean the following contracts and agreements to which either Party or any member of its Group is a party or by which it or any member of its Group or any of their respective Assets is bound, whether or not in writing; provided, that PayPal Contracts shall not include any contract or agreement that is contemplated to be retained by eBay or any member of the eBay Group from and after the Effective Time pursuant to any provision of this Agreement or any Ancillary Agreement:

- (a) (i) any marketing, merchant, reseller, distributor, development, supply or vendor contract or agreement entered into prior to the Effective Time exclusively related to the PayPal Business and (ii) with respect to any marketing, merchant, supply or vendor contract or agreement entered into prior to the Effective Time that relates to the PayPal Business but is not exclusively related to the PayPal Business, that portion of any such customer, distribution, supply or vendor contract or agreement that relates to the PayPal Business;
- (b) (i) any license agreement or other agreement conferring Intellectual Property Rights entered into prior to the Effective Time exclusively related to the PayPal Business and (ii) with respect to any license agreement entered into prior to the Effective Time that relates to the PayPal Business but is not exclusively related to the PayPal Business, that portion of any such license agreement that relates to the PayPal Business;
- (c) (i) any contract or agreement with a Third Party pursuant to which such Third Party provides colocation or disaster recovery services entered into prior to the Effective Time exclusively related to the PayPal Information Technology and (ii) with respect to any contract or agreement with a Third Party pursuant to which such Third Party provides colocation or disaster recovery services entered into prior to the Effective Time that relates to the PayPal Information Technology but is not exclusively related to the PayPal Information Technology, that portion of any such contract or agreement that relates to the PayPal Information Technology;

- (d) any customer or user contract or agreement primarily used or held primarily for use in the PayPal Business as of the Effective Time;
- (e) any joint venture or partnership contract or agreement that relates primarily to the PayPal Business as of the Effective Time:
- (f) any guarantee, indemnity, representation, covenant, warranty or other Liability of either Party or any member of its Group in respect of any other PayPal Contract, any PayPal Liability or the PayPal Business;
- (g) (i) any employment, change of control, retention, consulting, indemnification, termination, severance or other similar agreement with any current or former PayPal Group employee or current or former consultant of the PayPal Group entered into prior to the Effective Time and (ii) any proprietary information and inventions agreement or similar Intellectual Property Rights assignment or license agreement with any current or former PayPal Group employee, eBay Group employee, consultant of the PayPal Group or consultant of the eBay Group, in each case entered into prior to the Effective Time, to the extent such agreement relates to the PayPal Business;
- (h) any contract or agreement that is otherwise expressly contemplated pursuant to this Agreement or any of the Ancillary Agreements to be assigned to PayPal or any member of the PayPal Group;
- (i) any interest rate, currency, commodity or other swap, collar, cap or other hedging or similar agreements or arrangements related exclusively to the PayPal Business or entered into by or on behalf of any division, business unit or member of the PayPal Group;
- (j) (i) any PayPal, Inc. Contract that is exclusively related to the PayPal Business and (ii) with respect to any PayPal, Inc. Contract that relates to the PayPal Business but is not exclusively related to the PayPal Business, that portion of any such PayPal, Inc. Contract that relates to the PayPal Business; and
- (k) any contracts, agreements or settlements listed on <u>Schedule 1.12(k)</u>, including the right to recover any amounts under such contracts, agreements or settlements.

"<u>PayPal Designees</u>" shall mean the entities (including corporations, general or limited partnerships, trusts, joint ventures, unincorporated organizations, limited liability entities or other entities) that will be members of the PayPal Group as of immediately prior to the Effective Time designated by PayPal to accept PayPal Assets and assume PayPal Liabilities.

"PayPal GPI Software" shall mean the Software set forth on Schedule 1.13.

"PayPal Group" shall mean (a) prior to the Effective Time, PayPal and each Person that will be a Subsidiary of PayPal as of immediately after the Effective Time, including the Transferred Entities, even if, prior to the Effective Time, such Person is not a Subsidiary of PayPal; and (b) on and after the Effective Time, PayPal and each Person that is a Subsidiary of PayPal.

"PayPal Indemnified Parties" shall have the meaning set forth in Section 4.3.

"PayPal Information Technology" shall mean: (a) all Software and all Information Technology owned or licensed by either Party or any member of its Group primarily used or primarily held for use in the PayPal Business as of the Effective Time, other than any eBay Data Center Infrastructure, including the Licensed PayPal Software and any other Software and Information Technology set forth on Schedule 1.14(a); and (b) all Intellectual Property Rights of either Party or any member of its Group in any of the foregoing.

"PayPal Intellectual Property" shall mean: (a) the PayPal Patents; (b) the Specified PayPal Patents; (c) the other Registered IP set forth on Schedule 1.15(c); (d) all Other IP owned by, licensed by or to, or sublicensed by or to either Party or any member of its Group as of the Effective Time primarily used or primarily held for use in the PayPal Business, including any Other IP set forth on Schedule 1.15(d); and (e) all Intellectual Property Rights of either Party or any member of its Group in any of the foregoing.

"PayPal Liabilities" shall have the meaning set forth in Section 2.3(a).

"PayPal Patents" shall mean: (a) the issued patents set forth on Schedule 1.16; (b) any patent issuing on any patent application set forth on Schedule 1.16; (c) any patent claims issuing on any patent application that claims priority from, and that cover exclusively subject matter that is entitled to priority to, any patent or patent application set forth on Schedule 1.16 (including, but not limited to, any divisional, continuation, continuation-in-part, reissue, reexamination, or extension) with a priority date that is on or before the Distribution Date; and (d) any foreign counterpart of any of the foregoing patents and patent applications with a priority date that is on or before the Distribution Date.

"<u>PayPal Permits</u>" shall mean all Permits owned or licensed by either Party or member of its Group primarily used or primarily held for use in the PayPal Business as of the Effective Time.

"PayPal Proceedings" shall mean the proceedings set forth in Schedule 1.17.

"PayPal Real Property" shall mean (a) all of the Real Property owned by either Party or member of its Group as of the Effective Time listed or described on Schedule 1.18(a), and (b) all the Real Property Leases to which either Party or member of its Group is party as of the Effective Time set forth on Schedule 1.18(b).

"PayPal Shares" shall mean the shares of common stock, par value \$0.0001 per share, of PayPal.

"PayPal Specified Actions" shall mean those Actions set forth on Schedule 1.19.

- "PayPal Specified Persons" shall mean the Persons set forth on Schedule 1.20.
- "PayPal Stock Exchange" shall mean The NASDAO Stock Market.
- "<u>Permits</u>" shall mean permits, approvals, authorizations, consents, licenses or certificates issued by any Governmental Authority.
- "Person" shall mean an individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.
  - "Plan of Reorganization" shall have the meaning set forth in Section 2.1(a).
- "Prime Rate" shall mean the rate that Bloomberg displays as "Prime Rate by Country United States" at www.bloomberg.com/markets/rates-bonds/key-rates/ or on a Bloomberg terminal at PRIMBB Index.
- "Privileged Information" means any information, in written, oral, electronic or other tangible or intangible forms, including any communications by or to attorneys (including attorney-client privileged communications), memoranda and other materials prepared by attorneys or under their direction (including attorney work product), as to which a Party or any member of its Group would be entitled to assert or have asserted a privilege, including the attorney-client and attorney work product privileges.
- "Product Development Agreement" shall mean the Product Development Agreement to be entered into by and between eBay and PayPal or the members of their respective Groups pursuant to the Operating Agreement and in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.
- "Real Property" shall mean land together with all easements, rights and interests arising out of the ownership thereof or appurtenant thereto and all buildings, structures, improvements and fixtures located thereon.
- "Real Property Leases" shall mean all leases to Real Property and, to the extent covered by such leases, any and all buildings, structures, improvements and fixtures located thereon.
- "Record Date" shall mean the close of business on the date to be determined by the eBay Board as the record date for determining holders of eBay Shares entitled to receive PayPal Shares pursuant to the Distribution.
  - "Record Holders" shall mean the holders of record of eBay Shares as of the Record Date.
- "Registered IP" shall mean all Intellectual Property Rights that are registered, filed, issued or granted under the authority of, with or by, any Governmental Authority, including all patents, invention registrations, registered copyrights, registered trademarks, registered service marks, registered trade secrets, registered Internet domain names, and all applications for any of the foregoing.

"Representatives" shall mean, with respect to any Person, any of such Person's directors, officers, employees, agents, consultants, advisors, accountants, attorneys or other representatives.

"Residual Information" shall mean information in non-tangible form that may be retained in the unaided memory of Representatives of a Party or members of such Party's Group who have had access to confidential and proprietary information concerning the other Party or any member of the other Party's Group.

"SEC" shall mean the U.S. Securities and Exchange Commission.

"Security Interest" shall mean any mortgage, security interest, pledge, lien, charge, claim, option, right to acquire, voting or other restriction, right-of-way, covenant, condition, easement, encroachment, restriction on transfer, or other encumbrance of any nature whatsoever.

"Separation" shall have the meaning set forth in the Recitals.

"Shared Contingent Liabilities" shall mean the following Liabilities of either Party or any member of its Group:

- (a) any Liabilities relating to, arising out of or resulting from a general corporate matter of eBay occurring or existing at or prior to the Effective Time, including any such Liabilities (including any Liabilities relating to, arising out of or resulting from stockholder litigation or controversies arising out of or relating to actions or omissions occurring prior to the Effective Time, to the extent unresolved prior to the Effective Time and any amount paid or payable after the Effective Time by either Party or any member of its Group in respect of such Liabilities, and any Liabilities under federal and state securities laws) relating to, arising out of or resulting from claims made by or on behalf of holders of any of eBay's securities (including debt securities), in their capacities as such, in respect of such general corporate matter;
- (b) any Liabilities relating to, arising out of or resulting from any Action with respect to the Separation or the Distribution (other than any Action related to any Disclosure Document) made or brought by any Third Party against either Party or any member of its Group (but excluding any Action by a Party or a member of such Party's Group, on the one hand, against another Party or member of either Party's Group, on the other hand);
- (c) any Liabilities relating to, arising out of or resulting from any (i) claims for indemnification by any current or former directors, officers or employees of eBay or any of its current or former Subsidiaries, in their capacities as such, or (ii) claims for breach of fiduciary duties brought against current or former directors, officers or employees of eBay or any of its current or former Subsidiaries, in their capacities as such, in each case, relating to any acts, omissions or events at or prior to the Effective Time; and

(d) any Liabilities relating to, arising out of or resulting from the Actions set forth on Schedule 1.21(d);

except, in each case, (A) any Liability that is otherwise specified to be a PayPal Liability or an eBay Liability, (B) any Liability for Taxes, which shall be governed by the Tax Matters Agreement, (C) any Liability that is otherwise specifically allocated under this Agreement or any other Ancillary Agreement or (D) any Liability relating to, arising out of or resulting from any eBay Proceedings, Joint Proceedings or PayPal Proceedings.

"Shared Contract" shall have the meaning set forth in Section 2.8(a).

"Software" shall mean any and all (a) computer programs, including any and all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other form, (b) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (c) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, (d) screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons and (e) documentation, including user manuals and other training documentation, relating to any of the foregoing.

"Source Code" shall mean the human-readable version of a computer program that can be compiled into Executable Code.

"Specified eBay Patents" shall mean: (a) the issued patents set forth on Schedule 1.22; (b) any patent issuing on any patent application set forth on Schedule 1.22; (c) any patent claims issuing on any patent application that claims priority from, and that cover exclusively subject matter that is entitled to priority to, any patent or patent application set forth on Schedule 1.22 (including any divisional, continuation, continuation-in-part, reissue, reexamination, or extension) with a priority date that is on or before the Distribution Date; and (d) any foreign counterpart of any of the foregoing patents and patent applications with a priority date that is on or before the Distribution Date.

"Specified PayPal Patents" shall mean: (a) the issued patents set forth on Schedule 1.23; (b) any patent issuing on any patent application set forth on Schedule 1.23; (c) any patent claims issuing on any patent application that claims priority from, and that cover exclusively subject matter that is entitled to priority to, any patent or patent application set forth on Schedule 1.23 (including any divisional, continuation, continuation-in-part, reissue, reexamination, or extension) with a priority date that is on or before the Distribution Date; and (d) any foreign counterpart of any of the foregoing patents and patent applications with a priority date that is on or before the Distribution Date.

"Subsidiary" shall mean, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities, (ii) the total combined equity interests or (iii) the capital or profit interests, in the case of a partnership, or (b) otherwise has the power to vote, either directly or indirectly, sufficient securities to elect a majority of the board of directors or similar governing body.

- "Tangible Information" shall mean Information that is contained in written, electronic or other tangible forms.
- "Tax" shall have the meaning set forth in the Tax Matters Agreement.
- "<u>Tax Matters Agreement</u>" shall mean the Tax Matters Agreement to be entered into by and between eBay and PayPal in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.
  - "Tax Opinion" shall have the meaning set forth in the Recitals.
  - "Tax Return" shall have the meaning set forth in the Tax Matters Agreement.
  - "Technical Information" shall have the meaning set forth in the Intellectual Property Matters Agreement.
- "<u>Technology</u>" shall have the meaning set forth in the Intellectual Property Matters Agreement, in each case, other than Software.
  - "Third Party" shall mean any Person other than the Parties or any members of their respective Groups.
  - "Third-Party Claim" shall have the meaning set forth in Section 4.5(a).
  - "Transfer Documents" shall have the meaning set forth in Section 2.1(b).
  - "Transferred Cash Amount" shall have the meaning set forth in Section 2.12.
  - "Transferred Entities" shall mean the entities set forth on Schedule 1.24.
  - "Transition Committee" shall have the meaning set forth in Section 2.14.
- "<u>Transition Services Agreement</u>" shall mean the Transition Services Agreement to be entered into by and between eBay and PayPal or any members of their respective Groups in connection with the Separation, the Distribution and the other transactions contemplated by this Agreement.
  - "Unreleased eBay Liability" shall have the meaning set forth in Section 2.5(b)(ii).
  - "Unreleased PayPal Liability" shall have the meaning set forth in Section 2.5(a)(ii).

# ARTICLE II THE SEPARATION

- 2.1 Transfer of Assets and Assumption of Liabilities.
- (a) On or prior to the Effective Time, but in any case, prior to the Distribution, in accordance with the plan and structure set forth on Schedule 2.1(a) (the "Plan of Reorganization"):
  - (i) *Transfer and Assignment of PayPal Assets*. eBay shall, and shall cause the applicable members of its Group to, contribute, assign, transfer, convey and deliver to PayPal, or the applicable PayPal Designees, and PayPal or such PayPal Designees shall accept from eBay and the applicable members of the eBay Group, all of eBay's and such eBay Group members' respective direct or indirect right, title and interest in and to all of the PayPal Assets (it being understood that if any PayPal Asset is held by a Transferred Entity or a wholly owned Subsidiary of a Transferred Entity, such PayPal Asset may be assigned, transferred, conveyed and delivered to PayPal as a result of the transfer of all of the equity interests in such Transferred Entity from eBay or the applicable members of the eBay Group to PayPal or the applicable PayPal Designee);
  - (ii) Acceptance and Assumption of PayPal Liabilities. PayPal and the applicable PayPal Designees shall accept, assume and agree faithfully to perform, discharge and fulfill all the PayPal Liabilities in accordance with their respective terms (it being understood that if any PayPal Liability is a liability of a Transferred Entity or a wholly owned Subsidiary of a Transferred Entity, such PayPal Liability may be assumed by PayPal as a result of the transfer of all of the equity interests in such Transferred Entity from eBay or the applicable members of the eBay Group to PayPal or the applicable PayPal Designee); provided, that PayPal shall cause such Transferred Entity and such PayPal Designee to perform, discharge and fulfill all such PayPal Liabilities. PayPal and such PayPal Designees shall be responsible for all PayPal Liabilities, regardless of when or where such PayPal Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Effective Time, regardless of where or against whom such PayPal Liabilities are asserted or determined (including any PayPal Liabilities arising out of claims made by eBay's or PayPal's respective Subsidiaries, Affiliates or Representatives, or by the respective Representatives of their Subsidiaries or Affiliates, against any member of the eBay Group or the PayPal Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentatives;
  - (iii) *Transfer and Assignment of eBay Assets*. eBay and PayPal shall cause PayPal and the PayPal Designees to contribute, assign, transfer, convey and deliver to eBay or certain members of the eBay Group designated by eBay, and eBay or such members of the eBay Group shall accept from PayPal and the PayPal Designees, all of PayPal's and such PayPal Designees' respective direct or indirect right, title and interest in and to all eBay Assets held by PayPal or a PayPal Designee; and

- (iv) Acceptance and Assumption of eBay Liabilities. eBay and the applicable members of the eBay Group designated by eBay shall accept and assume and agree faithfully to perform, discharge and fulfill all of the eBay Liabilities in accordance with their respective terms. eBay and the applicable members of the eBay Group shall be responsible for all eBay Liabilities in accordance with their respective terms, regardless of when or where such eBay Liabilities arose or arise, whether the facts on which they are based occurred prior to or subsequent to the Effective Time, where or against whom such eBay Liabilities are asserted or determined (including any such eBay Liabilities arising out of claims made by eBay's or PayPal's respective Subsidiaries, Affiliates or Representatives, or by the respective Representatives of their Subsidiaries or Affiliates, against any member of the eBay Group or the PayPal Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the eBay Group or the PayPal Group, or any of their respective Subsidiaries, Affiliates or Representatives.
- (b) *Transfer Documents*. In furtherance of the contribution, assignment, transfer, conveyance and delivery of the Assets and the acceptance and assumption of the Liabilities in accordance with Section 2.1(a), (i) each Party shall execute and deliver, and shall cause the applicable members of its Group to execute and deliver, such bills of sale, quitclaim deeds, stock powers, certificates of title, assignments of contracts and other instruments of transfer, conveyance and assignment as and to the extent necessary to evidence the transfer, conveyance and assignment of all of such Party's and the applicable members of its Group in accordance with Section 2.1(a), and (ii) each Party shall execute and deliver, and shall cause the applicable members of its Group to execute and deliver, to the other Party such assumptions of contracts and other instruments of assumption as and to the extent necessary to evidence the valid and effective assumption of the Liabilities by such Party or the applicable members of its Group in accordance with Section 2.1(a). All of the foregoing documents contemplated by this Section 2.1(b) shall be referred to collectively herein as the "Transfer Documents."
- (c) *Misallocations*. In the event that at any time or from time to time (whether prior to, at or after the Effective Time), one Party (or any member of such Party's respective Group) shall receive or otherwise possess any Asset that is allocated to the other Party (or any member of such Party's Group) pursuant to this Agreement or any Ancillary Agreement, such Party shall promptly transfer, or cause to be transferred, such Asset to the Party so entitled thereto (or to any member of such Party's Group), and such Party (or member of such Party's Group) shall accept such Asset. Prior to any such transfer, the Person receiving or possessing such Asset shall hold such Asset in trust for any such other Person. In the event that at any time or from time to time (whether prior to, at or after the Effective Time), one Party hereto (or any member of such Party's respective Group) shall receive or otherwise assume any Liability that is allocated to the other Party (or any member of such Party's Group) pursuant to this Agreement or any Ancillary Agreement, such Party shall promptly transfer, or cause to be transferred, such Liability to the Party responsible therefor (or to the applicable member of such Party's Group), and such Party (or member of such Party's Group) shall accept, assume and agree to faithfully perform such Liability. The Parties shall, and shall cause the applicable members of their respective Group to, execute such Transfer Documents and take such further actions as may be required to effectuate the Transfers denoted in this Section 2.1.

(d) Waiver of Bulk-Sale and Bulk-Transfer Laws. PayPal hereby waives compliance by each and every member of the eBay Group with the requirements and provisions of any "bulk-sale" or "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the PayPal Assets to any member of the PayPal Group. eBay hereby waives compliance by each and every member of the PayPal Group with the requirements and provisions of any "bulk-sale" or "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the eBay Assets to any member of the eBay Group.

#### (e) Intellectual Property Rights.

- (i) If and to the extent that, as a matter of Law in any jurisdiction, eBay or the applicable members of its Group cannot assign, transfer or convey any of eBay's or such eBay Group members' respective direct or indirect right, title and interest in and to any Registered IP, Other IP, Software or Intellectual Property Rights included in the PayPal Assets, then, to the extent possible, eBay shall, and shall cause the applicable members of its Group to, irrevocably grant to PayPal, or the applicable PayPal Designees, an exclusive, irrevocable, assignable, transferable, sublicenseable, worldwide, perpetual, royalty-free license to use, exploit and commercialize in any manner now known or in the future discovered and for whatever purpose, any such right, title or interest.
- (ii) If and to the extent that, as a matter of Law in any jurisdiction, PayPal or the applicable members of its Group cannot assign, transfer or convey any of PayPal's or such PayPal Group members' respective direct or indirect right, title and interest in and to any Registered IP, Other IP, Software or Intellectual Property Rights included in the eBay Assets, then, to the extent possible, PayPal shall, and shall cause the applicable members of its Group to, irrevocably grant to eBay, or the applicable eBay Designees, an exclusive, irrevocable, assignable, transferable, sublicenseable, worldwide, perpetual, royalty-free license to use, exploit and commercialize in any manner now known or in the future discovered and for whatever purpose, any such right, title or interest.

# 2.2 PayPal Assets; eBay Assets.

- (a) PayPal Assets. For purposes of this Agreement, "PayPal Assets" shall mean:
- (i) all issued and outstanding capital stock or other equity interests of the Transferred Entities that are owned by either Party or any members of its Group as of the Effective Time;
- (ii) all Assets (including cash and cash equivalents) of either Party or any of the members of its Group included or reflected as assets of the PayPal Group on the PayPal Balance Sheet, subject to any dispositions of such Assets subsequent to the date of the PayPal Balance Sheet; provided, that the amounts set forth on the PayPal

Balance Sheet with respect to any Assets shall not be treated as minimum amounts or limitations on the amount of such Assets that are included in the definition of PayPal Assets pursuant to this clause (ii);

- (iii) all Assets of either Party or any of the members of its Group as of the Effective Time that are of a nature or type that would have resulted in such Assets being included as Assets of PayPal or members of the PayPal Group on a pro forma combined balance sheet of the PayPal Group or any notes or subledgers thereto as of the Effective Time (were such balance sheet, notes and subledgers to be prepared on a basis consistent with the determination of the Assets included on the PayPal Balance Sheet), it being understood that (x) the PayPal Balance Sheet shall be used to determine the types of, and methodologies used to determine, those Assets that are included in the definition of PayPal Assets pursuant to this subclause (iii); and (y) the amounts set forth on the PayPal Balance Sheet with respect to any Assets shall not be treated as minimum amounts or limitations on the amount of such Assets that are included in the definition of PayPal Assets pursuant to this subclause (iii);
- (iv) all Assets of either Party or any of the members of its Group as of the Effective Time that are expressly provided by this Agreement or any Ancillary Agreement as Assets to be transferred to or owned by PayPal or any other member of the PayPal Group;
- (v) all PayPal Contracts as of the Effective Time and all rights, interests or claims of either Party or any of the members of its Group thereunder as of the Effective Time;
- (vi) all PayPal Intellectual Property and all rights, interests or claims of either Party or any of the members of its Group thereunder as of the Effective Time;
- (vii) all PayPal Information Technology and all rights, interests or claims of either Party or any of the members of its Group thereunder as of the Effective Time;
- (viii) all rights of PayPal and any member of the PayPal Group under any license of Technology, Software or Intellectual Property Rights granted by eBay or any member of the eBay Group pursuant to the terms of the Intellectual Property Matters Agreement;
- (ix) all rights of PayPal and any member of the PayPal Group under any covenant not to sue granted by eBay or any member of the eBay Group pursuant to the terms of the Intellectual Property Matters Agreement;
- (x) any lease, sublease, license or right to use the eBay Data Center Infrastructure granted by eBay or any member of the eBay Group to PayPal or any member of the PayPal Group pursuant to the terms of the Colocation Services Agreements;

- (xi) all PayPal Permits as of the Effective Time and all rights or interests of either Party or any of the members of its Group thereunder as of the Effective Time;
  - (xii) all PayPal Real Property as of the Effective Time:
- (xiii) to the extent not already identified in clauses (i) through (xii) of this <u>Section 2.2(a)</u>, all Assets of either Party or any of the members of its Group as of the Effective Time that are exclusively used or exclusively held for use in the PayPal Business;
- (xiv) subject to applicable Law and the provisions of the applicable Ancillary Agreements, to the extent not already identified in clauses (i) through (xii) of this Section 2.2(a), all rights, interests and claims of either Party or any of the members of its Group as of the Effective Time with respect to Information that is exclusively related to the PayPal Assets, the PayPal Liabilities, the PayPal Business or the Transferred Entities, and a non-exclusive right to all Information that is related to, but not exclusively related to, the PayPal Assets, the PayPal Liabilities, the PayPal Business or the Transferred Entities (it being understood that no member of the eBay Group or the PayPal Group shall be required to delete any Information from its systems); and
  - (xv) any and all Assets set forth on Schedule 2.2(a)(xv).

Notwithstanding the foregoing, the PayPal Assets shall not in any event include any Asset referred to in clauses (i), (ii) or (iv) through (vii) of Section 2.2(b).

- (b) *eBay Assets*. For the purposes of this Agreement, "<u>eBay Assets</u>" shall mean all Assets of either Party or the members of its Group as of the Effective Time, other than the PayPal Assets, it being understood that the eBay Assets shall include:
  - (i) all Assets that are expressly contemplated by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Assets to be retained by eBay or any other member of the eBay Group;
  - (ii) all Contracts of either Party or any of the members of its Group as of the Effective Time (other than the PayPal Contracts);
  - (iii) all Registered IP, Other IP, and Software of either Party or any of the members of its Group as of the Effective Time (other than the PayPal Intellectual Property and PayPal Information Technology, all rights of PayPal and any member of the PayPal Group under any license of technology, Software or Intellectual Property Rights granted by eBay or any member of the eBay Group pursuant to the terms of the Intellectual Property Matters Agreement, all rights of PayPal and any member of the PayPal Group under any covenant not to sue granted by eBay or any member of the eBay Group pursuant to the terms of the Intellectual Property Matters Agreement and any lease, sublease, license or right to use the eBay Data Center Infrastructure granted by eBay or any member of the eBay Group to PayPal or any member of the PayPal Group pursuant to the terms of the Information Technology Services Agreement), including the

eBay Name and eBay Marks, the eBay Patents, the Licensed eBay Software, the Specified eBay Patents, and the Registered IP, Software and Technology set forth on Schedule 2.2(b)(iii);

- (iv) all Permits of either Party or any of the members of its Group as of the Effective Time (other than the PayPal Permits);
- (v) all Real Property of either Party or any of the members of its Group as of the Effective Time (other than the PayPal Real Property);
- (vi) any and all cash proceeds, securities or property received by either Party or any of the members of its Group as a result of the sale, spin-off, initial public offering or other disposition or divestiture of all or a portion of the Enterprise Business; and
  - (vii) any and all Assets set forth on Schedule 2.2(b)(vii).
  - 2.3 PayPal Liabilities; eBay Liabilities.
- (a) *PayPal Liabilities*. For the purposes of this Agreement, "<u>PayPal Liabilities</u>" shall mean the following Liabilities of either Party or any of the members of its Group:
  - (i) all Liabilities included or reflected as liabilities or obligations of PayPal or the members of the PayPal Group on the PayPal Balance Sheet, subject to any discharge of such Liabilities subsequent to the date of the PayPal Balance Sheet; provided, that the amounts set forth on the PayPal Balance Sheet with respect to any Liabilities shall not be treated as minimum amounts or limitations on the amount of such Liabilities that are included in the definition of PayPal Liabilities pursuant to this subclause (i);
  - (ii) all Liabilities as of the Effective Time that are of a nature or type that would have resulted in such Liabilities being included or reflected as liabilities or obligations of PayPal or the members of the PayPal Group on a pro forma combined balance sheet of the PayPal Group or any notes or subledgers thereto as of the Effective Time (were such balance sheet, notes and subledgers to be prepared on a basis consistent with the determination of the Liabilities included on the PayPal Balance Sheet), it being understood that (x) the PayPal Balance Sheet shall be used to determine the types of, and methodologies used to determine, those Liabilities that are included in the definition of PayPal Liabilities pursuant to this subclause (ii); and (y) the amounts set forth on the PayPal Balance Sheet with respect to any Liabilities shall not be treated as minimum amounts or limitations on the amount of such Liabilities that are included in the definition of PayPal Liabilities pursuant to this subclause (ii);
  - (iii) all Liabilities relating to, arising out of or resulting from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case, to the extent that such Liabilities relate to, arise out of or result from the PayPal Business or a PayPal Asset;

- (iv) fifty percent (50%) of the Shared Contingent Liabilities;
- (v) all Liabilities that are expressly provided by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed by PayPal or any other member of the PayPal Group, and all agreements, obligations and Liabilities of any member of the PayPal Group under this Agreement or any of the Ancillary Agreements;
- (vi) all Liabilities relating to, arising out of or resulting from the PayPal Contracts, the PayPal Intellectual Property, the PayPal Information Technology, the PayPal Permits or the PayPal Real Property;
- (vii) all Liabilities (A) relating to, arising out of or resulting from the PayPal Specified Actions or (B) set forth on Schedule 2.3(a)(vii);
- (viii) all Liabilities arising out of claims made by any Third Party (including eBay's or PayPal's respective directors, officers, stockholders, current and former employees and agents) against any member of the eBay Group or the PayPal Group to the extent relating to, arising out of or resulting from the PayPal Business or the PayPal Assets or the other business, operations, activities or Liabilities referred to in clauses (i) through (vii) above;

<u>provided</u> that, notwithstanding the foregoing, the Parties agree that (A) the Liabilities set forth in <u>Section 2.3(b)</u> shall not be PayPal Liabilities but instead shall be eBay Liabilities and (B) the Liabilities of each Party relating to, arising out of or resulting from any eBay Proceedings, Joint Proceedings or PayPal Proceedings shall be governed exclusively by <u>Schedule 5.6</u>.

- (b) *eBay Liabilities*. For the purposes of this Agreement, "<u>eBay Liabilities</u>" shall mean the following Liabilities of either Party or any of the members of its Group:
- (i) all Liabilities relating to, arising out of or resulting from actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time) of any member of the eBay Group and, prior to the Effective Time, any member of the PayPal Group in each case, to the extent that such Liabilities are not PayPal Liabilities or Shared Contingent Liabilities;
  - (ii) fifty percent (50%) of the Shared Contingent Liabilities;
- (iii) all Liabilities that are expressly provided by this Agreement or any Ancillary Agreement (or the Schedules hereto or thereto) as Liabilities to be assumed or retained by eBay or any other member of the eBay Group, and all agreements, obligations and Liabilities of any member of the eBay Group under this Agreement or any of the Ancillary Agreements;

- (iv) all Liabilities relating to, arising out of or resulting from the sale, spin-off, initial public offering or other disposition or divestiture of all or a portion of the Enterprise Business, and all fees and expenses of brokers, finders, counsel, financial advisors, accountants, consultants and other professional advisors incurred by either Party or any member of its Group in connection with such sale, spin-off, initial public offering or other disposition or divestiture;
- (v) all Liabilities arising out of claims made by any Third Party (including eBay's or PayPal's respective directors, officers, stockholders, current and former employees and agents) against any member of the eBay Group or the PayPal Group to the extent relating to, arising out of or resulting from the eBay Business or the eBay Assets; and
- (vi) all Liabilities all Liabilities (A) relating to, arising out of or resulting from the eBay Specified Actions or (B) set forth on Schedule 2.3(b)(vi).

# 2.4 Approvals and Notifications.

- (a) Approvals and Notifications for PayPal Assets. To the extent that the transfer or assignment of any PayPal Asset, the assumption of any PayPal Liability, the Separation, or the Distribution requires any Approvals or Notifications, the Parties shall use their commercially reasonable efforts to obtain or make such Approvals or Notifications as soon as reasonably practicable; provided, that, except to the extent expressly provided in this Agreement or any of the Ancillary Agreements or as otherwise agreed between eBay and PayPal, neither eBay nor PayPal shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person in order to obtain or make such Approvals or Notifications.
- (b) *Delayed PayPal Transfers*. If and to the extent that the valid, complete and perfected transfer or assignment to the PayPal Group of any PayPal Asset or assumption by the PayPal Group of any PayPal Liability would be a violation of applicable Law or require any Approvals or Notifications in connection with the Separation or the Distribution that have not been obtained or made by the Effective Time then, unless the Parties mutually shall otherwise determine, the transfer or assignment to the PayPal Group of such PayPal Assets or the assumption by the PayPal Group of such PayPal Liabilities, as the case may be, shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Approvals or Notifications have been obtained or made. Notwithstanding the foregoing, any such PayPal Assets or PayPal Liabilities shall continue to constitute PayPal Assets and PayPal Liabilities, as the case may be, for all other purposes of this Agreement.
- (c) Treatment of Delayed PayPal Assets and Delayed PayPal Liabilities. If any transfer or assignment of any PayPal Asset or any assumption of any PayPal Liability intended to be transferred, assigned or assumed hereunder, as the case may be, is not consummated on or prior to the Effective Time, whether as a result of the provisions of Section 2.4(b) or for any other reason (any such PayPal Asset, a "Delayed PayPal Asset" and any such PayPal Liability, a "Delayed PayPal Liability"), then, insofar as reasonably possible and

subject to applicable Law, the member of the eBay Group retaining such Delayed PayPal Asset or such Delayed PayPal Liability, as the case may be, shall thereafter hold such Delayed PayPal Asset or Delayed PayPal Liability, as the case may be, for the use and benefit (or the performance and obligation, in the case of a Liability) of the member of the PayPal Group entitled thereto (at the expense of the member of the PayPal Group entitled thereto). In addition, the member of the eBay Group retaining such Delayed PayPal Asset or such Delayed PayPal Liability shall, insofar as reasonably possible and to the extent permitted by applicable Law, treat such Delayed PayPal Asset or Delayed PayPal Liability in the ordinary course of business in accordance with past practice and take such other actions as may be reasonably requested by the member of the PayPal Group to whom such Delayed PayPal Asset is to be transferred or assigned, or which will assume such Delayed PayPal Liability, as the case may be, in order to place such member of the PayPal Group in a substantially similar position as if such Delayed PayPal Asset or Delayed PayPal Liability, as the case may be, including use, risk of loss, potential for gain, and dominion, control and command over such Delayed PayPal Asset or Delayed PayPal Liability, as the case may be, and all costs and expenses related thereto, shall inure from and after the Effective Time to the PayPal Group.

- (d) Transfer of Delayed PayPal Assets and Delayed PayPal Liabilities. If and when the Approvals or Notifications, the absence of which caused the deferral of transfer or assignment of any Delayed PayPal Asset or the deferral of assumption of any Delayed PayPal Liability pursuant to Section 2.4(b), are obtained or made, and, if and when any other legal impediments for the transfer or assignment of any Delayed PayPal Asset or the assumption of any Delayed PayPal Liability have been removed, the transfer or assignment of the applicable Delayed PayPal Asset or the assumption of the applicable Delayed PayPal Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement.
- (e) Costs for Delayed PayPal Assets and Delayed PayPal Liabilities. Any member of the eBay Group retaining a Delayed PayPal Asset or Delayed PayPal Liability due to the deferral of the transfer or assignment of such Delayed PayPal Asset or the deferral of the assumption of such Delayed PayPal Liability, as the case may be, shall not be obligated, in connection with the foregoing, to expend any money unless the necessary funds are advanced (or otherwise made available) by PayPal or the member of the PayPal Group entitled to the Delayed PayPal Asset or Delayed PayPal Liability, other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be promptly reimbursed by PayPal or the member of the PayPal Group entitled to such Delayed PayPal Asset or Delayed PayPal Liability.
- (f) Approvals and Notifications for eBay Assets. To the extent that the transfer or assignment of any eBay Asset or the assumption of any eBay Liability requires any Approvals or Notifications, the Parties shall use their commercially reasonable efforts to obtain or make such Approvals or Notifications as soon as reasonably practicable; provided, that, except to the extent expressly provided in this Agreement or any of the Ancillary Agreements or as otherwise agreed between eBay and PayPal, neither eBay nor PayPal shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person in order to obtain or make such Approvals or Notifications.

- (g) *Delayed eBay Transfers*. If and to the extent that the valid, complete and perfected transfer or assignment to the eBay Group of any eBay Asset or assumption by the eBay Group of any eBay Liability would be a violation of applicable Law or require any Approval or Notification that has not been obtained or made by the Effective Time then, unless the Parties mutually shall otherwise determine, the transfer or assignment to the eBay Group of such eBay Assets or the assumption by the eBay Group of such eBay Liabilities, as the case may be, shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Approval or Notification has been obtained or made. Notwithstanding the foregoing, any such eBay Assets or eBay Liabilities shall continue to constitute eBay Assets and eBay Liabilities, as the case may be, for all other purposes of this Agreement.
- (h) Treatment of Delayed eBay Assets and Delayed eBay Liabilities. If any transfer or assignment of any eBay Asset or any assumption of any eBay Liability intended to be transferred, assigned or assumed hereunder, as the case may be, is not consummated on or prior to the Effective Time whether as a result of the provisions of this Section 2.4(h) or for any other reason (any such eBay Asset, a "Delayed eBay Asset" and any such eBay Liability, a "Delayed eBay Liability"), then, insofar as reasonably possible, the member of the PayPal Group retaining such Delayed eBay Asset or such Delayed eBay Liability, as the case may be, shall thereafter hold such Delayed eBay Asset or Delayed eBay Group entitled thereto (at the expense of the member of the eBay Group entitled thereto). In addition, the member of the PayPal Group retaining such Delayed eBay Asset or such Delayed eBay Liability shall, insofar as reasonably possible and to the extent permitted by applicable Law, treat such Delayed eBay Asset or Delayed eBay Liability in the ordinary course of business in accordance with past practice. Such member of the PayPal Group shall also take such other actions as may be reasonably requested by the member of the eBay Group to which such Delayed eBay Asset is to be transferred or assigned, or which will assume such Delayed eBay Liability, as the case may be, in order to place such member of the eBay Group in a substantially similar position as if such Delayed eBay Asset or Delayed eBay Liability had been transferred, assigned or assumed and so that all the benefits and burdens relating to such Delayed eBay Asset or Delayed eBay Liability, and all costs and expenses related thereto, shall inure from and after the Effective Time to the eBay Group.
- (i) Transfer of Delayed eBay Assets and Delayed eBay Liabilities. If and when the Approvals or Notifications, the absence of which caused the deferral of transfer or assignment of any Delayed eBay Asset or the deferral of assumption of any Delayed eBay Liability, are obtained or made, and, if and when any other legal impediments for the transfer or assignment of any Delayed eBay Asset or the assumption of any Delayed eBay Liability have been removed, the transfer or assignment of the applicable Delayed eBay Asset or the assumption of the applicable Delayed eBay Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable Ancillary Agreement.

(j) Costs for Delayed eBay Assets and Delayed eBay Liabilities. Any member of the PayPal Group retaining a Delayed eBay Asset or Delayed eBay Liability due to the deferral of the transfer or assignment of such Delayed eBay Asset or the deferral of the assumption of such Delayed eBay Liability, as the case may be, shall not be obligated, in connection with the foregoing, to expend any money unless the necessary funds are advanced (or otherwise made available) by eBay or the member of the eBay Group entitled to the Delayed eBay Asset or Delayed eBay Liability, other than reasonable out-of-pocket expenses, attorneys' fees and recording or similar fees, all of which shall be promptly reimbursed by eBay or the member of the eBay Group entitled to such Delayed eBay Asset or Delayed eBay Liability.

### 2.5 Novation of Liabilities.

- (a) Novation of PayPal Liabilities.
- (i) Each of eBay and PayPal, at the request of the other, shall use its commercially reasonable efforts to obtain, or to cause to be obtained, as soon as reasonably practicable, any consent, substitution, approval or amendment required to novate or assign all PayPal Liabilities and obtain in writing the unconditional release of each member of the eBay Group that is a party to or otherwise bound by any such arrangements, so that, in any such case, the members of the PayPal Group shall be solely responsible for such PayPal Liabilities; provided, that, except as otherwise expressly provided in this Agreement or any of the Ancillary Agreements, neither eBay nor PayPal shall be obligated to contribute any capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any third Person from whom any such consent, substitution, approval, amendment or release is requested.
- (ii) If eBay or PayPal is unable to obtain, or to cause to be obtained, any such required consent, substitution, approval, amendment or release and the applicable member of the eBay Group continues to be bound by such agreement, lease, license or other obligation or Liability (each, an "Unreleased PayPal Liability"), PayPal shall, to the extent not prohibited by Law, as indemnitor, guarantor, agent or subcontractor for such member of the eBay Group, as the case may be, (A) pay, perform and discharge fully all the obligations or other Liabilities of such member of the eBay Group that constitute Unreleased PayPal Liabilities from and after the Effective Time and (B) use its commercially reasonable efforts to effect such payment, performance or discharge prior to the time any demand for such payment, performance or discharge is permitted to be made by the obligee thereunder on any member of the eBay Group. If and when any such consent, substitution, approval, amendment or release shall be obtained or the Unreleased PayPal Liabilities shall otherwise become assignable or able to be novated, eBay shall promptly assign, or cause to be assigned, and PayPal or the applicable PayPal Group member shall assume, such Unreleased PayPal Liabilities without exchange of further consideration.

#### (b) Novation of eBay Liabilities.

- (i) Each of eBay and PayPal, at the request of the other, shall use its commercially reasonable efforts to obtain, or to cause to be obtained, as soon as reasonably practicable, any consent, substitution, approval or amendment required to novate or assign all eBay Liabilities and obtain in writing the unconditional release of each member of the PayPal Group that is a party to or otherwise bound by any such arrangements, so that, in any such case, the members of the eBay Group shall be solely responsible for such eBay Liabilities; provided, that, except as otherwise expressly provided in this Agreement or any of the Ancillary Agreements, neither eBay nor PayPal shall be obligated to contribute any capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any third Person from whom any such consent, substitution, approval, amendment or release is requested.
- (ii) If eBay or PayPal is unable to obtain, or to cause to be obtained, any such required consent, substitution, approval, amendment or release and the applicable member of the PayPal Group continues to be bound by such agreement, lease, license or other obligation or Liability (each, an "Unreleased eBay Liability"), eBay shall, to the extent not prohibited by Law, as indemnitor, guarantor, agent or subcontractor for such member of the PayPal Group, as the case may be, (A) pay, perform and discharge fully all the obligations or other Liabilities of such member of the PayPal Group that constitute Unreleased eBay Liabilities from and after the Effective Time and (B) use its commercially reasonable efforts to effect such payment, performance or discharge prior to the time any demand for such payment, performance or discharge is permitted to be made by the obligee thereunder on any member of the PayPal Group. If and when any such consent, substitution, approval, amendment or release shall be obtained or the Unreleased eBay Liabilities shall otherwise become assignable or able to be novated, PayPal shall promptly assign, or cause to be assigned, and eBay or the applicable eBay Group member shall assume, such Unreleased eBay Liabilities without exchange of further consideration.
  - 2.6 Release of Guarantees. In furtherance of, and not in limitation of, the obligations set forth in Section 2.5:
- (a) On or prior to the Effective Time or as soon as practicable thereafter, each of eBay and PayPal shall, at the request of the other Party and with the reasonable cooperation of such other Party and the applicable member(s) of such Party's Group, use commercially reasonable efforts to (i) have any member(s) of the eBay Group removed as guarantor of or obligor for any PayPal Liability to the extent that they relate to PayPal Liabilities, including the removal of any Security Interest on or in any eBay Asset that may serve as collateral or security for any such PayPal Liability; and (ii) have any member(s) of the PayPal Group removed as guarantor of or obligor for any eBay Liability to the extent that they relate to eBay Liabilities, including the removal of any Security Interest on or in any PayPal Asset that may serve as collateral or security for any such eBay Liability.

- (b) To the extent required to obtain a release from a guarantee of:
- (i) any member of the eBay Group, PayPal shall execute a guarantee agreement in the form of the existing guarantee or such other form as is agreed to by the relevant parties to such guarantee agreement, which agreement shall include the removal of any Security Interest on or in any eBay Asset that may serve as collateral or security for any such eBay Liability, except to the extent that such existing guarantee contains representations, covenants or other terms or provisions either (A) with which PayPal would be reasonably unable to comply or (B) which PayPal would not reasonably be able to avoid breaching; and
- (ii) any member of the PayPal Group, eBay shall execute a guarantee agreement in the form of the existing guarantee or such other form as is agreed to by the relevant parties to such guarantee agreement, which agreement shall include the removal of any Security Interest on or in any PayPal Asset that may serve as collateral or security for any such PayPal Liability, except to the extent that such existing guarantee contains representations, covenants or other terms or provisions either (A) with which eBay would be reasonably unable to comply or (B) which eBay would not reasonably be able to avoid breaching.
- (c) If eBay or PayPal is unable to obtain, or to cause to be obtained, any such required removal or release as set forth in clauses (a) and (b) of this Section 2.6, (i) the Party or the relevant member of its Group that has assumed the Liability with respect to such guarantee shall indemnify, defend and hold harmless the guarantor or obligor against or from any Liability arising from or relating thereto in accordance with the provisions of Article IV and shall, as agent or subcontractor for such guarantor or obligor, pay, perform and discharge fully all the obligations or other Liabilities of such guarantor or obligor thereunder; and (ii) each of eBay and PayPal, on behalf of itself and the other members of their respective Group, agree not to renew or extend the term of, increase any obligations under, or transfer to a Third Party, any loan, guarantee, lease, contract or other obligation for which the other Party or a member of its Group is or may be liable unless all obligations of such other Party and the members of such other Party's Group with respect thereto are thereupon terminated by documentation satisfactory in form and substance to such other Party.

# 2.7 Termination of Agreements.

(a) Except as set forth in Section 2.7(b), in furtherance of the releases and other provisions of Section 4.1, PayPal and each member of the PayPal Group, on the one hand, and eBay and each member of the eBay Group, on the other hand, hereby terminate any and all agreements, arrangements, commitments or understandings, whether or not in writing, between or among PayPal and/or any member of the PayPal Group, on the one hand, and eBay and/or any member of the eBay Group, on the other hand, effective as of the Effective Time. No such terminated agreement, arrangement, commitment or understanding (including any provision thereof which purports to survive termination) shall be of any further force or effect after the Effective Time. Each Party shall, at the reasonable request of the other Party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

- (b) The provisions of Section 2.7(a) shall not apply to any of the following agreements, arrangements, commitments or understandings (or to any of the provisions thereof): (i) this Agreement, the Ancillary Agreements and the Commercial Agreements (and each other agreement or instrument expressly contemplated by this Agreement or any Ancillary Agreement or Commercial Agreement to be entered into by any of the Parties or any of the members of their respective Groups or to be continued from and after the Effective Time); (ii) any agreements, arrangements, commitments or understandings listed or described on Schedule 2.7(b)(ii); (iii) any agreements, arrangements, commitments or understandings to which any Third Party is a party; (iv) any intercompany accounts payable or accounts receivable accrued as of the Effective Time that are reflected in the books and records of the Parties or otherwise documented in writing in accordance with past practices, which shall be settled in the manner contemplated by Section 2.7(c); (v) any agreements, arrangements, commitments or understandings to which any non-wholly owned Subsidiary of eBay or PayPal, as the case may be, is a party (it being understood that directors' qualifying shares or similar interests will be disregarded for purposes of determining whether a Subsidiary is wholly owned); and (vi) any Shared Contracts.
- (c) All of the intercompany accounts receivable and accounts payable between any member of the eBay Group, on the one hand, and any member of the PayPal Group, on the other hand, outstanding as of the Effective Time and arising out of the contracts or agreements described in Section 2.7(b) or out of the provision, prior to the Effective Time, of the services to be provided following the Effective Time pursuant to the Ancillary Agreements or the Commercial Agreements shall be repaid or settled following the Effective Time in the ordinary course of business or, if otherwise mutually agreed prior to the Effective Time by duly authorized representatives of PayPal and eBay, cancelled, assigned or assumed by PayPal or one or more PayPal Subsidiaries. All other intercompany accounts receivable and accounts payable between any member of the eBay Group, on the one hand, and any member of the PayPal Group, on the other hand, outstanding as of the Effective Time shall be repaid or settled as promptly as practicable after the Effective Time.

#### 2.8 Treatment of Shared Contracts.

(a) Subject to applicable Law and without limiting the generality of the obligations set forth in Section 2.1, unless the Parties otherwise agree or the benefits of any contract, agreement, arrangement, commitment or understanding described in this Section 2.8 are expressly conveyed to the applicable Party pursuant to this Agreement or an Ancillary Agreement, any (i) contract or agreement, a portion of which is a PayPal Contract, and the remainder of which is an eBay Asset or (ii) any contract or agreement entered into prior to the Effective Time that relates to the PayPal Business but is not exclusively related to the PayPal Business and with respect to which the portion that relates to the PayPal Business cannot be divided (any such contract or agreement, a "Shared Contract"), shall be assigned in relevant part to the applicable member(s) of the applicable Group, if so assignable, or appropriately amended prior to, on or after the Effective Time, so that each Party or applicable member of its Group shall, as of the Effective Time, be entitled to the rights and benefits, and shall assume the related portion of any Liabilities, inuring to its respective businesses; provided, that (A) in no event shall any member of any Group be required to assign (or amend) any Shared Contract in its entirety or to assign a portion of any Shared Contract which is not assignable (or cannot be amended) by its terms (including any terms imposing consents or conditions on an assignment where such

consents or conditions have not been obtained or fulfilled) and (B) if any Shared Contract cannot be so partially assigned by its terms or otherwise or cannot be amended, if such assignment or amendment would impair the benefit the parties thereto derive from such Shared Contract or if such Shared Contract is listed or described on Schedule 2.8(a), then the Parties shall, and shall cause each of the members of their respective Groups to, take such other reasonable and permissible actions (including by providing prompt written notice to the other Party with respect to any relevant claim of Liability or other relevant matters arising in connection with a Shared Contract so as to allow such other Party the ability to exercise any applicable rights under such Shared Contract) to cause a member of the PayPal Group or the eBay Group, as the case may be, to receive the rights and benefits of that portion of each Shared Contract that relates to the PayPal Business or the eBay Business, respectively (in each case, to the extent so related), as if such Shared Contract had been assigned to (or amended to admit) a member of the applicable Group pursuant to this Section 2.8, and to bear the burden of the corresponding Liabilities (including any Liabilities that may arise by reason of such arrangement), as if such Liabilities had been assumed by a member of the applicable Group pursuant to this Section 2.8.

- (b) Each of eBay and PayPal shall, and shall cause the members of its Group to, (i) treat for all Tax purposes the portion of each Shared Contract inuring to its respective businesses as Assets owned by, and/or Liabilities of, as applicable, such Party, or the members of its Group, as applicable, not later than the Effective Time, and (ii) neither report nor take any Tax position (on a Tax Return or otherwise) inconsistent with such treatment (unless required by applicable Law).
- (c) Nothing in this <u>Section 2.8</u> shall require any member of any Group to make any non-*de minimis* payment (except to the extent advanced, assumed or agreed in advance to be reimbursed by any member of the other Group), incur any non-*de minimis* obligation or grant any non-*de minimis* concession for the benefit of any member of the other Group in order to effect any transaction contemplated by this <u>Section 2.8</u>.

#### 2.9 Bank Accounts; Cash Balances.

- (a) Each Party agrees to take, or cause the members of its Group to take, at the Effective Time (or such earlier time as the Parties may agree), all actions necessary to amend all contracts or agreements governing each bank and brokerage account owned by PayPal or any other member of the PayPal Group (collectively, the "PayPal Accounts") and all contracts or agreements governing each bank or brokerage account owned by eBay or any other member of the eBay Group (collectively, the "eBay Accounts") so that each such PayPal Account and eBay Account, if currently Linked (whether by automatic withdrawal, automatic deposit or any other authorization to transfer funds from or to, hereinafter "Linked") to any eBay Account or PayPal Account, respectively, is de-Linked from such eBay Account or PayPal Account, respectively.
- (b) It is intended that, following consummation of the actions contemplated by <u>Section 2.9(a)</u>, there will be in place a cash management process pursuant to which the PayPal Accounts will be managed and funds collected will be transferred into one (1) or more accounts maintained by PayPal or a member of the PayPal Group.

- (c) It is intended that, following consummation of the actions contemplated by <u>Section 2.9(a)</u>, there will continue to be in place a cash management process pursuant to which the eBay Accounts will be managed and funds collected will be transferred into one (1) or more accounts maintained by eBay or a member of the eBay Group.
- (d) With respect to any outstanding checks issued or payments initiated by eBay, PayPal, or any of the members of their respective Groups prior to the Effective Time, such outstanding checks and payments shall be honored following the Effective Time by the Person or Group owning the account on which the check is drawn or from which the payment was initiated, respectively.
- (e) As between eBay and PayPal (and the members of their respective Groups), all payments made and reimbursements or other payments received after the Effective Time by either Party (or member of its Group) that relate to a business, Asset or Liability of the other Party (or member of its Group), shall be held by such Party in trust for the use and benefit of the Party entitled thereto and, promptly following receipt by such Party of any such payment or reimbursement, such Party shall pay over, or shall cause the applicable member of its Group to pay over, to the other Party the amount of such payment or reimbursement without right of set-off.
- 2.10 <u>Ancillary Agreements</u>. Effective on or prior to the Effective Time, each of eBay and PayPal will, or will cause the applicable members of their Groups to, execute and deliver all Ancillary Agreements to which it is a party.
- 2.11 Disclaimer of Representations and Warranties. EACH OF EBAY (ON BEHALF OF ITSELF AND EACH MEMBER OF THE EBAY GROUP) AND PAYPAL (ON BEHALF OF ITSELF AND EACH MEMBER OF THE PAYPAL GROUP) UNDERSTANDS AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT OR COMMERCIAL AGREEMENT, NO PARTY TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR COMMERCIAL AGREEMENT, ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, ANY ANCILLARY AGREEMENT, ANY COMMERCIAL AGREEMENT OR OTHERWISE, IS REPRESENTING OR WARRANTING IN ANY WAY AS TO THE ASSETS, BUSINESSES OR LIABILITIES TRANSFERRED OR ASSUMED AS CONTEMPLATED HEREBY OR THEREBY, AS TO ANY CONSENTS OR APPROVALS REQUIRED IN CONNECTION THEREWITH, AS TO THE VALUE OR FREEDOM FROM ANY SECURITY INTERESTS OF, OR ANY OTHER MATTER CONCERNING, ANY ASSETS OF SUCH PARTY. OR AS TO THE ABSENCE OF ANY DEFENSES OR RIGHT OF SETOFF OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY CLAIM OR OTHER ASSET, INCLUDING ANY ACCOUNTS RECEIVABLE, OF ANY PARTY, OR AS TO THE LEGAL SUFFICIENCY OF ANY ASSIGNMENT, DOCUMENT OR INSTRUMENT DELIVERED HEREUNDER TO CONVEY TITLE TO ANY ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING HEREOF OR THEREOF. EXCEPT AS MAY EXPRESSLY BE SET FORTH HEREIN OR IN ANY ANCILLARY AGREEMENT OR ANY COMMERCIAL AGREEMENT, ALL SUCH ASSETS ARE BEING TRANSFERRED ON AN "AS IS," "WHERE IS" BASIS (AND, IN THE CASE OF ANY REAL PROPERTY, BY MEANS OF A QUITCLAIM OR SIMILAR FORM OF DEED OR CONVEYANCE) AND

THE RESPECTIVE TRANSFEREES SHALL BEAR THE ECONOMIC AND LEGAL RISKS THAT (I) ANY CONVEYANCE WILL PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD AND MARKETABLE TITLE, FREE AND CLEAR OF ANY SECURITY INTEREST, AND (II) ANY NECESSARY APPROVALS OR NOTIFICATIONS ARE NOT OBTAINED OR MADE OR THAT ANY REQUIREMENTS OF LAWS OR JUDGMENTS ARE NOT COMPLIED WITH.

- 2.12 <u>Cash Transfer</u>. Prior to the Effective Time and pursuant to the Plan of Reorganization, eBay shall transfer, or cause its Subsidiaries to transfer (including by one or more transfers or capital contributions), to PayPal and/or the applicable PayPal Designees an aggregate amount of cash and cash equivalents ("<u>Cash Amounts</u>") equal to \$[ ] (such Cash Amounts, the "<u>Transferred Cash Amounts</u>"). All Cash Amounts held by PayPal or any member of the PayPal Group as of the Effective Time shall be a PayPal Asset, and all Cash Amounts held by eBay or any member of the eBay Group as of the Effective Time shall be an eBay Asset.
- 2.13 <u>Financial Information Certifications</u>. eBay's disclosure controls and procedures and internal control over financial reporting (as each is contemplated by the Exchange Act) are currently applicable to PayPal as its Subsidiary. In order to enable the principal executive officer and principal financial officer of PayPal to make the certifications required of them under Section 302 of the Sarbanes-Oxley Act of 2002, eBay, within thirty-five (35) days of the end of any fiscal quarter during which PayPal remains eBay's Subsidiary, shall provide PayPal with one (1) or more certifications (in a format to be agreed by eBay and PayPal in good faith) with respect to such disclosure controls and procedures, its internal control over financial reporting and the effectiveness thereof. Such certification(s) shall be provided by eBay (and not by any officer or employee in their individual capacity).
- 2.14 <u>Transition Committee</u>. Prior to the Effective Time, the Parties shall establish a transition committee (the "<u>Transition Committee</u>") that shall consist of an equal number of members from eBay and PayPal. The Transition Committee shall be responsible for monitoring and managing all matters related to any of the transactions contemplated by this Agreement or any Ancillary Agreements. The Transition Committee shall have the authority to (a) establish one (1) or more subcommittees from time to time as it deems appropriate or as may be described in any Ancillary Agreements, with each such subcommittee comprised of one or more members of the Transition Committee or one or more employees of either Party or any member of its respective Group, and each such subcommittee having such scope of responsibility as may be determined by the Transition Committee from time to time; (b) delegate to any such committee any of the powers of the Transition Committee; (c) combine, modify the scope of responsibility of, and disband any such subcommittees; and (d) modify or reverse any such delegations. The Transition Committee shall establish general procedures for managing the responsibilities delegated to it under this <u>Section 2.14</u>, and may modify such procedures from time to time. All decisions by the Transition Committee or any subcommittee thereof shall be effective only if mutually agreed by both Parties. The Parties shall utilize the procedures set forth in Article VII to resolve any matters as to which the Transition Committee is not able to reach a decision.

# ARTICLE III THE DISTRIBUTION

# 3.1 Sole and Absolute Discretion; Cooperation.

- (a) eBay shall, in its sole and absolute discretion, determine the terms of the Distribution, including the form, structure and terms of any transaction(s) and/or offering(s) to effect the Distribution and the timing and conditions to the consummation of the Distribution. In addition, eBay may, at any time and from time to time until the consummation of the Distribution, modify or change the terms of the Distribution, including by accelerating or delaying the timing of the consummation of all or part of the Distribution. Nothing shall in any way limit eBay's right to terminate this Agreement or the Distribution as set forth in Article IX or alter the consequences of any such termination from those specified in Article IX.
- (b) PayPal shall cooperate with eBay to accomplish the Distribution and shall, at eBay's direction, promptly take any and all actions necessary or desirable to effect the Distribution, including in respect of the registration under the Exchange Act of PayPal Shares on the Form 10. eBay shall select any investment bank or manager in connection with the Distribution, as well as any financial printer, solicitation and/or exchange agent and financial, legal, accounting and other advisors for eBay. PayPal and eBay will provide to the Agent any information required in order to complete the Distribution.
- 3.2 <u>Actions Prior to the Distribution</u>. Prior to the Effective Time and subject to the terms and conditions set forth herein, the Parties shall take, or cause to be taken, the following actions in connection with the Distribution:
- (a) *Notice to eBay Stock Exchange*. eBay shall, to the extent possible, give the eBay Stock Exchange not less than ten (10) days' advance notice of the Record Date in compliance with Rule 10b-17 under the Exchange Act.
- (b) PayPal Certificate of Incorporation and PayPal Bylaws. On or prior to the Distribution Date, eBay and PayPal shall take all necessary actions so that, as of the Effective Time, the PayPal Certificate of Incorporation and the PayPal Bylaws shall become the certificate of incorporation and bylaws of PayPal, respectively.
- (c) PayPal Directors and Officers. On or prior to the Distribution Date, eBay and PayPal shall take all necessary actions so that as of the Effective Time: (i) the directors and executive officers of PayPal shall be those set forth in the Information Statement made available to the Record Holders prior to the Distribution Date, unless otherwise agreed by the Parties; and (ii) PayPal shall have such other officers as the board of directors of PayPal shall appoint.
- (d) *PayPal Stock Exchange Listing*. PayPal shall prepare and file, and shall use its reasonable best efforts to have approved, an application for the listing of the PayPal Shares to be distributed in the Distribution on the PayPal Stock Exchange, subject to official notice of distribution.

- (e) Securities Law Matters. PayPal shall file any amendments or supplements to the Form 10 as may be necessary or advisable in order to cause the Form 10 to become and remain effective as required by the SEC or federal, state or other applicable securities Laws. eBay and PayPal shall cooperate in preparing, filing with the SEC and causing to become effective registration statements or amendments thereof which are required to reflect the establishment of, or amendments to, any employee benefit and other plans necessary or advisable in connection with the transactions contemplated by this Agreement and the Ancillary Agreements. eBay and PayPal will prepare, and PayPal will, to the extent required under applicable Law, file with the SEC any such documentation and any requisite no-action letters which eBay determines are necessary or desirable to effectuate the Distribution, and eBay and PayPal shall each use its reasonable best efforts to obtain all necessary approvals from the SEC with respect thereto as soon as practicable. eBay and PayPal shall take all such action as may be necessary or appropriate under the securities or blue sky Laws of the United States (and any comparable Laws under any foreign jurisdiction) in connection with the Distribution.
- (f) Availability of Information Statement. eBay shall, as soon as is reasonably practicable after the Form 10 is declared effective under the Exchange Act and the eBay Board has approved the Distribution, cause the Information Statement to be mailed to the Record Holders or, in connection with the delivery of a notice of Internet availability of the Information Statement to such holders, posted on the Internet.
- (g) *The Distribution Agent*. eBay shall enter into a distribution agent agreement with the Agent or otherwise provide instructions to the Agent regarding the Distribution.
- (h) Stock-Based Employee Benefit Plans. eBay and PayPal shall take all actions as may be necessary to approve the grants of adjusted equity awards by eBay (in respect of eBay shares) and PayPal (in respect of PayPal shares) in connection with the Distribution in order to satisfy the requirements of Rule 16b-3 under the Exchange Act.

#### 3.3 Conditions to the Distribution.

- (a) The consummation of the Distribution will be subject to the satisfaction, or waiver by eBay in its sole and absolute discretion, of the following conditions:
  - (i) The SEC shall have declared effective the Form 10; no order suspending the effectiveness of the Form 10 shall be in effect; and no proceedings for such purposes shall have been instituted or threatened by the SEC.
  - (ii) The Information Statement shall have been mailed to the Record Holders or, in connection with the delivery of a notice of Internet availability of the Information Statement to such holders, posted on the Internet.
  - (iii) eBay shall have received the Tax Opinion regarding the qualification of the Contribution and the Distribution, taken together, as a transaction that is generally tax free for U.S. federal income tax purposes under Sections 355 and 368(a)(1)(D) of the Code.

- (iv) The transfer of the PayPal Assets (other than any Delayed PayPal Asset) and PayPal Liabilities (other than any Delayed PayPal Liability) contemplated to be transferred from eBay to PayPal on or prior to the Distribution shall have occurred as contemplated by Section 2.1, and the transfer of the eBay Assets (other than any Delayed eBay Asset) and eBay Liabilities (other than any Delayed eBay Liability) contemplated to be transferred from PayPal to eBay on or prior to the Distribution Date shall have occurred as contemplated by Section 2.1, in each case pursuant to the Plan of Reorganization.
- (v) The actions and filings necessary or appropriate under applicable U.S. federal, U.S. state or other securities Laws or blue sky Laws and the rules and regulations thereunder shall have been taken or made, and, where applicable, have become effective or been accepted.
- (vi) Any Approvals or Notifications of any Governmental Authorities required for the consummation of the Separation and Distribution, including any required Approvals or Notifications of the Commission de Surveillance du Secteur Financier and the Bank Centrale du Luxembourg, have been obtained.
  - (vii) Each of the Ancillary Agreements shall have been duly executed and delivered by the applicable parties thereto.
- (viii) No order, injunction or decree issued by any Governmental Authority of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Separation, the Distribution or any of the transactions related thereto shall be in effect.
- (ix) The PayPal Shares to be distributed to the eBay stockholders in the Distribution shall have been accepted for listing on the PayPal Stock Exchange, subject to official notice of distribution.
  - (x) PayPal and/or the applicable PayPal Designees shall have received the Transferred Cash Amount.
- (xi) No other events or developments shall exist or shall have occurred that, in the judgment of the eBay Board, in its sole and absolute discretion, makes it inadvisable to effect the Separation, the Distribution or the transactions contemplated by this Agreement or any Ancillary Agreement.
- (b) The foregoing conditions are for the sole benefit of eBay and shall not give rise to or create any duty on the part of eBay or the eBay Board to waive or not waive any such condition or in any way limit eBay's right to terminate this Agreement as set forth in Article IX or alter the consequences of any such termination from those specified in Article IX. Any determination made by the eBay Board prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in Section 3.3(a) shall be conclusive and binding on the Parties. If eBay waives any material condition, it shall promptly issue a press release disclosing such fact and file a Current Report on Form 8-K with the SEC describing such waiver.

# 3.4 The Distribution.

- (a) Subject to Section 3.3, on or prior to the Effective Time, PayPal will deliver to the Agent, for the benefit of the Record Holders, book-entry transfer authorizations for such number of the outstanding PayPal Shares as is necessary to effect the Distribution, and shall cause the transfer agent for the eBay Shares to instruct the Agent to distribute at the Effective Time the appropriate number of PayPal Shares to each such holder or designated transferee or transferees of such holder by way of direct registration in book-entry form. PayPal will not issue paper stock certificates in respect of the PayPal Shares. The Distribution shall be effective at the Effective Time.
- (b) Subject to Sections 3.3 and 3.4(c), each Record Holder will be entitled to receive in the Distribution a number of whole PayPal Shares equal to the number of eBay Shares held by such Record Holder on the Record Date multiplied by the Distribution Ratio, rounded down to the nearest whole number.
- (c) No fractional shares will be distributed or credited to book-entry accounts in connection with the Distribution, and any such fractional shares interests to which a Record Holder would otherwise be entitled shall not entitle such Record Holder to vote or to any other rights as a stockholder of PayPal. In lieu of any such fractional shares, each Record Holder who, but for the provisions of this Section 3.4(c), would be entitled to receive a fractional share interest of a PayPal Share pursuant to the Distribution, shall be paid cash, without any interest thereon, as hereinafter provided. As soon as practicable after the Effective Time, eBay shall direct the Agent to determine the number of whole and fractional PayPal Shares allocable to each Record Holder, to aggregate all such fractional shares into whole shares, and to sell the whole shares obtained thereby in the open market at the then-prevailing prices on behalf of each Record Holder who otherwise would be entitled to receive fractional share interests (with the Agent, in its sole and absolute discretion, determining when, how and through which broker-dealer and at what price to make such sales), and to cause to be distributed to each such Record Holder, in lieu of any fractional share, such Record Holder's or owner's ratable share of the total proceeds of such sale, after deducting any Taxes required to be withheld and applicable transfer Taxes, and after deducting the costs and expenses of such sale and distribution, including brokers fees and commissions. None of eBay, PayPal or the Agent will be required to guarantee any minimum sale price for the fractional PayPal Shares sold in accordance with this Section 3.4(c). Neither eBay nor PayPal will be required to pay any interest on the proceeds from the sale of fractional shares. Neither the Agent nor the broker-dealers through which the aggregated fractional shares are sold shall be Affiliates of eBay or PayPal. Solely for purposes of computing fractional share interests pursuant to this Section 3.4(c) and Section 3.4(e), the beneficial owner of eBay Shares held of record in the name of a nominee in any nominee account shall be treated as the Record Holder with respect to such shares.
- (d) Notwithstanding anything herein to the contrary, if the distribution of PayPal Shares pursuant to the Distribution is not permitted under the applicable Law of any jurisdiction (each such jurisdiction, a "<u>Prohibited Jurisdiction</u>"), each Record Holder in such Prohibited Jurisdiction who, but for such applicable Law, would have received a PayPal Share pursuant to the Distribution, shall receive a distribution of cash, without any interest thereon, in lieu of such PayPal Share to the extent permitted by the applicable Law of such Prohibited

Jurisdiction. The procedures set forth in <u>Section 3.4(c)</u> with respect to fractional shares shall apply to the distribution of PayPal Shares to Record Holders in Prohibited Jurisdictions, *mutatis mutandis*, with each reference to a "fractional share" in such sentences being deemed a reference to a PayPal Share that, but for this <u>Section 3.4(d)</u> and for applicable Law, would have been distributed pursuant to the Distribution to a Record Holder in a Prohibited Jurisdiction.

- (e) Any PayPal Shares or cash in lieu of PayPal Shares (or fractions thereof) that remain unclaimed by any Record Holder one hundred and eighty (180) days after the Distribution Date shall be delivered to PayPal, and PayPal shall hold such PayPal Shares for the account of such Record Holder, and the Parties agree that all obligations to provide such PayPal Shares and cash, if any, in lieu of PayPal Shares (or fractions thereof) shall be obligations of PayPal, subject in each case to applicable escheat or other abandoned property Laws, and eBay shall have no Liability with respect thereto.
- (f) Until the PayPal Shares are duly transferred in accordance with this Section 3.4 and applicable Law and subject to Section 3.4(d), from and after the Effective Time, PayPal will regard the Persons entitled to receive such PayPal Shares as record holders of PayPal Shares in accordance with the terms of the Distribution without requiring any action on the part of such Persons. PayPal agrees that, subject to any transfers of such shares, from and after the Effective Time (i) each such holder will be entitled to receive all dividends payable on, and exercise voting rights and all other rights and privileges with respect to, the PayPal Shares then held by such holder, and (ii) each such holder will be entitled, without any action on the part of such holder, to receive evidence of ownership of the PayPal Shares then held by such holder.

# ARTICLE IV MUTUAL RELEASES; INDEMNIFICATION

#### 4.1 Release of Pre-Distribution Claims.

(a) PayPal Release of eBay. Except as provided in Sections 4.1(c) and 4.3, effective as of the Effective Time, PayPal does hereby, for itself and each other member of the PayPal Group, and their respective successors and assigns, and, to the extent permitted by Law, all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the PayPal Group (in each case, in their respective capacities as such), surrender, relinquish, release and forever discharge (i) eBay and the members of the eBay Group, and their respective successors and assigns, and (ii) all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the eBay Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, and (iii) all Persons who at any time prior to the Effective Time are or have been stockholders, directors, officers, agents or employees of a Transferred Entity and who are not, as of immediately following the Effective Time, directors, officers or employees of PayPal or a member of the PayPal Group, in each case from: (A) all PayPal Liabilities, (B) all Liabilities arising from or in connection with the transactions and all other activities to implement the Separation and the Distribution and (C) all Liabilities arising from or in connection with actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or

foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent relating to, arising out of or resulting from the PayPal Business, the PayPal Assets or the PayPal Liabilities.

- (b) *eBay Release of PayPal*. Except as provided in Sections 4.1(c) and 4.2, effective as of the Effective Time, eBay does hereby, for itself and each other member of the eBay Group and their respective successors and assigns, and, to the extent permitted by Law, all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the eBay Group (in each case, in their respective capacities as such), surrender, relinquish, release and forever discharge (i) PayPal and the members of the PayPal Group and their respective successors and assigns, and (ii) all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the PayPal Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from (A) all eBay Liabilities, (B) all Liabilities arising from or in connection with the transactions and all other activities to implement the Separation and the Distribution and (C) all Liabilities arising from or in connection with actions, inactions, events, omissions, conditions, facts or circumstances occurring or existing prior to the Effective Time (whether or not such Liabilities cease being contingent, mature, become known, are asserted or foreseen, or accrue, in each case before, at or after the Effective Time), in each case to the extent relating to, arising out of or resulting from the eBay Business, the eBay Assets or the eBay Liabilities.
- (c) *Obligations Not Affected.* Nothing contained in <u>Section 4.1(a)</u> or <u>4.1(b)</u> shall impair any right of any Person to enforce this Agreement, any Ancillary Agreement or any agreements, arrangements, commitments or understandings that are specified in <u>Section 2.7(b)</u> or the applicable Schedules thereto as not to terminate as of the Effective Time, in each case in accordance with its terms. Nothing contained in Sections 4.1(a) or 4.1(b) shall release any Person from:
  - (i) any Liability provided in or resulting from any agreement among any members of the eBay Group or the PayPal Group that is specified in Section 2.7(b) or the applicable Schedules thereto as not to terminate as of the Effective Time, or any other Liability specified in Section 2.7(b) as not to terminate as of the Effective Time;
  - (ii) any Liability, contingent or otherwise, assumed, transferred, assigned or allocated to the Group of which such Person is a member in accordance with, or any other Liability of any member of any Group under, this Agreement or any Ancillary Agreement;
  - (iii) any Liability for the sale, lease, construction or receipt of goods, property or services purchased, obtained or used in the ordinary course of business by a member of one Group from a member of the other Group prior to the Effective Time;
  - (iv) any Liability for unpaid amounts for products or services or refunds owing on products or services due on a value-received basis for work done by a member of one Group at the request or on behalf of a member of the other Group;

- (v) any Liability provided in or resulting from any Contract or understanding that is entered into after the Effective Time between any Party (and/or a member of such Party's Group), on the one hand, and any other Party (and/or a member of the other Party's Group), on the other hand;
- (vi) any Liability that the Parties may have with respect to indemnification or contribution pursuant to this Agreement, any Ancillary Agreement or otherwise for claims brought against the Parties by third Persons, which Liability shall be governed by the provisions of this Article IV and Article V and, if applicable, the appropriate provisions of the Ancillary Agreements; or
- (vii) any Liability the release of which would result in the release of any Person other than a Person released pursuant to this <u>Section 4.1</u>.

In addition, nothing contained in Section 4.1(a) shall release any member of the eBay Group from honoring its existing obligations to indemnify any director, officer or employee of PayPal who was a director, officer or employee of any member of the eBay Group on or prior to the Effective Time, to the extent such director, officer or employee becomes a named defendant in any Action with respect to which such director, officer or employee was entitled to such indemnification pursuant to such existing obligations, it being understood that, if the underlying obligation giving rise to such Action is a PayPal Liability, PayPal shall indemnify eBay for such Liability (including eBay's costs to indemnify the director, officer or employee) in accordance with the provisions set forth in this Article IV.

- (d) No Claims. PayPal shall not make, and shall not permit any member of the PayPal Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against eBay or any other member of the eBay Group, or any other Person released pursuant to Section 4.1(a), with respect to any Liabilities released pursuant to Section 4.1(a). eBay shall not make, and shall not permit any other member of the eBay Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification against PayPal or any other member of the PayPal Group, or any other Person released pursuant to Section 4.1(b), with respect to any Liabilities released pursuant to Section 4.1(b).
- (e) Execution of Further Releases. At any time at or after the Effective Time, at the request of either Party, the other Party shall cause each member of its respective Group to execute and deliver releases reflecting the provisions of this Section 4.1.
- 4.2 <u>Indemnification by PayPal</u>. Except as otherwise specifically set forth in this Agreement or in any Ancillary Agreement, to the fullest extent permitted by Law, PayPal shall, and shall cause the other members of the PayPal Group to, indemnify, defend and hold harmless eBay, each member of the eBay Group and each of their respective past, present and future directors, officers, employees and agents, in each case in their respective capacities as such, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "<u>eBay Indemnified Parties</u>"), from and against any and all Liabilities of the eBay Indemnified Parties relating to, arising out of or resulting from, directly or indirectly, any of the following items (without duplication):

- (a) any PayPal Liability;
- (b) any failure of PayPal, any other member of the PayPal Group or any other Person to pay, perform or otherwise promptly discharge any PayPal Liabilities in accordance with their terms, whether prior to, on or after the Effective Time;
  - (c) the PayPal Specified Actions and 50% of the Shared Contingent Liabilities;
- (d) any breach by PayPal or any other member of the PayPal Group of this Agreement or any of the Ancillary Agreements (other than the Ancillary Agreements set forth on Schedule 4.2(d), which shall be subject to the indemnification provisions contained therein);
- (e) except to the extent it relates to an eBay Liability, any guarantee, indemnification or contribution obligation, surety bond or other credit support agreement, arrangement, commitment or understanding for the benefit of any member of the PayPal Group by any member of the eBay Group that survives following the Distribution; and
- (f) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to all information contained in the Form 10, the Information Statement (as amended or supplemented if PayPal shall have furnished any amendments or supplements thereto) or any other Disclosure Document, other than the matters described in clause (f) of Section 4.3.
- 4.3 <u>Indemnification by eBay</u>. Except as otherwise specifically set forth in this Agreement or in any Ancillary Agreement, to the fullest extent permitted by Law, eBay shall, and shall cause the other members of the eBay Group to, indemnify, defend and hold harmless PayPal, each member of the PayPal Group and each of their respective past, present and future directors, officers, employees or agents, in each case in their respective capacities as such, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the "<u>PayPal Indemnified Parties</u>"), from and against any and all Liabilities of the PayPal Indemnified Parties relating to, arising out of or resulting from, directly or indirectly, any of the following items (without duplication):
  - (a) any eBay Liability;
- (b) any failure of eBay, any other member of the eBay Group or any other Person to pay, perform or otherwise promptly discharge any eBay Liabilities in accordance with their terms, whether prior to, on or after the Effective Time;
  - (c) the eBay Specified Actions and 50% of the Shared Contingent Liabilities;
- (d) any breach by eBay or any other member of the eBay Group of this Agreement or any of the Ancillary Agreements (other than the Ancillary Agreements set forth on Schedule 4.2(d), which shall be subject to the indemnification provisions contained therein);

- (e) except to the extent it relates to a PayPal Liability, any guarantee, indemnification or contribution obligation, surety bond or other credit support agreement, arrangement, commitment or understanding for the benefit of any member of the eBay Group by any member of the PayPal Group that survives following the Distribution; and
- (f) any untrue statement or alleged untrue statement of a material fact or omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, with respect to statements made explicitly in eBay's name in the Form 10, the Information Statement (as amended or supplemented if PayPal shall have furnished any amendments or supplements thereto) or any other Disclosure Document; it being agreed that the statements set forth on Schedule 4.3(f) shall be the only statements made explicitly in eBay's name in the Form 10, the Information Statement or any other Disclosure Document, and all other information contained in the Form 10, the Information Statement or any other Disclosure Document shall be deemed to be information supplied by PayPal.

## 4.4 <u>Indemnification Obligations Net of Insurance Proceeds and Other Amounts.</u>

- (a) The Parties intend that any Liability subject to indemnification, contribution or reimbursement pursuant to this Article IV or Article V will be net of Insurance Proceeds or other amounts actually recovered (net of any out-of-pocket costs or expenses incurred in the collection thereof) from any Person by or on behalf of the Indemnified Party in respect of such indemnifiable Liability. Accordingly, the amount that either Party (an "Indemnifying Party") is required to pay to any Person entitled to indemnification or contribution hereunder (an "Indemnified Party") will be reduced by any Insurance Proceeds or other amounts actually recovered (net of any out-of-pocket costs or expenses incurred in the collection thereof) from any Person by or on behalf of the Indemnified Party in respect of the related Liability. If an Indemnified Party receives a payment (an "Indemnity Payment") under this Agreement from an Indemnifying Party in respect of any Liability and subsequently receives Insurance Proceeds or any other amounts in respect of the same Liability, then the Indemnified Party will pay to the Indemnifying Party an amount equal to the excess of the Indemnity Payment received over the amount of the Indemnity Payment that would have been due if the Insurance Proceeds or such other amounts (net of any out-of-pocket costs or expenses incurred in the collection thereof) had been received, realized or recovered before the Indemnity Payment was made.
- (b) The Parties agree that an insurer that would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of any provision contained in this Agreement or any Ancillary Agreement, have any subrogation rights with respect thereto, it being understood that no insurer or any other Third Party shall be entitled to a "windfall" (i.e., a benefit they would not be entitled to receive in the absence of the indemnification provisions) by virtue of the liability allocation, indemnification and contribution provisions hereof. Accordingly, any provision herein that could have the result of giving any insurer or other Third Party such a "windfall" shall be suspended or amended to the extent necessary to not provide such "windfall." Each Party shall, and shall cause the members of its Group to, use commercially reasonable efforts (taking into account the probability of success on the merits and the cost of expending such efforts, including attorneys' fees and expenses) to

collect or recover any Insurance Proceeds that may be collectible or recoverable respecting the Liabilities for which indemnification or contribution may be available under this <u>Article IV</u>. Notwithstanding the foregoing, an Indemnifying Party may not delay making any indemnification payment required under the terms of this Agreement, or otherwise satisfying any indemnification obligation, pending the outcome of any Action to collect or recover Insurance Proceeds, and an Indemnified Party need not attempt to collect any Insurance Proceeds prior to making a claim for indemnification or contribution or receiving any Indemnity Payment otherwise owed to it under this Agreement or any Ancillary Agreement.

# 4.5 Procedures for Indemnification of Third-Party Claims.

- (a) *Notice of Claims*. If, at or following the date of this Agreement, an Indemnified Party shall receive notice or otherwise learn of the assertion by a Person (including any Governmental Authority) who is not a member of the eBay Group or the PayPal Group of any claim or of the commencement by any such Person of any Action (collectively, a "Third-Party Claim") with respect to which an Indemnifying Party may be obligated to provide indemnification to such Indemnified Party pursuant to Sections 4.2 or 4.3, or any other Section of this Agreement or any Ancillary Agreement, such Indemnified Party shall give such Indemnifying Party written notice within thirty (30) days of becoming aware of such Third-Party Claim (or sooner if the nature of the Third-Party Claim so requires). Any such notice shall describe the Third-Party Claim in reasonable detail, including, to the extent set forth in or readily apparent from the notices and documents received by the Indemnified Party, the facts and circumstances giving rise to such claim for indemnification, and include copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third-Party Claim.

  Notwithstanding the foregoing, the failure of an Indemnified Party to provide notice in accordance with this Section 4.5(a) shall not relieve an Indemnifying Party of its indemnification obligations under this Agreement, except to the extent to which the Indemnifying Party is prejudiced by the Indemnified Party's failure to provide notice in accordance with this Section 4.5(a).
- (b) Control of Defense. An Indemnifying Party may elect to control the defense of (and unless the Indemnifying Party has specified any reservations or exceptions, seek to settle or compromise), at its own expense and with its own counsel, any Third-Party Claim; provided, that, prior to the Indemnifying Party assuming and controlling defense of such Third-Party Claim, it shall first confirm to the Indemnitee in writing that, assuming the facts presented to the Indemnifying Party by the Indemnitee being true, the Indemnifying Party shall indemnify the Indemnifying Party assumes such defense and, in the course of defending such Third-Party Claim. Notwithstanding the foregoing, if the Indemnifying Party assumes such defense and, in the course of defending such Third-Party Claim, (i) the Indemnifying Party discovers that the facts presented at the time the Indemnifying Party acknowledged its indemnification obligation in respect of such Third-Party Claim were not true in all material respects or that such facts, while true in all material respects, do not form the basis upon which such Third-Party Claim is predicated (e.g., as a result of the allegations made in such Third-Party Claim changing over time) and (ii) such untruth or change provides a reasonable basis for asserting that the Indemnifying Party does not have an indemnification obligation in respect of such Third-Party Claim, then (A) the Indemnifying Party shall not be bound by such acknowledgment, (B) the Indemnifying Party shall promptly thereafter provide the Indemnitee written notice of its

assertion that it does not have an indemnification obligation in respect of such Third-Party Claim (giving the reasons therefor) and (C) the Indemnitee shall have the right to assume the defense of such Third-Party Claim. Within thirty (30) days after the receipt of a notice from an Indemnified Party in accordance with Section 4.5(a) (or sooner, if the nature of the Third-Party Claim so requires), the Indemnifying Party shall provide written notice to the Indemnified Party indicating whether the Indemnifying Party shall assume responsibility for defending the Third-Party Claim, which written notice shall specify any reservations or exceptions by the Indemnifying Party. If an Indemnifying Party elects not to assume responsibility for defending any Third-Party Claim or fails to notify an Indemnified Party of its election within thirty (30) days after receipt of the notice from an Indemnified Party as provided in Section 4.5(a), then the Indemnified Party that is the subject of such Third-Party Claim shall be entitled to continue to conduct and control the defense of such Third-Party Claim. Notwithstanding an election by an Indemnifying Party to defend a Third-Party Claim pursuant to this Section 4.5(b), the Indemnified Party may, upon written notice to the Indemnifying Party, elect to take over the defense of such Third-Party Claim (although the Indemnifying Party may continue to participate but not control such defense) if (I) in its exercise of reasonable business judgment, the Indemnified Party determines that the Indemnifying Party is not defending such Third-Party Claim competently or in good faith, (II) the Indemnified Party determines in good faith that such Indemnified Party and the Indemnifying Party have actual or potential differing defenses or conflicts of interest between them that make joint representation inappropriate. (III) the Indemnifying Party makes a general assignment for the benefit of creditors, has filed against it or files a petition in bankruptcy or insolvency or is declared bankrupt or insolvent or declares that it is bankrupt or insolvent, or (IV) there occurs a change of control of the Indemnifying Party.

(c) Allocation of Defense Costs. If an Indemnifying Party has elected to assume the defense of a Third-Party Claim, then such Indemnifying Party shall be solely liable for all fees and expenses incurred by it in connection with the defense of such Third-Party Claim and shall not be entitled to seek any indemnification or reimbursement from the Indemnified Party for any such fees or expenses incurred by the Indemnifying Party during the course of the defense of such Third-Party Claim by such Indemnifying Party, regardless of any subsequent decision by the Indemnifying Party to reject or otherwise abandon its assumption of such defense. If an Indemnifying Party elects not to assume responsibility for defending any Third-Party Claim or fails to notify an Indemnified Party of its election within thirty (30) days after receipt of a notice from an Indemnified Party as provided in Section 4.5(a) or the Indemnified Party takes over the defense of any Third Party-Claim pursuant to Section 4.5(b), and the Indemnified Party conducts and controls the defense of such Third-Party Claim and the Indemnifying Party has an indemnification obligation with respect to such Third-Party Claim, then the Indemnifying Party shall be liable for all reasonable fees and expenses incurred by the Indemnified Party in connection with the defense of such Third-Party Claim.

(d) *Right to Monitor and Participate*. An Indemnified Party that does not conduct and control the defense of any Third-Party Claim, or an Indemnifying Party that has failed to elect to defend any Third-Party Claim as contemplated hereby or from whom the Indemnified Party has taken over control of defense of the claim pursuant to <u>Section 4.5(b)</u>, nevertheless shall have the right to employ separate counsel (including local counsel as necessary) of its own choosing to monitor and participate in (but not control) the defense of any Third-Party Claim for which it is a potential Indemnified Party or Indemnifying Party, but the

fees and expenses of such counsel shall be borne by such Indemnified Party or non-controlling Indemnifying Party, as the case may be, and the provisions of Section 4.5(c) shall not apply to such fees and expenses; provided, that if the Indemnifying Party has elected to defend the Third-Party Claim but has specified, and continues to assert, any reservations or exceptions, then the Indemnifying Party shall reimburse the reasonable fees and expenses of such counsel for the potential Indemnified Party. Notwithstanding the foregoing, but subject to Sections 6.7 and 6.8, and whether or not participating in the defense of a claim, such Party shall use commercially reasonable efforts to cooperate with the Party entitled to conduct and control the defense of such Third-Party Claim in such defense and make available to the controlling Party, all witnesses, information and materials in such Party's possession or under such Party's control relating thereto as are reasonably required by the controlling Party (with the reasonable out-of-pocket costs associated with such cooperation being at the expense of the Indemnifying Party). In addition to the foregoing, if any Indemnified Party shall in good faith determine that such Indemnified Party and the Indemnifying Party have actual or potential differing defenses or conflicts of interest between them that make joint representation inappropriate, then the Indemnified Party shall have the right to employ separate counsel (including local counsel as necessary) and to participate in (but not control) the defense, compromise, or settlement thereof, and the Indemnifying Party shall bear the reasonable fees and expenses of one such counsel and local counsel (as appropriate) for all Indemnified Parties.

(e) No Settlement. The Indemnifying Party may not settle or compromise any Third-Party Claim without the consent of the Indemnified Party, which consent may not be unreasonably withheld, unless such settlement or compromise is solely for monetary damages, does not involve any finding or determination of wrongdoing or violation of Law by the other Party and provides for a full, unconditional and irrevocable release of the other Party from all Liability in connection with the Third-Party Claim. If an Indemnifying Party elects not to assume responsibility for defending any Third-Party Claim or fails to notify an Indemnified Party of its election within thirty (30) days after receipt of a notice from an Indemnified Party as provided in Section 4.5(a), and the Indemnified Party conducts and controls the defense of such Third-Party Claim, the Indemnified Party may enter into a reasonable settlement or compromise of such Third-Party Claim without the consent of the Indemnified Party may not settle or compromise any Third-Party Claim without the consent of the Indemnifying Party, which consent may not be unreasonably withheld or delayed. The Parties hereby agree that if a Party presents the other Party with a written notice containing a proposal to settle or compromise a Third-Party Claim for which either Party is seeking to be indemnified hereunder and the Party receiving such proposal does not respond in any manner to the Party presenting such proposal within thirty (30) days (or within any such shorter time period that may be required by applicable Law or court order) of receipt of such proposal, then the Party receiving such proposal shall be deemed to have consented to the terms of such proposal.

(f) Legal Hold Orders. PayPal shall prepare and circulate a legal hold order ("LHO") covering relevant categories of documents as promptly as practical following receipt of any notice pursuant to Section 4.5(a) with respect to any Action that PayPal determines in good faith is meritorious and shall promptly notify eBay after such LHO has been circulated. eBay shall prepare and circulate a LHO covering documents in the possession, custody or control of the eBay Group with respect to any Action so notified to PayPal. eBay shall prepare and

circulate an LHO covering relevant categories of documents as promptly as practical following receipt of any notice pursuant to Section 4.5(a) with respect to any Action that eBay determines in good faith is meritorious and shall promptly notify PayPal after such LHO has been circulated. PayPal shall prepare and circulate a LHO covering documents in the possession, custody or control of the PayPal Group with respect to any Action so notified to eBay.

(g) *Reporting*. An Indemnifying Party shall provide the Indemnified Party with a monthly written report identifying any Third-Party Claims that such Indemnifying Party has elected to defend pursuant to Section 4.5(b), the Actions relating to the Shared Contingent Liabilities and the eBay Specified Actions or the PayPal Specified Actions, as applicable. In addition, the Indemnifying Party shall establish a procedure reasonably acceptable to the Indemnified Party to automatically send electronic notice from the Indemnifying Party to the Indemnified Party through the litigation management system or any successor system when any such Third-Party Claim is closed, regardless of whether such Third-Party Claim was decided by settlement, verdict, dismissal or was otherwise disposed of.

#### 4.6 Additional Matters.

- (a) *Timing of Payments*. Indemnification or contribution payments in respect of any Liabilities for which an Indemnified Party is entitled to indemnification or contribution under this <u>Article IV</u> shall be paid reasonably promptly (but in any event within thirty (30) days of the final determination of the amount that the Indemnified Party is entitled to indemnification or contribution under this <u>Article IV</u>) by the Indemnifying Party to the Indemnified Party as such Liabilities are incurred upon demand by the Indemnified Party, including reasonably satisfactory documentation setting forth the basis for the amount of such indemnification or contribution payment, including documentation with respect to calculations made and consideration of any Insurance Proceeds that actually reduce the amount of such Liabilities. The indemnity and contribution provisions contained in this <u>Article IV</u> shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Indemnified Party, and (ii) the knowledge by the Indemnified Party of Liabilities for which it might be entitled to indemnification hereunder.
- (b) *Notice of Direct Claims*. Any claim for indemnification or contribution under this Agreement or any Ancillary Agreement that does not result from a Third-Party Claim shall be asserted by written notice given by the Indemnified Party to the applicable Indemnifying Party; provided, that the failure by an Indemnified Party to so assert any such claim shall not prejudice the ability of the Indemnifying Party to do so at a later time except to the extent (if any) that the Indemnifying Party is prejudiced thereby. Such Indemnifying Party shall have a period of thirty (30) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such thirty (30)-day period, such specified claim shall be conclusively deemed a Liability of the Indemnifying Party under this Section 4.6(b) or, in the case of any written notice in which the amount of the claim (or any portion thereof) is estimated, on such later date when the amount of the claim (or such portion thereof) becomes finally determined. If such Indemnifying Party does not respond within such thirty (30)-day period or rejects such claim in whole or in part, such Indemnified Party shall, subject to the provisions of Article VII, be free to pursue such remedies as may be available to such party as contemplated by this Agreement and the Ancillary Agreements, as applicable, without prejudice to its continuing rights to pursue indemnification or contribution hereunder.

- (c) Pursuit of Claims Against Third Parties. If (i) a Party incurs any Liability arising out of this Agreement or any Ancillary Agreement; (ii) an adequate legal or equitable remedy is not available for any reason against the other Party to satisfy the Liability incurred by the incurring Party; and (iii) a legal or equitable remedy may be available to the other Party against a Third Party for such Liability, then the other Party shall use its commercially reasonable efforts to cooperate with the incurring Party, at the incurring Party's expense, to permit the incurring Party to obtain the benefits of such legal or equitable remedy against the Third Party.
- (d) Subrogation. In the event of payment by or on behalf of any Indemnifying Party to any Indemnified Party in connection with any Third-Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnified Party as to any events or circumstances in respect of which such Indemnified Party may have any right, defense or claim relating to such Third-Party Claim against any claimant or plaintiff asserting such Third-Party Claim or against any other Person. Such Indemnified Party shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.
- (e) Substitution. In the event of an Action for which a Party is entitled to indemnification hereunder in which the Indemnifying Party is not a named defendant, if either the Indemnified Party or Indemnifying Party shall so request, the Parties shall endeavor to substitute the Indemnifying Party for the named defendant. If such substitution or addition cannot be achieved for any reason or is not requested, the named defendant shall allow the Indemnifying Party to manage the Action as set forth in Section 4.5 and this Section 4.6, and the Indemnifying Party shall fully indemnify the named defendant against all costs of defending the Action (including court costs, sanctions imposed by a court, attorneys' fees, experts fees and all other external expenses), the costs of any judgment or settlement and the cost of any interest or penalties relating to any judgment or settlement.

### 4.7 Right of Contribution.

- (a) *Contribution*. If any right of indemnification contained in <u>Sections 4.2</u> or <u>4.3</u> is held unenforceable or is unavailable for any reason, or is insufficient to hold harmless an Indemnified Party in respect of any Liability for which such Indemnified Party is entitled to indemnification hereunder, then the Indemnifying Party shall contribute to the amounts paid or payable by the Indemnified Parties as a result of such Liability (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party and the members of its Group, on the one hand, and the Indemnified Parties entitled to contribution, on the other hand, as well as any other relevant equitable considerations.
- (b) *Allocation of Relative Fault*. Solely for purposes of determining relative fault pursuant to this <u>Section 4.7</u>: (i) any fault associated with the business conducted with the Delayed PayPal Assets or Delayed PayPal Liabilities (except for the gross negligence or intentional misconduct of a member of the eBay Group) or with the ownership, operation or

activities of the PayPal Business prior to the Effective Time shall be deemed to be the fault of PayPal and the other members of the PayPal Group, and no such fault shall be deemed to be the fault of eBay or any other member of the eBay Group; (ii) any fault associated with the business conducted with Delayed eBay Assets or Delayed eBay Liabilities (except for the gross negligence or intentional misconduct of a member of the PayPal Group) shall be deemed to be the fault of eBay and the other members of the eBay Group, and no such fault shall be deemed to be the fault of PayPal or any other member of the PayPal Group; (iii) any fault associated with the ownership, operation or activities of the eBay Business prior to the Effective Time shall be deemed to be the fault of eBay and the other members of the eBay Group, and no such fault shall be deemed to be the fault of PayPal Business prior to the Effective Time shall be deemed to be the fault of PayPal and the other members of the PayPal Business prior to the Effective Time shall be deemed to be the fault of PayPal and the other members of the PayPal Group, and no such fault shall be deemed to be the fault of eBay or any other member of the eBay Group.

- 4.8 Covenant Not to Sue. Each Party hereby covenants and agrees that none of it, the members of such Party's Group or any Person claiming through it shall bring suit or otherwise assert any claim against any Indemnified Party, or assert a defense against any claim asserted by any Indemnified Party, before any court, arbitrator, mediator or administrative agency anywhere in the world, alleging that: (a) the assumption of any PayPal Liabilities by PayPal or a member of the PayPal Group on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason; (b) the retention of any eBay Liabilities by eBay or a member of the eBay Group on the terms and conditions set forth in this Agreement and the Ancillary Agreements is void or unenforceable for any reason, or (c) the provisions of this Article IV are void or unenforceable for any reason.
- 4.9 <u>Remedies Cumulative</u>. The remedies provided in this <u>Article IV</u> shall be cumulative and, subject to the provisions of <u>Article VIII</u>, shall not preclude assertion by any Indemnified Party of any other rights or the seeking of any and all other remedies against any Indemnifying Party.
- 4.10 <u>Survival of Indemnities</u>. The rights and obligations of each of eBay and PayPal and their respective Indemnified Parties under this <u>Article IV</u> shall survive (a) the sale or other transfer by either Party or any member of its Group of any assets or businesses or the assignment by it of any liabilities; or (b) any merger, consolidation, business combination, sale of all or substantially all of its Assets, restructuring, recapitalization, reorganization or similar transaction involving either Party or any of the members of its Group.
  - 4.11 Coordination with Ancillary Agreements.
- (a) The provisions of <u>Sections 4.2</u> through <u>4.10</u> hereof shall not apply with respect to Taxes or Tax matters (including the control of Tax related proceedings), which shall be governed by the Tax Matters Agreement. In the case of any conflict between this Agreement and the Tax Matters Agreement in relation to any matters addressed by the Tax Matters Agreement, the Tax Matters Agreement shall control.

- (b) The provisions of Sections 4.2 through 4.10 hereof shall not apply (except as expressly set forth in the applicable Ancillary Agreement) with respect to the representations, warranties, covenants and agreements set forth in the Operating Agreement, the Transition Services Agreement, the Colocation Services Agreements, the Data Sharing Addendum and the Product Development Agreement, which shall be governed by the Operating Agreement, the Transition Services Agreement, the Colocation Services Agreements, the Data Sharing Addendum and the Product Development Agreement, respectively.
- (c) In the case of any conflict between this Agreement and the Operating Agreement in relation to any matters addressed by the Operating Agreement, the Operating Agreement shall control. In the case of any conflict between this Agreement and the Transition Services Agreement, the Transition Services Agreement, the Transition Services Agreement shall control. In the case of any conflict between this Agreement and the Intellectual Property Matters Agreement in relation to any matters addressed by the Intellectual Property Matters Agreement, the Intellectual Property Matters Agreement shall control. In the case of any conflict between this Agreement and a Colocation Services Agreement in relation to any matters addressed by the Colocation Services Agreement, the Colocation Services Agreement shall control. In the case of any conflict between this Agreement and the Data Sharing Addendum in relation to any matters addressed by the Product Development Agreement in relation to any matters addressed by the Product Development Agreement, the Product Development Agreement shall control.

# ARTICLE V CERTAIN OTHER MATTERS

#### 5.1 Insurance Matters.

- (a) eBay and PayPal agree to cooperate in good faith to provide for an orderly transition of insurance coverage from the date hereof through the Effective Time. In no event shall eBay, any other member of the eBay Group or any eBay Indemnified Party have Liability or obligation whatsoever to any member of the PayPal Group in the event that any insurance policy or other contract or policy of insurance shall be terminated or otherwise cease to be in effect for any reason, shall be unavailable or inadequate to cover any Liability of any member of the PayPal Group for any reason whatsoever, or shall not be renewed or extended beyond the current expiration date.
- (b) From and after the Effective Time, with respect to any losses, damages and Liability incurred by any member of the PayPal Group prior to the Effective Time, eBay will provide PayPal with access to, and PayPal may, upon prior written notice to eBay in accordance with the procedures set forth on Schedule 5.1(b), make claims under, eBay's policies or contracts of insurance in place immediately prior to the Effective Time and eBay's historical policies of insurance, but solely to the extent that such policies provided coverage for members of the PayPal Group prior to the Effective Time; provided, that such access to, and the right to make claims under, such insurance policies, shall be subject to the terms and conditions of such insurance policies, including any limits on coverage or scope, any deductibles and other fees and expenses, and shall be subject to the following additional conditions:

- (i) PayPal shall report any claim to eBay, as promptly as practicable, and in any event in sufficient time so that such claim may be made in accordance with eBay's claim reporting procedures in effect immediately prior to the Effective Time (or in accordance with any modifications to such procedures after the Effective Time communicated by eBay to PayPal in writing);
- (ii) PayPal and the members of the PayPal Group shall indemnify, hold harmless and reimburse eBay and the members of the eBay Group for any deductibles, self-insured retention (other than any such retention under an eBay Group captive insurance arrangement), fees and expenses incurred by eBay or any members of the eBay Group to the extent resulting from any access to, any claims made by PayPal or any other members of the PayPal Group under, any insurance provided pursuant to this Section 5.1(b), including any indemnity payments, settlements, judgments, legal fees and allocated claims expenses and claim handling fees, whether such claims are made by PayPal, its employees or third Persons (it being understood that amounts recovered under an eBay Group captive insurance arrangement shall not be deemed to be fees and expenses incurred by eBay or any member of the eBay Group); and
- (iii) PayPal shall exclusively bear (and neither eBay nor any members of the eBay Group shall have any obligation to repay or reimburse PayPal or any member of the PayPal Group for) and shall be liable for all uninsured, uncovered, unavailable or uncollectible amounts of all such claims made by PayPal or any member of the PayPal Group under the policies as provided for in this Section 5.1(b). In the event an insurance policy aggregate is exhausted, or believed likely to be exhausted, due to noticed claims, the PayPal Group, on the one hand, and the eBay Group, on the other hand, shall be responsible for their pro rata portion of the reinstatement premium, if any, based upon the losses of such Group submitted to eBay's insurance carrier(s) (including any submissions prior to the Effective Time). To the extent that the eBay Group or the PayPal Group is allocated more than its pro rata portion of such premium due to the timing of losses submitted to eBay's insurance carrier(s), the other party shall promptly pay the first party an amount so that each Group shall be properly allocated its pro rata portion of the reinstatement premium. Subject to the following sentence, eBay may elect not to reinstate the policy aggregate. In the event that eBay elects not to reinstate the policy aggregate, it shall provide prompt written notice to PayPal, and PayPal may direct eBay in writing to, and eBay shall, in such case, reinstate the policy aggregate; provided, that PayPal shall then be responsible for all reinstatement premiums and other costs associated with such reinstatement.

In the event that any member of the eBay Group incurs any losses, damages or Liability prior to or in respect of the period prior to the Effective Time for which such member of the eBay Group is entitled to coverage under PayPal' s insurance policies, the same process pursuant to this Section 5.1(b) shall apply, substituting "eBay" for "PayPal" and "PayPal" for "eBay."

- (c) Except as provided in Section 5.1(b), from and after the Effective Time, neither PayPal nor any member of the PayPal Group shall have any rights to or under any of the insurance policies of eBay or any other member of the eBay Group. At the Effective Time, PayPal shall have in effect all insurance programs required to comply with PayPal's contractual obligations and such other insurance policies required by Law or as reasonably necessary or appropriate for companies operating a business similar to PayPal's. Such insurance programs may include general liability, commercial auto liability, workers' compensation, employer's liability, product liability, professional services liability, property, cargo, employment practices liability, employee dishonesty/crime, directors' and officers' liability and fiduciary liability.
- (d) Neither PayPal nor any member of the PayPal Group, in connection with making a claim under any insurance policy of eBay or any member of the eBay Group pursuant to this Section 5.1, shall take any action (other than the act of making the claim) that would be reasonably likely to (i) have an adverse impact on the then-current relationship between eBay or any member of the eBay Group, on the one hand, and the applicable insurance company, on the other hand; (ii) result in the applicable insurance company terminating or reducing coverage, or increasing the amount of any premium owed by eBay or any member of the eBay Group under the applicable insurance policy; or (iii) otherwise compromise, jeopardize or interfere with the rights of eBay or any member of the eBay Group under the applicable insurance policy. All payments and reimbursements by PayPal pursuant to this Section 5.1 will be made within thirty (30) days after PayPal's receipt of an invoice therefor from eBay. If eBay incurs costs to enforce PayPal's obligations herein, PayPal agrees to indemnify and hold harmless eBay for such enforcement costs, including reasonable attorneys' fees pursuant to Section 4.6(b).
- (e) eBay shall retain responsibility for and have the exclusive right to control Insurance Administration of its insurance policies and programs and any and all other rights with respect to its insurance policies and programs, including the right to exhaust, settle, release, commute, buyback or otherwise resolve disputes with respect to any of its insurance policies and programs and to amend, modify or waive any rights under any such insurance policies and programs, notwithstanding whether any such policies or programs apply to any PayPal Liabilities and/or claims PayPal has made or could make in the future, and no member of the PayPal Group shall (without the prior written consent of eBay) erode, exhaust, settle, release, commute, buyback or otherwise resolve disputes with eBay's insurers with respect to any of eBay's insurance policies and programs, or amend, modify or waive any rights under any such insurance policies and programs. PayPal shall cooperate with eBay and share such information as is reasonably necessary to permit eBay to manage and conduct its insurance matters as it deems appropriate. Neither eBay nor any of the members of the eBay Group shall have any obligation to secure extended reporting for any claims under any Liability policies of eBay or any member of the eBay Group for any acts or omissions by any member of the PayPal Group incurred prior to the Effective Time.
- (f) eBay shall, and shall cause the members of the eBay Group to, (i) use commercially reasonable efforts, at PayPal's reasonable request (and provided that PayPal complies with the requirements of Section 5.1(b)), to assist PayPal in making claims under the eBay insurance policies described in Section 5.1(b), (ii) notify PayPal within thirty (30) days of any election by eBay to control any claim under an eBay insurance policy or program to the extent such claim relates to a PayPal Asset and/or PayPal Liability and (iii) promptly (and in any event within thirty (30) days after eBay's receipt thereof) pay over to PayPal or the applicable member of the PayPal Group any Insurance Proceeds that are received by eBay or any member of the eBay Group in respect of such claims.

- (g) This Agreement shall not be considered as an attempted assignment of any policy of insurance or as a contract of insurance and shall not be construed to waive any right or remedy of any member of the eBay Group in respect of any insurance policy or any other contract or policy of insurance.
- (h) PayPal does hereby, for itself and each other member of the PayPal Group, agree that no member of the eBay Group shall have any Liability whatsoever as a result of the insurance policies and practices of eBay and the members of the eBay Group as in effect at any time, including as a result of the level or scope of any such insurance, the creditworthiness of any insurance carrier, the terms and conditions of any policy, the adequacy or timeliness of any notice to any insurance carrier with respect to any claim or potential claim or otherwise.
- 5.2 <u>Directors and Officers Insurance</u>. Prior to the Effective Time, eBay shall obtain and fully pay for a directors and officers liability run-off insurance policy and a fiduciary liability run-off insurance policy, in each case for claims made after the Effective Time covering wrongful acts that have occurred prior to and through the Effective Time and arising out of or relating to PayPal, the other members of the PayPal Group or the PayPal Business (as the PayPal Business exists as of immediately after the Effective Time), with a policy period of at least six (6) years from and after the Effective Time, covering (a) any Persons who, as of or at any time prior to the Effective Time, are or have been directors or officers of eBay or any other member of the eBay Group; (b) any Persons who, as of or at any time prior to the Effective Time, are or have been directors or officers of PayPal or the other members of the PayPal Group; and (c) eBay, the other members of the eBay Group, PayPal, the other members of the PayPal Business (as the PayPal Business exists as of immediately after the Effective Time). Such directors and officers liability run-off insurance policy shall be consistent in all material respects with the directors and officers liability insurance policy maintained by eBay as of the Effective Time (except for the policy period and provisions excluding coverage for wrongful acts occurring after the Effective Time).
- 5.3 <u>Late Payments</u>. Except as expressly provided to the contrary in this Agreement or in any Ancillary Agreement, any amount not paid when due pursuant to this Agreement or any Ancillary Agreement (and any amounts billed or otherwise invoiced or demanded and properly payable that are not paid within thirty (30) days of such bill, invoice or other demand) shall accrue interest at a rate per annum equal to Prime Rate plus two percent (2%).
- 5.4 <u>Inducement</u>. PayPal acknowledges and agrees that eBay's willingness to cause, effect and consummate the Separation and the Distribution has been conditioned upon and induced by PayPal's covenants and agreements in this Agreement and the Ancillary Agreements, including PayPal's assumption of the PayPal Liabilities pursuant to the Separation and the provisions of this Agreement and PayPal's covenants and agreements contained in <u>Article IV</u>.

- 5.5 <u>Post-Effective Time Conduct</u>. The Parties acknowledge that, after the Effective Time, each Party shall be independent of the other Party, with responsibility for its own actions and inactions and its own Liabilities relating to, arising out of or resulting from the conduct of its business, operations and activities following the Effective Time, except as may otherwise be provided in any Ancillary Agreement, and each Party shall (except as otherwise provided in <u>Article IV</u>) use commercially reasonable efforts to prevent such Liabilities from being inappropriately borne by the other Party.
- 5.6 <u>Conduct of Certain Intellectual Property Matters</u>. Commencing as of the Effective Time, the Parties will cooperate and coordinate on the conduct of the defense or prosecution of the Joint Proceedings, eBay Proceedings, and PayPal Proceedings as set forth in <u>Schedule 5.6</u>. The provisions of <u>Sections 4.2</u> through <u>4.10</u> hereof shall not apply with respect to any such Joint Proceedings, eBay Proceedings or PayPal Proceedings, which shall be governed by <u>Schedule 5.6</u>.

# ARTICLE VI EXCHANGE OF INFORMATION; CONFIDENTIALITY

- 6.1 Agreement for Exchange of Information.
- (a) Subject to Section 6.9, any other applicable confidentiality obligations, any Ancillary Agreement or any other agreement between the Parties, each of eBay and PayPal, on behalf of itself and each member of its respective Group, agrees to use commercially reasonable efforts to provide or make available, or cause to be provided or made available, to the other Party and the members of such other Party's Group, at any time before, on or after the Effective Time, as soon as reasonably practicable after written request therefor. any information (or a copy thereof) in the possession or under the control of such Party or its Group which the requesting Party or its Group to the extent that (i) such information relates (A) to the PayPal Business, or any PayPal Asset or PayPal Liability, if PayPal is the requesting Party, or (B) to the eBay Business, or any eBay Asset or eBay Liability, if eBay is the requesting Party; (ii) such information is required by the requesting Party to comply with its obligations under this Agreement or any Ancillary Agreement; or (iii) such information is required by the requesting Party to comply with any obligation imposed by any Governmental Authority; provided, that if the Party to whom the request has been made determines that, in the reasonable good faith judgment of such Party, any such provision of information could be detrimental to the Party providing the information, then the Parties shall use commercially reasonable efforts to permit compliance with such obligations to the extent and in a manner that avoids any such harm or consequence. Notwithstanding the foregoing, this Section 6.1 shall not require the Party to whom the request has been made to provide such information if such Party determines that doing so would, in the reasonable good faith judgment of such Party, reasonably be expected to result in any violation of any Law or agreement or waive any privilege available under applicable Law, including any attorney-client privilege; provided, that the Parties shall use commercially reasonable efforts to cooperate in seeking to find a way to permit compliance with such obligations to the extent and in a manner that avoids such consequence. The Party providing information pursuant to this Section 6.1 shall only be obligated to provide such information in the form, condition and format in which it then exists, and in no event shall such Party be required to perform any improvement, modification, conversion, updating or reformatting of any such information, and nothing in this Section 6.1 shall expand the obligations of a Party under Section 6.4.

- (b) Without limiting the generality of the foregoing, until the first PayPal fiscal year end during which the Distribution Date occurs (and for a reasonable period of time afterwards as required for each Party to prepare consolidated financial statements or complete a financial statement audit for the fiscal year during which the Distribution Date occurs), each Party shall use its commercially reasonable efforts to cooperate with the other Party's information requests to enable (i) the other Party to meet its timetable for dissemination of its earnings releases, financial statements and management's assessment of the effectiveness of its disclosure controls and procedures and its internal control over financial reporting in accordance with Items 307 and 308, respectively, of Regulation S-K promulgated under the Exchange Act; and (ii) the other Party's accountants to timely complete their review of the quarterly financial statements and audit of the annual financial statements, including, to the extent applicable to such Party, its auditor's audit of its internal control over financial reporting and management's assessment thereof in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, the SEC's and Public Company Accounting Oversight Board's rules and auditing standards thereunder and any other applicable Laws.
- (c) Without limiting the generality of the foregoing, each Party shall deliver to the other Party a reasonably complete draft (to the extent practicable) of (i) its first quarterly report on Form 10-Q to be filed with the Commission that includes its respective financial statements, (ii) its first annual report on Form 10-K to be filed with the Commission that includes its respective annual financial statements in the form expected to be covered by the audit report of such Party's independent auditor and (iii) the proxy materials to be filed with the Commission in respect of such Party's first annual meeting of stockholders following the Distribution Date (the documents described in clauses (i), (ii) and (iii), the "Financial Reporting and Proxy Materials") at least fifteen (15) days prior to the expected date of filing and to deliver to the other Party any supplements, amendments or significant revisions following such delivery. Each Party shall notify the other Party as soon as reasonably practicable after it becomes aware of any material accounting differences between its Financial Reporting and Proxy Materials and the other Party's Financial Reporting and Proxy Materials with respect to transactions or activities conducted prior to or at the Effective Time, and the Parties shall subsequently confer and use commercially reasonable efforts to consult with each other in good faith and resolve such differences prior to the filing of the applicable Financial Reporting and Proxy Materials.
- 6.2 <u>Ownership of Information</u>. The provision of any information pursuant to <u>Section 6.1</u> or <u>Section 6.7</u> shall not affect the ownership of such information (which shall be determined solely in accordance with the terms of this Agreement and the Ancillary Agreements), or constitute a grant of rights in or to any such information.
- 6.3 <u>Compensation for Providing Information</u>. Subject to any Ancillary Agreement or any other agreement between the Parties, the Party requesting information agrees to reimburse the other Party for the reasonable costs, if any, of creating, gathering, copying, transporting and otherwise complying with the request with respect to such information (including any reasonable costs and expenses incurred in any review of information for purposes of protecting the Privileged Information of the providing Party or in connection with the

restoration of backup media for purposes of providing the requested information). Except as may be otherwise specifically provided elsewhere in this Agreement, any Ancillary Agreement or any other agreement between the Parties, such costs shall be computed in accordance with the providing Party's standard methodology and procedures as provided to the other Party from time to time.

- 6.4 Record Retention. To facilitate the possible exchange of information pursuant to this Article VI and other provisions of this Agreement after the Effective Time, the Parties agree to use their commercially reasonable efforts, which shall be no less rigorous than those used for retention of such Party's own information, to retain all information in their respective possession or control on the Effective Time (including information that is subject to an LHO) in accordance with the policies of eBay as in effect on the Effective Time or such other policies as may be adopted by eBay after the Effective Time (provided, that in the case of PayPal, eBay notifies PayPal of any such change). Except in accordance with its, or its applicable Subsidiaries', policies and ordinary course practices, no Party will destroy, or permit any of its Subsidiaries to destroy, any information that would, in accordance with such policies or ordinary course practices, be archived or otherwise filed in a centralized filing system by such party or its applicable Subsidiaries and, without limiting the foregoing, comply with the requirements of any LHO that relates to (x) any Action that is pending as of the Effective Time; or (y) any Action that arises or becomes threatened or reasonably anticipated after the Effective Time as to which such Party or its Subsidiaries has received a notice of the applicable LHO from the other Party. Notwithstanding anything in this Article VI to the contrary, (a) the Tax Matters Agreement shall govern the retention of Tax related records and the exchange of Tax related information, (b) the Employee Matters Agreement shall govern the retention of employment and benefits related records and (c) the Data Sharing Addendum will govern the retention of the records specified therein.
- 6.5 <u>Limitations of Liability</u>. Neither Party shall have any Liability to the other Party in the event that any information exchanged or provided pursuant to this Agreement is found to be inaccurate in the absence of gross negligence or willful misconduct by the Party providing such information. Neither Party shall have any Liability to any other Party if any information is destroyed after commercially reasonable efforts by such Party to comply with the provisions of Section 6.4.
  - 6.6 Other Agreements Providing for Exchange of Information.
- (a) The rights and obligations granted under this <u>Article VI</u> are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange, retention or confidential treatment of information set forth in any Ancillary Agreement.
- (b) Any party that receives, pursuant to a request for information in accordance with this <u>Article VI</u>, Tangible Information that is not relevant to its request shall (i) return it to the providing Party or, at the providing Party's request, destroy such Tangible Information; and (ii) deliver to the providing Party written confirmation that such Tangible Information was returned or destroyed, as the case may be, which confirmation shall be signed by an authorized representative of the requesting Party.

# 6.7 Production of Witnesses; Records; Cooperation.

- (a) After the Effective Time, except in the case of an adversarial Action or Dispute between eBay and PayPal or as prohibited by applicable Law, or any members of their respective Groups, each Party shall use its reasonable best efforts (which shall not impose undue burden on such Party) to make available to the other Party, upon written request, the former and then-current directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its possession, custody or control, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any Action in which the requesting Party (or member of its Group) may from time to time be involved, regardless of whether such Action is a matter with respect to which indemnification may be sought hereunder. The requesting Party shall bear all costs and expenses in connection therewith.
- (b) If an Indemnifying Party chooses to defend any Third-Party Claim, the other Party shall make available to such Indemnifying Party (without undue burden to such other Party), upon written request, the former and then-current directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its possession, custody or control, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with such defense, or such prosecution, evaluation or pursuit, as the case may be, and shall otherwise cooperate in such defense, or such prosecution, evaluation or pursuit, as the case may be.
- (c) Without limiting the foregoing, the Parties shall cooperate and consult with each other to the extent reasonably necessary with respect to any Actions.
- (d) The obligation of the Parties to provide witnesses pursuant to this <u>Section 6.7</u> is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to provide as witnesses inventors and other officers without regard to whether the witness or the employer of the witness could assert a possible business conflict (subject to the exception set forth in the first sentence of <u>Section 6.7(a)</u>).

# 6.8 Privileged Matters.

(a) The Parties recognize that legal and other professional services that have been and will be provided prior to the Effective Time (whether by outside counsel, in-house counsel or other legal professionals) have been and will be rendered for the collective benefit of each of the members of the eBay Group and the PayPal Group, and that each of the members of the eBay Group and the PayPal Group shall be deemed to be the client with respect to such services for the purposes of asserting all privileges which may be asserted under applicable Law in connection therewith. The Parties recognize that legal and other professional services will be provided following the Effective Time, which services will be rendered solely for the benefit of the eBay Group or the PayPal Group, as the case may be.

# (b) The Parties agree as follows:

- (i) eBay shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the eBay Business and not to the PayPal Business, whether or not the Privileged Information is in the possession or under the control of any member of the eBay Group or any member of the PayPal Group. eBay shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the eBay Specified Actions or to any eBay Liabilities resulting from any other Actions that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under the control of any member of the eBay Group or any member of the PayPal Group; and
- (ii) PayPal shall be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the PayPal Business and not to the eBay Business, whether or not the Privileged Information is in the possession or under the control of any member of the PayPal Group or any member of the eBay Group. PayPal shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges and immunities in connection with any Privileged Information that relates solely to the PayPal Specified Actions or to any PayPal Liabilities resulting from any other Actions that are now pending or may be asserted in the future, whether or not the Privileged Information is in the possession or under the control of any member of the PayPal Group or any member of the eBay Group.
- (iii) If the Parties do not agree as to whether certain information is Privileged Information, then such information shall be treated as Privileged Information, and the Party that believes that such information is Privileged Information shall be entitled to control the assertion or waiver of all privileges and immunities in connection with any such information until such time as it is finally judicially determined that such information is not Privileged Information, unless the Parties otherwise agree. The Parties shall use the procedures set forth in <a href="https://example.com/Article VII">Article VII</a> to resolve any disputes as to whether any information relates solely to the eBay Business, solely to the PayPal Business, or to both the eBay Business and the PayPal Business.
- (c) Subject to the remaining provisions of this Section 6.8, the Parties agree that they shall have a shared privilege or immunity with respect to all privileges and immunities not allocated pursuant to Section 6.8(b) and all privileges and immunities relating to any Actions or other matters that involve both Parties (or one or more members of their respective Groups) and in respect of which both Parties have Liabilities under this Agreement, and that no such shared privilege or immunity may be waived by either Party without the written consent of the other Party. The Parties will enter into common interest or joint defense agreements as deemed necessary to preserve privilege, allow coordination of defenses, and avoid waivers of privilege in connection with any Privileged Information that relates to Shared Contingent Liabilities, whether or not the Privileged Information is in the possession or under the control of any member of the PayPal Group or any member of the eBay Group.

- (d) If any Dispute arises between the Parties or any members of their respective Group regarding whether a privilege or immunity should be waived to protect or advance the interests of either Party and/or any member of their respective Groups, each Party agrees that it shall (i) negotiate with the other Party in good faith; (ii) endeavor to minimize any prejudice to the rights of the other Party; and (iii) not unreasonably withhold consent to any request for waiver by the other Party. Further, each Party specifically agrees that it shall not withhold its consent to the waiver of a privilege or immunity for any purpose except in good faith to protect its own legitimate interests.
- (e) Subject to Section 6.9, in the event of any adversarial Action or Dispute between eBay and PayPal, or any members of their respective Groups, either Party may waive a privilege in which the other Party or member of such other Party's Group has a shared privilege, without obtaining consent pursuant to Section 6.8(c); provided, that such waiver of a shared privilege shall be effective only as to the use of information with respect to the Action or Dispute between the Parties and/or the applicable members of their respective Groups, and shall not operate as a waiver of the shared privilege with respect to any Third Party.
- (f) Upon receipt by either Party, or by any member of its respective Group, of any subpoena, discovery or other request (or of written notice that it will or has received such subpoena, discovery or other request) that may reasonably be expected to result in the production or disclosure of Privileged Information subject to a shared privilege or immunity or as to which another Party has the sole right hereunder to assert a privilege or immunity, or if either Party obtains knowledge or becomes aware that any of its, or any member of its respective Group's, current or former directors, officers, agents or employees have received any subpoena, discovery or other requests (or have received written notice that they will or have received such subpoena, discovery or other requests) that may reasonably be expected to result in the production or disclosure of such Privileged Information, such Party shall promptly notify the other Party of the existence of the request (which notice shall be delivered to such other Party no later than five (5) business days following the receipt of (or of written notice that it will or has received) any such subpoena, discovery or other request) and shall provide the other Party a reasonable opportunity to review the Privileged Information and to assert any rights it or they may have, under this Section 6.8 or otherwise, to prevent the production or disclosure of such Privileged Information; provided, that if such Party is prohibited by applicable Law from disclosing the existence of the request, such Party shall provide written notice of such related information for which disclosure is not prohibited by applicable Law and use commercially reasonable efforts to inform the other Party of any related information such Party determines, in its discretion, is necessary or appropriate for the other Party to be informed of to enable the other Party to review the Privileged Information and to assert its rights, under this Section 6.8 or otherwise, to prevent the production or disclosure of such Privileged Information.
- (g) Any furnishing of, or access or transfer of, any information pursuant to this Agreement is made in reliance on the agreement of eBay and PayPal set forth in this Section 6.8 and in Section 6.9 to maintain the confidentiality of Privileged Information and to assert and maintain all applicable privileges and immunities. The Parties agree that their respective rights to any access to information, witnesses and other Persons, the furnishing of notices and documents and other cooperative efforts between the Parties contemplated by this Agreement, and the transfer of Privileged Information between the Parties and members of their

respective Groups pursuant to this Agreement, shall not be deemed a waiver of any privilege that has been or may be asserted under this Agreement or otherwise. The Parties further agree that (i) the exchange by one Party to the other Party of any Privileged Information that should not have been transferred pursuant to the terms of this <u>Article VI</u> shall not be deemed to constitute a waiver of any privilege or immunity that has been or may be asserted under this Agreement or otherwise with respect to such Privileged Information; and (ii) the Party receiving such Privileged Information shall promptly return such Privileged Information to the Party who has the right to assert the privilege or immunity.

(h) In connection with any matter contemplated by <u>Section 6.7</u> or this <u>Section 6.8</u>, the Parties agree to, and to cause the applicable members of their Group to, use reasonable efforts to maintain their respective separate and joint privileges and immunities, including by executing joint defense and/or common interest agreements where necessary or useful for this purpose.

#### 6.9 Confidentiality.

(a) Confidentiality. Subject to Section 6.10 and any Ancillary Agreement, from and after the Effective Time until the five (5) year anniversary of the Effective Time (other than in the case of any item of Technical Information, for which the obligations in this Section 6.9 will continue until such time as any of the exceptions set forth in clauses (A) through (C) of this Section 6.9(a) have been satisfied with respect to such item of Technical Information), each of eBay and PayPal, on behalf of itself and each member of its respective Group, agrees to hold, and to cause its respective Representatives to hold, in strict confidence, with at least the same degree of care that applies to eBay's confidential and proprietary information pursuant to policies in effect as of the Effective Time, all confidential and proprietary information concerning the other Party or any member of the other Party's Group or their respective businesses that is either (i) in its possession (including confidential and proprietary information in its possession prior to the date hereof) or (ii) furnished by any such other Party or any member of such Party's Group or their respective Representatives at any time pursuant to this Agreement, any Ancillary Agreement or otherwise, and shall not use any such confidential and proprietary information other than for such purposes as shall be expressly permitted hereunder or thereunder, except, in each case, to the extent that such confidential and proprietary information is or was (A) in the public domain or generally available to the public, other than as a result of a disclosure by such Party or any member of such Party's Group or any of their respective Representatives in violation of this Agreement, (B) later lawfully acquired from other sources by such Party (or any member of such Party's Group) which sources are not themselves bound by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such confidential and proprietary information, or (C) independently developed or generated without reference to or use of any proprietary or confidential information of the other Party or any member of such Party's Group. If any confidential and proprietary information of one Party or any member of its Group is disclosed to the other Party or any member of such other Party's Group in connection with providing services to such first Party or any member of such first Party's Group under this Agreement or any Ancillary Agreement, then such disclosed confidential and proprietary information shall be used only as required to perform such services.

- (b) No Release; Return or Destruction. Each Party agrees not to release or disclose, or permit to be released or disclosed, any information addressed in Section 6.9(a) to any other Person, except its Representatives who need to know such information in their capacities as such (who shall be advised of their obligations hereunder with respect to such information), and except in compliance with Section 6.10. Without limiting the foregoing, when any such information is no longer needed for the purposes contemplated by this Agreement or any Ancillary Agreement, each Party shall, at its option and as promptly as practicable after receiving a written request from the other Party, either (i) return to the other Party all such information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or (ii) certify to the other Party that it has destroyed such information (and such copies thereof and such notes, extracts or summaries based thereon); provided, that such Party's Representatives may retain one (1) copy of such information to the extent required by applicable Law or professional standards, and shall not be required to destroy any such information located in back-up, archival electronic storage).
- (c) Third-Party Information; Privacy or Data Protection Laws. Each Party acknowledges that it and members of its Group may presently have and, following the Effective Time, may gain access to or possession of confidential or proprietary information of, or personal information relating to, Third Parties (i) that was received under confidentiality or non-disclosure agreements entered into between such Third Parties, on the one hand, and the other Party or members of such Party's Group, on the other hand, prior to the Effective Time; or (ii) that, as between the Parties, was originally collected by the other Party or members of such Party's Group and that may be subject to and protected by privacy, data protection or other applicable Laws. Subject to the Data Sharing Addendum and any other Ancillary Agreement, each Party agrees that it shall hold, protect and use, and shall cause the members of its Group and its and their respective Representatives to hold, protect and use, in strict confidence the confidential and proprietary information of, or personal information relating to, Third Parties in accordance with privacy, data protection or other applicable Laws and the terms of any agreements that were either entered into before the Effective Time or affirmative commitments or representations that were made before the Effective Time by, between or among the other Party or members of the other Party's Group, on the one hand, and such Third Parties, on the other hand.
- (d) *Residual Information*. Notwithstanding anything to the contrary herein, each Party and the members of such Party's Group shall be free to use for any purpose the Residual Information resulting from access Representatives of such Party or the members of its Group have had to confidential and proprietary information concerning the other Party or any member of the other Party's Group. The Parties acknowledge and understand that the foregoing does not constitute a license under any patents or copyrights.
- 6.10 <u>Protective Arrangements</u>. In the event that a Party or any member of its Group either determines on the advice of its counsel that it is required to disclose any information pursuant to applicable Law or receives any request or demand under lawful process or from any Governmental Authority to disclose or provide information of the other Party (or any member of the other Party's Group) that is subject to the confidentiality provisions hereof, such Party shall notify the other Party (to the extent legally permitted) as promptly as practicable under the circumstances prior to disclosing or providing such information and shall cooperate, at such other Party's cost and expense, in seeking any appropriate protective order reasonably

requested by the other Party. In the event that such other Party fails to receive such appropriate protective order in a timely manner and the Party receiving the request or demand reasonably determines that its failure to disclose or provide such information will actually prejudice the Party receiving the request or demand, then the Party that received such request or demand may thereafter disclose or provide information to the extent required by such Law (as so advised by its counsel) or by lawful process or such Governmental Authority, and the disclosing Party shall promptly provide the other Party with a copy of the information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such information was disclosed, in each case to the extent legally permitted.

### ARTICLE VII DISPUTE RESOLUTION

7.1 Good-Faith Negotiation. Subject to Section 7.5, either Party seeking resolution of any dispute, controversy or claim arising out of or relating to this Agreement or Ancillary Agreement (including regarding whether any Assets are PayPal Assets, any Liabilities are PayPal Liabilities or the validity, interpretation, breach or termination of this Agreement or any Ancillary Agreement) (a "Dispute") that cannot be resolved by the Transition Committee, shall provide written notice thereof to the other Party (the "Initial Notice"), and within thirty (30) days of the delivery of the Initial Notice, the Parties shall attempt in good faith to negotiate a resolution of the Dispute. The negotiations shall be conducted by executives who hold, at a minimum, the title of senior vice president or general counsel and who have authority to settle the Dispute. All such negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties are unable for any reason to resolve a Dispute within thirty (30) days after the delivery of such notice or if a Party reasonably concludes that the other Party is not willing to negotiate as contemplated by the preceding sentences of this Section 7.1, the Dispute shall be submitted to the Escalation Committee.

7.2 Escalation Committee. As of the Effective Time, the Parties shall establish an escalation committee (the "Escalation Committee") with six (6) members, consisting of the Chief Executive Officer of each of PayPal and eBay, the Chairman of the board of each of PayPal and eBay, a member of the eBay Board who shall be appointed by eBay and a member of the board of directors of PayPal who shall be appointed by PayPal (together with the member of the eBay Board, the "Other Board Members"). Each of eBay and PayPal will use its good faith efforts to avoid replacing the initial Other Board Members for the first two (2) years after the Effective Time. Thereafter, eBay and PayPal will, to the extent practicable, honor the other Party's reasonable objections to any replacements of Other Board Members. While any person is serving as a member of the Escalation Committee, such person may not designate any substitute or proxy for purposes of attending or voting at an Escalation Committee meeting. The Escalation Committee will meet at least annually and will make a good faith effort to promptly (and in any event within forty-five (45) days of the dispute being referred to the Escalation Committee) resolve all Disputes referred to it. Escalation Committee decisions made with the consent of at least four (4) members, including at least one (1) eBay member and at least one PayPal member, will be binding on eBay, PayPal and their respective Group members. If the Escalation Committee does not agree to a resolution of a Dispute within the forty-five (45)-day period following the referral of such Dispute to the Escalation Committee, the Parties may refer the Dispute to mediation in accordance with Section 7.3.

7.3 Non-Binding Mediation. Any Dispute not resolved pursuant to Section 7.2 shall, upon the written request of a Party (a "Mediation Request"), be submitted to nonbinding mediation in accordance with the then current JAMS International Mediation Rules (the "Mediation Rules"), except as modified herein. The mediation shall be held in (i) San Jose, California or (ii) such other place as the Parties may mutually agree in writing. The Parties shall have twenty (20) days from receipt by a Party of a Mediation Request to agree on a mediator. If no mediator has been agreed upon by the Parties within twenty (20) days of receipt by a party of a Mediation Request, then a Party may request (on written notice to the other Party), that JAMS appoint a mediator in accordance with the Mediation Rules. All mediation pursuant to this clause shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence, and no oral or documentary representations made by the Parties during such mediation shall be admissible for any purpose in any subsequent proceedings. No Party shall disclose or permit the disclosure of any information about the evidence adduced or the documents produced by the other Party in the mediation proceedings or about the existence, contents or results of the mediation without the prior written consent of such other Party, except in the course of a judicial or regulatory proceeding or as may be required by Law or requested by a Governmental Authority or securities exchange. Before making any disclosure permitted by the preceding sentence, the Party intending to make such disclosure shall, to the extent reasonably practicable, give the other Party reasonable written notice of the intended disclosure and afford the other party a reasonable opportunity to protect its interests. If the Dispute has not been resolved within sixty (60) days of the appointment of a mediator, or within ninety (90) days after receipt by a Party of a Mediation Request (whichever occurs sooner), or within such longer period as the Parties may agree to in writing, then the Dispute shall be submitted to binding arbitration in accordance with Section 7.4.

#### 7.4 Arbitration; Litigation.

(a) In the event that a Dispute has not been resolved within sixty (60) days of the appointment of a mediator in accordance with Section 7.3, or within ninety (90) days after receipt by a Party of a Mediation Request (whichever occurs sooner), or within such longer period as the Parties may agree to in writing, then, unless the amount in dispute, inclusive of all claims and counterclaims, totals \$250 million or more or the Dispute involves primarily non-monetary relief (in which case such Dispute shall be addressed in accordance with Section 7.4(e)), such Dispute shall, upon the written request of a Party (an "Arbitration Request") be submitted to be finally resolved by binding arbitration pursuant to the then current CPR Arbitration Commercial Arbitration Rules of the American Arbitration Association (the "Arbitration Rules"). The arbitration shall be held in the same location as the mediation pursuant to Section 7.3. Unless otherwise agreed by the Parties in writing, any Dispute to be decided by binding arbitration pursuant to this Section 7.4 will be decided (i) before a sole independent arbitrator if the amount in dispute, inclusive of all claims and counterclaims, totals \$50 million or less; or (ii) by a panel of three (3) arbitrators if the amount in dispute, inclusive of all claims and counterclaims, totals more than \$50 million but less than \$250 million.

- (b) The panel of three (3) arbitrators will be chosen as follows: (i) within fifteen (15) days from the date of the receipt of the Arbitration Request, each Party will name an arbitrator; and (ii) the two (2) Party-appointed arbitrators will thereafter, within thirty (30) days from the date on which the second of the two (2) arbitrators was named, name a third, independent arbitrator who will act as chairperson of the arbitral tribunal. In the event that either Party fails to name an arbitrator within fifteen (15) days from the date of receipt of the Arbitration Request, then upon written application by either Party, that arbitrator shall be appointed pursuant to the Arbitrator will be appointed pursuant to the Arbitration Rules. If the arbitration will be before a sole independent arbitrator, then the sole independent arbitrator will be appointed by agreement of the Parties within fifteen (15) days of the date of receipt of the Arbitration Request. If the Parties cannot agree to a sole independent arbitrator, then upon written application by either party, the sole independent arbitrator will be appointed pursuant to the Arbitration Rules.
- (c) If the amount in dispute, inclusive of all claims and counterclaims, totals \$25 million or less, then each Party shall provide the arbitrator with its respective resolution of the Dispute, including the net amount to be paid or received by such Party, together with the supporting calculations and analyses prepared with respect thereto, and the arbitrator shall select either the resolution of the Dispute as proposed by eBay or by PayPal; provided, that the arbitrator may award only one or the other of the net amounts so submitted. If the amount in dispute, inclusive of all claims and counterclaims, totals more than \$25 million but less than \$250 million, the arbitrator(s) will have the right to award, on an interim basis, or include in the final award, any monetary relief which it deems proper in the circumstances, including money damages (with interest on unpaid amounts from the due date) and attorneys' fees and costs. The arbitrator(s) will decide the substance of all claims in accordance with applicable Law, including recognized principles of equity, and will honor all claims of privilege recognized by Law. In no event shall the arbitrator(s) award any relief not specifically requested by the parties or award any indirect, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages of the other arising in connection with the transactions contemplated hereby (other than any such Liability with respect to a Third-Party Claim). Upon selection of the arbitrator(s) following any grant of interim relief by a special arbitrator or court pursuant to Section 7.5. the arbitrator(s) may affirm or disaffirm that relief, and the parties will seek modification or rescission of the order entered by the court as necessary to accord with the decision of the arbitrator(s). The award of the arbitrator(s) shall be final and binding on the Parties, and may be enforced in any court of competent jurisdiction. The Parties shall share equally the administration and arbitrator fees associated with the arbitration.
- (d) The initiation of mediation or arbitration pursuant to this <u>Article VII</u> will toll the applicable statute of limitations for the duration of any such proceedings.
- (e) If the amount in dispute, inclusive of all claims and counterclaims, totals \$250 million or more or if the Dispute involves primarily non-monetary relief, then such Dispute shall not be submitted to arbitration, and either Party may commence litigation in the Delaware Court of Chancery (or, if such court does not have subject matter jurisdiction thereof, any other federal or state court located in the State of Delaware with subject matter jurisdiction).

7.5 <u>Litigation and Unilateral Commencement of Arbitration</u>. Notwithstanding the foregoing provisions of this <u>Article VII</u>, (a) a Party may seek preliminary provisional or injunctive judicial relief with respect to a Dispute without first complying with the procedures set forth in <u>Sections 7.1</u> to <u>7.4</u> if such action is reasonably necessary to avoid irreparable damage and (b) either Party may initiate arbitration before the expiration of the periods specified in <u>Sections 7.3</u> and <u>7.4</u> if (i) such Party has submitted a Mediation Request or Arbitration Request, as applicable, and the other party has failed, within the applicable periods set forth in <u>Section 7.3</u>, to agree upon a date for the first mediation session to take place within thirty (30) days after the appointment of such mediator or such longer period as the Parties may agree to in writing or (ii) such Party has failed to comply with <u>Section 7.4</u> in good faith with respect to commencement and engagement in arbitration. In such event, the other Party may commence and prosecute such arbitration unilaterally in accordance with the Arbitration Rules. Immediately following the issuance of any preliminary provisional or injunctive relief pursuant to clause (a) of the immediately preceding sentence, the Party seeking such relief will consent to the stay of any judicial proceedings pending the resolution of the Dispute pursuant to the procedures set forth in <u>Sections 7.1</u> to <u>7.4</u>.

7.6 <u>Conduct During Dispute Resolution Process</u>. Unless otherwise agreed in writing, the Parties shall, and shall cause their respective members of their Group to, continue to honor all commitments under this Agreement and each Ancillary Agreement to the extent required by such agreements during the course of dispute resolution pursuant to the provisions of this <u>Article VII</u>, unless such commitments are the specific subject of the Dispute at issue.

# ARTICLE VIII FURTHER ASSURANCES AND ADDITIONAL COVENANTS

## 8.1 Further Assurances.

- (a) In addition to the actions specifically provided for elsewhere in this Agreement, each of the Parties shall use its reasonable best efforts, prior to, on and after the Effective Time, to take, or cause to be taken, all actions, and to do, or cause to be done, all things, reasonably necessary, proper or advisable under applicable Laws, regulations and agreements to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements.
- (b) Without limiting the foregoing, prior to, on and after the Effective Time, each Party hereto shall cooperate with the other Party, and without any further consideration, but at the expense of the requesting Party, to execute and deliver, or use its reasonable best efforts to cause to be executed and delivered, all instruments, including instruments of conveyance, assignment and transfer, and to make all filings with, and to obtain all Approvals or Notifications of, any Governmental Authority or any other Person under any permit, license, agreement, indenture or other instrument (including any Governmental Approvals) and to take all such other actions as such Party may reasonably be requested to take by the other Party from time to time, consistent with the terms of this Agreement and the Ancillary Agreements, in order to effectuate the provisions and purposes of this Agreement and the Ancillary Agreements, the transfers of the PayPal Assets and the eBay Assets, the assignment and assumption of the PayPal Liabilities and the eBay Liabilities and the other transactions

contemplated hereby and thereby. Without limiting the foregoing, each Party will, at the reasonable request, cost and expense of the other Party, take such other actions as may be reasonably necessary to vest in such other Party good and marketable title to the Assets transferred or allocated to such Party under this Agreement or any of the Ancillary Agreements, free and clear of any Security Interest, if and to the extent it is practicable to do so.

(c) On or prior to the Effective Time, eBay and PayPal in their respective capacities as direct and indirect stockholders of the members of their respective Groups, shall each ratify any actions which are reasonably necessary or desirable to be taken by eBay, PayPal or any of the members of their respective Groups, as the case may be, to effectuate the transactions contemplated by this Agreement and the Ancillary Agreements.

# ARTICLE IX TERMINATION

- 9.1 <u>Termination</u>. This Agreement and all Ancillary Agreements may be terminated and the Distribution may be amended, modified or abandoned at any time prior to the Effective Time by eBay, in its sole and absolute discretion, without the approval or consent of any other Person, including PayPal. After the Effective Time, this Agreement may not be terminated except by an agreement in writing signed by a duly authorized officer of each of the Parties.
- 9.2 <u>Effect of Termination</u>. In the event of any termination of this Agreement prior to the Effective Time, no Party (nor any of its directors, officers or employees) shall have any Liability or further obligation to the other Party by reason of this Agreement.

# ARTICLE X MISCELLANEOUS

- 10.1 Counterparts; Entire Agreement; Corporate Power.
- (a) This Agreement and each Ancillary Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.
- (b) This Agreement, the Ancillary Agreements and the Exhibits, Schedules and appendices hereto and thereto contain the entire agreement between the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties other than those set forth or referred to herein or therein.

- (c) eBay represents on behalf of itself and each other member of the eBay Group, and PayPal represents on behalf of itself and each other member of the PayPal Group, as follows:
  - (i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform this Agreement and each Ancillary Agreement to which it is a party and to consummate the transactions contemplated hereby and thereby; and
  - (ii) this Agreement and each Ancillary Agreement to which it is a party has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms thereof.
- (d) Each Party acknowledges that it and each other Party is executing certain of the Ancillary Agreements by facsimile, stamp or mechanical signature, and that delivery of an executed counterpart of a signature page to this Agreement or any Ancillary Agreement (whether executed by manual, stamp or mechanical signature) by facsimile or by email in portable document format (PDF) shall be effective as delivery of such executed counterpart of this Agreement or any Ancillary Agreement. Each Party expressly adopts and confirms each such facsimile, stamp or mechanical signature (regardless of whether delivered in person, by mail, by courier, by facsimile or by email in portable document format (PDF)) made in its respective name as if it were a manual signature delivered in person, agrees that it will not assert that any such signature or delivery is not adequate to bind such Party to the same extent as if it were signed manually and delivered in person and agrees that, at the reasonable request of the other Party at any time, it will as promptly as reasonably practicable cause each such Ancillary Agreement to be manually executed (any such execution to be as of the date of the initial date thereof) and delivered in person, by mail or by courier.
- 10.2 Governing Law. This Agreement and, unless expressly provided therein, each Ancillary Agreement (and any claims or disputes arising out of or related hereto or thereto or to the transactions contemplated hereby and thereby or to the inducement of any party to enter herein and therein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed by and construed and interpreted in accordance with the Laws of the State of Delaware irrespective of the choice of laws principles of the State of Delaware including all matters of validity, construction, effect, enforceability, performance and remedies.
- 10.3 <u>Assignability</u>. Except as set forth in any Ancillary Agreement, this Agreement and each Ancillary Agreement shall be binding upon and inure to the benefit of the Parties and the parties thereto, respectively, and their respective successors and permitted assigns; <u>provided</u>, that neither Party nor any such party thereto may assign its rights or delegate its obligations under this Agreement or any Ancillary Agreement without the express prior written consent of the other Party hereto or other parties thereto, as applicable. Notwithstanding the foregoing, no such consent shall be required for the assignment of a party's rights and obligations under this Agreement and the Ancillary Agreements (except as may be otherwise provided in any such Ancillary Agreement) in whole (*i.e.*, the assignment of a party's rights and obligations under this Agreement and all Ancillary Agreements all at the same time) in

connection with a change of control of a Party so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party. Nothing herein is intended to, or shall be construed to, prohibit either Party or any member of its Group from being party to or undertaking a change of control.

10.4 Third-Party Beneficiaries. Except for the indemnification rights under this Agreement of any eBay Indemnified Party or PayPal Indemnified Party in their respective capacities as such, (a) the provisions of this Agreement and each Ancillary Agreement are solely for the benefit of the Parties and are not intended to confer upon any Person except the Parties any rights or remedies hereunder, and (b) there are no third-party beneficiaries of this Agreement or any Ancillary Agreement and neither this Agreement nor any Ancillary Agreement shall provide any third person with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement or any Ancillary Agreement.

10.5 <u>Notices</u>. All notices, requests, claims, demands or other communications under this Agreement and, to the extent, applicable and unless otherwise provided therein, under each of the Ancillary Agreements shall be in writing, together with a copy by electronic mail (which shall not constitute notice), and shall be given or made (and shall be deemed to have been duly given or made upon acknowledgment of receipt) by delivery in person, by overnight courier service, or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this <u>Section 10.5</u>):

If to eBay, to:
eBay Inc.
2065 Hamilton Avenue
San Jose, California 95125
Attention: General Counsel
Email: [ ]
If to PayPal, to:
PayPal Holdings, Inc.
2211 North First Street
San Jose, California 95131
Attention: General Counsel
Email: [ ]

A Party may, by notice to the other Party, change the address to which such notices are to be given.

10.6 <u>Severability</u>. If any provision of this Agreement or any Ancillary Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other

than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.

- 10.7 Force Majeure. No Party shall be deemed in default of this Agreement or, unless otherwise expressly provided therein, any Ancillary Agreement for any delay or failure to fulfill any obligation (other than a payment obligation) hereunder or thereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance of such obligations (other than a payment obligation) shall be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement and the Ancillary Agreements, as applicable, as soon as reasonably practicable.
- 10.8 No Set-Off. Except as set forth in any Ancillary Agreement or as otherwise mutually agreed to in writing by the Parties, neither Party nor any member of such Party's Group shall have any right of set-off or other similar rights with respect to (a) any amounts received pursuant to this Agreement or any Ancillary Agreement; or (b) any other amounts claimed to be owed to the other Party or any member of its Group arising out of this Agreement or any Ancillary Agreement.
- 10.9 <u>Publicity</u>. Prior to the Effective Time, each of PayPal and eBay shall consult with each other prior to issuing any press releases or otherwise making public statements with respect to the Separation, the Distribution or any of the other transactions contemplated hereby or under any Ancillary Agreement and prior to making any filings with any Governmental Authority with respect thereto.
- 10.10 Expenses. Except as otherwise expressly set forth in this Agreement or any Ancillary Agreement, or as otherwise agreed to in writing by the Parties, all out-of-pocket fees, costs and expenses incurred prior to the Effective Time in connection with the preparation, execution, delivery and implementation of this Agreement and any Ancillary Agreement, the Separation, the Plan of Reorganization, the Form 10, the Distribution and the consummation of the transactions contemplated hereby and thereby will be borne by eBay and (b) all out-of-pocket fees, costs and expenses incurred following the Effective Time will be borne by the Party or its applicable Subsidiary incurring such fees, costs or expenses.
- 10.11 <u>Headings</u>. The article, section and paragraph headings contained in this Agreement and in the Ancillary Agreements are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement or any Ancillary Agreement.
- 10.12 <u>Survival of Covenants</u>. Except as expressly set forth in this Agreement or any Ancillary Agreement, the covenants, representations and warranties contained in this Agreement and each Ancillary Agreement, and Liability for the breach of any obligations contained herein, shall survive the Separation and the Distribution and shall remain in full force and effect in accordance with their terms.

10.13 <u>Waivers of Default</u>. Waiver by a Party of any default by the other Party of any provision of this Agreement or any Ancillary Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of the other Party. No failure or delay by a Party in exercising any right, power or privilege under this Agreement or any Ancillary Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.

10.14 Specific Performance. Subject to the provisions of Article VII, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement or any Ancillary Agreement, the Party or Parties who are, or are to be, thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief in respect of its or their rights under this Agreement or such Ancillary Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by each of the Parties.

10.15 <u>Amendments</u>. No provisions of this Agreement or any Ancillary Agreement shall be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the Party against whom it is sought to enforce such waiver, amendment, supplement or modification.

10.16 Interpretation. In this Agreement and any Ancillary Agreement, (a) words in the singular shall be deemed to include the plural and vice versa and words of one gender shall be deemed to include the other genders as the context requires; (b) the terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement (or the applicable Ancillary Agreement) as a whole (including all of the Schedules, Exhibits and Appendices hereto and thereto) and not to any particular provision of this Agreement (or such Ancillary Agreement); (c) Article, Section, Schedule, Exhibit and Appendix references are to the Articles, Sections, Schedules, Exhibits and Appendices to this Agreement (or the applicable Ancillary Agreement) unless otherwise specified; (d) unless otherwise stated, all references to any agreement shall be deemed to include the exhibits, schedules and annexes to such agreement; (e) the word "including" and words of similar import when used in this Agreement (or the applicable Ancillary Agreement) shall mean "including, without limitation," unless otherwise specified; (f) the word "or" shall not be exclusive; (g) unless otherwise specified in a particular case, the word "days" refers to calendar days; (h) references to "business day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by law to close in the United States or San Jose, California; (i) references herein to this Agreement or any other agreement contemplated herein shall be deemed to refer to this Agreement or such other agreement as of the

date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified; and (j) unless expressly stated to the contrary in this Agreement or in any Ancillary Agreement, all references to "the date hereof," "the date of this Agreement," "hereby" and "hereupon" and words of similar import shall all be references to [ ], 201[ ].

10.17 <u>Limitations of Liability</u>. Notwithstanding anything in this Agreement to the contrary, neither PayPal or any member of the PayPal Group, on the one hand, nor eBay or any member of the eBay Group, on the other hand, shall be liable under this Agreement to the other for any indirect, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages of the other arising in connection with the transactions contemplated hereby (other than any such Liability to the extent payable to a Third-Party with respect to a Third-Party Claim).

10.18 <u>Performance</u>. eBay will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any Ancillary Agreement to be performed by any member of the eBay Group. PayPal will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement or in any Ancillary Agreement to be performed by any member of the PayPal Group. Each Party (including its permitted successors and assigns) further agrees that it will (a) give timely notice of the terms, conditions and continuing obligations contained in this Agreement and any applicable Ancillary Agreement to all of the other members of its Group and (b) cause all of the other members of its Group not to take any action or fail to take any such action inconsistent with such Party's obligations under this Agreement, any Ancillary Agreement or the transactions contemplated hereby or thereby.

10.19 <u>Mutual Drafting</u>. This Agreement and the Ancillary Agreements shall be deemed to be the joint work product of the Parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

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auth	norized representatives.				
[]					
By:					
	Name:				
	Title:				
[]					
By:					
	Name:				
	Title:				
[Signature Page to Separation and Distribution Agreement]					

IN WITNESS WHEREOF, the Parties have caused this Separation and Distribution Agreement to be executed by their duly

## AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

#### OF

## PAYPAL HOLDINGS, INC.

PayPal Holdings, Inc., a corporation organized and existing under the laws of the State of Delaware, does hereby certify as follows:

- A. The name of the corporation is PayPal Holdings, Inc. The date of the filing of its original certificate of incorporation with the Secretary of State was January 30, 2015.
- B. This amended and restated certificate of incorporation amends, restates and integrates the certificate of incorporation of said corporation (the "original certificate of incorporation") and has been duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "DGCL") by the written consent of its sole stockholder in accordance with Section 228 of the DGCL.
  - C. The text of the original certificate of incorporation is hereby amended and restated to read herein as set forth in full.

#### ARTICLE I

The name of the corporation is PayPal Holdings, Inc. (the "corporation").

#### ARTICLE II

The address of the registered office of the corporation in the State of Delaware is 160 Greentree Drive, Suite 101, City of Dover 19904, County of Kent. The name of its registered agent at that address is National Registered Agents, Inc.

## ARTICLE III

The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

## ARTICLE IV

- A. The total number of shares of all classes of stock which the corporation has the authority to issue is [ ] shares, consisting of two classes: [ ] shares of common stock, \$0.0001 par value per share (the "Common Stock"), and 100,000,000 shares of preferred stock, 0.0001 par value per share (the "Preferred Stock").
- B. Except as may otherwise be provided in this certificate of incorporation, in a Certificate of Designation (as defined below) or as required by law, the holders of the outstanding shares of Common Stock shall have the right to vote on all questions to the exclusion of all other stockholders, each holder of record of Common Stock being entitled to one vote for

each share of Common Stock standing in the name of the stockholder on the books of the corporation.

C. The Board of Directors is authorized, subject to any limitations prescribed by the law of the State of Delaware, to provide for the issuance of the shares of Preferred Stock in one or more series, for such consideration and for such corporate purposes as the Board of Directors (or a duly authorized committee thereof) may from time to time determine, and, by filing a certificate (referred to as a "Certificate of Designation") pursuant to the applicable law of the State of Delaware, to establish from time to time the number of shares to be included in each such series, to fix the designation, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof to the fullest extent now or hereafter permitted by this certificate of incorporation and the laws of the State of Delaware, including, without limitation, voting rights, dividend rights, liquidation rights, redemption rights and conversion rights, as shall be stated and expressed in a resolution or resolutions adopted by the Board of Directors (or such committee thereof) providing for the issuance of, or increase or decrease of the number of shares of, such series of Preferred Stock.

D. Except as otherwise expressly provided in any Certificate of Designation designating any series of Preferred Stock pursuant to the foregoing provisions of this Article IV, any new series of Preferred Stock may be designated, fixed and determined as provided herein by the Board of Directors without approval of the holders of Common Stock or the holders of Preferred Stock, or any series thereof, and any such new series may have powers, preferences and rights, senior to, junior to or pari passu with the rights of the Common Stock, the Preferred Stock, or any future class or series of Preferred Stock or Common Stock. Each series of Preferred Stock shall be distinctly designated. The authority of the Board of Directors with respect to each series of Preferred Stock shall include, but not be limited to, determination of the following:

- (i) the designation of the series, which may be by distinguishing number, letter or title;
- (ii) the number of shares of the series, which number the Board of Directors may thereafter (except where otherwise provided in the Certificate of Designation) increase or decrease (but not below the number of shares thereof then outstanding);
- (iii) the amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative;
- (iv) dates at which dividends, if any, shall be payable;
- (v) the redemption rights and price or prices, if any, for shares of the series;
- (vi) the terms and amount of any sinking fund provided for the purchase or redemption of shares of the series;
- (vii) the amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the corporation;

- (viii) whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of the corporation or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made;
- (ix) restrictions on the issuance of shares of the same series or of any other class or series; and
- (x) the voting rights, if any, of the holders of shares of the series.

## ARTICLE V

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the corporation shall have the power to adopt, amend or repeal by-laws of the corporation (the "Bylaws"), in whole or in part.

## ARTICLE VI

- A. Election of directors need not be by written ballot unless the Bylaws of the corporation shall so provide.
- B. Subject to the rights of the holders of any series of Preferred Stock to elect directors under specified circumstances, the number of directors shall be fixed from time to time exclusively pursuant to a resolution adopted by a majority of the total number of directors that the corporation would have if there were no vacancies.
- C. Each nominee for director, other than those who may be elected by the holders of Preferred Stock under specified circumstances, shall stand for election as a director at the next annual meeting of stockholders and shall, if elected, hold office until the next annual meeting of stockholders and until their respective successors are duly elected and qualified, subject to their earlier death, resignation, retirement or removal from service as a director.
- D. Advance notice of stockholder nominations for the election of directors and of any stockholder proposals to be considered at an annual stockholder meeting shall be given in the manner provided in the Bylaws. Nominations of any person for election to the Board of Directors at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board of Directors, including by any committee or persons appointed by the Board of Directors, (ii) by a stockholder who (1) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the corporation) both at the time of giving the notice provided for in the Bylaws and at the time of the meeting, (2) is entitled to vote at the meeting, and (3) has complied with the procedures set forth in the Bylaws as to such nomination or (iii) by a stockholder or group of stockholders as provided in Clause E of this Article VI. The foregoing Clauses (ii) and (iii) shall be the exclusive means for a stockholder to make any nomination of a

person or persons for election to the Board of Directors at an annual meeting or special meeting (other than, if permitted by Article VII, pursuant to a Special Meeting Request).

- E. Subject to the terms and conditions of this Clause E and the applicable provisions of the Bylaws, the corporation shall include in its proxy statement for an annual meeting of the stockholders of the corporation the name, together with the Required Information (defined below), of any person nominated for election (the "Stockholder Nominee") to the Board of Directors by one or more stockholders that satisfy, the requirements of this Clause E (such person or group, the "Eligible Stockholder"), and that expressly elects at the time of providing the notice required by this Clause E to have its nominee included in the corporation's proxy materials pursuant to this Clause E. Such notice shall consist of all of the information required in a stockholder's notice required by the Bylaws with respect to any director nomination, in proper form, along with a copy of the Eligible Stockholder's Schedule 14N (the "Schedule 14N") that has been or will be filed with the Securities and Exchange Commission (the "Commission") in accordance with Rule 14a-18 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), and any additional information as required to be delivered to the corporation by this Clause E (all such information collectively referred to as the "Notice"), and such Notice shall be delivered to the corporation in accordance with the procedures and at the times set forth in this Clause E. This Clause E shall be the exclusive means by which the corporation may be required (subject to the terms and conditions of this Clause E and the applicable provisions of the Bylaws) to include in its proxy statement for any meeting of the stockholders of the corporation any person nominated for election to the Board of Directors by a stockholder. Without limiting the foregoing:
  - (i) The Notice, to be timely, must be delivered to or mailed and received at the principal executive offices of the corporation within the time periods applicable to stockholder notices of nominations delivered pursuant to the Bylaws and further be updated and supplemented, if necessary, in accordance with the Bylaws. In addition, for the Notice to be timely, an Eligible Stockholder must file or cause to be filed its Schedule 14N with the Commission no later than the thirtieth (30th) day following the final date specified in the Bylaws for delivery of the Notice. In no event shall any adjournment or postponement of an annual meeting, the date of which has been announced by the corporation, commence a new time period for the giving of a Notice. For the avoidance of doubt, the requirement to update and supplement a Notice and to file a Schedule 14N with the Commission shall not allow an Eligible Stockholder to change or add any proposed Stockholder Nominee.
  - (ii) Subject to the provisions of this Clause E(ii), the maximum number of Stockholder Nominees (including Stockholder Nominees that were submitted by an Eligible Stockholder for inclusion in proxy materials of the corporation pursuant to this Clause E but either are subsequently withdrawn, or that the Board of Directors itself determines to nominate for election) appearing in the corporation's proxy materials with respect to any annual meeting of stockholders shall not exceed 20% of the number of directors in office as of the last day on which the Notice may be delivered, or if such amount is not a whole number, the closest whole number below 20% of such number of directors (the "Permitted Number"); provided, that the Permitted Number shall be

reduced by (1) the number of such director candidates for which the corporation shall have received one or more valid stockholder notices nominating director candidates pursuant to Clause D(ii) of this Article VI, (2) the number of directors or director candidates that the corporation has agreed to include in its proxy materials as a nominee pursuant to an agreement, arrangement or other understanding with a stockholder or group of stockholders and (3) the number of directors in office and whom the Board of Directors is renominating for election for whom access to the corporation's proxy materials was previously provided pursuant to this Clause E (other than any such director who has served as a director continuously for at least twenty-four (24) months), but only to the extent that the Permitted Number after such reduction with respect to this clause (3) equals or exceeds one (1); provided, further, that if one or more vacancies for any reason occurs on the Board of Directors at any time before the date of the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. If the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Clause E exceeds the Permitted Number, each Eligible Stockholder will select one Stockholder Nominee for inclusion in the corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of Common Stock each Eligible Stockholder disclosed as owned in its Notice. If the Permitted Number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached.

(iii) An Eligible Stockholder is one or more stockholders of record who own and have owned, or are acting on behalf of one or more beneficial owners who own and have owned (in each case as defined below), continuously for at least thirty-six (36) months as of both the date that the Notice is received by the corporation pursuant to this Clause E, and as of the record date for determining stockholders eligible to vote at the annual meeting, Common Stock of the corporation representing at least three percent (3%) of the corporation's issued and outstanding Common Stock (the "Required Shares"), and who continue to own the Required Shares at all times between the date such Notice is received by the corporation and the date of the applicable meeting of stockholders, provided that the aggregate number of stockholders, and, if and to the extent that a stockholder is acting on behalf of one or more beneficial owners, of such beneficial owners, whose stock ownership is counted for the purpose of satisfying the foregoing ownership requirement shall not exceed fifteen (15). Two or more funds that are (1) under common management and investment control or (2) under common management and funded primarily by a single employer (such funds together under each of (1) or (2) comprising a "Qualifying Fund") shall be treated as one stockholder for the purpose of determining the aggregate number of stockholders in this Clause E, provided that each fund comprising a Qualifying Fund otherwise meets the requirements set forth in this Clause E. No stockholder or beneficial holder may be a member of more than one group constituting an Eligible Stockholder under this Clause E. A record holder acting on behalf of a beneficial owner will be counted as a stockholder only with respect to the shares owned by beneficial owners on whose behalf such record holder has been directed in writing to act, and, with respect to the shares covered by such directions, will be

deemed to be the same stockholder as the beneficial owner for purposes of determining the number of stockholders whose holdings may be considered as part of an Eligible Stockholder's holdings.

(iv) No later than the final date specified in this Clause E for delivery of the Notice, an Eligible Stockholder must provide the following information in writing to the Secretary of the corporation: (1) one or more written statements from the record holders of the shares (and from each intermediary through which the shares are or have been held during the requisite thirty-six (36)-month holding period) verifying that, as of a date within seven calendar days prior to the date the Notice is received by the corporation, the Eligible Stockholder owns, and has owned continuously for the preceding thirty-six (36) months, the Required Shares, and the Eligible Stockholder's agreement to provide, within five (5) business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date; (2) the information required to be set forth in the Notice, together with the written consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected; (3) a representation that the Eligible Stockholder (including each member of any group of stockholders that together is an Eligible Stockholder) (a) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the corporation, and does not presently have such intent, (b) presently intends to maintain qualifying ownership of the Required Shares through the date of the annual meeting, (c) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than its Stockholder Nominee(s) being nominated pursuant to this Clause E, (d) has not engaged and will not engage in, and has not and will not be a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(1) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (e) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the corporation and (f) will provide facts, statements and other information in all communications with the corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and other comply with all applicable laws, rules and regulations in connection with any actions taken pursuant to this Clause E; (4) in the case of a nomination by a group of stockholders that together is such an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all members of the nominating stockholder group with respect to the nomination and matters related thereto, including withdrawal of the nomination; and (5) an undertaking that the Eligible Stockholder agrees to (a) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the corporation or out of the information that the Eligible Stockholder provided to the corporation, (b) indemnify and hold harmless the corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising

out of any violation of law, regulation or contract (including any provisions of this certificate of incorporation or the corporation's Bylaws) in connection with any nomination submitted by the Eligible Stockholder pursuant to this Clause E, and (c) file with the Commission under Regulation 14A of the Exchange Act any solicitation or other communication with the corporation's stockholders relating to the meeting at which the Stockholder Nominee will be nominated.

- (v) The Eligible Stockholder may provide to the Secretary, at the time the Notice is timely delivered to the corporation pursuant to this Clause E, a written statement for inclusion in the corporation's proxy statement for the annual meeting, not to exceed 500 words, in support of the Stockholder Nominee's candidacy (the "Statement"). Notwithstanding anything to the contrary contained in this Clause E, the corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is materially false or misleading, omits to state any material fact, or would violate any applicable law or regulation. Nothing in this certificate of incorporation shall limit the corporation's ability to solicit against and include in the proxy statement its own statement relating to any Stockholder Nominee.
- (vi) At the request of the corporation, each Stockholder Nominee must (1) provide an executed agreement, in a form deemed satisfactory by the Board of Directors or its designee, that (a) the Stockholder Nominee has read and agrees, if elected, to serve as a member of the Board of Directors, to adhere to the corporation's Corporate Governance Guidelines and Code of Conduct and any other corporation policies and guidelines applicable to directors, and (b) that the Stockholder Nominee is not and will not become a party to any compensatory, payment or other financial agreement, arrangement or understanding with any person or entity in connection with his or her nomination, service or action as a director of the corporation, or any agreement, arrangement or understanding with any person or entity as to how the Stockholder Nominee would vote or act on any issue or question as a director, in each case that has not been fully disclosed to the corporation; (2) submit completed and signed questionnaires required of the corporation's directors (forms of which shall be made available by the Secretary following written request); and (3) provide such additional information as necessary to permit the Board of Directors to determine if such Stockholder Nominee is independent under the listing standards of each principal U.S. exchange upon which the Common Stock is listed, any applicable rules of the Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the corporation's directors. If any information or communications provided by or on behalf of the Eligible Stockholder or the Stockholder Nominee to the corporation or its stockholders ceases to be true and correct in all material respects or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of any defect in such previously provided information and of the information that is required to correct any such defect.
- (vii) Any Stockholder Nominee who is included in the corporation's proxy materials for a particular annual meeting of stockholders but either (1) withdraws from or

becomes ineligible or unavailable for election at the annual meeting (other than by reason of such Stockholder Nominee's death, disability or other health reason) or (2) does not receive at least 10% of the votes cast in favor of the election of such Stockholder Nominee (as calculated pursuant to the applicable provisions of the Bylaws), will be ineligible to be a Stockholder Nominee pursuant to this Clause E for the next two (2) annual meetings of stockholders of the corporation. Any Stockholder Nominee who is included in the corporation's proxy statement for a particular annual meeting of stockholders, but subsequently is determined not to satisfy the eligibility requirements of this Clause E or any other provision of this certificate of incorporation or the corporation's Bylaws, Corporate Governance Guidelines or other applicable regulation any time before the annual meeting of Stockholders, will not be eligible for election at the relevant annual meeting of stockholders and may not be substituted by the Eligible Stockholder that nominated such Stockholder Nominee.

(viii) Notwithstanding anything to the contrary, the corporation shall not be required to include, pursuant to this Clause E, any Stockholder Nominee in its proxy materials for any annual meeting of stockholders or, if the proxy statement already has been filed, to allow the nomination of a Stockholder Nominee, notwithstanding that proxies in respect of such vote may have been received by the Corporation: (1) if the Stockholder Nominee or the Eligible Stockholder (or any member of any group of stockholders that together is such Eligible Stockholder) who has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a "participant" in another person's, "solicitation" within the meaning of Rule 14a-1(1) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors; (2) who is not independent under the listing standards of each principal U.S. exchange upon which the Common Stock is listed, any applicable rules of the Commission and any publicly disclosed standards used by the Board of Directors in determining and disclosing independence of the corporation's directors, in each case as determined in good faith by the Board of Directors: (3) whose election as a member of the Board of Directors would cause the corporation to be in violation of this certificate of incorporation, the Bylaws, the rules and listing standards of the principal U.S. exchanges upon which the Common Stock is listed, or any applicable state or federal law, rule or regulation; (4) who is an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended; (5) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past ten (10) years; (6) if such Stockholder Nominee or the applicable Eligible Stockholder (or any individual member of a group of Eligible Stockholders) shall have provided information to the corporation in connection with such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, as determined by the Board of Directors or any duly authorized committee thereof; or (7) the Eligible Stockholder (or any member of a group of Eligible Stockholders) or applicable Stockholder Nominee otherwise breaches or fails to comply with its obligations pursuant to this certificate of incorporation, including without limitation this Clause E, or the Bylaws.

(ix) Any Stockholder Nominee who is included in the corporation's proxy materials for an annual meeting pursuant to this Clause E shall tender an irrevocable resignation in advance of the annual meeting. Such resignation shall become effective upon a determination in good faith by the Board of Directors or any duly authorized committee thereof that any of the provisions of Clause E(viii) shall be applicable.

## (x) For purposes of this Clause E:

- (1) "<u>Required Information</u>" that the corporation will include in its proxy statement is (a) the information concerning the Stockholder Nominee and the Eligible Stockholder that is required to be disclosed in the corporation's proxy statement by the regulations promulgated under the Exchange Act; and (b) if the Eligible Stockholder so elects, a Statement.
- (2) An Eligible Stockholder shall be deemed to "own" only those outstanding shares of Common Stock as to which the stockholder possesses both (a) the full voting and investment rights pertaining to the shares and (b) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided, that the number of shares calculated in accordance with the immediately foregoing Clauses (a) and (b) shall not include any shares (x) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, including short sales, (y) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell or (z) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding Common Stock, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (I) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares, and/ or (II) hedging, offsetting or altering to any degree gain or loss arising from the full economic ownership of such shares by such stockholder or affiliate. A stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A stockholder's ownership of shares shall be deemed to continue during any period in which the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of Common Stock are "owned" for these purposes shall be determined by the Board of Directors.

F. Subject to the rights of the holders of any series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board of Directors resulting from death, resignation, removal or

other cause may be filled (a) by a majority of the directors, although less than a quorum, (b) by a sole remaining director or (c) in accordance with the proviso in Article VII, Section E(2), and directors so chosen shall hold office for a term expiring at the next annual meeting of stockholders at which the term of office of the class to which they have been elected expires, and until their respective successors are elected, except in the case of the death, resignation, or removal of any director. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

## ARTICLE VII

A. Any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of stockholders of the corporation and may not be effected by any consent in writing by such stockholders.

B. Subject to the terms of any class or series of Preferred Stock and except as required by law, special meetings of the stockholders of the corporation may be called only by: (i) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption); (ii) the Chairman of the Board; (iii) the Chief Executive Officer; and shall be held at such place, if any, and on such date, and at such time as they shall fix; or (iv) in accordance with the following sentence, subject to the provisions of this Article VII and the other applicable provisions of this certificate of incorporation, a special meeting of the stockholders shall be called by the Secretary of the corporation upon the written request (a "Stockholder Requested Special Meeting") of one or more stockholders of record of the corporation that together have continuously held, for their own account or on behalf of others, beneficial ownership of at least a twenty percent (20%) "net long position" of the outstanding common stock of the corporation (the "Requisite Percent") for at least thirty (30) days as of the Delivery Date.

For purposes of determining the Requisite Percent, "net long position" shall be determined with respect to each requesting holder in accordance with the definition thereof set forth in Rule 14e-4 under the Exchange Act; provided, that (x) for purposes of such definition, (1) "the date that a tender offer is first publicly announced or otherwise made known by the bidder to the holders of the security to be acquired" shall be the date of the relevant Special Meeting Request (as defined below), (2) the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of the Common Stock on the NASDAQ Global Select Market (or such other securities exchange designated by the Board of Directors if the Common Stock is not listed for trading on the NASDAQ Global Select Market) on such date (or, if such date is not a trading day, the next succeeding trading day), (3) the "person whose securities are the subject of the offer" shall refer to the corporation, and (4) a "subject security" shall refer to the outstanding common stock of the corporation; and (y) the "net long position" of such holder shall be reduced by the number of shares of Common Stock as to which the Board of Directors determines that such holder does not, or will not, have the right to vote or direct the vote at the special meeting or as to which the Board of Directors determines that such holder has entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares.

Whether the requesting holders have complied with the requirements of this Article VII and related provisions of this certificate of incorporation shall be determined in good faith by the Board of Directors, which determination shall be conclusive and binding on the corporation and its stockholders.

C. In order for a Stockholder Requested Special Meeting to be called, one or more requests for a special meeting (each, a "Special Meeting Request," and collectively, the "Special Meeting Requests") must be signed by the Requisite Percent of stockholders submitting such request and by each of the beneficial owners, if any, on whose behalf the Special Meeting Request is being made and must be delivered to the Secretary of the corporation. The Special Meeting Request(s) shall be delivered to the Secretary of the corporation at the principal executive offices of the corporation by overnight express courier or registered mail, return receipt requested. Each Special Meeting Request shall (i) set forth a statement of the specific purpose(s) of the meeting and the matters proposed to be acted on at it, (ii) bear the date of signature of each such stockholder signing the Special Meeting Request, (iii) set forth (1) the name and address, as they appear in the corporation's books, of each stockholder signing such request and the beneficial owners, if any, on whose behalf such request is made, and (2) the class, if applicable, and the number of shares of Common Stock that are owned of record and beneficially (within the meaning of Rule 13d-3 under the Exchange Act) by each such stockholder and the beneficial owners, if any, on whose behalf such request is made, (iv) include documentary evidence that the stockholders requesting the special meeting own the Requisite Percent as of the Delivery Date (as defined below); provided, that if the stockholders are not the beneficial owners of the shares constituting all or part of the Requisite Percent, then to be valid, the Special Meeting Request must also include documentary evidence (or, if not simultaneously provided with the Special Meeting Request, such documentary evidence must be delivered to the Secretary of the corporation within ten (10) days after the Delivery Date) that the beneficial owners on whose behalf the Special Meeting Request is made beneficially own such shares as of the Delivery Date, (v) an agreement by each of the stockholders requesting the special meeting and each beneficial owner, if any, on whose behalf the Special Meeting Request is being made to notify the corporation promptly in the event of any decrease in the "net long position" held by such stockholder or beneficial owner following the delivery of such Special Meeting Request and prior to the special meeting and an acknowledgement that any such decrease shall be deemed to be a revocation of such Special Meeting Request by such stockholder or beneficial owner to the extent of such reduction, and (vi) contain all of the information required by the Bylaws to be disclosed pursuant to the Bylaws, provided that all references to "Proposing Person" and to "Nominating Person" in the Bylaws shall, for purposes of Clause C of this Article VII, mean (1) the stockholders of record making the Special Meeting Request, (2) any beneficial owner or beneficial owners, if different, on whose behalf the Special Meeting Request is being made, and (3) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner. Each stockholder making a Special Meeting Request and each beneficial owner, if any, on whose behalf the Special Meeting Request is being made is required to update the notice delivered pursuant to this Article VII in accordance with the applicable provisions of the Bylaws. Any requesting stockholder may revoke his, her or its Special Meeting Request at any time prior to the special meeting by written revocation delivered to the Secretary of the corporation at the principal executive offices of the corporation. If at any time after sixty (60) days following the earliest dated Special Meeting Request, the unrevoked (whether by specific written revocation by the stockholder or pursuant to

Clause C(v) of this Article VII) valid Special Meeting Requests represent in the aggregate less than the Requisite Percent, then the requesting stockholder(s) or beneficial owner(s) shall be deemed to have withdrawn such request (in connection with which the Board of Directors may cancel the meeting).

In determining whether a special meeting of stockholders has been requested by stockholders holding in the aggregate at least the Requisite Percent, multiple Special Meeting Requests delivered to the Secretary of the corporation will be considered together only if each Special Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting (in each case as determined in good faith by the Board of Directors), and such Special Meeting Requests have been delivered to the Secretary of the corporation within sixty (60) days of the earliest dated Special Meeting Request.

D. Except as provided in the next sentence, a special meeting requested by stockholders shall be held at such date, time and place within or without the State of Delaware as may be fixed by the Board of Directors; provided, however, that the date of any such special meeting shall be not more than ninety (90) days after the date on which valid Special Meeting Request(s) constituting the Requisite Percent are delivered to the Secretary of the corporation (such date of delivery being the "Delivery Date"). Notwithstanding the foregoing, the Secretary of the corporation shall not be required to call a special meeting of stockholders if (i) the Board of Directors calls an annual meeting of stockholders, or a special meeting of stockholders at which a Similar Item (as defined below) is to be presented pursuant to the notice of such meeting, in either case to be held not later than sixty (60) days after the Delivery Date; (ii) the Delivery Date is during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the earlier of (1) the date of the next annual meeting and (2) thirty (30) days after the first anniversary of the date of the immediately preceding annual meeting; or (iii) the Special Meeting Request(s) (1) contain an identical or substantially similar item (as determined in good faith by the Board of Directors, a "Similar Item") to an item that was presented at any meeting of stockholders held not more than one hundred and twenty (120) days before the Delivery Date (and for purposes of this Clause (iii), the election of directors shall be deemed a Similar Item with respect to all items of business involving the election or removal of directors); (2) relate to an item of business that is not a proper subject for action by the stockholders under applicable law and Article VII; (3) were made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law; or (4) do not comply with the provisions of this Article VII.

E. Business transacted at any Stockholder Requested Special Meeting (1) shall be limited to the purpose(s) stated in the Special Meeting Request for such special meeting; <u>provided</u>, that the Board of Directors shall have the authority in its discretion to submit additional matters to the stockholders and to cause other business to be transacted pursuant to the corporation's notice of meeting, and (2) shall not include the election, removal or replacement of directors unless a single person or entity, or "group" of persons or entities who have filed as a "group" as defined under Section 13(d) of the Exchange Act with respect to their ownership of the then-outstanding shares of capital stock of the corporation entitled to vote generally in the election of directors, has a "net long position" of greater than 50% of such shares as of the Delivery Date; <u>provided</u>, that following such time that a single person or entity, or "group" of

persons or entities who have filed as a "group" as defined under Section 13(d) of the Exchange Act with respect to such ownership, has a net "net long position" at of greater than 50% of such shares as of the Delivery Date, then, subject to the rights of the holders of any series of Preferred Stock with respect to such series of Preferred Stock, any director, or the entire Board of Directors, may be removed from office at any time with or without cause, and replaced, by the affirmative vote of the holders of a majority of the voting power of all of the then-outstanding shares of capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class. If none of the stockholders who submitted a Special Meeting Request appears at or sends a duly authorized representative to the Stockholder Requested Special Meeting to present the matters to be presented for consideration that were specified in the Special Meeting Request, the corporation need not present such matters for a vote at such meeting.

#### ARTICLE VIII

- A. The corporation shall not be governed by or subject to Section 203 of the DGCL.
- B. Notwithstanding the foregoing, the corporation shall not engage in any business combination (as defined below), at any point in time at which the Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:
  - (i) prior to such time, the Board of Directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or
  - (ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers or (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or
  - (iii) at or subsequent to such time, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two thirds (2/3) of the outstanding voting stock of the corporation which is not owned by the interested stockholder.
  - C. The restrictions contained in this Article VIII shall not apply if:
  - (i) the corporation, by action of its stockholders, adopts an amendment to this certificate of incorporation expressly deleting or deciding not to be bound by this Article VIII; <u>provided</u> that, in addition to any other vote required by law, such amendment to the certificate of incorporation must be approved by the affirmative vote of

a majority of the shares entitled to vote. An amendment adopted pursuant to this paragraph shall not be effective until 12 months after the adoption of such amendment and shall not apply to any business combination between the corporation and any person who became an interested stockholder on or prior to such adoption;

- (ii) a stockholder becomes an interested stockholder inadvertently and (1) as soon as practicable divests itself of ownership of sufficient shares so that the stockholder ceases to be an interested stockholder; and (2) would not, at any time within the 3-year period immediately prior to a business combination between the corporation and such stockholder, have been an interested stockholder but for the inadvertent acquisition of ownership; or
- (iii) the business combination is proposed prior to the consummation or abandonment of and subsequent to the earlier of the public announcement or the notice required hereunder of a proposed transaction which (1) constitutes one of the transactions described in the second sentence of this paragraph; (2) is with or by a person who either was not an interested stockholder during the previous three years or who became an interested stockholder with the approval of the Board of Directors; and (3) is approved or not opposed by a majority of the members of the Board of Directors then in office (but not less than one) who were directors prior to any person becoming an interested stockholder during the previous three years or were recommended for election or elected to succeed such directors by a majority of such directors. The proposed transactions referred to in the preceding sentence are limited to (x) a merger or consolidation of the corporation (except for a merger in respect of which, pursuant to Section 251(f) of the DGCL, no vote of the stockholders of the corporation is required); (y) a sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation (other than to any direct or indirect whollyowned subsidiary or to the corporation) having an aggregate market value equal to 50% or more of either that aggregate market value of all of the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation; or (z) a proposed tender or exchange offer for 50% or more of the outstanding voting stock of the corporation. The corporation shall give not less than twenty (20) days' notice to all interested stockholders prior to the consummation of any of the transactions described in Clause (x) or (y) of the second sentence of this paragraph.

## D. For purposes of this Article VIII, references to:

- (i) "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.
- (ii) "associate," when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at

least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

- (iii) "business combination," when used in reference to the corporation and any interested stockholder of the corporation, means:
  - (1) any merger or consolidation of the corporation or any direct or indirect majority-owned subsidiary of the corporation (a) with the interested stockholder, or (b) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation, Clause B of this Article VIII is not applicable to the surviving entity;
  - (2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the corporation or of any direct or indirect majority-owned subsidiary of the corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the corporation;
  - (3) any transaction which results in the issuance or transfer by the corporation or by any direct or indirect majority-owned subsidiary of the corporation of any stock of the corporation or of such subsidiary to the interested stockholder, except: (a) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (b) pursuant to a merger under Section 251(g) of the DGCL; (c) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the corporation subsequent to the time the interested stockholder became such; (d) pursuant to an exchange offer by the corporation to purchase stock made on the same terms to all holders of said stock; or (e) any issuance or transfer of stock by the corporation; provided, however, that in no case under items (c)-(e) of this subsection (3) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the corporation or of the voting stock of the corporation (except as a result of immaterial changes due to fractional share adjustments);
  - (4) any transaction involving the corporation or any direct or indirect majority-owned subsidiary of the corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the corporation or

of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

- (5) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (1)-(4) above) provided by or through the corporation or any direct or indirect majority-owned subsidiary.
- (iv) "control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of any corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Article VII, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.
- (v) "interested stockholder" means any person (other than the corporation or any direct or indirect majority-owned subsidiary of the corporation) that (1) is the owner of 20% or more of the outstanding voting stock of the corporation, or (2) is an affiliate or associate of the corporation and was the owner of 20% or more of the outstanding voting stock of the corporation at any time within the three year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder, and the affiliates and associates of such person; provided, that the term "interested stockholder" shall not include any person whose ownership of shares in excess of the 20% limitation set forth herein is the result of any action taken solely by the corporation; provided, that any such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of "owner" below, but shall not include any other unissued stock of the corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.
- (vi) "owner," including the terms "own" and "owned," when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:
  - (1) beneficially owns such stock, directly or indirectly; or

- (2) has (a) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; provided, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (b) the right to vote such stock pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or
- (3) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (b) of subsection (2) above), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.
- (vii) "person" means any individual, corporation, partnership, unincorporated association or other entity.
- (viii) "stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.
- (ix) "<u>voting stock</u>" means stock of any class or series entitled to vote generally in the election of directors. Every reference to a percentage of voting stock shall refer to such percentage of the votes of such voting stock.

## ARTICLE IX

A. To the fullest extent permitted by law, no director of the corporation shall be personally liable either to the corporation or to any of its stockholders for monetary damages for breach of fiduciary duty as a director. Without limiting the effect of the preceding sentence, if the Delaware General Corporation Law is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

B. To the fullest extent permitted by applicable law, this corporation is also authorized to provide indemnification of (and advancement of expenses to) agents (and any other persons to which Delaware law permits this corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware General Corporation Law, subject only to limits

created by applicable Delaware law (statutory or non-statutory), with respect to actions for breach of duty to the corporation, its stockholders, and others.

C. No amendment, modification or repeal of this Article IX, nor the adoption of any provision of this certificate of incorporation inconsistent with this Article IX, shall eliminate, reduce or otherwise adversely affect any right or protection of a director of the corporation hereunder in respect of any act or omission occurring prior to or at the time of such amendment, modification or repeal or adoption of such inconsistent provision.

#### ARTICLE X

Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the corporation or the corporation's stockholders, (c) any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the DGCL or this certificate of incorporation or the Bylaws (as either may be amended from time to time), or (d) any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware). Any person or entity purchasing or otherwise acquiring any interests in shares of capital stock of the corporation shall be deemed to have notice of and to have consented to the provisions of this Article X.

#### ARTICLE XI

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware as they presently exist or may hereafter be amended, the corporation may from time to time alter, amend, repeal or adopt, in whole or in part, any provisions of this certificate of incorporation.

**IN WITNESS WHEREOF**, this Amended and Restated Certificate of Incorporation of PayPal Holdings, Inc. has been signed and attested as of this [Date] of [Month, Year].

[Name]		
[Position]		

#### AMENDED AND RESTATED BYLAWS

OF

## PAYPAL HOLDINGS, INC.

(a Delaware corporation)

PayPal Holdings, Inc. (the "<u>Corporation</u>"), pursuant to the provisions of Section 109 of the Delaware General Corporation Law, hereby adopts these Amended and Restated Bylaws, which restate, amend and supersede the bylaws of the Corporation, as previously amended and restated, in their entirety as described below:

#### ARTICLE I

## **STOCKHOLDERS**

Section 1.1 <u>Place of Meetings</u>. Meetings of the stockholders of the Corporation may be held at such place, either within or without the State of Delaware, as may be designated from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law.

Section 1.2 <u>Annual Meetings</u>. If required by applicable law, an annual meeting of stockholders shall be held for the election of directors at such date and time, as the Board of Directors shall each year fix. Any other proper business may be transacted at the annual meeting.

Section 1.3 <u>Special Meetings</u>. Special meetings of the stockholders may be called and business at such special meetings may be transacted only in accordance with the provisions of Article VII of the Certificate of Incorporation (defined below).

Section 1.4 <u>Notice of Meetings</u>. Notice of all meetings of stockholders shall be given that shall state the place, if any, date and time of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Certificate of Incorporation of the Corporation as currently in effect (the "<u>Certificate of Incorporation</u>"), such notice shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting.

# Section 1.5 Manner of Giving Notice; Affidavit of Notice.

(a) Notice of any meeting of stockholders, if mailed, is given when deposited in the United States mail, postage prepaid, directed to the stockholder at his, her or its address as it appears on the records of the Corporation.

- (b) Except as otherwise prohibited by the Delaware General Corporation Law and without limiting the foregoing, any notice to stockholders given by the Corporation under any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to (and not properly revoked by written notice to the Corporation) by the stockholder to whom the notice is given, to the extent such consent is required by the Delaware General Corporation Law. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation in accordance with such consent and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent of the Corporation, or other person responsible for the giving of notice; provided, however, that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Any such notice shall be deemed given (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by a posting on an electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder.
- (c) For the purposes of these Bylaws, an "<u>electronic transmission</u>" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.
- (d) Except as otherwise prohibited under the Delaware General Corporation Law and without limiting the manner by which notice otherwise may be given to stockholders, any notice to stockholders given by the Corporation under any provision of the Delaware General Corporation Law, the Certificate of Incorporation or these Bylaws may be given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if a stockholder fails to object in writing to the Corporation within sixty (60) days of having been given written notice by the Corporation of its intention to send the single notice in accordance with this Section 1.5(d). Any such consent shall be revocable by the stockholders by written notice to the Corporation.
- (e) An affidavit of the Secretary or an Assistant Secretary of the Corporation or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 1.6 <u>Adjournments</u>. Any meeting of stockholders may adjourn from time to time to reconvene at the same or another place, if any, or by means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and notice need not be given of any such adjourned meeting if the place, if any, time and date thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; <u>provided</u>,

however, that if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, then a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting.

Section 1.7 Quorum. At each meeting of stockholders, the holders of a majority of the shares of stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business, except if otherwise required by applicable law. Where a separate vote by a class or classes or series is required, a majority of the shares of such class or classes or series then outstanding and entitled to vote present in person or by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. If a quorum shall fail to attend any meeting, the chairman of the meeting or the holders of a majority of the shares entitled to vote who are present, in person or by proxy, at the meeting may adjourn the meeting. Shares of the Corporation's stock belonging to the Corporation (or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation are held, directly or indirectly, by the Corporation), shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation or any other corporation to vote any shares of the Corporation's stock held by it in a fiduciary capacity.

Section 1.8 Conduct of Business. Meetings of stockholders shall be presided over by such person as the Board of Directors may designate as chairman of the meeting, or, in the absence of such a person, the Chairman of the Board, or, in the absence of such person, the President of the Corporation, or, in the absence of such person, such person as may be chosen by the holders of a majority of the shares entitled to vote who are present, in person or by proxy, at the meeting. The Secretary of the Corporation shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting. The Board of Directors shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, adjourning the meeting if the chairman determines in his or her sole discretion that an adjournment is advisable, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting and matters which are to be voted on by ballot.

Section 1.9 <u>Voting; Proxies</u>. Unless otherwise provided by law or the Certificate of Incorporation, each stockholder shall be entitled to one (1) vote for each share of stock held by such stockholder of record according to the records of the Corporation. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance

with the provisions of Section 1.10 of these Bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the Delaware General Corporation Law. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy. Such a proxy may be prepared, transmitted and delivered in any manner permitted by applicable law. Unless otherwise provided in the Certificate of Incorporation or a Certificate of Designation relating to a series of Preferred Stock, directors shall be elected as provided in Section 2.2 of these Bylaws. Unless otherwise provided by applicable law, the rules or regulations of any stock exchange applicable to the Corporation, the Certificate of Incorporation or these Bylaws, every matter other than the election of directors shall be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock entitled to vote thereon that are present in person or represented by proxy at the meeting.

Section 1.10 Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which (i) in the case of determination of stockholders entitled to vote at any meeting of stockholders or adjournment thereof, shall, unless otherwise required by law, not be less than ten (10) nor more than sixty (60) days before the date of such meeting, and (ii) in the case of any other action, shall not be more than sixty (60) days prior to any such other action. If no record date is fixed by the Board of Directors, then the record date shall be as provided by applicable law. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 1.11 List of Stockholders Entitled to Vote. A complete list of stockholders entitled to vote at any meeting of stockholders, arranged in alphabetical order and showing the address of each stockholder and the number of shares registered in the name of each stockholder, shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to the stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, such list shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 1.11 or to vote in person or by proxy at any meeting of the stockholders. The

Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list.

# Section 1.12 <u>Inspectors of Elections</u>.

- (a) <u>Applicability</u>. Unless otherwise provided in the Corporation's Certificate of Incorporation or required by the Delaware General Corporation Law, the following provisions of this Section 1.12 shall apply only if and when the Corporation has a class of voting stock that is:
  - (i) listed on a national securities exchange;
  - (ii) authorized for quotation on an interdealer quotation system of a registered national securities association; or
  - (iii) held of record by more than 2,000 stockholders; in all other cases, observance of the provisions of this Section 1.12 shall be optional, and at the discretion of the Corporation.
- (b) <u>Appointment</u>. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.
- (c) <u>Inspector's Oath</u>. Each inspector of election, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability.
  - (d) <u>Duties of Inspectors</u>. At a meeting of stockholders, the inspectors of election shall:
    - (i) ascertain the number of shares outstanding and the voting power of each share;
    - (ii) determine the shares represented at a meeting and the validity of proxies and ballots;
    - (iii) count all votes and ballots;
  - (iv) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the inspectors; and
  - (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

- (e) Opening and Closing of Polls. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced by the inspectors at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.
- (f) <u>Determinations</u>. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in connection with proxies in accordance with Section 211(e) or Section 212(c)(2) of the Delaware General Corporation Law, or any information provided pursuant to Section 211(a)(2)(B)(i) or (iii) of the Delaware General Corporation Law, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification of their determinations pursuant to this Section 1.12 shall specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

## Section 1.13 Notice of Stockholder Business to Be Brought Before an Annual or Special Meeting.

(a) Business Properly Brought Before an Annual or Special Meeting. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) brought before the meeting by the Corporation and specified in the notice of meeting given by or at the direction of the Board of Directors, (ii) brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 1.13 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 1.13 as to such business. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), and included in the notice of meeting given by or at the direction of the Board of Directors, the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders (other than pursuant to a request for a special meeting in accordance with the requirements set forth in Article VII of the Certificate of Incorporation (a "Special Meeting Request")), and the only matters that may be brought before a special meeting are the matters specified in the Corporation's notice of meeting. Stockholders seeking to nominate persons for election to the Board, if permitted by Article VII of the Certificate of Incorporation, must comply with

Section 1.14 of these Bylaws, and this Section 1.13 shall not be applicable to nominations except as expressly provided in Section 1.14 of these Bylaws.

- (b) Requirement of Timely Notice of Stockholder Business. Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.13. To be timely, a stockholder's notice with respect to an annual meeting of stockholders (other than a notice submitted in order to include a Stockholder Nominee (as defined below) in the Corporation's proxy materials, as defined and described in Clause E of Article VI of the Certificate of Incorporation) must be delivered by overnight express courier or registered mail, return receipt requested, and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the one year anniversary of the preceding year's annual meeting; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not earlier than the one hundred twentieth (120th) day prior to such annual meeting and not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.
- (c) <u>Requirements for Proper Form of Stockholder Notice of Proposed Business</u>. To be in proper form for purposes of this Section 1.13, a stockholder's notice to the Secretary shall set forth:
  - (i) <u>Stockholder Information</u>. As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records), (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future and (C) a representation whether such Proposing Person intends or is part of a group that intends (x) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding stock required to approve or adopt the proposal or (y) otherwise to solicit proxies from stockholders in support of such proposal;
  - (ii) <u>Information Regarding Disclosable Interests</u>. As to each Proposing Person, (A) any derivative, swap or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar

to ownership of shares of any class or series of the Corporation, including due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which derivative, swap or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of the Corporation ("Synthetic Equity Interests"), which such Synthetic Equity Interests shall be disclosed without regard to whether (x) such derivative, swap or other transactions convey any voting rights in such shares to such Proposing Person, (y) the derivative, swap or other transactions are required to be, or are capable of being, settled through delivery of such shares or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such derivative, swap or other transactions, (B) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of the Corporation, (C) any agreement, arrangement, understanding or relationship, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of the Corporation, or which provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Corporation ("Short <u>Interests</u>"), (D) any rights to dividends on the shares of any class or series of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (E) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Synthetic Equity Interests or Short Interests, if any, and (F) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (F) are referred to as "Disclosable Interests"); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner; and

(iii) <u>Description of Proposed Business</u>. As to each item of business the stockholder proposes to bring before the annual or special meeting, (A) a

reasonably brief description of the business desired to be brought before the annual or special meeting, the reasons for conducting such business at the annual or special meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including the text of any resolutions proposed for consideration), and (C) a reasonably detailed description of all agreements, arrangements and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder.

- (iv) <u>Definition of Proposing Person</u>. For purposes of this Section 1.13, the term "<u>Proposing Person</u>" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual or special meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual or special meeting is made, and (iii) any affiliate or associate of such stockholder or beneficial owner.
- (d) <u>Update and Supplement of Stockholder Notice of Proposed Business</u>. A stockholder providing notice of business proposed to be brought before an annual or special meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.13 or in any Special Meeting Request shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date of the meeting, or in the case of any adjournment or postponement thereof, eight (8) business days prior to the date of such adjournment or postponement. For the avoidance of doubt, the obligation to update and supplement as set forth in this Section 1.13(d) or any other Section of these Bylaws shall not be deemed to extend any applicable deadlines under these Bylaws, cure deficiencies in any notice of business or permit a change in the proposal, business or resolution proposed to be brought before a meeting of the stockholders.
- (e) <u>Business Not Properly Brought Before a Meeting</u>. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at an annual or special meeting except in accordance with this Section 1.13. The presiding officer of the meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 1.13, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted.
- (f) Exchange Act Compliance. This Section 1.13 is expressly intended to apply to any business proposed to be brought before an annual or special meeting of stockholders other than any proposal made pursuant to Rule 14a-8 under the Exchange Act. In addition to the requirements of this Section 1.13 with respect to any business proposed to be brought before an annual or special meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business.

Nothing in this Section 1.13 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(g) <u>Definition of Public Disclosure</u>. For purposes of these Bylaws, "<u>public disclosure</u>" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

# Section 1.14 Nominations.

- (a) Who May Make Nominations. Nominations of any person for election to the Board of Directors at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only in accordance with the provisions of Clauses D and E of Article VI of the Certificate of Incorporation and any requirements imposed by this Section 1.14 as to such nomination. Clauses D and E of Article VI of the Certificate of Incorporation, together with any additional requirements imposed by this Section 1.14, shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or special meeting (other than, if permitted by Article VII of the Certificate of Incorporation, pursuant to a Special Meeting Request). Any person nominated for election to the Board of Directors pursuant to Clause E of Article VI of the Certificate of Incorporation shall be referred to herein as a "Stockholder Nominee."
- (b) Requirement of Timely Notice of Stockholder Nominations. Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting, the stockholder must (i) provide Timely Notice (as defined in Section 1.13 of these Bylaws) thereof in writing and in proper form to the Secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.14. Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board of Directors at a special meeting, the stockholder must (i) provide timely notice thereof in writing and in proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 1.14. To be timely, a stockholder's notice (other than a notice submitted in order to include a Stockholder Nominee (as defined above) in the Corporation's proxy materials, as defined and described in Clause E of Article VI of the Certificate of Incorporation) for nominations to be made at a special meeting (other than, if permitted by Article VII of the Certificate of Incorporation, pursuant to a Special Meeting Request) must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if later, the tenth (10th) day following the day on which public disclosure (as defined in Section 1.13 of these Bylaws) of the date of such special meeting was first made. In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period for

the giving of a stockholder's notice as described above.

- (c) <u>Requirements for Proper Form of Notice of Stockholder Nominations</u>. To be in proper form for purposes of this Section 1.14, a stockholder's notice to the Secretary shall set forth:
  - (i) <u>Stockholder Information</u>. As to each Nominating Person (as defined below), (A) the name and address of such Nominating Person (including, if applicable, the name and address that appear on the Corporation's books and records), (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Nominating Person, except that such Nominating Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Nominating Person has a right to acquire beneficial ownership at any time in the future and (C) a representation whether such Nominating Person intends or is part of a group that intends to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding stock reasonably believed by the Nominating Person to be sufficient to elect the nominee or nominees proposed to be nominated by the Nominating Person;
  - (ii) <u>Information Regarding Disclosable Interests</u>. As to each Nominating Person, any Disclosable Interests (as defined in Section 1.13(c)(ii), except that for purposes of this Section 1.14 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 1.13(c)(ii)), and the disclosure in clause (F) of Section 1.13(c)(ii) shall be made with respect to the election of directors at the meeting;
  - (iii) Information Regarding Proposed Nominees. As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 1.14 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, his or her respective affiliates and associates, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and

- (D) a statement as to whether the proposed nominee, if elected, intends to tender, promptly following such person's election or re-election, an irrevocable resignation effective upon the occurrence of both (1) such person's failure to receive the required vote for re-election at the next meeting at which such person would face re-election and (2) acceptance of such resignation in accordance with Section 2.2 of these Bylaws and the Corporation's Governance Guidelines for the Board of Directors; and
- (iv) Other Information to Be Furnished by Proposed Nominees. The Corporation may require any proposed nominee to furnish such other information (A) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation in accordance with the Corporation's Governance Guidelines or (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.
- (v) <u>Definition of Nominating Person</u>. For purposes of this Section 1.14, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, and (iii) any affiliate or associate of such stockholder or beneficial owner.
- (d) <u>Update and Supplement of Stockholder Notice of Nominations</u>. A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 1.14 or, if permitted by Article VII of the Certificate of Incorporation, in any Special Meeting Request, shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date of the meeting, or in the case of any adjournment or postponement thereof, eight (8) business days prior to the date of such adjournment or postponement. For the avoidance of doubt, the obligation to update and supplement as set forth in this <u>Section 1.14(d)</u> or any other Section of these Bylaws shall not be deemed to extend any applicable deadlines under these Bylaws, cure deficiencies in any notice of nominations or permit a change in the nominees or nominations proposed to be made at a meeting of the stockholders.
- (e) <u>Defective Nominations</u>. Notwithstanding anything in these Bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with this Section 1.14. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 1.14, and if he or she should so determine, he or she shall so declare such determination to the meeting and the defective nomination shall be disregarded.

(f) <u>Compliance with Exchange Act</u>. In addition to the requirements of this Section 1.14 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

#### ARTICLE II

### **BOARD OF DIRECTORS**

Section 2.1 <u>Number; Qualifications</u>. The Board of Directors shall consist of one or more members. The number of directors shall be fixed from time to time exclusively by resolution of the Board of Directors. No decrease in the authorized number of directors constituting the Board of Directors shall shorten the term of any incumbent director. Directors need not be stockholders of the Corporation.

## Section 2.2 Election.

- (a) The directors shall be elected as provided in the Certificate of Incorporation.
- (b) Each director to be elected by the stockholders of the Corporation shall be elected by the affirmative vote of a majority of the votes cast with respect to such director by the shares represented and entitled to vote therefor at a meeting of the stockholders for the election of directors at which a quorum is present (an "Election Meeting"); provided, however, that if the Board of Directors determines that the number of nominees exceeds the number of directors to be elected at such meeting (a "Contested Election"), and the Board of Directors has not rescinded such determination by the date that is twenty (20) days prior to the date of the Election Meeting as initially announced, each of the directors to be elected at the Election Meeting shall be elected by the affirmative vote of a plurality of the votes cast by the shares represented and entitled to vote at such meeting with respect to the election of such director. For purposes of this Section 2.2, a "majority of the votes cast" means that the number of votes cast "for" a candidate for director exceeds the number of votes cast "against" that director. In an election other than a Contested Election, stockholders will be given the choice to cast votes "for" or "against" the election of directors or to "abstain" from such vote and shall not have the ability to cast any other vote with respect to such election of directors. In a Contested Election, stockholders will be given the choice to cast "for" or "withhold" votes for the election of directors and shall not have the ability to cast any other vote with respect to such election of directors. In the event an Election Meeting involves the election of directors by separate votes by class or series, the determination as to whether an election constitutes a Contested Election shall be made on a class by class or series by series basis, as applicable.
- (c) In the event one or more incumbent directors (each, a "<u>Subject Director</u>") fails to receive the affirmative vote of a majority of the votes cast at an Election Meeting at which there was no Contested Election, either (i) the Corporate Governance and Nominating Committee or (ii) if one or more of the members of the Corporate Governance and Nominating Committee is a Subject Director or the Board of Directors determines that any decision to be made with respect to a Subject Director should be made by a committee other than the Corporate

Governance and Nominating Committee, a committee consisting solely of independent directors (as determined in accordance with any stock exchange rules and regulations applicable to the Corporation and any additional criteria set forth in the Corporation's Governance Guidelines for the Board of Directors or Corporate Governance and Nominating Committee Charter, as applicable) who are not Subject Directors (the committee described in clause (i) or (ii) of this sentence, the "Committee") will make a determination as to whether to accept or reject any previously tendered Resignations (as defined below), or whether other action should be taken (including whether to request that a Subject Director resign from the Board of Directors if no Resignation had been tendered prior to the relevant Election Meeting). The Committee will act with respect to any Subject Directors within ninety (90) days from the date of the certification of the election results and shall notify the Subject Directors of its decision. The Committee may consider all factors it considers relevant, including any stated reasons for "against" votes, whether the underlying cause or causes of the "against" votes are curable, the relationship between such causes and the actions of such Subject Director, the factors, if any, set forth in the Corporation's Governance Guidelines for the Board of Directors or other policies that are to be considered by the Corporate Governance and Nominating Committee in evaluating potential candidates for the Board of Directors as such criteria relate to such Subject Director, the length of service of such Subject Director, the size and holding period of such Subject Director's stock ownership in the Corporation, and such Subject Director's contributions to the Corporation. Subject Directors shall not participate in the deliberation or decision(s) of the Committee. The Corporation shall publicly disclose the decision(s) of the Committee in a Current Report on Form 8-K filed with the Securities and Exchange Commission. Notwithstanding the foregoing, if the result of accepting all tendered Resignations then pending and requesting resignations from incumbent directors who did not submit a Resignation prior to the relevant Election Meeting, would be that the Corporation would have fewer than three (3) directors who were in office before the election of directors, the Committee may determine to extend such ninety (90)-day period by an additional ninety (90) days if it determines that such an extension is in the best interests of the Corporation and its stockholders. For purposes of this Section 2.2, a "Resignation" is an irrevocable resignation submitted by an incumbent director nominated for re-election prior to the relevant Election Meeting that will become effective upon the occurrence of both (i) the failure to receive the affirmative vote of a majority of the votes cast at an Election Meeting at which there was no Contested Election and (ii) acceptance of such resignation by the Committee.

(d) If a Subject Director's tendered Resignation is not accepted by the Committee or such Subject Director does not otherwise submit his or her resignation to the Board of Directors, such director shall continue to serve until his or her successor is duly elected, or his or her earlier resignation or removal pursuant to Section 2.3. If a Subject Director's Resignation is accepted by the Committee pursuant to this Section 2.2, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Section 2.3 or decrease the size of the Board of Directors pursuant to the provisions of Section 2.1 of these Bylaws.

Section 2.3 <u>Resignation; Removal; Vacancies</u>. Subject to the provisions of the Certificate of Incorporation, each director shall serve until his or her successor is duly elected and qualified, or until his or her earlier death, resignation, retirement or removal

from service as a director. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation. Subject to the rights of any holders of Preferred Stock then outstanding and the Certificate of Incorporation:

- (i) the holders of a majority of the shares entitled to vote in an election of directors may remove any director or the entire Board of Directors with or without cause, and
- (ii) any vacancy occurring in the Board of Directors for any reason, and any newly created directorship resulting from any increase in the authorized number of directors to be elected by all stockholders having the right to vote as a single class, shall be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.
- Section 2.4 <u>Regular Meetings</u>. Regular meetings of the Board of Directors may be held at such places, within or without the State of Delaware, and at such times as the Board of Directors may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board of Directors.
- Section 2.5 <u>Special Meetings</u>. Special meetings of the Board of Directors may be called by the Chairman of the Board, the Chief Executive Officer or a majority of the members of the Board of Directors then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given, orally or in writing, by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery, overnight express courier, facsimile, electronic mail or other electronic transmission. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting. The notice shall be deemed given:
  - (i) in the case of hand delivery or notice by telephone, when received by the director to whom notice is to be given or by any person accepting such notice on behalf of such director,
  - (ii) in the case of delivery by mail, upon deposit in the United States mail, postage prepaid, directed to the director to whom notice is being given at such director's address as it appears on the records of the Corporation,
    - (iii) in the case of delivery by overnight express courier, on the first business day after such notice is dispatched, and
  - (iv) in the case of delivery via facsimile, electronic mail or other electronic transmission, when sent to the director to whom notice is to be given or by any person accepting such notice on behalf of such director at such director's facsimile number or electronic mail address, as the case may be, as it appears on the Corporation's records.

Section 2.6 <u>Telephonic Meetings Permitted</u>. Members of the Board of Directors, or any committee of the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to conference telephone or similar communications equipment shall constitute presence in person at such meeting.

Section 2.7 Quorum; Vote Required for Action. At all meetings of the Board of Directors a majority of the total number of authorized directors shall constitute a quorum for the transaction of business. Except as otherwise provided herein or in the Certificate of Incorporation, or as required by law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum is not present at any meeting of the Board of Directors, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 2.8 <u>Chairman of the Board</u>. The Board of Directors shall have the power to elect the Chairman of the Board from among the members of the Board of Directors. The Chairman of the Board shall have the power to preside at all meetings of the Board of Directors and shall have such other powers and duties as provided in these Bylaws and as the Board of Directors may from time to time prescribe.

Section 2.9 <u>Organization</u>. Meetings of the Board of Directors shall be presided over by the Chairman of the Board, or in his or her absence by the Chief Executive Officer, or in his or her absence by a chairman chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairman of the meeting may appoint any person to act as secretary of the meeting.

Section 2.10 Written Action by Directors. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee, respectively. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.11 <u>Powers</u>. The Board of Directors may, except as otherwise required by law or the notice is dispatched, and Certificate of Incorporation, exercise all such powers and do all such acts and things as may be exercised or done by the Corporation.

Section 2.12 <u>Compensation of Directors</u>. Directors, as such, may receive, pursuant to a resolution of the Board of Directors, fees and other compensation for their services as directors, including without limitation their services as members of committees of the Board of Directors.

### ARTICLE III

### **COMMITTEES**

Section 3.1 Committees. The Board of Directors may, by resolution passed by a majority of the authorized number of directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting of such committee who are not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the Delaware General Corporation Law to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the Corporation.

Section 3.2 <u>Committee Rules</u>. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

### ARTICLE IV

### **OFFICERS**

Section 4.1 <u>Generally</u>. The officers of the Corporation shall consist of a Chief Executive Officer and/or a President, one or more Vice Presidents, a Secretary, a Treasurer and such other officers, including a Chief Financial Officer, as may from time to time be appointed by the Board of Directors. All officers shall be elected by the Board of Directors; <u>provided</u>, <u>however</u>, that the Board of Directors may empower the Chief Executive Officer of the Corporation to appoint officers other than the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person. Any officer may resign at any time upon written notice to the Corporation. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board of Directors.

Section 4.2 <u>Chief Executive Officer</u>. Subject to the control of the Board of Directors and such supervisory powers, if any, as may be given by the Board of Directors, the powers and duties of the Chief Executive Officer of the Corporation are:

- (a) To act as the general manager and, subject to the control of the Board of Directors, to have general supervision, direction and control of the business and affairs of the Corporation;
  - (b) To preside at all meetings of the stockholders;
- (c) To call meetings of the stockholders to be held at such times and, subject to the limitations prescribed by law or by these Bylaws, at such places as he or she shall deem proper; and
- (d) To affix the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board of Directors or which, in the judgment of the Chief Executive Officer, should be executed on behalf of the Corporation; to sign certificates for shares of stock of the Corporation; and, subject to the direction of the Board of Directors, to have general charge of the property of the Corporation and to supervise and control all officers, agents and employees of the Corporation.

The President shall be the Chief Executive Officer of the Corporation unless the Board of Directors shall designate another officer to be the Chief Executive Officer. If there is no President, and the Board of Directors has not designated any other officer to be the Chief Executive Officer, then the Chairman of the Board shall be the Chief Executive Officer.

Section 4.3 <u>President</u>. The President shall be the Chief Executive Officer of the Corporation unless the Board of Directors shall have designated another officer as the Chief Executive Officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board of Directors, and subject to the supervisory powers of the Chief Executive Officer (if the Chief Executive Officer is an officer other than the President), and subject to such supervisory powers and authority as may be given by the Board of Directors to the Chairman of the Board, and/or to any other officer, the President shall have the responsibility for the general management and the control of the business and affairs of the Corporation and the general supervision and direction of all of the officers, employees and agents of the Corporation (other than the Chief Executive Officer, if the Chief Executive Officer is an officer other than the President) and shall perform all duties and have all powers that are commonly incident to the office of President or that are delegated to the President by the Board of Directors.

Section 4.4 <u>Vice President</u>. Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President, or that are delegated to him or her by the Board of Directors or the Chief Executive Officer. A Vice President may be designated by the Board to perform the duties and exercise the powers of the Chief Executive Officer in the event of the Chief Executive Officer's absence or disability.

Section 4.5 <u>Chief Financial Officer</u>. Subject to the direction of the Board of Directors and the President, the Chief Financial Officer shall perform all duties and have all powers that are commonly incident to the office of chief financial officer.

Section 4.6 <u>Treasurer</u>. The Treasurer shall have custody of all monies and securities of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also perform such other duties and have such other powers as are commonly incident to the office of Treasurer, or as the Board of Directors or the President may from time to time prescribe.

Section 4.7 <u>Secretary</u>. The Secretary shall issue or cause to be issued all authorized notices for, and shall keep, or cause to be kept, minutes of all meetings of the stockholders and the Board of Directors. The Secretary shall have charge of the corporate minute books and similar records and shall perform such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board of Directors or the President may from time to time prescribe.

Section 4.8 <u>Delegation of Authority</u>. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

Section 4.9 <u>Removal</u>. Any officer of the Corporation shall serve at the pleasure of the Board of Directors and may be removed at any time, with or without cause, by the Board of Directors. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation.

#### ARTICLE V

### STOCK

Section 5.1 <u>Certificates</u>. The shares of the Corporation may be uncertificated or may be represented by certificates. The Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by the Chairman or Vice-Chairman of the Board of Directors, or the President or a Vice President, and by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary, of the Corporation, representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile.

Section 5.2 <u>Lost</u>, <u>Stolen or Destroyed Stock Certificates</u>; <u>Issuance of New Certificates or Uncertificated Shares</u>. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to agree to indemnify the Corporation

and/or to give the Corporation a bond sufficient to indemnify it, against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 5.3 <u>Other Regulations</u>. The issue, transfer, conversion and registration of stock certificates or uncertificated shares shall be governed by such other regulations as the Board of Directors may establish.

## ARTICLE VI

## INDEMNIFICATION

Section 6.1 Indemnification of Officers and Directors. Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "proceeding"), by reason of the fact that he or she (or a person of whom he or she is the legal representative), is or was a director or officer of the Corporation or a Reincorporated Predecessor (as defined below) or is or was serving at the request of the Corporation or a Reincorporated Predecessor (as defined below) as a director, officer or employee of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (each such director, officer or employee, a "Covered Person"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by the Delaware General Corporation Law, against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such person in connection therewith; provided, however, that the Corporation shall indemnify any such Covered Person seeking indemnity in connection with a proceeding (or part thereof) initiated by such Covered Person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation. As used herein, the term "Reincorporated Predecessor" means a corporation that is merged with and into the Corporation in a statutory merger where (a) the Corporation is the surviving corporation of such merger; and (b) the primary purpose of such merger is to change the corporate domicile of the Reincorporated Predecessor to Delaware.

Section 6.2 <u>Advance of Expenses</u>. The Corporation shall pay all expenses (including attorneys' fees) incurred by a Covered Person in defending any such proceeding as they are incurred in advance of its final disposition; <u>provided, however,</u> that if the Delaware General Corporation Law then so requires, the payment of such expenses incurred by a Covered Person in advance of the final disposition of such proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Covered Person, to repay all amounts so advanced if it should be determined ultimately that such Covered Person is not entitled to be indemnified under this Article VI or otherwise; and <u>provided, further,</u> that the Corporation shall not be required to advance any expenses to a Covered Person against whom the Corporation directly brings a claim, in a proceeding, alleging that such person has breached his or her duty of loyalty to the Corporation, committed an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, or derived an improper personal benefit from a transaction.

Section 6.3 Non-Exclusivity of Rights. The rights conferred on any person in this Article VI shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote or consent of stockholders or disinterested directors, or otherwise. Additionally, nothing in this Article VI shall limit the ability of the Corporation, in its discretion, to indemnify or advance expenses to persons whom the Corporation is not obligated to indemnify or advance expenses pursuant to this Article VI. The Board of Directors of the Corporation shall have the power to delegate to such officer or other person as the Board of Directors shall specify the determination of whether indemnification shall be given to any person pursuant to this Section 6.3.

Section 6.4 <u>Indemnification Contracts</u>. The Board of Directors is authorized to cause the Corporation to enter into indemnification contracts with any director, officer, employee or agent of the Corporation, or any person serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including employee benefit plans, providing indemnification rights to such person. Such rights may be greater than those provided in this Article VI.

Section 6.5 <u>Continuation of Indemnification</u>. The rights to indemnification and to advancement of expenses provided by, or granted pursuant to, this Article VI shall continue notwithstanding that the person has ceased to be a Covered Person and shall inure to the benefit of his or her estate, heirs, executors, administrators, legatees and distributees; <u>provided</u>, <u>however</u>, that the Corporation shall indemnify any such person seeking indemnity in connection with a proceeding (or part thereof) initiated by such person only if such proceeding (or part thereof) was authorized by the Board of Directors of the Corporation.

Section 6.6 Effect of Amendment or Repeal. The provisions of this Article VI shall constitute a contract between the Corporation, on the one hand, and, on the other hand, each individual who serves or has served as a Covered Person (whether before or after the adoption of these Bylaws), in consideration of such person's performance of such services, and pursuant to this Article VI, the Corporation intends to be legally bound to each such current or former Covered Person. With respect to current and former Covered Persons, the rights conferred under this Article VI are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of these Bylaws. With respect to any Covered Persons who commence service following adoption of these Bylaws, the rights conferred under this Article VI shall be present contractual rights, and such rights shall fully vest, and be deemed to have vested fully, immediately upon such Covered Person's service in the capacity which is subject to the benefits of this Article VI.

## ARTICLE VII

## NOTICES

Section 7.1 <u>General Notice</u>. Except as otherwise specifically provided herein or required by law, all notices required to be given pursuant to these Bylaws shall be in writing and may in every instance be effectively given by hand delivery (including use of a delivery service), by depositing such notice in the mail, postage prepaid, or by sending such notice by prepaid overnight express courier or facsimile. Any such notice shall be addressed to the person

to whom notice is to be given at such person's address or facsimile number, as the case may be, as it appears on the records of the Corporation. The notice shall be deemed given

- (i) in the case of hand delivery, when received by the person to whom notice is to be given or by any person accepting such notice on behalf of such person;
- (ii) in the case of delivery by mail, upon deposit in the United States mail, postage prepaid, directed to the person to whom notice is being given at such person's address as it appears on the records of the Corporation;
  - (iii) in the case of delivery by overnight express courier, on the first business day after such notice is dispatched; and
- (iv) in the case of delivery via facsimile, when directed to the person to whom notice is to be given or by any person accepting such notice on behalf of such person.

Section 7.2 <u>Waiver of Notice</u>. Whenever notice is required to be given under any provision of these Bylaws, a written waiver of notice, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any written waiver of notice or any waiver by electronic transmission.

#### ARTICLE VIII

### INTERESTED DIRECTORS

Section 8.1 <u>Interested Directors; Quorum</u>. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if:

(i) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum;

- (ii) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or
- (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof, or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

### ARTICLE IX

# **MISCELLANEOUS**

- Section 9.1 Fiscal Year. The fiscal year of the Corporation shall be determined by resolution of the Board of Directors.
- Section 9.2 <u>Seal</u>. The Board of Directors may provide for a corporate seal, which shall have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board of Directors.

Section 9.3 Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or by means of, or be in the form of, any information storage device or method provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the Delaware General Corporation Law.

Section 9.4 <u>Reliance Upon Books and Records</u>. A member of the Board of Directors, or a member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board of Directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 9.5 <u>Certificate of Incorporation Governs</u>. In the event of any conflict between the provisions of the Certificate of Incorporation and Bylaws, the provisions of the Certificate of Incorporation shall govern.

Section 9.6 <u>Severability</u>. If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be

invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

# ARTICLE X

# **AMENDMENT**

Section 10.1 <u>Amendments</u>. Subject to Section 6.6 of these Bylaws, stockholders of the Corporation holding at least a majority of the Corporation's outstanding voting stock shall have the power to adopt, amend or repeal Bylaws. To the extent provided in the Certificate of Incorporation, the Board of Directors of the Corporation shall also have the power to adopt, amend or repeal Bylaws of the Corporation.

# CERTIFICATION OF BYLAWS

OF

# PAYPAL HOLDINGS, INC.

(a Delaware Corporation)

# KNOW ALL BY THESE PRESENTS:

I, [name], certify that I am [position] of PayPal Holdings, Inc., a Delaware corporation (the "Company"), that I am duly authorized to make and deliver this certification, that the attached Bylaws are a true and correct copy of the Bylaws of the Company in effect as of the date of this certificate.

Dated: [Month Date, Year]	
[Name]	
[Position]	

# FORM OF OPERATING AGREEMENT

BY AND BETWEEN

EBAY INC.

AND

PAYPAL HOLDINGS, INC.

DATED AS OF [●], 20[●]

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### OPERATING AGREEMENT

This OPERATING AGREEMENT, dated as of [●], 201[●] (this "<u>Agreement</u>"), is made and entered into by and between PayPal Holdings, Inc., a Delaware corporation ("<u>PayPal</u>"), and eBay Inc., a Delaware corporation ("<u>eBay</u>"). PayPal and eBay are sometimes referred to herein individually as a "<u>Party</u>" and collectively as the "<u>Parties</u>"). Capitalized terms used herein and not otherwise defined shall have the respective meanings assigned to them in <u>Article I</u>.

WHEREAS, the board of directors of eBay has determined that it is appropriate and advisable to separate the PayPal Business from the eBay Business;

WHEREAS, in order to effectuate the foregoing, eBay and PayPal have entered into a Separation and Distribution Agreement, dated as of [●], 201[●] (the "Separation and Distribution Agreement"), which provides for, among other things, the contribution from eBay to PayPal of certain assets, the assumption by PayPal of certain Liabilities from eBay, the distribution by eBay of PayPal common stock to eBay stockholders, and the execution and delivery of certain agreements in order to facilitate and provide for the foregoing, in each case subject to the terms and conditions set forth therein;

WHEREAS, PayPal currently provides certain Services to eBay and its customers;

WHEREAS, the Parties desire for PayPal to continue to provide such Services to eBay and its customers following the Distribution and for eBay to encourage its customers to use the Services following the Distribution; and

WHEREAS, the Parties have agreed to cooperate in fulfilling the purposes of this Agreement and to create a mutually beneficial strategic partnership.

NOW, THEREFORE, in consideration of the premises, the mutual covenants, agreements and respective representations and warranties contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

# ARTICLE I DEFINITIONS

For the purposes of this Agreement, the following capitalized terms will have the meanings ascribed to them below. All other capitalized terms not otherwise defined in this Agreement have the meaning ascribed to them in the Separation and Distribution Agreement.

"2014 Measurement Rate" shall have the meaning set forth in Section 6.3(e).

"Account Nationality" means the country in which an eBay Merchant or eBay User is resident according to information given by the eBay Merchant or eBay User in registering for such eBay Merchant's or eBay User's eBay account.

"<u>Acquired Property</u>" means a Property acquired by eBay after the Effective Time, by way of merger, acquisition, stock purchase or similar transaction, or by acquiring all or substantially

all of the assets of an entity or business line, including an e-commerce storefront or marketplace, such that such Acquired Property becomes an eBay Property.

"Action" shall have the meaning set forth in the Separation and Distribution Agreement.

"Activated New User" means, for any period, a PayPal User that had not sent or received any payments utilizing PayPal's payments network prior to the beginning of the period and that successfully sent or received at least one payment through PayPal's payment networks during such period: (a) on an eBay Covered Property; or (b) on a Property that is not an eBay Covered Property if such PayPal User was referred by eBay to PayPal through an eBay Covered Property or other trackable referral from eBay. A referral is "trackable" if eBay and/or PayPal is able to determine (using a methodology to be mutually agreed upon by the Parties) whether the PayPal User's PayPal account was opened as a result of such referral.

- "Activated New Users Adjustment Amount" shall have the meaning set forth in Section 6.1(b).
- "Additional Jurisdiction Property" shall have the meaning set forth in Section 2.3(b).
- "Additional Jurisdictions" means the jurisdictions listed on Schedule 1.1.
- "Affiliate" shall have the meaning set forth in the Separation and Distribution Agreement.
- "Aggregate Quarterly Fee" shall have the meaning set forth in Section 6.4.
- "Agreement" shall have the meaning set forth in the preamble.
- "Ancillary Agreement" shall have the meaning set forth in the Separation and Distribution Agreement.
- "Annual Statement" shall have the meaning set forth in Section 7.1(a).
- "API" means an application programming interface.
- "Audit" shall have the meaning set forth in Section 15.3(a).
- "Audit Committees" shall have the meaning set forth in Section 15.3(a).
- "Audited Party" shall have the meaning set forth in Section 8.2(a).

"Baseline Rate" means eighty percent (80%); <u>provided</u>, that, beginning with the second Calendar Year during the Term, effective as of the first day of each such Calendar Year, the Baseline Rate shall be increased or decreased by an amount equal to (a) the Penetration Rate for the previous Calendar Year calculated using the foreign currency exchange rates used by eBay for its internal planning and budgeting purposes for the current Calendar Year (and not the actual foreign currency exchange rates in effect during the previous Calendar Year) *minus* (b) the Penetration Rate for the previous Calendar Year. For example, if the Penetration Rate for the

previous Calendar Year was 82% but the same Penetration Rate, when calculated using the current Calendar Year's foreign currency exchange rates used by eBay for its internal planning and budget purposes, equals 83%, then the Baseline Rate for the current Calendar Year will be increased by 1% to 81%.

- "Baseline Referral Services Fee" shall have the meaning set forth in Section 6.1(a).
- "Buyer-Only Jurisdictions" means the jurisdictions listed in Schedule 1.2.
- "Calendar Year" means the twelve (12)-Month period ending December 31; or, (a) with respect to the first such twelve (12)-Month period that includes the Effective Time, the portion of such twelve (12)-Month period after the Effective Time, and (b) with respect to the twelve (12)-Month period that includes the last day of the Tail Period, the portion of such twelve (12)-Month period before the last day of the Tail Period.
  - "CEO Assessment" shall have the meaning set forth in Section 15.4.
- "Change of Control" means, with respect to a Party, the occurrence after the Effective Time of any of the following: (a) the sale, conveyance or disposition, in one or a series of related transactions, of all or substantially all of the assets of such Party to a third party that is not an Affiliate of such Party prior to such transaction or the first of such related transactions; (b) the consolidation, merger or other business combination of a Party with or into any other Person, immediately following which the stockholders of the Party prior to such transaction fail to own in the aggregate the Majority Voting Power of the surviving Party in such consolidation, merger or business combination or of its ultimate publicly traded parent Person; or (c) a transaction or series of transactions in which any Person or "group" (as such term is used in Section 13(d) of the Exchange Act) acquires the Majority Voting Power of such Party (other than a reincorporation or similar corporate transaction in which each of such Party's stockholders own, immediately thereafter, interests in the new parent company in substantially the same percentage as such stockholder owned in such Party immediately prior to such transaction).
  - "Colocation Services Agreement" shall have the meaning set forth in the Separation and Distribution Agreement.
  - "Commercial Agreement" shall have the meaning set forth in the Separation and Distribution Agreement.
  - "Common User Data" shall have the meaning set forth in Section 9.4(b).
  - "Competing Business" shall have the meaning set forth in Section 14.4(a).
  - "Competitive Platform Operator" means a PayPal Specified Person, together with such Person's wholly owned Subsidiaries.
  - "Confidential Information" shall have the meaning set forth in Section 9.1.

"Contract" means any loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, development agreement or other contract, agreement, obligation, commitment or instrument, including all amendments thereto.

"Covered Jurisdictions" shall mean the jurisdictions (other than Buyer-Only Jurisdictions and Excluded Jurisdictions) that are included in the determination of eBay Core GMV as of the Effective Time (based on user Account Nationality) and any Additional Jurisdictions from which eBay Merchants or eBay Users access Acquired Properties that have become eBay Covered Properties (also based on user Account Nationality.

- "CPO Conditions" shall have the meaning set forth in Section 3.4(a).
- "CPO MFP" shall have the meaning set forth in Section 3.4.
- "<u>Credit Services</u>" means (a) all actions, activities and operations of PayPal that enable PayPal Users to make payments to eBay or to eBay Merchants in connection with transactions effected through any service or offering available on an eBay Covered Property that are funded in whole or in part through credit extended through PayPal (including by credit issued by a third Person) and (b) any applicable Related Services.
  - "Credit Usage Fee" shall have the meaning set forth in Section 6.2.
- "<u>Data Protection Laws</u>" means any data protection Laws, privacy Laws, or other Laws relating to the protection of Personal Information or other data or information, including Laws relating to payment data security, whether currently in force or enacted during the Term.
  - "Data Sharing Addendum" shall have the meaning set forth in Section 5.1(a).
  - "Designated Operational Representative" shall have the meaning set forth in Section 15.1(a).
- "<u>Developed Property</u>" means a Property established or developed by eBay after the Effective Time, including an e-commerce storefront or marketplace (it being understood that Developed Properties excludes all Acquired Properties).
  - "Development Project" shall have the meaning set forth in Section 5.6.
  - "Disaster Recovery Plan" shall have the meaning set forth in Section 4.7.
  - "Disclosing Party" shall have the meaning set forth in Section 9.1.
  - "Dispute" shall have the meaning set forth in Section 16.1.
- "eBay" shall have the meaning set forth in the preamble. As used in this Agreement, all references to "eBay" shall be deemed to refer to eBay and its Subsidiaries.
- "<u>eBay Addressable GMV</u>" means, for any period, (a) the eBay Core GMV for such period *minus* (b) the GMV for all eBay Properties (other than eBay Excluded Properties) for such

period that results from a transaction where (i) the eBay Merchant's Account Nationality is a Buyer-Only Jurisdiction or (ii) both the eBay Merchant's and eBay User's Account Nationality is the same Excluded Jurisdiction *minus* (c) if eBay creates a localized Property in China, the GMV for such localized Property that results from a transaction where both the eBay Merchant's and eBay User's Account Nationality is China.

"eBay Core GMV" means, for any period, (a) the GMV for all eBay Properties for such period *minus* (b) the GMV for all eBay Excluded Properties for such period.

"eBay Covered Properties" means (a) all eBay Properties in existence as of the Effective Time that are not eBay Excluded Properties, including the eBay Properties set forth on Schedule 1.3, (b) all eBay Properties that become eBay Covered Properties pursuant to the terms and provisions of this Agreement and (c) any mobile applications made available by eBay from which an eBay User may bid for, purchase, sell or list goods or services on or through the eBay Properties described in clauses (a) and (b).

"eBay Excluded Properties" means the eBay Properties set forth on Schedule 1.4.

"eBay Group" shall have the meaning set forth in Section 12.1.

"eBay Merchant" means a third Person seller, merchant or other provider of goods or services that makes use of or accesses the Services through an eBay Covered Property.

"eBay Name and eBay Marks" shall have the meaning set forth in the Separation and Distribution Agreement.

"eBay Property" means a Property that is directly or indirectly owned or controlled by eBay (other than any such Property owned by a Person in which eBay does not directly or indirectly own the Majority Voting Power of such Person).

"eBay Restricted Business" shall have the meaning set forth in Section 14.2.

"eBay User" means a registered user of services offered by eBay identified by a unique account ID issued by eBay.

"<u>eBay User Data</u>" means customer or user information, including Personal Information, collected during the term of this Agreement from an eBay Merchant or from an eBay User that makes use of or accesses the Services through an eBay Covered Property.

"Effective Time" shall have the meaning set forth in the Separation and Distribution Agreement.

"Escalation Committee" shall have the meaning set forth in the Separation and Distribution Agreement.

"Estimated Activated New Users" shall have the meaning set forth in Section 6.1(b).

"Excluded Jurisdictions" shall mean the jurisdictions listed in Schedule 1.5.

- "External Audit" shall have the meaning set forth in Section 8.2(a).
- "External Auditor" shall have the meaning set forth in Section 8.2(a).
- "First-Party Transaction" shall have the meaning set forth in Section 14.1(a).
- "GMV" means, for any period, the total value of all successfully closed transactions between users on an eBay Property during such period, regardless of whether the buyer and seller actually consummated the transaction, excluding vehicles and real estate. In the event that eBay significantly changes its definition of GMV for purposes of its public financial reporting, the Parties will revisit the impact that any such change in definition could have on the Penetration Rate and make any appropriate adjustments so that the intent of the parties with respect to the Penetration Rate remains in effect.
  - "Governmental Authority" shall have the meaning set forth in the Separation and Distribution Agreement.
  - "Group" means the eBay Group or the PayPal Group, as applicable.
- "Highly Sensitive Information" means, with respect to a Party, information confidential to such Party in the following categories: (a) user data, including Personal Information, that is not anonymized or aggregated; (b) algorithms, Source Code, Object Code; and (c) specifications and technical documentation regarding system security, fraud and abuse protection systems and detection of illegal or unusual activities that, in each case, relate primarily to the PayPal Business (in the case of eBay as the Receiving Party) or the eBay Business (in the case of PayPal as the Receiving Party), as applicable. "Highly Sensitive Information" shall not, however, include any information which: (i) is or becomes commonly known within the public domain other than by breach of this Agreement or any other agreement that the Receiving Party has with any Person; (ii) is obtained from a third Person (other than Personnel of the Receiving Party) who is lawfully authorized to disclose such information free from any obligation of confidentiality; or (iii) is independently developed without reference to or use of any Highly Sensitive Information or Confidential Information of the Disclosing Party.
  - "Indemnified Party" shall have the meaning set forth in Section 12.3(a).
  - "Indemnifying Party" shall have the meaning set forth in Section 12.3(a).
  - "Independent Expert" shall have the meaning set forth in Section 3.2.
  - "Initial Notice" shall have the meaning set forth in Section 16.1.
  - "Initial Term" shall have the meaning set forth in Section 10.1.
  - "Integration Work" shall have the meaning set forth in Section 2.3(b).
  - "Intellectual Property Matters Agreement" shall have the meaning set forth in the Separation and Distribution Agreement.

- "Intellectual Property Rights" shall have the meaning set forth in the Intellectual Property Matters Agreement.
- "Interest Rate" means a rate per annum equal to the Prime Rate *plus* two percent (2%) or the maximum rate under applicable Law, whichever is lower.
  - "Internal Audit" shall have the meaning set forth in Section 15.3(a).
  - "Internal Audit Party" shall have the meaning set forth in Section 15.3(a).
  - "Law" shall have the meaning set forth in the Separation and Distribution Agreement.
  - "Losses" shall have the meaning set forth in the Separation and Distribution Agreement.
- "Majority Voting Power" means a majority of the voting power in the election of directors of all outstanding voting securities of the Person in question.
  - "Market Check" shall have the meaning set forth in Section 3.2.
- "Merchant of Record" means, except as otherwise agreed by the Parties, the entity that PayPal holds financially liable for all full and partial returns as well as any chargebacks initiated by the customer.
- "Month" means, unless the context requires otherwise, a calendar month or, with respect to the first calendar month that includes the Effective Time, the portion of such calendar month after the Effective Time.
- "Non-eBay Merchants" means sellers, merchants or other providers of goods or services that make use of or access PayPal's payment processing services other than through an eBay Property.
- "Object Code" means the fully compiled, machine-readable version of a software program that can be executed by a computer and used by an end user without further compilation.
  - "Operational Review Group" shall have the meaning set forth in Section 15.4.
- "Payment Gateway" means point of sale Software that links a merchant's website or selling application to such merchant's processing network and merchant account.
- "Payment Services" means (a) all actions, activities and operations of PayPal that enable eBay Merchants to receive payments from PayPal Users, and/or other eBay buyers using a guest check-out flow or other PayPal processing service such as Braintree or Pro, in any manner offered by PayPal in connection with transactions effected through any service or offering available on an eBay Covered Property and (b) any applicable Related Services.
- "PayPal" shall have the meaning set forth in the preamble. As used in this Agreement, all references to "PayPal" shall be deemed to refer to PayPal and its Subsidiaries.
  - "PayPal Group" shall have the meaning set forth in Section 12.2.

"PayPal Net TPV" means, for any period and of any Property, the total U.S. dollar volume of payments, net of payment reversals, successfully completed during such period through Services available through such Property (but excluding payments sent or received through PayPal's Payment Gateways or through PayPal products that are not substantially similar to the PayPal products offered on eBay Properties).

"PayPal Net TPV Off eBay" means, for any period, the PayPal Net TPV of all Properties other than eBay Properties for such period.

"PayPal Restricted Business" shall have the meaning set forth in Section 14.3.

"PayPal User" means a registered user of the payment processing services offered by PayPal that enable users to make or receive payments using a PayPal account (also known as a PayPal wallet) identified by a unique account ID and/or an eBay Merchant.

"PayPal User Data" means customer or user information, including Personal Information, collected from merchants and users of PayPal's services during the term of this Agreement.

"Penetration Rate" means, for any period, (a) the eBay Addressable GMV successfully completed through Services available through eBay Covered Properties (including Services executed utilizing a "guest" check-out feature but excluding payments sent or received through (i) PayPal's Payment Gateways or (ii) any PayPal product that the Parties agree from time to time should be set forth on Schedule 1.6 (which Schedule 1.6 shall be amended by the Parties following such agreement) because the Take Rate for such product is calculated using a "cost-plus" formula) for such period divided by (b) the eBay Addressable GMV for such period.

"Penetration Rate Payment" shall have the meaning set forth in Section 6.3.

"Person" shall have the meaning set forth in the Separation and Distribution Agreement.

"<u>Personal Information</u>" means any information that identifies, or could reasonably be used by or on behalf of the recipient of such information to identify, any Person, including names, addresses, bank or other account numbers, and national identification numbers, but excludes anonymized and aggregated information that cannot be used to identify any Person.

"Personnel" means, with respect to any Person, any of such Person's directors, officers, employees, agents, independent contractors, permitted subcontractors and consultants. Subcontractors of eBay shall be deemed Personnel of eBay, and subcontractors of PayPal shall be deemed Personnel of PayPal.

"<u>Platform</u>" means the technology, software, content, functionality, equipment, networks, Systems and any other materials delivered or used by PayPal in connection with providing the Services.

"Product Development Agreement" shall have the meaning set forth in Section 5.6.

"Product Development Plan" shall have the meaning set forth in Section 5.6.

- "Prohibited Conditions" shall have the meaning set forth in Section 3.4(b).
- "Property" means a website or mobile application, including an e-commerce storefront or marketplace.
- "Providing Party" shall have the meaning set forth in Section 12.4(b).
- "Quarter" means any of the following during any calendar year: the three (3)-Month period ending March 31, June 30, September 30 or December 31; or, with respect to the first three (3)-Month period that includes the Effective Time, the portion of such three (3)-Month period after the Effective Time.
  - "Quarterly Statement" shall have the meaning set forth in Section 7.1(a).
  - "Receiving Party" shall have the meaning set forth in Section 9.1.
  - "Referral Services Fee" shall have the meaning set forth in Section 6.1(a).
- "Related Services" means, with respect to Credit Services or Payment Services, as applicable, (a) providing an available web or client-end application interface for eBay Merchants to accept payment and for PayPal Users to fund their accounts (where applicable) and transfer payments, processing and settling such payments, and maintaining records of transactions and balances through and in the accounts of such eBay Merchants and PayPal Users, (b) any and all services, functions, or responsibilities not specifically described in the definition of the applicable Services that are within the scope of the applicable Services and/or that are inherent in, required for, implied by, or incidental to the proper performance and provision by PayPal of the applicable Services and (c) any and all improvements and upgrades to, extensions of, successors to or substitutes for any of the applicable Services or any of the foregoing developed or offered by PayPal at any time during the Term.
  - "Renewal Term" shall have the meaning set forth in Section 10.1.
  - "Requesting Party" shall have the meaning set forth in Section 8.2(a).
- "Residual Information" means information in non-tangible form that may be retained in the unaided memory of Personnel of the Receiving Party who have had access to the Confidential Information of the Disclosing Party.
  - "Security Review" shall have the meaning set forth in Section 15.3(b).
  - "Separation and Distribution Agreement" shall have the meaning set forth in the recitals.
  - "Service Levels" shall have the meaning set forth in Section 4.4.
  - "Services" means the Credit Services, the Payment Services and the Related Services.
- "Source Code" means the human-readable version of a software program that can be compiled into Object Code, including programmer's notes and materials and documentation, suf-

ficient to allow a reasonably skilled programmer to understand the design, logic, structure, functionality, operation and features of such software program and to use, operate, maintain, modify, support and diagnose errors pertaining to such software program.

"Specified Change of Control" means a Change of Control of PayPal with any eBay Specified Person or their direct or indirect Subsidiaries or controlled Affiliates.

"Subsidiary" shall have the meaning set forth in the Separation and Distribution Agreement.

"Systems" means, with respect to a Person, such Person's computer equipment, software, servers, network infrastructure and other hardware or information systems (and components thereof) used in the operation of each Party's respective business and otherwise used in connection with and/or necessary to provide or receive, as applicable, the Services hereunder.

"Tail Period" shall have the meaning set forth in Section 10.4(a).

"<u>Take Rate</u>" means the fee PayPal charges a merchant to process a payment using PayPal's payment services or offerings, measured as (a) net revenues received by PayPal from the transaction *divided by* (b) the amount of such payment (including any portion thereof paid to PayPal), in each case of clauses (a) and (b), in local currency.

"Take Rate Offset" shall have the meaning set forth in Section 3.3.

"Take Rate Overage" shall have the meaning set forth in Section 3.3.

"Tax" means any income, gross income, gross receipts, profits, capital stock, franchise, withholding, payroll, social security, workers compensation, unemployment, disability, property, *ad valorem*, stamp, excise, severance, occupation, service, sales, use, license, lease, transfer, import, export, value added, alternative minimum, estimated or other tax (including any fee, assessment, or other charge in the nature of or in lieu of any tax) imposed by any governmental entity or political subdivision thereof, and any interest, penalties, additions to tax, or additional amounts in respect of the foregoing.

"<u>Taxing Authority</u>" means, with respect to any Tax, the Governmental Authority or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity or subdivision.

"Transaction Taxes" shall have the meaning set forth in Section 7.2(a).

"Technology" shall have the meaning set forth in the Intellectual Property Matters Agreement (including Software).

"Term" shall have the meaning set forth in Section 10.1.

"Termination Assistance Services" shall have the meaning set forth in Section 10.5.

"Test Jurisdiction" shall have the meaning set forth in Section 14.1(d).

"Third-Party Claim" means any Action, whether civil or criminal, at Law or in equity, made or brought by a third Person.

"Transition Services Agreement" shall have the meaning set forth in the Separation and Distribution Agreement.

"<u>User Data</u>" means eBay User Data together with PayPal User Data.

"Viruses" means any and all viruses and other contaminants (including code, commands, instructions, devices, techniques, bugs, web bugs, or design flaws) that are intended to be used to access (without authorization), alter, delete, threaten, infect, assault, vandalize, defraud, disrupt, damage, disable, inhibit, or shut down either Party's Systems or other information or property.

# ARTICLE II SERVICES

- 2.1 <u>Provision of Services; Scope</u>. During the Term, PayPal shall provide the Services to eBay Merchants and eBay Users that make use of or access the Services through the eBay Covered Properties. This Agreement does not address PayPal's provision of the Services through any eBay Excluded Property. eBay and PayPal shall mutually agree on any additional Properties that should be included in the eBay Covered Properties or the eBay Excluded Properties and shall jointly amend <u>Schedules 1.3</u> and <u>1.4</u> to reflect such mutual agreement.
- 2.2 <u>Terms and Conditions of Services</u>. The Services shall be subject to the terms and conditions set forth herein and in the applicable User Agreement for each PayPal User, including the policies set forth therein. If any terms of this Agreement conflict with the terms and conditions of the applicable User Agreement, then as between PayPal and such PayPal User, the terms of the User Agreement shall govern to the extent of the conflict.
- 2.3 <u>Services to Acquired Properties and Developed Properties</u>. Except as set forth below, all Acquired Properties and all Developed Properties shall be Excluded Properties:
- (a) If an Acquired Property or a Developed Property is incorporated into an eBay Covered Property or a mobile application supporting or relating to an eBay Covered Property in a Covered Jurisdiction, such Acquired Property or Developed Property shall be included in the eBay Covered Properties; if the Acquired Property or Developed Property continues to exist as a separate and distinct Property, the Parties shall jointly amend Schedules 1.3 and 1.4, as applicable, to reflect such inclusion. For purposes of this Agreement, an Acquired Property or a Developed Property shall be "incorporated" into an eBay Covered Property, as described in this Section 2.3(a), if: (i) eBay Users who attempt to access such Acquired Property or Developed Property are directed or redirected to an eBay Covered Property or to a web page or series of web pages that directs such eBay Users to an eBay Covered Property; (ii) the functions available or previously available on or through such Acquired Property or Developed Property are made available on or through an eBay Covered Property; or (iii) if such Acquired Property or Developed Property or Developed Property is substantially equivalent to the total inventory of goods and services available on or through an eBay Covered Property.

- (b) If an Acquired Property is primarily located in an Additional Jurisdiction and, as of the date eBay consummates the acquisition of such Acquired Property, PayPal provides payment processing services to non-eBay Merchants in such Additional Jurisdiction (such Acquired Property, an "Additional Jurisdiction Property"), the Parties shall mutually cooperate in good faith to determine the scope and cost of the integration work that would be required to enable the Services to be made available through such Additional Jurisdiction Property in a manner that is substantially equivalent to the manner in which the Services are made available through the eBay Covered Properties as of such date ("Integration Work") and shall use good faith efforts to negotiate any changes to the Product Development Plan required to complete the Integration Work; provided, that neither Party shall be required to agree to a change to the Product Development Plan that would materially delay or impede the completion of any current or projected Development Project or require such Party to invest a materially higher amount of resources into the Product Development Plan. If the Parties mutually agree on the required changes to the Product Development Plan in accordance with the immediately preceding sentence, the applicable Party or Parties shall perform the Integration Work on the timeline set forth in the revised Product Development Plan. Upon the completion of such Integration Work, the Acquired Property shall be included (or shall be deemed to be included) in the eBay Covered Properties and the Parties shall jointly amend Schedules 1.3 and 1.4, as applicable, to reflect such inclusion.
- (c) If an Acquired Property is a customer of PayPal at the time such Property is acquired by eBay, PayPal shall continue to provide to such Property all Services provided by PayPal to such Property prior to its acquisition by eBay in accordance with the terms of the then-existing agreement(s) governing the provision of such Services for a period ending on the later of (i) the expiration of the then-current term of any such existing agreement, (ii) the completion of Integration Work for such Property and (iii) the incorporation of such Property into an eBay Covered Property.
- 2.4 <u>No Exclusivity</u>. This Agreement shall be non-exclusive, and any Party (and any Party's Subsidiaries) may, subject to <u>Article 14</u>, contract with other Persons for the procurement or provision of comparable (or unrelated) services, including the provision of services to eBay Merchants and eBay Users that are PayPal Users on eBay Excluded Properties.
- 2.5 <u>Additional Services</u>. PayPal may also provide through eBay Properties services different from and in addition to the Services as eBay may reasonably request or require from time to time. The use of such additional services through eBay Properties will be governed by the terms and conditions of, and subject to the fees for, such additional services (a) as found on the applicable PayPal website in the jurisdiction in which such additional services are provided or (b) as mutually agreed upon by the Parties.

# ARTICLE III PRICING FOR EBAY MERCHANTS

3.1 <u>Take Rate</u>. It is the intention of the Parties that the Take Rate charged to eBay Merchants immediately following the Effective Time shall remain generally consistent with the Take Rates charged to such eBay Merchants as of immediately prior to the Effective Time. Furthermore, following the Effective Time and at all times during the Term, PayPal shall use reasonable best efforts to cause the Take Rate charged to comparable eBay Merchants (de-

termined on an aggregate or average basis) to be comparable to the Take Rate charged to Non-eBay Merchants for comparable payment services in each Covered Jurisdiction, as set forth in more detail on <u>Schedule 3.1</u>. The Parties shall determine whether eBay Merchants and Non-eBay Merchants are "comparable" by segmenting such eBay Merchants and Non-eBay Merchants using the characteristics set forth on <u>Schedule 3.1</u>.

- 3.2 Market Check. Annually during the Term (or more frequently as mutually agreed by the Parties), a third-party, independent expert mutually agreed upon by the Parties (the "Independent Expert") will, with respect to each Covered Jurisdiction, review the actual Take Rate for comparable (x) eBay Merchants with an Account Nationality in such Covered Jurisdiction (determined on an aggregate or average basis) and (y) Non-eBay Merchants in such Covered Jurisdiction, including Non-eBay Merchants that use or access PayPal's services through Properties operated by a Competitive Platform Operator (other than Non-eBay Merchants that are also Competitive Platform Operators) (each such review, a "Market Check"), in accordance with the following procedures:
- (a) The Independent Expert shall be an independent, external internationally recognized firm with appropriate qualifications and experience in conducting reviews of this nature.
- (b) Before beginning a Market Check for a Covered Jurisdiction, the Independent Expert shall execute a confidentiality agreement with PayPal and eBay (or their respective Subsidiaries in such Covered Jurisdiction), the terms of which shall not frustrate or impede the purpose of the review or the disclosure of the results thereof to the Parties. If the Independent Expert has executed a confidentiality agreement in accordance with this Section 3.2(b) during the Term and such confidentiality agreement remains in full force and effect, the Independent Expert shall not be required to reexecute a second confidentiality agreement.
- (c) The Independent Expert shall create a detailed written report of the results and findings of the Market Check for such Covered Jurisdiction and simultaneously provide copies of the report to both eBay and PayPal. The Independent Expert shall not disclose any Highly Sensitive Information that, if disclosed to eBay or PayPal, as applicable, would cause PayPal or eBay, as applicable, competitive harm, and shall not disclose any information to the extent disclosure of such information to such Party would violate applicable Law (including the law of a Covered Jurisdiction). Neither Party shall be required to disclose to the Independent Expert any information to the extent disclosure of such information to such Independent Expert would violate applicable Law (including the law of a Covered Jurisdiction).
- (d) The Independent Expert shall conduct the Market Check in a manner that does not unreasonably interfere with eBay's or PayPal's business operations. Each Party and its respective Subsidiaries shall reasonably cooperate with the Independent Expert in connection with the Market Check, including by providing the Independent Expert with access to relevant financial and accounting books and statements, management and operating data, records and sample or survey data previously collected by such Party, financial statements, Systems, facilities, operations, and management Personnel and other Personnel, but only as reasonably necessary for the purposes of the Market Check, and ensure that its Personnel cooperate with the Mar-

ket Check and all other reasonable requests by the Independent Expert for additional information or documentation related to the Market Check.

- 3.3 Response to Market Check. If the Independent Expert concludes following a Market Check for a Covered Jurisdiction that the Take Rate charged to comparable eBay Merchants with an Account Nationality in such Covered Jurisdiction (determined on an aggregate or average basis) is higher than the Take Rate charged to Non-eBay Merchants for comparable payment services in such Covered Jurisdiction (the amount of such excess, the "Take Rate Overage"), then (a) PayPal shall cause the Take Rate charged to comparable eBay Merchants with an Account Nationality in such Covered Jurisdiction (in aggregate) for the remainder of the Term to be comparable to the Take Rate charged to Non-eBay Merchants for comparable payment services in such Covered Jurisdiction and (b) eBay and PayPal shall cooperate in good faith and mutually agree on actions to be taken by PayPal and by eBay (if any) to communicate such change in the Take Rate to, and to remedy the Take Rate Overage during the previous year or years of the Term for, some or all of the eBay Merchants with an Account Nationality in such Covered Jurisdiction, including by means of a refund, discount or otherwise (the "Take Rate Offset"). If the Parties cannot mutually agree on the Take Rate Offset for a Covered Jurisdiction, the Parties shall resolve such dispute through the dispute resolution provisions set forth in Sections 16.1 and 16.2.
- 3.4 Competitive Platform Operators. In the event that PayPal offers to Non-eBay Merchants that use or access PayPal's services through Properties operated by a Competitive Platform Operator in a Covered Jurisdiction (other than Non-eBay Merchants that are also Competitive Platform Operators) (a) overall economic terms that are more favorable than the economic terms offered at such time to eBay Merchants accessing the Services through the eBay Covered Properties primarily located in such Covered Jurisdiction or (b) any non-economic term that is not offered at such time to eBay Merchants accessing the Services through the eBay Covered Properties primarily located in such Covered Jurisdiction (unless such non-economic term is exclusively offered at such time to Non-eBay Merchants who use or access PayPal's services through Properties operated by such Competitive Platform Operator in such Covered Jurisdiction and is not offered at such time to other Non-eBay Merchants) (any such term described in clauses (a) or (b), whether temporary or permanent, a "CPO MFP"):
- (a) Offer to eBay. Promptly after offering a CPO MFP to one or more Competitive Platform Operator(s), PayPal shall offer to eBay, on behalf of comparable eBay Merchants in such Covered Jurisdiction, the same CPO MFP, along with all other terms and conditions directly related to such CPO MFP, including any terms and conditions required to comply with applicable Law and any amendments or modifications to any Contracts to which eBay is a party (the "CPO Conditions"), other than any Prohibited Conditions. As part of such offer, PayPal shall provide to eBay the material terms of the CPO MFP and of the CPO Conditions in sufficient detail to enable eBay to evaluate the material terms and determine whether to choose to accept the CPO MFP and to comply with the CPO Conditions (other than the Prohibited Conditions). eBay shall notify PayPal in writing no later than ninety (90) days following eBay's receipt of such material terms whether to accept the CPO Conditions (other than any Prohibited Conditions). If eBay chooses to accept the CPO MFP, eBay shall use reasonable efforts to comply with the CPO Conditions (other than any Prohibited Conditions) as soon as commercially reasonable following the date eBay communicates its acceptance to PayPal, and the CPO MFP

shall be effective immediately upon eBay's compliance with the CPO Conditions (other than any Prohibited Conditions).

- (b) Prohibited Conditions. If one or more of the CPO Conditions is: (i) a term or condition with which eBay is not reasonably capable of complying. (ii) a term or condition applicable to merchants with which the eBay Merchants (in the aggregate) are not reasonably capable of complying, as described below; (iii) unique to such Competitive Platform Operator (such that only the Competitive Platform Operator could comply); or (iv) designed or intended to, or operates to, frustrate or interfere with, or otherwise has the effect of, discriminating against eBay or eBay Merchants or frustrating or circumventing the application of this Section 3.4 (collectively, the "Prohibited Conditions"), then eBay and the eBay Merchants shall receive the CPO MFP without having to comply with such CPO Condition (provided, that eBay complies with all CPO Conditions that are not Prohibited Conditions). By way of example: (A) eBay and eBay Merchants will be deemed to be not "reasonably capable of complying" with any and all terms or conditions to the extent that they (1) impose a condition or requirement of size or ranking (in aggregate or with respect to a specific jurisdiction) that is unrelated to the Competitive Platform Operator's payments volume on PayPal and that exceeds the size or ranking of the applicable eBay Covered Properties, (2) require eBay or eBay Merchants to violate any applicable Law or Contract (other than any Contract that may be amended by eBay without the consent of the other party or parties thereto to eliminate such violation) or (3) would require eBay to operate a Property that is not an eBay Covered Property or own or control operations in a jurisdiction that is not a Covered Jurisdiction; and (B) subject to clause (A), eBay shall not be deemed to be not "reasonably capable of complying" with a term or condition solely because such term or condition requires eBay to pay or commit to pay any amount or incur any obligation in favor of or offer or grant any accommodation (financial or otherwise) to the Competitive Platform Operator or in respect of such CPO MFP.
- (c) In connection with the Market Check, the Independent Expert shall review the CPO MFPs, if any, offered by PayPal during the year covered by such Market Check and PayPal's compliance with the terms of this Section 3.4. The Independent Expert's review shall be conducted in a manner consistent with the procedures and policies for the Market Check set forth in Sections 3.2(b), (c) and (d), and PayPal shall provide the same level of cooperation to the Independent Expert that PayPal is required to provide in connection with the Market Check.
- 3.5 <u>Changes in Law</u>. If PayPal changes the terms, conditions or manner of performing the payment processing services it offers or the Take Rate charged to merchants for payment processing services in a Covered Jurisdiction in response to a change in Law, PayPal shall use its reasonable best efforts to implement such change in a manner that does not have a disproportionately adverse effect on the Take Rate charged to, and the terms, conditions or manner of performing payment processing services for, eBay Merchants relative to the impact on Non-eBay Merchants.

# ARTICLE IV PERFORMANCE OF SERVICES; SERVICE LEVELS

4.1 <u>Manner of Performance</u>. PayPal shall, at all times, ensure that the Services, and PayPal's obligations under this Agreement, are performed at the highest level of quali-

ty provided, or required to be provided, by PayPal with respect to comparable services provided to or for Non-eBay Merchants and PayPal Users, and by appropriately trained and qualified Personnel in a timely, professional and workmanlike manner. PayPal shall promptly notify eBay upon becoming aware of any circumstances that could reasonably be expected to jeopardize the performance of the Services or PayPal's obligations under this Agreement in accordance with this Article 4, and eBay shall promptly notify PayPal upon becoming aware of any circumstances that could reasonably be expected to jeopardize the performance by eBay of its obligations under this Agreement in accordance with this Article 4.

- 4.2 Facilities; Personnel. Except as otherwise expressly provided herein, (a) each Party shall be responsible for providing all facilities, Personnel and other resources necessary to perform its obligations under this Agreement and (b) without limiting the foregoing, PayPal shall be responsible for providing all facilities, Personnel and other resources necessary to perform the Services; provided, that if eBay has agreed pursuant to another Ancillary Agreement or Commercial Agreement to provide to PayPal any facilities, Personnel or other resources used by PayPal in performing the Services, then eBay shall be responsible for providing such facilities, Personnel and other resources pursuant to the applicable Ancillary Agreement(s) and Commercial Agreement(s). Each Party shall manage, supervise and provide direction to its respective Personnel in connection with this Agreement, and shall cause them to comply with all obligations and restrictions applicable to such Party under this Agreement and, to the extent set forth in the proviso to clause (b) of the immediately preceding sentence, any other Ancillary Agreement or Commercial Agreement.
- 4.3 <u>Subcontracting</u>. Each of eBay and PayPal shall remain fully responsible and liable for the performance of all of its obligations under this Agreement even if performed, or failed to be performed, by a subcontractor. Each subcontracting arrangement entered into by either Party in connection with the performance of its obligations under this Agreement shall be documented in a written Contract, and each Party shall use reasonable best efforts to cause any such Contract not to contain any provision that is inconsistent with the terms of this Agreement. Unless otherwise requested by eBay, PayPal shall be eBay's sole point of contact with respect to PayPal's subcontractors and any subcontracting arrangements entered into by PayPal under this Agreement, and unless otherwise requested by PayPal, eBay shall be PayPal's sole point of contact with respect to eBay's subcontractors and any subcontracting arrangements entered into by eBay under this Agreement.
- 4.4 <u>Service Levels</u>. Without limiting <u>Section 4.1</u>, during the Term, PayPal shall perform the Services in a manner that meets or exceeds the applicable service level requirements agreed by the Parties from time to time (the "<u>Service Levels</u>"). The Parties shall cooperate in good faith to update the service level requirements from time to time in order to reflect a Service Level that equals or exceeds the performance and quality standards set forth in <u>Section</u>

- 4.1, and PayPal's provision of Services shall satisfy or exceed the requirements of the then-current Service Level.
- 4.5 Root Cause Analysis. Each time there occurs a failure to provide any Services due to system outages or interruptions, the Parties shall each promptly use commercially reasonable efforts to: (a) conduct a root cause analysis of the failure and prepare a written report identifying and describing in reasonable detail such root cause(s), (b) discuss the root cause(s) of the failure and each Party's position with regard to such root cause(s), (c) correct the problem and begin providing the impacted Services as soon as practicable and (d) regularly advise the other Party of the status of such corrective efforts and respond promptly to any request by the other Party for an update regarding such efforts (it being agreed that, except as mutually agreed by the Parties, each Party may satisfy the requirements of the foregoing clauses (a) through (d) by using the same degree of effort that such Party used to analyze and discuss system outages and interruptions prior to the Effective Time). Each Party shall prioritize any root cause analysis performed hereunder at a level equal to or higher than that afforded to such Party's testing or quality assurance investigations or activities conducted internally or for any other of such Party's customers of services reasonably comparable to the Services. The Parties shall apportion the cost of correcting the problem based on the results of the root cause analysis and the relative contribution of each Party to the root cause(s) of the failure. All Service Levels and applicable Service Credits shall remain in effect notwithstanding the subsequent correction of any performance problem.
- 4.6 <u>Monitoring</u>. As part of the Services, PayPal shall implement measurement and monitoring tools and procedures necessary to measure its performance of the Services against the Service Levels on a monthly basis. Subject to the provisions of <u>Article 15</u>, PayPal shall provide eBay with information and documentation regarding the measurement and monitoring tools necessary to verify compliance by PayPal with the Service Levels and shall provide eBay with such access to the measurement and monitoring tools as is necessary to conduct such analysis.
- 4.7 <u>Disaster Recovery.</u> In order to facilitate an orderly transition in connection with the Separation and Distribution, PayPal shall implement and maintain disaster recovery facilities and a written disaster recovery plan that is consistent with the terms of the Colocation Services Agreement and that is designed to ensure that in the case of a disaster within or around the geographic location of PayPal's Systems used in connection with the Services, PayPal shall be able to switch to a redundant site (or colocated site hosted by eBay or a third Person) capable of meeting the requirements of this Agreement without disruption or lapse in service (such disaster recovery plan, the "<u>Disaster Recovery Plan</u>"). Subject to the foregoing, the Disaster Recovery Plan shall be consistent with, and be at least as protective as, the most protective disaster recovery plan that PayPal then provides or is required to provide to any other customer (other than eBay) of PayPal or any of its Subsidiaries. Upon PayPal's discovery of circumstances requiring disaster recovery in connection with the Services, PayPal shall implement the Disaster Recovery Plan and shall promptly notify eBay of such circumstances. In the event that a disaster causes PayPal to allocate limited resources between or among its customers, PayPal shall allocate such resources to eBay in a manner no less favorable to eBay than PayPal allocates such resources to its most favored customers.

# ARTICLE V DATA SHARING; INFORMATION SECURITY; PRODUCT DEVELOPMENT

#### 5.1 Data Sharing Addendum.

- (a) eBay and PayPal shall execute and deliver a data sharing addendum, substantially in the form set forth on <u>Schedule 5.1</u> (a "<u>Data Sharing Addendum</u>"), effective as of the Effective Time, providing for each Party and its Subsidiaries to share data with the other Party and its Subsidiaries for use in risk, trust and fraud modeling and for the purpose of facilitating customer transactions and customer service. If there is any inconsistency or conflict between the terms of this Agreement and the terms and conditions of the Data Sharing Addendum, then the terms of the Data Sharing Addendum shall govern to the extent of the conflict.
- (b) The Data Sharing Addendum shall provide that: (i) all data sharing will comply with all applicable Laws, including Data Protection Laws; and (ii) notwithstanding anything to the contrary in the Data Sharing Addendum, neither Party shall be required to share any data with the other Party in violation of any applicable Law; provided, that the Parties shall use commercially reasonable efforts to cooperate in seeking to find a way to permit compliance with the data sharing obligations contained in the Data Sharing Addendum to the extent and in a manner that avoids any violation of Law, including through (A) the amendment of the applicable privacy policy or (B) the redaction or anonymization of data so that the provision of such redacted or anonymized data to the other Party pursuant to the Data Sharing Addendum does not violate applicable Law.
- (c) Upon the consummation of a Specified Change of Control, eBay can terminate all or any portion of the Data Sharing Addendum (without triggering the termination of this Agreement or any related arrangements) by delivering a written notice to PayPal at any time beginning at the effective date of such Specified Change of Control and ending ninety (90) days thereafter, with such termination to become effective on the date specified by eBay in such written notice.
- 5.2 Access to Facilities. To the extent that eBay's or PayPal's Personnel will access the other Party's sites or facilities in connection with this Agreement, such Party shall cause its Personnel, while working at such sites or facilities, to comply with all applicable safety and security policies and procedures that have been provided to such Personnel, and shall be liable for any violation of any such policies and procedures by such Party's Personnel.
- 5.3 Systems Policies. To the extent that eBay's (or its Subsidiaries') or PayPal's (or its Subsidiaries') Personnel will access the Systems of the other Party or its Subsidiaries in connection with this Agreement, that Party shall cause such Personnel, while accessing such Systems, to (a) comply with all applicable security policies and procedures that have been provided to such Personnel, (b) not tamper with, compromise or circumvent any security or audit measures employed by the other Party and (c) if requested by the other Party, execute a confidentiality agreement in the form provided by that Party. For clarity, access or use of APIs of a Party or its Subsidiaries shall not constitute access to Systems of such Party or its Subsidiaries. Each Party shall also:

- (a) Ensure that only those of its Personnel who are specifically authorized to have access to the other Party's Systems gain such access, prevent its Personnel's unauthorized access to, or use, destruction, alteration or loss of, any information contained therein, and notify its Personnel of the restrictions set forth in this Agreement; and
- (b) Use commercially reasonable efforts to ensure that its Personnel who are authorized to have access to the other Party's Systems shall access and use only those Systems, and only such data and information within such Systems, to which such Personnel have been granted the right to access and use.
- 5.4 Security and Stability. Each Party acknowledges that it is in the best interests of all Parties for each Party maintain a secure and stable environment and, to that end, except as set forth in the Data Sharing Addendum, each Party reserves the right to change at any time the method by which its applicable databases and/or data may be accessed by the other Party (and in the case of PayPal, the eBay Merchants); provided, that such access method shall not negatively affect, in any material way, the quality of or provision of the Services or either Party's compliance with the obligations set forth in this Agreement. Each Party shall provide the other Party with advance written notice of any such changes to the method of access to the applicable databases and/or data and shall ensure that any such change does not materially and adversely impact the quality of or provision of the Services or either Party's compliance with the obligations set forth in this Agreement. Each Party also agrees that, in the event of degradation or instability of the Platform or the other Party's Systems or an emergency with respect to the Platform or such Systems, the other Party may, in its sole discretion, temporarily suspend access to the applicable, API, database and/or data under this Agreement in order to minimize threats to and protect the operational stability and security of the Platform and such other Party's Systems. Each of the Parties agree to the information security requirements described on Schedule 5.4 (the "Information Security Addendum"); provided, that any change to the scope of Services provided under this Agreement would require additional review by the Parties' security teams to determine whether additional information security requirements to the Information Security Addendum required to reflect any such additional information security requirements.
- 5.5 <u>Unauthorized Access</u>. Each Party shall be responsible for implementing and appropriately updating reasonable policies, procedures and technology to prevent unauthorized access to the eBay Properties or PayPal's Systems in connection with the usage or provision of the Services. Each Party shall apply appropriate internal information security practices, including: using appropriate firewall and anti-virus software; maintaining such countermeasures, operating systems, and other applications with up-to-date virus definitions and security patches; installing and operating security mechanisms in the manner in which they were intended sufficient to ensure that the eBay Properties or PayPal's Systems will not be impacted nor operations disrupted in connection with the usage or provision of the Services; and permitting only authorized users access to computer systems and applications. Each Party shall also use up-to-date anti-virus tools to remove known Viruses from any email message or data transmitted to an eBay Property or PayPal's Systems in connection with the usage or availability of the Services. Each Party shall be responsible for maintaining and providing the other Party with appropriate access to audit its policies, procedures and technology for safeguarding customer information. Each Party acknowledges and understands that such policies, procedures and technology are consid-

ered Confidential Information. Additionally, each of PayPal and eBay shall not knowingly compromise the security of the other Party's Systems, including by tampering with, compromising, or attempting to circumvent any physical or electronic security or audit measures employed by such Party in the course of its business operations.

5.6 <u>Product Development Agreement</u>. eBay and PayPal shall execute and deliver a product development agreement (the "<u>Product Development Agreement</u>"), effective as of the Effective Time, that provides for eBay and PayPal to mutually discuss in good faith and agree on a product development plan for improving the PayPal experience on eBay Covered Properties and to prioritize those improvements to be incorporated into the experience on the eBay Covered Properties (the "<u>Product Development Plan</u>"). The Product Development Plan shall set forth, at a minimum, a description of each development project to which eBay and PayPal mutually agree (each such project, a "<u>Development Project</u>"), the primary owner (eBay or PayPal), the Party with primary responsibility for the achievement of each action item or deliverable for each such Development Project, the expected timeline and key milestones for each such Development Project, the anticipated budget for each such Development Project, and the resource commitments by eBay and PayPal towards completing each such Development Project. The Product Development Agreement shall also provide, among other things, for each of eBay and PayPal to agree to commit resources and development staff, as mutually agreed by eBay and PayPal, to the Development Projects included in the Product Development Plan.

### ARTICLE VI REFERRAL SERVICES FEES; USAGE OF SERVICES; MARKETING

#### 6.1 Referral Services Fee.

- (a) Baseline Referral Services Fee. eBay shall be entitled to receive from PayPal, for each Quarter during the Term in which the Penetration Rate as of the beginning of such Quarter exceeds sixty percent (60%), an amount equal to \$[ ] (the "Baseline Referral Services Fee"), subject to adjustment pursuant to Sections 6.1(b) (the Baseline Referral Services Fee, as so adjusted, the "Referral Services Fee").
- (b) Adjustment Payments. Immediately following the Effective Time, PayPal and eBay shall mutually determine in good faith an estimate of (i) the number of Activated New Users for the period commencing on such date and ending at the beginning of the following Quarter and (ii) the number of Activated New Users for subsequent Quarters during the Term (clause (i) (with respect to the first Quarter following the Effective Time) and clause (ii) (with respect to all other Quarters during the Term), the "Estimated Activated New Users"). Within three (3) business days of the end of each Month and each Quarter, PayPal shall calculate and deliver to eBay a report of the number of Activated New Users since the beginning of the previous Month or Quarter, as applicable. If the number of Activated New Users for a Quarter exceeds the Estimated Activated New Users, then the Referral Services Fee for such Quarter shall equal (i) the Baseline Referral Services Fee plus (ii) an amount equal to (A) the absolute value of (I) the Activated New Users for such period minus (II) the Estimated Activated New Users mul-

tiplied by (B) an amount that is mutually determined by eBay and PayPal (such amount for such Quarter, the "Activated New Users Adjustment Amount"). If the Estimated Activated New Users for a Quarter exceeds the number of Activated New Users for such Quarter, then the Referral Services Fee for such Quarter shall equal (I) the Baseline Referral Services Fee for such Quarter minus (II) the Activated New Users Adjustment Amount for such Quarter.

- (c) Revisions to Baseline Referral Services Fee. If there occur three (3) or more consecutive Quarters in which the Activated New Users Adjustment Amount for each such Quarter exceeds five percent (5%) of the Baseline Referral Services Fee for the corresponding Quarter and either (i) the Referral Services Fee for each such Quarter exceeds the Baseline Referral Services Fee or (ii) the Referral Services Fee for each such Quarter is less than the Baseline Referral Services Fee, the Parties shall mutually adjust the Baseline Referral Services Fee for subsequent Quarters in the Term, in a manner to be mutually agreed by the Parties, to reflect the average number of Activated New Users over such consecutive Quarters.
- 6.2 <u>Credit Services Referral Fees</u>. eBay shall be entitled to receive from PayPal, for each Quarter during the Term, an amount equal to 0.30% of the PayPal Net TPV of eBay Properties for such Quarter completed through the Credit Services (the "<u>Credit Usage Fee</u>"). No later than three (3) business days following the end of each Month and each Quarter during the Term, the Parties shall calculate the PayPal Net TPV of eBay Properties for such Month or Quarter, as applicable, completed through the Credit Services and the resulting Credit Usage Fee.
- 6.3 <u>Penetration Rate Payments</u>. Either eBay or PayPal shall, subject to <u>Section 6.3(d)</u>, be entitled to receive from the other Party, for each Quarter during the Term, a payment in respect of the Penetration Rate for such Quarter, calculated in accordance with this <u>Section 6.3</u> (the "<u>Penetration Rate Payment</u>"), as follows:
- (a) *Calculation*. No later than the last business day of each Month during the Term, eBay will provide to PayPal the following: the Penetration Rate for the previous Month and an estimate of the Penetration Rate for the Quarter in which the current Month is included. The data provided by eBay will include country level detail of the Penetration Rate for at least the highest ten Covered Jurisdictions, measured by eBay Addressable GMV. In making its calculations, eBay will utilize foreign exchange rates consistent with those utilized by eBay for its internal planning and budgeting purposes. PayPal acknowledges that the Penetration Rate data to be provided by eBay is commercially sensitive and, accordingly, PayPal agrees to restrict access to the Penetration Rate data to the PayPal senior executive team and those PayPal Personnel who need access to such information to execute their job responsibilities, including accounting and financial reporting Personnel.
- (b) *Penetration Rate Above Baseline Rate*. If the Penetration Rate for such Quarter exceeds the Baseline Rate, eBay shall be entitled to a Penetration Rate Payment in an amount equal to (i) \$3,250,000 *multiplied by* (ii) (A) the Penetration Rate for such Quarter *minus* (B) the Baseline Rate, (C) rounded to the nearest hundredth of a percentage point, *multiplied by*

(iii) one hundred (100). By way of example, if the Penetration Rate for a Quarter were 82.253%, eBay would be entitled to a Penetration Rate Payment for such Quarter equal to \$3,250,000 *multiplied by* 2.25% *multiplied by* 100, or \$7,312,500.

- (c) Penetration Rate Less than Baseline Rate (0 to 5%). If the Baseline Rate exceeds the Penetration Rate for such Quarter, PayPal shall be entitled to a Penetration Rate Payment in an amount equal to (i) \$3,250,000 multiplied by (ii) the Baseline Rate minus the Penetration Rate for such Quarter, (C) rounded to the nearest hundredth of a percentage point, multiplied by (iii) one hundred (100). By way of example, if the Penetration Rate for a Quarter were 78.253%, PayPal would be entitled to a Penetration Rate Payment for such Quarter equal to \$3,250,000 million multiplied by 1.75% multiplied by 100, or \$5,687,500.
- (d) *Penetration Rate Less than Baseline Rate (More than 5%)*. If the Baseline Rate exceeds the Penetration Rate for such Quarter by more than five percent (5%), then PayPal shall be entitled to a Penetration Rate Payment in an amount equal to (i) \$16,250,000, (ii) *plus* (A) \$12,500,000 *multiplied by* (B) (I) the Baseline Rate *minus* (II) the Penetration Rate *minus* (III) five percent (5%), (IV) rounded to the nearest hundredth of a percentage point, *multiplied by* (C) one hundred (100). By way of example, if the Penetration Rate for a Quarter were 74.253%, PayPal would be entitled to a Penetration Rate Payment equal to \$16,250,000 (calculated pursuant to Section 6.3(c)) + \$12,500,000 *multiplied by* 0.75 *multiplied by* 100 = \$25,625,000.
- (e) Elimination of Penetration Rate Payment. Notwithstanding the foregoing: (i) PayPal shall not be entitled to any Penetration Rate Payments for any Quarter ending after December 31, 2015 if PayPal Net TPV Off eBay in the calendar year ended December 31, 2015 is less than (A) eighty eight percent (88%) multiplied by (B) the PayPal Net TPV Off eBay for the calendar year ending December 31, 2014 (such product, the "2014 Measurement Rate"); (ii) PayPal shall not be entitled to any Penetration Rate Payments for any Quarter ending after December 31, 2016 if PayPal Net TPV Off eBay in the calendar year ended December 31, 2016 is less than the greater of: (A) the 2014 Measurement Rate and (B) (I) eighty eight percent (88%) multiplied by (II) the highest PayPal Net TPV Off eBay in the previous two (2) calendar years; and (iii) for the calendar years ending on December 31, 2017, December 31, 2018 or December 31, 2019, PayPal shall not be entitled to any Penetration Rate Payments for any Quarter following the end of any calendar year in which PayPal Net TPV Off eBay is less than (A) eighty eight percent (88%) multiplied by (B) the highest PayPal Net TPV Off eBay in the previous three consecutive calendar years.
- 6.4 <u>Aggregate Quarterly Fees</u>. The "<u>Aggregate Quarterly Fee</u>" for each Quarter shall equal (a) the Referral Services Fee for such Quarter *plus* (b) the Credit Usage Fee for such Quarter *plus* (c) if eBay is entitled to a Penetration Rate Payment for such Quarter, the Penetration Rate Payment for such Quarter *minus* (d) if PayPal is entitled to a Penetration Rate Payment for such Quarter, the Penetration Rate Payment for such Quarter. At the end of every Calendar Year during the Term, PayPal shall pay to eBay, in accordance with the provisions of <u>Article 7</u>, the sum of the Aggregate Quarterly Fees accrued during the previous year.
- 6.5 <u>Descriptions of PayPal on eBay Covered Properties</u>. All text descriptions of PayPal on the eBay Covered Properties pursuant to this section shall be preapproved in writing by PayPal.

6.6 <u>Integration of New PayPal Products</u>. eBay agrees to review and consider in good faith implementation of any new PayPal products and related offerings but shall have no obligation, now or in the future, to implement any such PayPal products or related offerings.

### ARTICLE VII FEES AND PAYMENT

### 7.1 Payment Terms.

- (a) Within three (3) business days following the end of each Quarter, PayPal shall deliver to eBay (i) a calculation of the estimated Aggregate Quarterly Fee payable by eBay or PayPal, as applicable, for such Quarter, including each of the component fees, and (ii) true and complete statements of the Activated New Users for such Quarter and PayPal Net TPV on eBay Covered Properties completed through the Credit Services (each such statement and associated information, a "Quarterly Statement"). The Quarterly Statement shall also include the Penetration Rate for such Quarter delivered by eBay to PayPal pursuant to Section 6.3(a). Within thirty (30) days following the end of each Calendar Year during the Term, PayPal shall deliver to eBay a statement that contains (A) a calculation of the Aggregate Quarterly Fee payable by eBay or PayPal, as applicable, for such Calendar Year, including each of the component fees, and (B) the PayPal Net TPV Off eBay for the most recently completed fiscal year (each such statement and associated information, an "Annual Statement"). The Parties will determine amongst themselves what additional information shall be included in the Quarterly Statements and Annual Statement and the form, substance and recipients of any invoices issued in respect of the Aggregate Quarterly Fee payable by eBay or PayPal, as applicable, for each Quarter and each Calendar Year.
- (b) Subject to Section 7.1(c), if the Annual Statement indicates that eBay is entitled to receive a payment from PayPal, then PayPal shall, or shall cause its applicable Affiliates to, pay to eBay the undisputed amount due pursuant to such Annual Statement within thirty (30) days after PayPal's delivery of such Annual Statement. Subject to Section 7.1(c), if the Annual Statement indicates that PayPal is entitled to receive a payment from eBay, then eBay shall, or shall cause its applicable Affiliates to, pay to PayPal the undisputed amount due pursuant to such Annual Statement within thirty (30) days after eBay's receipt of such Annual Statement.
- (c) Each Party may dispute in whole or in part any Quarterly Statement or Annual Statement, or any component thereof prepared by the other Party, by providing written notice to such other Party within thirty (30) days from the receipt of the relevant Quarterly Statement or Annual Statement (or component thereof), it being understood that any undisputed amounts on the Annual Statement (or components thereof) shall be paid when due by PayPal or eBay in accordance with Section 7.1(b). If a Party does not dispute a Quarterly Statement (or component thereof) within such thirty (30)-day period, it shall not be permitted to dispute pursuant to this Section 7.1(c) the amounts set forth on the Annual Statement for the applicable Calendar Year to the extent that such amounts were included or reflected in such undisputed Quarterly Statement. eBay and PayPal shall attempt in good faith to negotiate a resolution of any dispute within thirty (30) days from the receipt of the written notice by the Party that prepared the disputed Quarterly Statement or Annual Statement (or component thereof). If the resolution of any such dispute with respect to an Annual Statement is that one Party owes a payment of any amount to the other Party or that one Party's payment was in excess of the actual amount due,

the Party that owes such payment or that received the excess payment, as applicable, shall pay such amount due or amount in excess to the other Party, *plus* interest accruing at the Interest Rate from the date that is thirty (30) days following the date set forth in Section 7.3(a) for PayPal to deliver to eBay's the Annual Statement to the time of the payment, promptly, and in any event within thirty (30) days, after eBay and PayPal agree to such resolution. If a dispute regarding any Quarterly Statement or Annual Statement is not resolved within such thirty (30)-day period, the dispute may be resolved in accordance with Section 16.2. The existence of a dispute (pursuant to this Section 7.1(c) or otherwise) shall not excuse any Party from any other obligation under this Agreement, including eBay's or PayPal's applicable obligation to pay any undisputed amounts and PayPal's obligation to continue to perform Services hereunder, unless and until this Agreement is validly terminated pursuant to Section 10.2.

(d) The Parties hereby agree that the consideration payable pursuant to this Agreement also constitutes compensation for the services rendered by each Party under the Product Development Agreement and the Data Sharing Addendum, and that no additional payments shall be required to be made by one Party to another Party as consideration for such services.

#### 7.2 Taxes.

- (a) The amounts payable to eBay or PayPal, as applicable, pursuant to Section 7.1 shall be exclusive of any and all value added, goods and services, sales, use, consumption, excise, service, transfer, stamp, documentary, filing, recordation taxes or similar taxes and any related interest and penalties (collectively, "Transaction Taxes"). The Party receiving any services hereunder for which it would be required to pay a component fee but for the aggregation of such fees pursuant to Sections 6.4 and 7.1 shall be responsible for any Transaction Taxes imposed or assessed with respect thereto. The Party providing any services hereunder shall issue proper invoices usable by the Party receiving any services hereunder in order to recover (by way of credit or refund) in jurisdictions where they are recoverable. The Parties shall cooperate to minimize any Transaction Taxes and in obtaining any refund, return or rebate, or applying an exemption or zero-rating for services giving rise to any Transaction Taxes, including by filing any exemption or other similar forms or providing valid tax identification number or other relevant registration numbers, certificates or other documents. The Parties shall cooperate regarding any requests for information, audit, or similar request by any Taxing Authority concerning Transaction Taxes payable with respect to services provided pursuant to this Agreement.
- (b) The Party receiving services hereunder shall be entitled to deduct and withhold Tax required by applicable Law to be withheld on payments made to the Party providing any service hereunder. To the extent any amounts are so withheld, the Party receiving any service hereunder shall timely remit such deducted and withheld amount to the relevant Taxing Authority and promptly provide the Party providing any services hereunder with evidence of such payment. The Party providing any services hereunder agrees to complete and provide to the Party receiving any services hereunder or if required, to the relevant Taxing Authority, at least ten (10) days prior to the payment due date, such forms, certifications or other documents as may be reasonably requested by the Party receiving any services hereunder, in order to reduce or exempt the withholding of any Tax with respect to payments made to the Party providing any services hereunder when and where applicable by Law. The Parties shall cooperate regarding any

requests for information, audit, or similar request by any Taxing Authority concerning the withholding of any Tax payable with respect to services provided pursuant to this Agreement.

(c) Any penalties or interested imposed on any Transaction Taxes described in <u>Section 7.2(a)</u> or Tax described <u>Section 7.2(b)</u> shall be the responsibility of the Party receiving any services hereunder unless the penalties or interested are the result of an action or failure to act by the Party providing any services hereunder.

# ARTICLE VIII COMPLIANCE WITH LAW: AUDITS

- 8.1 Compliance with Law; Books and Records.
- (a) Each Party shall ensure that the performance of its obligations hereunder complies with all applicable Laws (including all Data Protection Laws), and shall, at its sole expense, obtain and maintain in force all licenses, consents and permits required for it to comply with all such Laws. Without limiting the foregoing, neither Party shall be required to pay or commit to pay any amount or incur any obligation in favor of or offer or grant any accommodation (financial or otherwise) to enable the other Party to comply with such applicable Laws. Each Party shall notify the other Party of any requirements under applicable Law that require disclosures with respect to the Services to be made on any eBay Property or that require any other change to any such Property in connection with the Services, in each case to the extent such disclosure is required due to the nature of the Services. Notwithstanding the foregoing, to the extent required by applicable Law, PayPal and eBay shall be jointly responsible for notifying any Governmental Authority of this Agreement and of any modification hereto. The Parties shall, upon the reasonable request of the other Party, share information with each other as necessary to enable each Party to satisfy its obligations under this Section 8.1.
- (b) Each Party and its Subsidiaries shall each maintain (and cause to be maintained) complete and accurate books and records for the purpose of supporting and documenting the accuracy of the Quarterly Statements and Annual Statements and the calculation of the Aggregate Quarterly Fees, eBay Addressable GMV, PayPal Net TPV on eBay Covered Properties and PayPal Net TPV Off eBay, including any financial, operating and market data with respect to the Services, and as otherwise reasonably necessary to confirm such Party's compliance with this Agreement (except for Sections 3.1 and 3.2). All such books and records will be retained at the applicable Party's, or its applicable Subsidiary's, principal place of business for a period of at least eighteen (18) months after the payments to which they pertain have been made. Each Party's books and records will be open for inspection and review (as set forth in this Article 8) during such eighteen (18)-month period for the purpose of verifying the accuracy of the payments and charges made hereunder and such Party's compliance with this Agreement.

#### 8.2 Audits.

(a) Each Party shall have the right (but not the obligation) to engage an independent auditor to conduct (and such Party shall be permitted to cause such independent auditor to so conduct), at such Party's sole cost and expense, audits (each, an "External Audit") of the other Party to confirm: the accuracy of the Quarterly Statements, Annual Statements and any

financial, operating and market data used to determine the Aggregate Quarterly Fees. The Party causing the External Audit to be conducted is referred to herein as the "Requesting Party," and the Party that that is the subject of the External Audit is referred to herein as the "Audited Party." The scope of the External Audit referred to in the preceding sentence shall be set forth in an auditor's review instruction letter that the Requesting Party shall provide to the auditor performing such External Audit (such auditor, the "External Auditor"). Any External Audit conducted pursuant to this Section 8.2 shall be conducted by an independent, external, internationally-recognized firm as mutually agreed upon by the Parties with appropriate qualifications and experience in conducting audits of this nature. Before beginning an External Audit, the External Auditor shall execute a confidentiality agreement with the Audited Party, the terms of which shall not frustrate or impede the purpose of the External Audit or the disclosure of the results thereof to the Requesting Party; provided, that if the External Auditor has executed a confidentiality agreement in accordance with this Section 8.2(a) during the Term and such confidentiality agreement remains in full force and effect, the External Auditor shall not be required to reexecute a second confidentiality agreement. The External Auditor shall create a detailed written report of the results and findings of each External Audit, and simultaneously provide copies of the report to both eBay and PayPal; provided, that such report shall not contain any Highly Sensitive Information that, if disclosed to the Requesting Party, would cause the Audited Party competitive harm, and shall not disclose any information to the extent disclosure of such information to the Requesting Party would violate applicable Law.

- (b) The Requesting Party may, through an External Auditor, conduct External Audits under Section 8.2(a) no more than once per Calendar Year. The External Auditor shall conduct all audits during normal business hours and shall endeavor to conduct them in a manner that does not unreasonably interfere with the Audited Party's business operations. The Audited Party shall reasonably cooperate with the External Auditor in connection with any External Audit, including by providing the External Auditor with access to financial and accounting books and statements, management and operating data, records, accounts, financial statements and management Personnel and other Personnel, but only as reasonably necessary for the purposes of the External Audit, and ensure that its Personnel cooperate with any such External Audit and all other reasonable requests by the External Auditor for additional information or documentation required to complete such External Audit. The Audited Party shall not be required pursuant to this Section 8.2 to disclose to the External Auditor any information to the extent disclosure of such information to the External Auditor would violate applicable Law.
- (c) If an audit by a Governmental Authority having jurisdiction over either Party results in a finding that either Party is not in compliance with any generally accepted accounting principle or other audit or accounting requirement or any Law relating to the performance of its obligations under this Agreement, the Party that is found to be non-compliant shall, at its own expense and within the time period specified by such Governmental Authority auditor, address and resolve the deficiencies identified by such Governmental Authority.

#### 8.3 Audit Responses.

(a) Subject to Section 8.3(c), if any External Audit conducted pursuant to Section 8.2 or any Internal Audit conducted pursuant to Section 15.3 reveals that eBay overpaid any amount due or is owed any amount under this Agreement (except for any portion thereof disputed

in good faith), PayPal shall within ten (10) business days after such determination reimburse eBay the amount of such underpayment or pay to eBay the amount owed, in each case *plus* interest accruing at the Interest Rate from the date of payment by eBay or the date such payment should have been made to eBay to the time of reimbursement or payment by PayPal. If any External Audit reveals any material inaccuracy of the Quarterly Statements, Annual Statements or Aggregate Quarterly Fees resulting from the conduct of or information provided by PayPal that equals or exceeds two hundred fifty thousand Dollars (\$250,000) and also amounts to ten percent (10%) or more of the total amount payable by eBay for any period covered by the review, PayPal shall reimburse eBay for the cost of such External Audit.

- (b) Subject to Section 8.3(c), if any External Audit conducted pursuant to Section 8.2 or any Internal Audit conducted pursuant to Section 15.3 reveals that eBay underpaid any amount due or received any amount under this Agreement to which it was not entitled (except for any portion thereof disputed in good faith), eBay shall within ten (10) business days after such determination pay to PayPal the amount of such underpayment or reimburse PayPal the amount to which eBay was not entitled, in each case *plus* interest accruing at the Interest Rate from the date such payment originally should have been made by eBay or the date of payment by PayPal to the time of payment or reimbursement by eBay. If any External Audit reveals any material inaccuracy of the Quarterly Statements, Annual Statements or Aggregate Quarterly Fees resulting from the conduct of or information provided by eBay that equals or exceeds two hundred fifty thousand Dollars (\$250,000) and also amounts to ten percent (10%) or more of the total amount payable by eBay for any period covered by the review, eBay shall reimburse PayPal for the cost of such External Audit.
- (c) Either Party may dispute the results of an Audit by providing written notice to the other Party within thirty (30) days of the completion of the Audit and delivery of the applicable Audit report, in which case the Parties shall attempt in good faith to negotiate a resolution of any dispute within thirty (30) days of the receipt of such written notice. If the Parties are unable to resolve any such dispute after such thirty (30)-day period, the Parties shall resolve the dispute pursuant to Section 16.2.

# ARTICLE IX CONFIDENTIALITY: USER DATA

9.1 <u>Confidential Information</u>. Each of eBay (and its Affiliates) and PayPal (and its Affiliates) (in such capacity, the "<u>Receiving Party</u>") agrees to hold, and to cause its Personnel to hold, in strict confidence, the Confidential Information of the other Party (in such capacity, the "<u>Disclosing Party</u>") using at least the same standard of care to prevent the public disclosure and dissemination thereof as the Receiving Party uses to protect its own comparable Confidential Information. "<u>Confidential Information</u>" of the Disclosing Party means information including marketing plans, product plans, business strategies, financial information, forecasts, Personal Information, Highly Sensitive Information, customer lists and customer data, technical documents and information and any similar materials and information, regarding the Disclosing Party and its Affiliates, or their representatives or customers, disclosed by the Disclosing Party to the Receiving Party under or in connection with this Agreement, whether orally, electronically, in writing, or otherwise, including copies thereof, that is, in each case, (a) if disclosed in a tangible form, marked using a legend such as "Confidential" or "Proprietary" or if not so marked,

should be reasonably understood by the Receiving Party from the context of disclosure or from the information itself, to be confidential, or (b) if disclosed orally or visually, declared to be confidential or, if not so declared, should be reasonably understood by the Receiving Party from the context of disclosure or from the information itself to be confidential. Each of eBay and PayPal agrees, on its behalf and on behalf of its Affiliates, not to use any Confidential Information of the other Party other than for such purposes as shall be expressly permitted under this Agreement, except, in each case, to the extent that such Confidential Information has been (i) in the public domain or generally available to the public, other than as a result of a disclosure by the Receiving Party or any of its Affiliates or any of their Personnel in violation of this Agreement, (ii) later lawfully acquired from other sources by such Party (or any of its Affiliates) which sources are not themselves bound by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such Confidential Information or (iii) independently developed or generated without reference to or use of any proprietary or confidential information of the other Party or any of its Affiliates. If any Confidential Information of one Party or any of its Affiliates is disclosed to the other Party or of its Affiliates in connection with providing the Services under this Agreement, then such disclosed Confidential Information shall be used by the Receiving Party only as required to perform such Services.

- 9.2 Additional Confidentiality Provisions. Sections 6.9(b) and 6.10 of the Separation and Distribution Agreement are incorporated by reference into this Agreement, *mutatis mutandis*, except that each reference in the Separation and Distribution Agreement to "Section 6.9" or "the confidentiality provisions hereof" shall be deemed to refer to Section 9.1. Notwithstanding anything to the contrary herein, the Receiving Party shall be free to use for any purpose the Residual Information resulting from access to any Confidential Information of the Disclosing Party disclosed to it under this Agreement. Receiving Party's receipt of Confidential Information under this Agreement shall not create any obligation that in any way limits or restricts the assignment and/or reassignment of the Receiving Party's Personnel. The Parties acknowledge and understand that the foregoing does not constitute a license under any patents or copyrights.
- 9.3 <u>Competitive or Similar Materials</u>. Subject to <u>Article 14</u>, and without relieving either Party of its obligations under this <u>Article 9</u>, in no event shall either Party be precluded from discussing, reviewing, developing for itself, having developed, acquiring, licensing or developing for third parties, as well as marketing and/or distributing, materials that are competitive with the other Party's products and/or services, regardless of their similarity to current products or services or products or services that may be developed after the date of this Agreement.

#### 9.4 User Data.

(a) As between the Parties, PayPal owns all PayPal User Data and PayPal does not in any way assign, transfer, or convey title to PayPal User Data. PayPal User Data may not be used by eBay for any reason other than for the purpose of carrying out eBay's obligations under this Agreement and the Data Sharing Addendum. As between the Parties, eBay owns all eBay User Data and eBay does not in any way assign, transfer, or convey title to PayPal to any eBay User Data. eBay User Data may not be used by PayPal for any reason other than for the purpose of carrying out PayPal's obligations under this Agreement and the Data Sharing Addendum; provided, that following the consummation of a Specified Change of Control, eBay User

Data may not be used by the eBay Specified Person involved in such Specified Change of Control (or any of such Person's direct or indirect Subsidiaries or controlled Affiliates, other than PayPal and its Subsidiaries existing as of the consummation of such Specified Change of Control) for any purpose.

- (b) To the extent that eBay User Data includes information that also meets the definition of PayPal User Data, eBay and PayPal shall have overlapping ownership rights in such information, and the information shall be deemed both eBay User Data and PayPal User Data. eBay and PayPal shall use eBay User Data and PayPal User Data, respectively, in accordance with their respective privacy policies.
- (c) In the event that the Disclosing Party discloses User Data to the Receiving Party that would not ordinarily be collected by the Receiving Party in the course of performing its obligations under this Agreement or the Data Sharing Addendum, that information shall be the Confidential Information of the Disclosing Party and, except as set forth in the Data Sharing Addendum, the Receiving Party shall keep such Confidential Information only as long as necessary to perform its obligations under this Agreement and shall not have the right to use, reproduce, display, perform, or modify such Confidential Information and any derivative works thereof except as strictly required to perform Services under this Agreement.
- 9.5 <u>Privacy Policy</u>. The terms of each Party's privacy policy shall be adequately displayed within such Party's respective websites and meet current legal and industry standards applicable within such Party's reasonable determination.

# ARTICLE X TERM AND TERMINATION

- 10.1 <u>Term</u>. This Agreement shall commence on the Effective Time and shall remain in full force and effect for an initial term of five (5) years (the "<u>Initial Term</u>"). Thereafter, this Agreement may be renewed by mutual written agreement of the Parties for additional renewal terms of one (1) year each (each a "<u>Renewal Term</u>"). This Agreement may otherwise be terminated only as expressly provided in this Article 10. Collectively, the Initial Term and any Renewal Term(s) constitute the "<u>Term</u>"; <u>provided</u>, that the Term shall end if and when this Agreement is terminated in accordance with this <u>Article 10</u>.
- 10.2 <u>Termination by eBay or PayPal</u>. Neither Party shall have any right to terminate this Agreement or any of the Services before the end of the Term except if the other Party (a) becomes insolvent or makes an assignment for the benefit of creditors; or (b) commits a material breach of this Agreement that is not cured within one hundred twenty (120) days after the breaching Party receives of notice of such breach, or is incapable of being cured within one hundred twenty (120) days of the receipt of such notice; <u>provided</u>, that no Party may terminate this Agreement pursuant to <u>Section 10.2(b)</u> until the Parties have completed the dispute resolution procedures set forth in <u>Sections 16.1</u> and <u>16.2</u>.
- 10.3 <u>Replacement Services</u>. If either Party commits a material breach of this Agreement in its provision or usage of Services that has a significant impact on the non-breaching Party's ability to conduct a material aspect of its business and the breaching Party is

unable to cure such breach within twenty-four (24) hours of notice of such breach, the non-breaching Party may obtain replacement services from a third party that are comparable to the Services until the breach is cured or this Agreement is terminated, and the breaching Party will reimburse all commercially reasonable costs incurred by the non-breaching Party to obtain such replacement services until the breach is cured or this Agreement is terminated.

- 10.4 Effect of Termination. In connection with termination of this Agreement for any reason:
- (a) *Tail Period*. During the one (1)-year period following the termination of this Agreement (the "<u>Tail Period</u>"), all of the provisions of this Agreement will continue to apply as if the Tail Period was part of the Term, except for: (i) the Parties ability to extend the Agreement for additional Renewal Terms pursuant to <u>Section 10.1</u>; (ii) the Parties' obligations under the Product Development Agreement; (iii) <u>Article 14</u> and (iv) eBay's obligation to make Penetration Rate Payments if the Penetration Rate is less than the Baseline Rate.
- (b) *Unpaid Amounts*. No Party shall be relieved from its obligation to pay any fees, payments or other amounts incurred and payable to the other Party prior to termination of this Agreement, including, as applicable, the Aggregate Quarterly Fees.
- 10.5 Termination Assistance Services. During the Tail Period, each Party shall use reasonable best efforts to cooperate in good faith with the other Party to transition off of the Services provided under this Agreement, including by providing each other with all information and assistance necessary and requested by the other Party to assist in such transition, cooperating to develop a written disengagement plan and taking such other actions as may be reasonably required to allow the Parties to operate their respective businesses without the mutual arrangements set forth in this Agreement (the "Termination Assistance Services"). The Parties will discuss and agree to the appropriate service levels applicable to the Termination Assistance Services, which service levels may be different from the Service Levels applicable to the services provided under this Agreement; provided, that failure of the Parties to agree on a service level for Termination Assistance Services shall not affect the Parties' respective obligations to provide such Termination Assistance Services. Notwithstanding the foregoing, neither Party has any obligation to provide the other Party or any third Person with any (a) Highly Sensitive Information pursuant to this Section 10.5 other than data regarding the eBay Merchants and PayPal Users to the extent (i) required for the purpose of facilitating any Services that are continuing to be provided pursuant to this Agreement (provided, that such third Person shall not use such data for any other purpose), (ii) that disclosure of such data to a Party or a third Person, as the case may be, in accordance with this Agreement does not violate applicable Law and (iii) disclosure of such data to a Party or a third Person, as the case may be, in accordance with this Agreement does not violate the terms of use or terms of service under which such data was collected, or (b) other information or materials, to the extent that disclosure of such other information or materials to a Party or such third Person, as the case may be, would violate applicable Law.

10.6 <u>Survival</u>. <u>Article 1</u>, <u>Section 7.1</u>, <u>Section 8.2</u> (for six (6) months after the payment due date of the final Annual Statement issued in accordance with this Agreement), <u>Article 9</u>, <u>Section 10.4</u>, <u>Section 10.5</u>, this <u>Section 10.6</u>, <u>Article 11</u>, <u>Article 12</u>, <u>Article 13</u>, Article 16

and <u>Article 17</u> shall survive any termination of this Agreement. Any and all liabilities accrued prior to termination shall survive any termination of this Agreement.

# ARTICLE XI REPRESENTATIONS AND WARRANTIES

- 11.1 <u>Representations and Warranties by the Parties</u>. Each of eBay and PayPal hereby represents and warrants to the other Party as follows:
- (a) The execution and performance of this Agreement by such Party does not violate, conflict with, or result in a material default under any other material Contract to which it is a party, or by which its assets or property is bound.
- (b) It holds all the necessary licenses, consents and authorizations required to engage in the sale and performance of the Services.
  - 11.2 Representations and Warranties by PayPal. PayPal hereby represents and warrants to eBay as follows:
- (a) It has the skill and experience necessary to perform its obligations under this Agreement, including performing the Services, in a professional manner.
  - (b) The Services will be performed according to specifications set forth in any and all accompanying documents.
  - (c) The Services shall comply with all applicable Laws, including all Data Protection Laws.
  - 11.3 Representations and Warranties by eBay, eBay hereby represents and warrants to eBay as follows:
  - (a) It has the skill and experience necessary to perform its obligations under this Agreement in a professional manner.
- (b) The Services will be made available through the eBay Properties according to specifications set forth in any and all accompanying documents.
- (c) The eBay Properties shall comply with all applicable Laws in connection with the Services, including all Data Protection Laws.
- 11.4 <u>Disclaimer of Warranty</u>. EXCEPT AS EXPRESSLY SET FORTH IN THIS <u>ARTICLE 11</u>, NO PARTY MAKES, AND EACH PARTY HEREBY EXPRESSLY DISCLAIMS FOR ITSELF AND ON BEHALF OF ITS AFFILIATES, ANY REPRESENTATION OR WARRANTY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

# ARTICLE XII INDEMNIFICATION

- 12.1 PayPal's Indemnification of eBay. PayPal agrees to defend, indemnify, and hold harmless eBay, its Subsidiaries, and its and their respective directors, officers, employees, representatives and agents (the "eBay Group") from and against any and all Losses arising out of or resulting from any Third-Party Claim to the extent arising out of or resulting from (a) the violation by PayPal of any Data Protection Laws in connection with the Services, (b) any breach (or a claim by a third Person that if true would be a breach) or alleged breach of any of PayPal's representations or warranties set forth in Article 11 or the covenants of PayPal in this Agreement or (c) subject to Section 12.4, the infringement or misappropriation of any Intellectual Property Right of any third Person as a result of the eBay Group's use of any Services, Systems, Platform or other Technology provided by PayPal under this Agreement.
- 12.2 <u>eBay</u>'s <u>Indemnification of PayPal</u>. eBay agrees to defend, indemnify, and hold harmless PayPal, its Subsidiaries, and its and their respective directors, officers, employees, representatives and agents (the "<u>PayPal Group</u>") from and against any and all Losses arising out of or resulting from any Third-Party Claim to the extent arising out of or resulting from (a) the violation by eBay of any Data Protection Laws in connection with the Services, (b) any breach (or a claim by a third Person that if true would be a breach) or alleged breach of any of eBay's representations or warranties set forth in <u>Article 11</u> or the covenants of eBay in this Agreement or (c) subject to <u>Section 12.4</u>, the infringement or misappropriation of any Intellectual Property Right of any third Person as a result of the PayPal Group's use of any Services, Systems, Platform or other Technology provided by eBay under this Agreement.

#### 12.3 Indemnification Procedures.

- (a) Promptly after receipt by the Party seeking indemnification pursuant to this Article 12 (the "Indemnified Party") of notice of the commencement or threatened commencement of any Third-Party-Claim in respect of which such Indemnified Party intends to seek indemnification pursuant to Section 12.1 or Section 12.2, the Indemnified Party shall notify the other Party (the "Indemnifying Party") of such Third-Party Claim in writing. Any such notice shall describe the Third-Party Claim in reasonable detail, including the facts and circumstances giving rise to such claim for indemnification, and include copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third-Party Claim. No failure to so notify the Indemnifying Party shall relieve it of its obligations under this Agreement, except to the extent that it can demonstrate that it was prejudiced by such failure.
- (b) The Parties shall resolve any Third-Party Claim for which indemnification is sought pursuant to this <u>Article 12</u> in accordance with the provisions, procedures and rules set forth in Sections 4.5(b) through (g), 4.6 and 4.7 of the Separation and Distribution Agreement.

### 12.4 Infringement Claims.

(a) *Exclusions*. Notwithstanding any other provision in this Agreement, PayPal and eBay, as applicable, shall not have any obligation under <u>Sections 12.1</u>, <u>12.2</u> or otherwise to the extent that any Third-Party Claim of infringement (including direct infringement, induce-

ment to infringe, or contributory infringement) or misappropriation of Intellectual Property Rights is based on or arises in whole or in part out of: (i) the other Party's (or any member of its Group's) breach of this Agreement, where such infringement or misappropriation would not have occurred but for such breach; (ii) modifications of or enhancements to any of the Indemnifying Party's Services, Systems, Platform or other Technology by any Person other than the Indemnifying Party (or any member of its Group), where such infringement or misappropriation would not have occurred but for such modifications or enhancements; (iii) the use of any of any of the Indemnifying Party's Services, Systems, Platform or other Technology in combination with other software or technologies not provided by the Indemnifying Party, where such infringement or misappropriation would not have occurred but for such combination; (iv) the other Party's (or any member of its Group's) willful infringement of any Intellectual Property Rights of any third Person, or (v) the other Party's (or any member of its Group's) use of any of the Indemnifying Party's Services, Systems, Platform or other Technology not in accordance with this Agreement.

- (b) *Mitigation*. In addition to any other rights of or remedies available to the Parties, if the Services, Systems, Platform or any other Technology provided by eBay or PayPal (in such capacity, the "Providing Party") is found or alleged to infringe or misappropriate any Intellectual Property Right of any third Person, or, in the Providing Party's reasonable opinion is likely to be so found, then the Providing Party may, at its option and sole expense: (i) modify such infringing Services, Platform or Technology to make it (or them) non-infringing, provided, that such modification does not adversely affect in any material way the functionality, completeness, or accuracy of any of the Services or any Service Levels applicable thereto; (ii) procure for the other Party the right to continue using such Services, Systems, Platform or Technology; or, (ii) if neither (i) nor (ii) are possible within a reasonable time, replace such Services, Systems, Platform or Technology with substantially equivalent services or Technology that are non-infringing. If, after using commercially reasonable efforts, the Providing Party determines that it cannot implement one of the foregoing steps (i), (ii) or (iii) within a reasonable time, it shall promptly notify the other Party. Upon receiving any such notice, such other Party may, at its option and without limitation to any other rights of or remedies available to such Party, either cease offering such Services, Systems, Platform or Technology on eBay Covered Properties and adjust the Services offered on eBay Covered Properties and calculation of Penetration Rate appropriately.
- (c) *Sole Remedy*. This <u>Article 12</u> states each Party's sole and exclusive remedy with respect to any direct or indirect infringement (whether actual or alleged) or misappropriation of any Intellectual Property Rights of any other Person (and any claim or action relating thereto) based on any Services, Systems, Platform or other Technology provided by the other Party under this Agreement.
- 12.5 Exclusion of Other Indemnification Remedies. The provisions of this Article 12 shall, to the maximum extent permitted by applicable Law, be the sole and exclusive remedies of the eBay Group and the PayPal Group, as applicable, for any Liability arising out of or resulting from any Third-Party Claim arises from statute, principle of common or civil law, principles of strict liability, tort, contract or otherwise under this Agreement.

### ARTICLE XIII LIMITATION OF LIABILITY

#### 13.1 Limitation of Liability.

- (a) THE CUMULATIVE AGGREGATE LIABILITIES OF EACH PARTY AND ITS SUBSIDIARIES AND THEIR RESPECTIVE REPRESENTATIVES UNDER THIS AGREEMENT DURING ANY CALENDAR YEAR FOR ANY ACT OR FAILURE TO ACT IN CONNECTION HEREWITH (INCLUDING THE PERFORMANCE OR BREACH OF THIS AGREEMENT), OR FOR ANY OTHER MATTER UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED FIFTY PERCENT (50%) OF THE AGGREGATE REVENUE RECEIVED BY PAYPAL DURING SUCH CALENDAR YEAR GENERATED BY PAYPAL NET TPV ON EBAY COVERED PROPERTIES.
- (b) IN NO EVENT SHALL EITHER PARTY, ITS SUBSIDIARIES OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE TO THE OTHER PARTY (OR ANY MEMBER OF ITS GROUP) FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, REMOTE, SPECULATIVE OR SIMILAR DAMAGES IN EXCESS OF COMPENSATORY DAMAGES OF THE OTHER PARTYOR ANY MEMBER OF ITS GROUP (INCLUDING LOST PROFITS OR LOST REVENUES) IN CONNECTION WITH THIS AGREEMENT (OTHER THAN ANY SUCH LIABILITY WITH RESPECT TO A THIRD-PARTY CLAIM), AND EACH PARTY HEREBY WAIVES ON BEHALF OF ITSELF, ITS SUBSIDIARIES AND ITS REPRESENTATIVES ANY CLAIM FOR SUCH DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

# ARTICLE XIV MERCHANT OF RECORD; NON-COMPETE

#### 14.1 Merchant of Record.

- (a) During the Term, except as set forth in Sections 14.1(b), (c) and (d), eBay shall not declare itself as the Merchant of Record for transactions between users effected through any service or offering available on (i) an eBay Covered Property (excluding transactions that are excluded from the definition of eBay Addressable GMV) or (ii) any third party payments platform where the value of such transactions is included in the definition of eBay Addressable GMV (with all references in such definition to "eBay" being deemed to refer to such third party payments platform). Notwithstanding the foregoing, if and to the extent that eBay is the owner of inventory sold on an eBay Covered Property and takes financial responsibility for all full and partial returns and any chargebacks initiated by the customer (a "First Party Transaction"), eBay may elect to declare itself as the Merchant of Record solely with respect to such First Party Transaction.
- (b) If PayPal provides payment processing services to a Competitive Platform Operator as a Merchant of Record for third party merchant transactions effected by or on such Competitive Platform Operator's platform, eBay shall also be permitted to become a Merchant of

Record for transactions effected by eBay Merchants on eBay Covered Properties, and the Parties shall cooperate in good faith to mutually develop a transition plan and adjustment to the Product Development Plan to enable eBay to become a Merchant of Record as described in this Section 14.1(b).

- (c) Upon the consummation of a Specified Change of Control, eBay may elect to become a Merchant of Record (without triggering the termination of this Agreement or any related arrangements) by delivering a written notice to PayPal at any time beginning at the effective date of such Specified Change of Control and ending ninety (90) days thereafter, with such Merchant of Record election to become effective on a date, specified by eBay in such written notice, that is no less than fifteen (15) months nor greater than twenty-one (21) months following the consummation of such Specified Change of Control.
- (d) Following the three (3) year anniversary of the Effective Time, eBay shall be permitted to declare itself as a Merchant of Record for transactions effected by third Persons in up to two (2) Covered Jurisdictions as selected by eBay in its sole discretion (each, a "Test Jurisdiction"); provided, that (i) the GMV transacted as a Merchant of Record on all eBay Covered Properties in each Test Jurisdiction during the fourth (4th) year of the Term shall not exceed five percent (5%) of the GMV on all eBay Covered Properties in such Test Jurisdiction during such year, and (ii) the GMV transacted as a Merchant of Record on all eBay Covered Properties in each Test Jurisdiction during each of the fifth (5th) year of the Term and the Tail Period shall not exceed ten percent (10%) of the GMV on all eBay Covered Properties in such Test Jurisdiction during each such year.
- 14.2 <u>eBay Non-Compete</u>. During the Term, except as otherwise expressly contemplated in this Agreement or the Transition Services Agreement, eBay and its controlled Affiliates shall not, directly or indirectly, engage in the business of marketing, distributing, promoting or selling their own proprietary payment solution for use (i) on the eBay Covered Properties or (ii) on any Properties in the Covered Jurisdictions that are not eBay Properties (the "<u>eBay Restricted Business</u>").
- 14.3 <u>PayPal Non-Compete</u>. During the Term, except as otherwise expressly contemplated in this Agreement or the Transition Services Agreement, PayPal and its controlled Affiliates shall not, directly or indirectly, engage in the business of marketing, distributing, promoting or selling their own proprietary marketplace offering for the sale of physical goods, other than the Tradera marketplace (the "<u>PayPal Restricted Business</u>").
  - 14.4 Exceptions to Non-Compete. Notwithstanding anything to the contrary set forth in Section 14.2 or 14.3:
- (a) Nothing in this Agreement shall prohibit, preclude or in any way restrict eBay and its controlled Affiliates, on the one hand, or PayPal and its controlled Affiliate, on the other hand, from: (i) purchasing or acquiring, or being the holder or beneficial owner of, up to the greater of five percent (5%) or \$100 million of the outstanding equity securities of any Person; (ii) acquiring and, after such acquisition, owning an interest in any Person (or its successor) that is engaged in a business activity that would otherwise violate Section 14.2 or Section 14.3, as applicable, (a "Competing Business") if the annual revenue generated by such Competing

Business in the last completed fiscal year of such Person did not exceed the *greater of* (A) ten percent (10%) of such Person's consolidated annual revenues for such fiscal year and (B) the *lesser of* fifty percent (50%) of such Person's consolidated annual revenues for such fiscal year and \$500 million.

- (b) Nothing in this Agreement shall prohibit, preclude or in any way restrict any director of eBay or PayPal from, whether in such director's personal capacity or as a manager, partner, director, officer or other control person of an investment fund, investing in, participating in or directing the investment in, serving on the board of directors or similar governing body of, receiving information rights in or participating in other customary activities related to investments in, any Person that is engaged in the Competing Business.
- (c) If the restrictions set forth in Section 14.2 are not enforceable for any portion of the Term or with respect to any portion of the eBay Restricted Business in any jurisdiction under the antitrust/competition laws of such jurisdiction, the Parties shall negotiate in good faith and agree upon a suitable and equitable alternative that, to the fullest extent permitted under the antitrust/competition laws of such jurisdiction, effects the original intent of Section 14.2. If the restrictions set forth in Section 14.3 are not enforceable for any portion of the Term or with respect to any portion of the PayPal Restricted Business in any jurisdiction under the antitrust/competition laws of such jurisdiction, the Parties shall negotiate in good faith and agree upon a suitable and equitable alternative that, to the fullest extent permitted under the antitrust/competition laws of such jurisdiction, effects the original intent of Section 14.3. Any such alternative agreed upon by the Parties pursuant to this Section 14.4 may include the payment of a fee or other lump sum amount by one Party to the other Party.

#### ARTICLE XV GOVERNANCE

15.1 <u>Designated Operational Representatives</u>. eBay and PayPal shall each appoint and designate an individual to act as its initial designated representative (collectively, the "<u>Designated Operational Representative</u>"). Each Designated Operational Representative shall be directly responsible for coordinating and managing the delivery and use of the Services and the compliance with the other obligations of the designating Party under this Agreement, and shall have authority to act on eBay's and PayPal's behalf, as applicable with respect to the provision and use of such Services and such other obligations. Each Designated Operational Representative shall work with the Personnel of the Party appointing such Designated Operational Representative to periodically address issues and matters raised by the other Party relating to the provision of Services. The Designated Operational Representatives shall meet at least once per Month to review and discuss the delivery and use of the Services (including the results of any Account Review) and the Parties compliance with their respective obligations under this Agreement. In connection with such meetings, PayPal shall deliver to eBay, at least once per Month, reports regarding PayPal's ongoing performance under the Service Levels and the Service Credits granted or due to eBay. All communications between the Parties pursuant to this Agreement regarding routine matters involving the Services and the other obligations of the Parties under this Agreement shall be directed to the applicable Designated Operational Representative. Each Party shall notify the other Party of the resignation of its Designated Operational Representative or

appointment of a new Designated Manager at least ten (10) business days prior to such appointment.

#### 15.2 Quarterly Reviews.

- (a) At least once per Quarter, the Parties shall review in good faith each then-current Service Level to evaluate PayPal's performance under such Service Level, including any remedial steps PayPal has taken to address any Service Level failures, during such period. As part of such review, the Parties shall discuss any ongoing improvements to the Services that are necessary to ensure continued adherence to the applicable Service Levels (including the Service Levels as updated, if applicable). PayPal shall also use reasonable efforts to identify any processes used by PayPal in connection with other customers that would benefit eBay to improve the performance of Services hereunder against the Service Levels, and shall consult with eBay as to the implementation of any such methods of improving such performance against the Service Levels approved by eBay.
- (b) At least once per Quarter, the Chief Executive Officer of each of eBay and PayPal shall meet to review and discuss the Services, the performance by each Party of its respective obligations under this Agreement and the other aspects of the relationship between the Parties set forth in this Agreement.

### 15.3 Internal Audits; Security Review.

- (a) At least annually, each Party shall conduct, at its sole cost and expense, an internal audit of its compliance with this Agreement (each, an "Internal Audit" and, together with an External Audit, an "Audit"). The Party conducting the Internal Audit is referred to herein as the "Internal Audit Party." The Internal Audit shall be conducted in accordance with the Internal Audit Party's customary internal audit procedures and policies. The Internal Audit Party shall create a detailed written report of the results and findings of each review, and simultaneously provide copies of the report to the Audit Committees of the boards of directors of each of eBay and PayPal (the "Audit Committees"); provided, that such report shall not contain any Highly Sensitive Information that, if disclosed to such Audit Committees, would cause the Internal Audit Party competitive harm, and shall not disclose any information to the extent disclosure of such information to the Audit Committees would violate applicable Law.
- (b) At least annually, each Party shall complete a security review (a "Security Review"), or provide certification of such Security Review, by an industry recognized third party firm agreed upon by the Parties that specializes in information systems security audits and assessments. The definition of passing criteria from the results of the Security Review shall include vulnerability findings with no greater than a risk categorization of "LOW." Any findings from the Security Review categorized as "MEDIUM" or "HIGH" must be resolved to the other Party's reasonable satisfaction as promptly as practicable following the date of the review. The Parties shall use reasonable best efforts to coordinate with each other so that each Party's Security Review occurs at approximately the same time of the Calendar Year as such Party's Internal Audit.

15.4 Operational Review. During the Month of December of each Calendar Year during the Term (or such other Month as is mutually agreed by the Parties), the Chief Executive Officer of each of eBay and PayPal shall prepare a written assessment of each Party's compliance under this Agreement and the Product Development Agreement, the costs and benefits of this Agreement and the Product Development Agreement to eBay or PayPal, as applicable, the Product Development Plan for the upcoming Calendar Year, the Parties' performance of the Development Projects included in the Product Development Plan for the current Calendar Year and any other aspect of the relationship between the Parties governed by this Agreement and the Product Development Agreement as such Chief Executive Officer deems relevant (a "CEO Assessment"). The CEO Assessments shall be distributed to the Chairman of the board of directors, Chief Executive Officer and Chairman of the Audit Committee of eBay and PayPal as well as any member of the eBay or PayPal board of directors who served as the Chief Executive Officer or Chief Financial Officer of eBay immediately prior to the Effective Time (the "Operational Review Group"). The Operational Review Group shall meet within thirty (30) days of the distribution of the CEO Assessments to review the CEO Assessments and other aspects of the relationship between the Parties governed by this Agreement as the Operational Review Group shall deem relevant. The Operational Review Group will also consider any findings noted in each Audit report produced in an External Audit or an Internal Audit and develop and agree upon an action plan to promptly address and resolve any deficiencies, concerns and/or recommendations in such Audit report, and, unless mutually agreed by the Parties, the Party responding to a deficiency, concern and/or recommendation in an Audit report, shall, at its own expense, undertake remedial action in accordance with such action plan. During the Month of June of each Calendar Year during the Term (or such other Month as is mutually agreed by the Parties), the boards of directors of each of eBay and PayPal shall meet with each other and discuss the aspects of the relationship between the Parties governed by this Agreement, including opportunities for additional or expanded commercial relationships on arm's length terms.

### ARTICLE XVI DISPUTE RESOLUTION

16.1 Good Faith Negotiation. Subject to Section 16.3, either Party seeking resolution of any dispute, controversy or claim arising out of or relating to this Agreement, including the breach, termination or validity of this Agreement (a "Dispute"), shall provide written notice thereof to the other Party (the "Initial Notice"), and within thirty (30) days of the delivery of the Initial Notice, the Parties shall attempt in good faith to negotiate a resolution of the Dispute. The negotiations shall be conducted by executives who hold, at a minimum, the title of senior vice president or general counsel and who have authority to settle the Dispute. All such negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties are unable for any reason to resolve a Dispute within thirty (30) days after the delivery of such notice or if a Party reasonably concludes that the other Party is not willing to negotiate as contemplated by the preceding sentences of this Section 16.1, the Dispute shall be resolved in accordance with Section 16.2.

16.2 <u>Dispute Resolution Process</u>. Any Dispute that cannot be resolved by good faith negotiations between the Parties shall be submitted to the Escalation Committee and resolved in accordance with Sections 7.2 to 7.6 of the Separation and Distribution Agreement.

16.3 <u>Litigation and Unilateral Commencement of Arbitration</u>. Notwithstanding the foregoing provisions of this <u>Article 16</u> or Sections 7.2 to 7.4 of the Separation and Distribution Agreement, a Party may seek preliminary provisional or injunctive judicial relief with respect to a Dispute without first complying with the procedures set forth in <u>Section 16.1</u>, <u>Section 16.2</u> or Sections 7.2 to 7.4 of the Separation and Distribution Agreement if such action is reasonably necessary to avoid irreparable damage.

16.4 Conduct During Dispute Resolution Process. Unless otherwise agreed in writing, the Parties shall, and shall cause their respective Subsidiaries to, continue to honor all commitments under this Agreement to the extent required by this Agreement during the course of dispute resolution pursuant to the provisions of this Article 16, unless such commitments are the specific subject of the Dispute at issue. Notwithstanding the foregoing, PayPal agrees that its interruption of the Services may cause irreparable harm to eBay for which no adequate remedy exists at Law and agrees, during the pendency of any Dispute not to deny, withdraw, restrict or delay its provision of the Services to eBay Merchants or PayPal Users except as required by court order, by the resolution of the Dispute or as a result of the termination of this Agreement (subject to the Termination Assistance Services).

#### ARTICLE XVII MISCELLANEOUS

- 17.1 <u>Mutual Cooperation</u>. Each Party shall, and shall cause its Subsidiaries to, cooperate with the other Party and its Subsidiaries in connection with the performance of the Services hereunder; <u>provided</u>, that such cooperation shall not unreasonably disrupt the normal operations of such Party or its Subsidiaries; <u>provided</u>, <u>further</u>, that this <u>Section 17.1</u> shall not require such Party to incur any out-of-pocket costs or expenses unless and except as expressly provided in this Agreement or otherwise agreed to in writing by the Parties.
- 17.2 <u>Further Assurances</u>. Each Party shall take, or cause to be taken, any and all reasonable actions, including the execution, acknowledgment, filing and delivery of any and all documents and instruments that any other Party may reasonably request in order to effect the intent and purpose of this Agreement and the transactions contemplated hereby.
- 17.3 <u>Relationship</u>. The Parties each acknowledge and agree that they are separate entities, each of which has entered into this Agreement for its own independent business reasons. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership, agency, fiduciary or employment relationship among or between any of the Parties.
- 17.4 No Third-Party Beneficiaries. Except for the indemnification rights under this Agreement of any member of the eBay Group or the PayPal Group in their respective capacities as such, (a) the provisions of this Agreement are solely for the benefit of the Parties and are not intended to confer upon any Person except the Parties any rights or remedies hereunder, and (b) there are no third-party beneficiaries of this Agreement and neither this Agreement nor any Ancillary Agreement shall provide any third person with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement or any Ancillary Agreement.

17.5 <u>Amendment</u>. No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the Party against whom it is sought to enforce such waiver, amendment, supplement or modification. If the Parties have each determined that it is necessary or advisable to amend this Agreement but cannot agree on the terms of such amendment, the Parties shall resolve the dispute pursuant to <u>Sections 16.1</u> and <u>16.2</u>.

17.6 <u>Compliance with Law</u>. Notwithstanding anything to the contrary in this Agreement, none of the covenants or obligations in this Agreement shall require either Party to violate any applicable Law.

17.7 <u>Assignability</u>. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; <u>provided</u>, that neither Party nor any such party thereto may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other Party hereto or other parties thereto, as applicable. Notwithstanding the foregoing, no such consent shall be required for (i) the assignment of a Party's rights and obligations under this Agreement in whole or in part to any of its Subsidiaries; <u>provided</u>, that no such assignment shall release such Party from any liability or obligation under this Agreement; or (ii) the assignment of all of a Party's rights and obligations under in whole (*i.e.*, the assignment of a party's rights and obligations under this Agreement, the Separation and Distribution Agreement and all other Ancillary Agreements all at the same time) in connection with a change of control of a Party so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party. Nothing in this <u>Section 17.7</u> is intended to, or shall be construed to, prohibit eBay or PayPal from being party to or undertaking a change of control.

17.8 <u>Incorporation by Reference</u>. Sections 10.1 (excluding Sections 10.1(c)), 10.2, 10.5 through 10.14 and 10.16 through 10.19 of the Separation and Distribution Agreement are incorporated by reference into this Agreement, *mutatis mutandis*, except that each reference to "this Agreement", "any Ancillary Agreement" or "each Ancillary Agreement" in the Separation and Distribution Agreement shall be deemed to refer to this Agreement.

first above written.	
[●]	
By:	
Name:	
Title:	
[•]	
By:	
Name:	
Title:	
	[Signature Page to Operating Agreement]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by persons duly authorized as of the date and year

FORM OF

# TRANSITION SERVICES AGREEMENT

BY AND BETWEEN

EBAY INC.

AND

PAYPAL HOLDINGS, INC.

DATED AS OF [ ], 201[ ]

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Exhibit A Services

#### TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT, dated as of [], 201[], (this "Agreement"), is by and between eBay Inc., a Delaware corporation ("eBay"), and PayPal Holdings, Inc., a Delaware corporation ("PayPal"). This Agreement is effective as of immediately following the Effective Time (*i.e.*, 12:00:00 a.m. Eastern Time on the day immediately following the Distribution Date) (the "TSA Effective Time").

#### RECITALS:

WHEREAS, the board of directors of eBay (the "eBay Board") has determined that it is in the best interests of eBay and its shareholders to create a new publicly traded company that shall operate the PayPal Business;

WHEREAS, in furtherance of the foregoing, the eBay Board has determined that it is appropriate and desirable to separate the PayPal Business from the eBay Business (the "Separation") and, following the Separation, make a distribution, on a *pro rata* basis, to holders of eBay Shares on the Record Date of all the outstanding PayPal Shares owned by eBay (the "Distribution");

WHEREAS, to effectuate the Separation and the Distribution, eBay and PayPal have entered into a Separation and Distribution Agreement, dated as of [ ], 201[ ], (the "Separation and Distribution Agreement"); and

WHEREAS, to facilitate and provide for an orderly transition in connection with the Separation and the Distribution, the Parties desire to enter into this Agreement to set forth the terms and conditions pursuant to which each of the Parties shall provide Services to the other Party for a transitional period.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

#### AGREEMENT:

### ARTICLE I DEFINITIONS

Section 1.01. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

"Action" has the meaning set forth in the Separation and Distribution Agreement.

"Affiliate" has the meaning set forth in the Separation and Distribution Agreement.

"Agreement" has the meaning set forth in the Preamble.

- "Ancillary Agreements" has the meaning set forth in the Separation and Distribution Agreement.
- "Approvals" has the meaning set forth in the Separation and Distribution Agreement.
- "Change of Control" shall mean, with respect to a Party, the occurrence after the Effective Time of any of the following: (a) the sale, conveyance or disposition, in one or a series of related transactions, of all or substantially all of the assets of such Party to a third party that is not an Affiliate of such Party prior to such transaction or the first of such related transactions; (b) the consolidation, merger or other business combination of a Party with or into any other Person, immediately following which the stockholders of the Party prior to such transaction fail to own in the aggregate the Majority Voting Power of the surviving Party in such consolidation, merger or business combination or of its ultimate publicly traded parent Person; or (c) a transaction or series of transactions in which any Person or "group" (as such term is used in Section 13(d) of the Exchange Act) acquires the Majority Voting Power of such Party (other than a reincorporation or similar corporate transaction in which each of such Party's stockholders own, immediately thereafter, interests in the new parent company in substantially the same percentage as such stockholder owned in such Party immediately prior to such transaction).
  - "Charge" and "Charges" have the meaning set forth in Section 2.04.
  - "Confidential Information" shall mean all Information that is either confidential or proprietary.
  - "Dispute" has the meaning set forth in Section 8.01.
  - "<u>Distribution</u>" has the meaning set forth in the <u>Recitals</u>.
  - "Distribution Date" has the meaning set forth in the Separation and Distribution Agreement.
  - "Divested Asset" has the meaning set forth in Section 9.07(c).
  - "Divested Asset Acquirer" has the meaning set forth in Section 9.07(c).
  - "eBay" has the meaning set forth in the Preamble.
  - "eBay Board" has the meaning set forth in the Recitals.
  - "eBay Business" has the meaning set forth in the Separation and Distribution Agreement.
  - "eBay Shares" has the meaning set forth in the Separation and Distribution Agreement.
  - "eBay Specified Person" has the meaning set forth in the Separation and Distribution Agreement.
  - "Effective Time" has the meaning set forth in the Separation and Distribution Agreement.

- "Escalation Committee" has the meaning set forth in the Separation and Distribution Agreement.
- "Force Majeure" has the meaning set forth in the Separation and Distribution Agreement.
- "Governmental Authority" has the meaning set forth in the Separation and Distribution Agreement.
- "Independent Auditor" has the meaning set forth in Section 4.04(a).
- "Information" has the meaning set forth in the Separation and Distribution Agreement.
- "Information Technology" has the meaning set forth in the Separation and Distribution Agreement.
- "Intellectual Property Matters Agreement" has the meaning set forth in the Separation and Distribution Agreement.
- "Intellectual Property Rights" has the meaning set forth in the Intellectual Property Matters Agreement.
- "Interest Payment" has the meaning set forth in Section 4.02.
- "Law" has the meaning set forth in the Separation and Distribution Agreement.
- "Liability" and "Liabilities" have the meaning set forth in the Separation and Distribution Agreement.
- "Losses" has the meaning set forth in the Separation and Distribution Agreement.
- "Majority Voting Power" shall mean a majority of the voting power in the election of directors of all outstanding voting securities of the Person in question.
  - "Parties" and "Party" shall mean the parties to this Agreement.
  - "PayPal" has the meaning set forth in the Preamble.
  - "PayPal Business" has the meaning set forth in the Separation and Distribution Agreement.
  - "PayPal Shares" has the meaning set forth in the Separation and Distribution Agreement.
  - "PayPal Specified Person" has the meaning set forth in the Separation and Distribution Agreement.
  - "Person" has the meaning set forth in the Separation and Distribution Agreement.

- "Personnel" means, with respect to any Person, any of such Person's directors, officers, employees, agents, independent contractors, permitted subcontractors and consultants. Subcontractors of any Person shall be deemed Personnel of that Person.
  - "Provider" shall mean, with respect to any Service, the Party identified on Exhibit A hereto as the "Provider" of such Service.
  - "Provider Indemnitees" has the meaning set forth in Section 7.02.
- "<u>Provider Systems</u>" shall mean, with respect to each Service, the Information Technology, Information, Software or other Technology owned or controlled by Provider or any of its Affiliates that is required for Recipient's use of the Services.
  - "Recipient" shall mean, with respect to any Service, the Party receiving such Service hereunder.
  - "Recipient Indemnitees" has the meaning set forth in Section 7.03.
- "<u>Recipient Systems</u>" shall mean, with respect to each Service, the Information Technology, Information, Software or other Technology owned or controlled by Recipient or any of its Affiliates that is required for its use of the Services or the Provider's provision of the Services.
  - "Record Date" has the meaning set forth in the Separation and Distribution Agreement.
  - "Representatives" has the meaning set forth in the Separation and Distribution Agreement.
  - "Residual Information" has the meaning set forth in the Separation and Distribution Agreement.
  - "Separation" has the meaning set forth in the Recitals.
  - "Separation and Distribution Agreement" has the meaning set forth in the Recitals.
  - "Service Change" has the meaning set forth in Section 2.03(c).
  - "Service Interruption" has the meaning set forth in Section 2.03(a).
  - "Service Manager" has the meaning set forth in Section 2.09.
- "Service Period" shall mean, with respect to any Service, the period commencing at the TSA Effective Time and ending on the earlier of (a) the date that a Party terminates the provision of such Service pursuant to Section 5.02 or (b) the date that is set forth opposite such Service on Exhibit A.
  - "Services" has the meaning set forth in Section 2.01.
  - "Software" has the meaning set forth in the Separation and Distribution Agreement.

- "Subsidiary" has the meaning set forth in the Separation and Distribution Agreement.
- "Tax" has the meaning set forth in the Tax Matters Agreement.
- "Tax Matters Agreement" has the meaning set forth in the Separation and Distribution Agreement.
- "Taxing Authority" has the meaning set forth in the Tax Matters Agreement.
- "Technical Information" shall have the meaning set forth in the Intellectual Property Matters Agreement.
- "Technology" has the meaning set forth in the Separation and Distribution Agreement.
- "Term" has the meaning set forth in Section 5.01.

"Termination Charges" shall mean, with respect to the termination of any Service pursuant to Section 5.02(a)(i), the sum of (a) any and all costs, fees and expenses (other than any severance or retention costs paid to Personnel, except as permitted by clause (b) below) payable by the Provider of such Service to a Third Party that directly result from the early termination of such Service; provided, that the Provider shall use commercially reasonable efforts to minimize any costs, fees or expenses payable to any Third Party in connection with such early termination of such Service and credit any such reductions against the Termination Charges payable by the Recipient; and (b) any and all unreimbursed upfront or start-up fees and expenses incurred by Provider (supported by adequate documentation) to provide or to enable the provision of the Services (it being agreed that the costs set forth in this clause (b) shall only be the amount, if any, in excess of the upfront or start-up fees and expenses that such Provider would not have recovered from the Recipient if the Service had been provided for the full period during which such Service would have been provided hereunder but for such early termination).

- "Third Party" shall mean any Person other than the Parties or any of their Affiliates.
- "Third-Party Claim" shall mean any Action commenced by any Third Party against any Party or any of its Affiliates.
- "Transaction Taxes" has the meaning set forth in Section 4.03(a).
- "TSA Effective Time" has the meaning set forth in the Preamble.
- "TSA Manager" has the meaning set forth in Section 2.09.

# ARTICLE II SERVICES

Section 2.01. <u>Services</u>. Commencing as of the TSA Effective Time, the Provider agrees to provide, or to cause one or more of its Subsidiaries to provide, to the Recipient, or any Subsidiary of the Recipient, the applicable services (the "<u>Services</u>") set forth on <u>Exhibit A</u>

hereto, and the Provider shall also perform those sub-tasks that are integral to and a necessary part of the proper discharge of the Services in accordance with standard industry practice.

Section 2.02. Additional Services. If during the period commencing on the TSA Effective Time and ending on the date that is one hundred and eighty (180) days following the Distribution Date, either Party identifies (i) (A) a service that was provided or performed by eBay or its Affiliates to or for PayPal or its Affiliates during the twelve (12)-month period immediately prior to the Distribution Date that PayPal or its Affiliates reasonably needs in order for the PayPal Business to continue to operate in substantially the same manner in which the PayPal Business operated prior to the Distribution Date, but is not listed on Exhibit A (other than because the Parties have otherwise agreed in writing that such service shall not be provided), or (B) a service that was provided or performed by PayPal or its Affiliates to or for eBay or its Affiliates during the twelve (12)-month period immediately prior to the Distribution Date that eBay or its Affiliates reasonably needs in order for the eBay Business to continue to operate in substantially the same manner in which the eBay Business operated prior to the Distribution Date, but is not listed on Exhibit A (other than because the Parties have agreed in writing that such service shall not be provided), and (ii) submits a written request describing such service to the applicable Manager(s), then such other Party shall consider in good faith the request to provide such additional services (such requested additional services, the "Additional Services"). If the Parties agree on such Additional Services, then the terms of such Additional Service and the associated service fees shall be documented in writing by the Parties as an amendment to Exhibit A, and such Additional Service shall be a Service provided under this Agreement, subject to the terms of this Agreement. The Recipient's costs for any such Additional Service shall be Charges to be calculated in accordance with Section 2.04.

#### Section 2.03. Performance of Services.

(a) Except as set forth on Exhibit A, the Provider (i) shall perform, or shall cause one or more of its Subsidiaries to perform, all Services to be provided by the Provider in a commercially reasonable manner consistent with the nature, quality, standard of care and service levels at which the same or similar services were performed by or on behalf of Provider during the twelve (12)-month period immediately prior to the Distribution Date; and (ii) upon receipt of written notice from the Recipient identifying any outage, interruption, disruption, downturn or other failure of any Service (a "Service Interruption"), shall use commercially reasonable efforts to respond, or to cause one or more of its Subsidiaries to respond, to such Service Interruption in a manner that is substantially similar to the manner in which such Provider or its Affiliates responded to any Service Interruption of the same or similar services during the twelve (12)-month period prior to the Distribution Date. Except as set forth on Exhibit A, with respect to Services for which the same or similar services were not provided prior to the Distribution Date, the Provider: (A) shall perform, or shall cause one or more of its Subsidiaries to perform, such Services in a commercially reasonable manner consistent with the nature, quality, standard of care and service levels at which the same or similar services are performed by or on behalf of Provider to Provider, its Affiliates or its other business units; and (B) upon receipt of written notice from the Recipient identifying any Service Interruption with respect to such Services, shall use commercially reasonable efforts to respond, or to cause one or more of its Subsidiaries to respond, to such Service Interruption in a manner that is substantially similar

to the manner in which such Provider or its Affiliates responds with respect to internally provided services.

- (b) Nothing in this Agreement shall require the Provider to perform or cause to be performed any Service to the extent that the manner of such performance would constitute a violation of any applicable Law or any existing contract or agreement with a Third Party. If the Provider is or becomes aware of any potential violation on the part of the Provider, the Provider shall use commercially reasonable efforts to promptly advise the Recipient of such potential violation, and the Provider and the Recipient will mutually seek a reasonable alternative that addresses such potential violation. The Parties agree to cooperate in good faith and use commercially reasonable efforts to obtain any necessary Third Party Approvals required under any existing contract or agreement with a Third Party to allow the Provider to perform, or cause to be performed, all Services to be provided by the Provider hereunder in accordance with the standards set forth in this Section 2.03; provided, that neither Party shall be required to accept any terms or conditions, commit to pay any amount, incur any obligation in favor of or offer or grant any accommodation (financial or otherwise, regardless of any provision to the contrary in the existing contract or agreement) to any Third Party to obtain any such Approval. Unless otherwise agreed in writing by the Parties, all reasonable and documented out-of-pocket costs and expenses (if any) incurred by any Party or any of its Subsidiaries in connection with obtaining any such Third Party Approval (including, if agreed by the Parties, the amount paid, obligation incurred or accommodation granted to Third Parties to obtain such Approval) that is required to allow the Provider to perform or cause to be performed such Services shall be incurred by the Recipient. If, with respect to a Service, the Parties, despite the use of such commercially reasonable efforts, are unable to obtain a required Third Party Approval, or the performance of such Service by the Provider would constitute a violation of any applicable Law, the Parties shall use commercially reasonable efforts to develop a reasonable alternative arrangement that enables Provider to perform or cause to be performed such Service or an analogous service without obtaining such required Third Party Approval or violating any applicable Law.
- (c) Except as set forth on Exhibit A, if Provider is required to (i) increase staffing; (ii) acquire, lease or license additional facilities, equipment or software; (iii) engage in significant capital expenditures; or (iv) apply for or obtain one or more Approval from Third Parties (other than renewals of any preexisting permits, licenses or authorizations) (clauses (i) to (iv), collectively, the "Service Changes") in order to accommodate an increase in the use of any Service beyond the level of use of such Service by the Recipient during the twelve (12) month period immediately prior to the Distribution Date, including (A) as a result of a change in the manner in which the Recipient's business is being conducted by such Recipient after the Distribution Date, but (B) excluding ordinary course expansion of the volume or the geographic scope of such business (such as ordinary-course increases in headcount, customers, supplier relationships and transaction volumes), then the Provider shall inform the Recipient in writing of the Service Change and propose a plan for implementing the Service Change before incurring any costs or expenses resulting from such Service Change. The Parties shall negotiate in good faith and mutually agree to adjust or change the Services, including the Charges, if necessary, before Provider is required to undertake any Service Change. If the Parties determine that the Provider shall undertake the Service Change, then such Service Change, together with any other adjustments or changes to the Services, including to the Charges, shall be documented in

a written agreement signed by the Parties, and the Parties shall jointly amend <u>Exhibit A</u> to reflect such written agreement. Each amended section of <u>Exhibit A</u>, as agreed to in writing by the Parties, shall be deemed part of this Agreement as of the date of such written agreement and the Service Changes set forth in such amended section of <u>Exhibit A</u> shall be deemed a part of the "Services" provided under this Agreement, in each case subject to the terms and conditions of this Agreement.

- (d) (i) Except as set forth on Exhibit A, neither the Provider nor any of its Subsidiaries shall be required to perform or to cause to be performed any of the Services for the benefit of any Third Party or any other Person other than the Recipient and its Subsidiaries, and (ii) EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 2.03 OR SECTION 7.03, EACH PARTY ACKNOWLEDGES AND AGREES THAT ALL SERVICES ARE PROVIDED ON AN "AS-IS" BASIS, AND THAT THE PROVIDER MAKES NO OTHER REPRESENTATIONS OR GRANTS ANY WARRANTIES, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, WITH RESPECT TO THE SERVICES. EACH PARTY SPECIFICALLY DISCLAIMS ANY OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, OR EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF QUALITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR USE OR PURPOSE OR THE NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES.
- (e) Each Party shall be responsible for its own compliance with any and all Laws applicable to its performance under this Agreement. No Party shall knowingly take any action in violation of any such applicable Law that results in Liability being imposed on the other Party. If a change in or addition to Law applicable to the Provider or the Recipient causes the Provider to change the Services provided or incur additional expenses in providing such Services, the Provider shall use commercially reasonable efforts to promptly advise the Recipient of such additional expenses, and the Provider and the Recipient will mutually seek an alternative that minimizes such additional expenses. The Recipient shall be responsible for any and all such additional expenses.

Section 2.04. Charges for Services. Except as set forth on Exhibit A, the Recipient shall pay the Provider of the Services a fee (either one-time or recurring) for such Services (or category of Services, as applicable) (each fee constituting a "Charge" and, collectively, "Charges"). The Charges for each Service shall equal (x) the cost of providing such Services, which shall be consistent with the Provider's direct costs, determined in a manner consistent with allocation methodology used by the Parties during the twelve (12) month period immediately prior to the Distribution Date, *plus* (y) seven percent (7%), unless otherwise agreed to by the Parties. During the Term, the amount of a Charge for any Service may be modified to the extent of (a) any adjustments mutually agreed to by the Parties, (b) any Service Change requested by the Recipient and agreed upon by the Provider pursuant to Section 2.03(c), and (c) any adjustment in the rates or charges imposed by any Third-Party provider that is providing Services (proportional to the respective use of such Services by each Party); provided, that the rates or charges imposed by such Third-Party provider shall be passed through to the Recipient without adding any margin or mark-up. Together with any invoice for Charges, the Provider shall provide the Recipient with reasonable documentation to support the calculation of such Charges,

including any additional documentation reasonably requested by the Recipient to the extent that such documentation is in the Provider's or its Subsidiaries' possession or control.

Section 2.05. Reimbursement for Out-of-Pocket Costs and Expenses. The Recipient shall reimburse the Provider for reasonable and documented out-of-pocket costs and expenses incurred by the Provider or any of its Subsidiaries in connection with providing the Services (including incremental license fees incurred by the Provider in connection with the performance of the Services and reasonable travel-related expenses) to the extent that such costs and expenses are not reflected in the Charges for such Services; provided, that any such cost or expense in excess of one thousand (\$1,000.00), in the aggregate, that is not consistent with the historical practice between the Parties during the twelve (12) month period immediately prior to the Distribution Date for any Service shall require advance written approval of the Recipient. Any authorized travel-related expenses incurred in performing the Services shall be incurred and charged to the Recipient in accordance with the Recipient's then-applicable business travel policies as provided to the Provider from time to time.

Section 2.06. Changes in the Performance of Services. Except as set forth on Exhibit A, subject to the performance standards for Services set forth in Sections 2.03(a), 2.03(b) and 2.03(c) and subject to Section 2.08, the Provider may make changes from time to time in the manner of performing the Services if the Provider furnishes to the Recipient reasonable prior written notice (in content and timing) of such changes. No such change shall materially reduce the quality or service level of, or increase the Charges for, the applicable Service. Subject to Section 2.03(e), if any such change by the Provider reasonably requires the Recipient to incur a material increase in costs and expenses, in the aggregate, to continue to receive and utilize the applicable Services in the same manner as the Recipient was receiving and utilizing such Service prior to such change, the Provider shall be required to reimburse the Recipient for all such reasonable increase in costs and expenses. Upon request, the Recipient shall provide the Provider with reasonable documentation, including any additional documentation reasonably requested by the Provider to the extent such documentation is in the Recipient's or its Subsidiaries' possession or control, to support the calculation of such increase in costs and expenses.

Section 2.07. <u>Transitional Nature of Services</u>. The Parties acknowledge the transitional nature of the Services. The Recipient shall use commercially reasonable efforts to transition each Service from the Provider to the Recipient (or its designee) as soon as commercially practicable after the Distribution Date, but in any event before the end of the Service Period for such Service (as described in <u>Section 5.01</u>). The Parties agree to use reasonable efforts to assist and cooperate in good faith with each other in to effectuating such transition of the Services from the Provider to the Recipient (or its designee) in a timely and orderly manner.

Section 2.08. <u>Subcontracting</u>. The Provider may hire or engage one or more Third Parties to perform any or all of its obligations under this Agreement without the consent of the Recipient; <u>provided</u>, that, subject to <u>Section 2.03(e)</u>, (a) the hiring or engagement of such Third Party does not decrease the quality or level of services provided to the Recipient to below that provided by the Provider, (b) the use of such Third Party will not increase the Charges payable by the Recipient in connection with such Services, (c) the use of such Third Party will not change the manner in which the Services are delivered in a way that increases the Recipient's costs of receiving the Services; <u>provided</u>, <u>further</u>, that if such Third Party has been engaged by

Provider to perform the same or similar services prior to the Distribution Date, then clauses (a), (b) and (c) shall be deemed satisfied. The Provider shall in all cases remain primarily responsible for all of its obligations under this Agreement with respect to the scope of the Services, the performance standard for Services set forth in Section 2.03 or Exhibit A and the content of the Services provided to the Recipient, except that if a Third Party provides all or part of any Service pursuant to a written agreement with the Recipient, the Recipient agrees to be bound by, and to cause its Affiliates to comply with, those obligations that such agreement places on the Recipient, and the Provider shall not be responsible for its obligations under this Agreement that are specified in such agreement to be obligations of the Third Party provider. Subject to the confidentiality provisions set forth in Article VI, each Party shall, and shall cause their respective Affiliates to, provide, upon ten (10) business days' prior written notice, any Information within such Party's or its Affiliates' possession that the requesting Party reasonably requests in connection with any Services being provided to such requesting Party by a Third Party, including any applicable invoices, agreements documenting the arrangements between such Third Party and the Provider and other supporting documentation.

Section 2.09. TSA Managers and Service Managers, eBay and PayPal shall each appoint and designate an individual to act as its initial manager with overall responsibility for all Services (the "TSA Managers"). eBay and PayPal shall provide each other with written notice of the identity and title of its TSA Manager upon execution of this Agreement. eBay and PayPal shall also each appoint and designate an individual holding the title set forth in the applicable sections of Exhibit A to act as the service manager for a particular Service (each, a "Service Manager"). Unless otherwise specified in Exhibit A, with respect to each Service, the Service Manager shall have primary responsibility for coordinating and managing the delivery and use of that Service and shall have authority to act on eBay's or PayPal's behalf, as applicable, with respect to the provision and use of such Service. In overseeing its Service Managers, the TSA Managers shall have all of the authority of each of their respective Service Managers across all Services, will be responsible for resolving any disputes that cannot be resolved between each Party's Service Managers and will be responsible for ensuring that each of their respective Service Managers fulfills its responsibilities in connection with the Services and this Section 2.09. The TSA Managers and applicable Service Managers shall work with the Personnel and Third Party providers to periodically address issues and matters raised by the other Party relating to the provision of Services. All communications between the Parties pursuant to this Agreement regarding routine matters involving a Service shall be directed to the applicable Service Manager with a copy to the TSA Managers, and all other communications between the Parties pursuant to Article II of this Agreement (other than the negotiation and execution of any written agreement that amends Exhibit A) shall be directed to the applicable TSA Manager. Each Party shall notify the other Party of any change in the status of any of its TSA Manager or any of its Service Managers that would affect such TSA Manager's or Service Manager's ability to carry out the responsibilities set forth in this Section 2.09 at least ten (10) business days prior to such change.

Section 2.10. <u>Services Not Included</u>. It is not the intent of the Provider to render to the Recipient, nor of the Recipient to receive from the Provider, professional advice or opinions, whether with regard to Tax, legal, treasury, finance, employment or other business, technical and financial matters; and the Recipient shall not rely on, or construe, any Service rendered by or on behalf of the Provider as such professional advice or opinions or technical advice.

# ARTICLE III OTHER ARRANGEMENTS

### Section 3.01. Access.

(a) PayPal shall, and shall cause its Subsidiaries to, allow eBay and its Subsidiaries and their respective Representatives reasonable access to the facilities of PayPal and its Subsidiaries that is necessary for eBay and its Subsidiaries to fulfill their obligations under this Agreement. In addition to the foregoing right of access, PayPal shall, and shall cause its Subsidiaries to, afford eBay, its Subsidiaries and their respective Representatives, upon reasonable advance written notice, reasonable access during normal business hours to the facilities. Information, systems, infrastructure and Personnel of PayPal and its Subsidiaries as reasonably necessary for eBay to verify the adequacy of internal controls over information technology, reporting of financial data and related processes employed in connection with the Services being provided by PayPal or its Subsidiaries, including in connection with verifying compliance with Section 404 of the Sarbanes-Oxley Act of 2002; provided, that (i) such access shall not unreasonably interfere with any of the business or operations of PayPal or any of its Subsidiaries, (ii) if PayPal determines that providing such access could violate any applicable Law or agreement or waive any attorney-client privilege, then the Parties shall use commercially reasonable efforts to permit such access in a manner that avoids each of such harm and consequence, and (iii) if PayPal determines that providing such access requires a Third Party Approval, such access shall be subject to the receipt of such Third Party Approval. eBay agrees that all of its and its Subsidiaries' employees shall, and that it shall use commercially reasonable efforts to cause its Representatives' employees to, when on the property of PayPal or its Subsidiaries, or when given access to any facilities, Information, systems, infrastructure or Personnel of PayPal or its Subsidiaries, conform to the reasonable policies and procedures of PayPal and its Subsidiaries, as applicable, concerning health, safety, conduct and security that are made known or provided to eBay from time to time.

(b) eBay shall, and shall cause its Subsidiaries to, allow PayPal and its Subsidiaries and their respective Representatives reasonable access to the facilities of eBay and its Subsidiaries that is necessary for PayPal and its Subsidiaries to fulfill their obligations under this Agreement. In addition to the foregoing right of access, eBay shall, and shall cause its Subsidiaries to, afford PayPal, its Subsidiaries and their respective Representatives, upon reasonable advance written notice, reasonable access during normal business hours to the facilities, Information, systems, infrastructure and Personnel of eBay and its Subsidiaries as reasonably necessary for PayPal to verify the adequacy of internal controls over information technology, reporting of financial data and related processes employed in connection with the Services being provided by eBay or its Subsidiaries, including in connection with verifying compliance with Section 404 of the Sarbanes-Oxley Act of 2002; provided, that (i) such access shall not unreasonably interfere with any of the business or operations of eBay or any of its Subsidiaries, (ii) if eBay determines that providing such access or operations of eBay or any attorney-client privilege, then the Parties shall use commercially reasonable efforts to permit such access in a manner that avoids each of such harm and consequence, and (iii) if eBay determines that providing such access requires a Third Party Approval, such access shall be subject to the receipt of such Third Party Approval. PayPal agrees that all of its and its Subsidiaries' employees shall, and that it shall use commercially reasonable efforts to cause its

Representatives' employees to, when on the property of eBay or its Subsidiaries, or when given access to any facilities, Information, systems, infrastructure or Personnel of eBay or its Subsidiaries, conform to the reasonable policies and procedures of eBay and its Subsidiaries, as applicable, concerning health, safety, conduct and security that are made known or provided to PayPal from time to time

Section 3.02. System Security and Data Protection. Each Party agrees that its and its Subsidiaries employees having access to the Information Technology, Software or other Technology of the other Party and its Subsidiaries in connection with the performance, receipt or delivery of a Service, shall, and that it shall use commercially reasonable efforts to cause its Representatives' employees having such access to, comply with all security guidelines (including physical security, network access, internet security, confidentiality and personal data security guidelines) of such other Party and its Subsidiaries that are made known or provided to such Party from time to time. Each Party shall ensure that any access described by this Section 3.02 shall be used by its and its Subsidiaries' Personnel, and shall use commercially reasonable efforts to ensure that any such access shall be used by its Representatives' Personnel, only for the purposes contemplated by, and subject to the terms of, this Agreement. Subject to Article VI of the Separation and Distribution Agreement and any applicable provisions of the other Ancillary Agreements and the Commercial Agreements, the Provider shall only process personal data which it may receive from the Recipient while carrying out its duties under this Agreement: (a) in such a manner as is necessary to carry out those duties; (b) in accordance with (i) applicable instructions in Exhibit A and (ii) any instructions otherwise communicated by the Recipient; and (c) using appropriate technical and organizational measures to prevent the unauthorized or unlawful processing of such personal data or the accidental loss or destruction of, or damage to, such personal data.

# ARTICLE IV PAYMENTS; BILLING; TAXES

Section 4.01. <u>Procedure</u>. Charges for the Services shall be charged to and payable by the Recipient. Amounts payable pursuant to this Agreement shall be paid by wire transfer (or such other method of payment as may be agreed between the Parties from time to time) to the Provider (as directed by the Provider), on a monthly basis in the case of recurring fees, which amounts shall be due within sixty (60) days of the Recipient's receipt of each such invoice, including reasonable documentation pursuant to <u>Section 2.04</u>. Except as set forth on Exhibit A, all amounts due and payable hereunder shall be invoiced and paid in U.S. dollars.

Section 4.02. <u>Late Payments</u>. Charges not paid when due pursuant to this Agreement (and any amounts billed or otherwise invoiced or demanded and properly payable that are not paid within sixty (60) days of the receipt of such bill, invoice or other demand) shall accrue interest at a rate per annum equal to the Prime Rate plus two percent (2%) or the maximum rate under applicable Law, whichever is lower (the "<u>Interest Payment</u>").

Section 4.03. Taxes.

(a) All Charges for Services shall be exclusive of any value added, goods and services, sales, use, consumption, excise, service, transfer, stamp, documentary, filing,

recordation taxes or similar taxes ("<u>Transaction Taxes</u>"). Without limiting any provision of this Agreement, the Recipient shall be responsible for all Transaction Taxes imposed or assessed with respect to the provision of Services by the Provider. The Provider shall issue proper invoices usable by the Recipient to recover (by way of credit or refund) Transaction Taxes in jurisdictions where they are recoverable. The Provider and the Recipient shall cooperate to minimize any Transaction Taxes and in obtaining any refund, return or rebate, or applying an exemption or zero-rating for Services giving rise to any Transaction Taxes, including by filing any exemption or other similar forms or providing valid tax identification number or other relevant registration numbers, certificates or other documents. The Recipient and the Provider shall cooperate regarding any requests for information, audit, or similar request by any Taxing Authority concerning Transaction Taxes payable with respect to Services provided pursuant to this Agreement.

- (b) The Recipient shall be entitled to deduct and withhold Tax required by applicable Law to be withheld on payments made to the Provider pursuant to this Agreement. To the extent any amounts are so withheld, the Recipient shall timely remit such deducted and withheld amount to the relevant Taxing Authority and promptly provide the Provider with evidence of such payment. Provider agrees to complete and provide to Recipient or if required, to the relevant Taxing Authority, at least ten (10) days prior to the payment due date, such forms, certifications or other documents as may be reasonably requested by Recipient, in order to reduce or exempt the withholding of any Tax with respect to payments made to Provider when and where applicable by Law. The Recipient and the Provider shall cooperate regarding any requests for information, audit, or similar request by any Taxing Authority concerning the withholding of any Tax payable with respect to Services provided pursuant to this Agreement.
- (c) Any penalties or interest imposed on any Transaction Taxes described in <u>Section 4.03(a)</u> or Tax described <u>Section 4.03(b)</u> shall be the responsibility of the Recipient unless the penalties or interest are the result of an action or failure to act by the Provider.

### Section 4.04. Audit Rights.

(a) During the Term and for eighteen (18) months thereafter, the Recipient shall be permitted to request, at the Recipient's sole cost and expense, periodic (but no more frequently than annually) audits of the books and records of the Provider reasonably relating to the Services that the Provider is obligated to provide under this Agreement. Any review conducted pursuant to this Section 4.04 shall be conducted by an independent, external, internationally-recognized firm to be mutually agreed upon by the Recipient and the Provider with appropriate qualifications and experience in conducting reviews of this nature (the "Independent Auditor"). Before beginning its review, the Independent Auditor shall execute a confidentiality agreement with the Provider, the terms of which shall not frustrate or impede the purpose of the audit or the disclosure of the results thereof to the Recipient; provided, that if the Independent Auditor has executed a confidentiality agreement in accordance with this Section 4.04(a) during the Term and such confidentiality agreement remains in full force and effect, the Independent Auditor shall not be required to reexecute a second confidentiality agreement. The Independent Auditor shall create a detailed written report of the results and findings of its audit, and simultaneously provide copies of the audit to both Parties.

- (b) The Provider may dispute the results of an audit conducted pursuant to Section 4.04(a), in which case the Parties shall attempt in good faith to negotiate a resolution of any dispute within thirty (30) days of the Recipient's demand for compensation or reimbursement arising out of the result of such audit. If the Parties are unable to resolve any such dispute after such thirty (30)-day period, the Parties shall resolve the dispute pursuant to Section 8.01 and Section 8.02.
- (c) The Provider shall reasonably cooperate with the Independent Auditor in connection with any audit under Section 4.04(a), including by providing the Independent Auditor with access to financial and accounting books and statements, management and operating data, records, working papers of the Provider's auditors (to the extent permitted by such auditors, provided, that the Provider shall not withhold any consents necessary to permit the Independent Auditor from providing access to such working papers), accounts, financial statements, systems, facilities, operations, and management Personnel and other Personnel, but only as reasonably necessary for the purposes set forth in Section 4.04(a), and ensure that its Personnel cooperate with any such audit and all other reasonable requests by the Independent Auditor for additional information or documentation required to complete such audit. The Provider shall not be required pursuant to this Section 4.04 to disclose to the Independent Auditor any Information to the extent disclosure of such Information to the Independent Auditor would violate applicable Law.
- (d) If any audit reveals that the Recipient overpaid any amount due (except for any portion thereof disputed in good faith), the Provider shall within ten (10) business days after such determination reimburse the Recipient an amount of cash equal to such overpayment, plus the Interest Payment, accruing from the date of payment by the Recipient to the time of reimbursement by the Provider. If any audit reveals that the Recipient has underpaid any amount due under this Agreement (except for any portion thereof disputed in good faith), the Recipient shall within ten (10) business days after such determination reimburse the Provider an amount of cash equal to such underpayment, plus the Interest Payment, accruing from the date such payment originally should have been made by the Recipient to the time of payment by the Recipient, subject to Section 4.04(c). If any such overpayment or underpayment equals or exceeds two hundred and fifty thousand Dollars (\$250,000) and also amounts to ten percent (10%) or more of the total amount payable by the Recipient for any period covered by the review, the Provider shall reimburse the Recipient for the cost of such review.

## ARTICLE V TERM AND TERMINATION

Section 5.01. <u>Term</u>. This Agreement shall commence at the TSA Effective Time and shall be in effect until terminated in accordance with this <u>Article V</u> (the "<u>Term</u>"). This Agreement shall terminate upon the earlier to occur of (a) the last date on which either Party is obligated to provide any Service to the other Party in accordance with the terms of this Agreement; (b) the mutual written agreement of the Parties to terminate this Agreement in its entirety; or (c) the date that is the twenty-fourth (24th) month anniversary of the Distribution Date. Unless otherwise terminated pursuant to <u>Section 5.02</u>, this Agreement shall terminate with respect to each Service as of the close of business on the last day of the Service Period for such Service.

## Section 5.02. Early Termination.

- (a) Without prejudice to the Recipient's rights with respect to Force Majeure, the Recipient may from time to time terminate this Agreement with respect to the entirety of any individual Service but not a portion thereof:
- (i) Except as set forth on Exhibit A, for any reason or no reason, upon the giving of at least thirty (30) days' prior written notice to the Provider of such Service; <u>provided</u>, that if Exhibit A sets forth a different notice period, then the Recipient shall comply with such different notice period; <u>provided</u>, <u>further</u>, that any such termination shall be subject to the obligation to pay any applicable Termination Charges pursuant to Section 5.04; or
- (ii) if the Provider of such Service has failed to perform any of its material obligations under this Agreement with respect to such Service, and such failure shall continue to be uncured for a period of at least thirty (30) days after receipt by the Provider of written notice of such failure from the Recipient; <u>provided</u>, that the Recipient shall not be entitled to terminate this Agreement with respect to the applicable Service if, as of the end of such period, there remains a good-faith Dispute between the Parties as to whether the Provider has cured the applicable breach.
  - (b) The Provider may terminate this Agreement with respect to any individual Service, but not a portion thereof, at any time upon prior written notice to the Recipient if the Recipient has failed to perform any of its material obligations under this Agreement relating to such Service, including making payment of Charges for such Service when due, and such failure shall continue to be uncured for a period of at least thirty (30) days after receipt by the Recipient of a written notice of such failure from the Provider; <u>provided</u>, that the Provider shall not be entitled to terminate this Agreement with respect to the applicable Service if, as of the end of such period, there remains a good-faith Dispute between the Parties as to whether the Recipient has cured the applicable breach.
    - (c) Exhibit A hereto shall be updated to reflect any terminated Service.

Section 5.03. Interdependencies. The Parties acknowledge and agree that (a) there may be interdependencies among the Services being provided under this Agreement; (b) upon the request of either Party, the Parties shall cooperate and act in good faith to determine whether (i) any such interdependencies exist with respect to the particular Service that a Party is seeking to terminate pursuant to Section 5.02 and (ii) in the case of such termination, the Provider's ability to provide a particular Service in accordance with this Agreement would be materially and adversely affected by such termination of another Service; and (c) if the Parties have determined that such interdependencies exist (and, in the case of such termination that the Provider's ability to provide a particular Service in accordance with this Agreement would be materially and adversely affected by such termination), the Parties shall negotiate in good faith to amend Exhibit A hereto with respect to such termination of such impacted Service, which amendment shall be consistent with the terms of comparable Services.

Section 5.04. Effect of Termination. Upon the termination of any Service pursuant to this Agreement, the Provider of the terminated Service shall have no further obligation to

provide the terminated Service, and the Recipient of such Service shall have no obligation to pay any future Charges relating to such Service; <u>provided</u>, that the Recipient shall remain obligated to the Provider for (a) the Charges owed and payable in respect of Services provided prior to the effective date of termination for such Service, and (b) any applicable Termination Charges (which, in the case of each of clauses (a) and (b), shall be payable only if the Recipient terminates any Service pursuant to Section 5.02(a)(i)). In connection with the termination of any Service, the provisions of this Agreement not relating solely to such terminated Service shall survive any such termination, and in connection with a termination of this Agreement, Article I, Section 4.04, this Article V, Article VII and Article IX, all confidentiality obligations under this Agreement and Liability for all due and unpaid Charges and Termination Charges shall continue to survive indefinitely.

## ARTICLE VI CONFIDENTIALITY; PROTECTIVE ARRANGEMENTS

Section 6.01, eBay and PayPal Obligations. Subject to Section 6.04, until the five (5) year anniversary of the date of the termination of this Agreement (other than in the case of any item of Technical Information, for which the obligations in this Section 6.01 will continue until such time as any of the exceptions set forth in clauses (a) through (c) of this Section 6.01 have been satisfied with respect to such item of Technical Information), each of eBay and PayPal, on behalf of itself and each of its Subsidiaries, agrees to hold, and to cause its Representatives to hold, in strict confidence, using at least the same standard of care to prevent the public disclosure and dissemination thereof that applies to eBay's Confidential Information pursuant to policies in effect as of the TSA Effective Time, all Confidential Information concerning the other Party or its Subsidiaries or their respective businesses that is either (a) in its possession (including Confidential Information in its possession prior to the date hereof) or (b) furnished by any such other Party or such other Party's Subsidiaries or their respective Representatives at any time pursuant to this Agreement, and shall not use any Confidential Information of the other Party other than for such purposes as expressly permitted hereunder, except, in each case, to the extent that such Confidential Information is or was (i) in the public domain or generally available to the public, other than as a result of a disclosure by such Party or any of its Subsidiaries or any of their respective Representatives in violation of this Agreement; (ii) later lawfully acquired from other sources by such Party or any of its Subsidiaries, which sources are not themselves bound by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such Confidential Information; or (iii) independently developed or generated without reference to or use of the Confidential Information of the other Party or any of its Subsidiaries. If any Confidential Information of a Party or any of its Subsidiaries is disclosed to the other Party or any of its Subsidiaries in connection with providing the Services, then such disclosed Confidential Information shall be used by the receiving Party only as required to perform such Services.

Section 6.02. No Release; Return or Destruction. Each Party agrees (a) not to release or disclose, or permit to be released or disclosed, any Confidential Information of the other Party addressed in Section 6.01 to any other Person, except its Representatives who need to know such Confidential Information in their capacities as such (who shall be advised of their obligations hereunder with respect to such Confidential Information) and except in compliance with Section 6.04, and (b) to use commercially reasonable efforts to maintain such Confidential Information

in accordance with Section 6.4 of the Separation and Distribution Agreement. Without limiting the foregoing, when any such Confidential Information is no longer needed for the purposes contemplated by the Separation and Distribution Agreement, this Agreement or any other Ancillary Agreements, each Party will promptly after request of the other Party either return to the other Party all such Confidential Information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or notify the other Party in writing that it has destroyed such information (and such copies thereof and such notes, extracts or summaries based thereon); provided, that such Party's Representatives may retain one (1) copy of such information to the extent required by applicable Law or professional standards, and shall not be required to destroy any such information located in back-up, archival electronic storage.

Section 6.03. Privacy and Data Protection Laws; Residual Information. Each Party shall comply with all applicable state, federal and foreign privacy and data protection Laws that are or that may in the future be applicable to the provision of the Services under this Agreement and any additional data protection requirements set forth on Exhibit A with respect to each Service. Notwithstanding anything to the contrary herein, each Party and its Subsidiaries shall be free to use for any purpose the Residual Information resulting from access Representatives of such Party or its Subsidiaries have had to confidential and proprietary information concerning the other Party or its Subsidiaries. The Parties acknowledge and understand that the foregoing does not constitute a license under any patents or copyrights.

Section 6.04. Protective Arrangements. If a Party or any of its Subsidiaries either determines on the advice of its counsel that it is required to disclose any information pursuant to applicable Law or receives any request or demand under lawful process or from any Governmental Authority to disclose or provide information of the other Party (or any of its Subsidiaries) that is subject to the confidentiality provisions hereof, such Party shall notify the other Party (to the extent legally permitted) as promptly as practicable under the circumstances prior to disclosing or providing such information and shall cooperate, at the expense of the other Party, in seeking any appropriate protective order requested by the other Party. If such other Party fails to receive such appropriate protective order in a timely manner and the Party receiving the request or demand reasonably determines that its failure to disclose or provide such information shall actually prejudice the Party receiving the request or demand, then the Party that received such request or demand may thereafter disclose or provide information to the extent required by such Law (as so advised by its counsel) or by lawful process or such Governmental Authority, and the disclosing Party shall promptly provide the other Party with a copy of the information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such information was disclosed, in each case to the extent legally permitted.

## ARTICLE VII LIMITED LIABILITY AND INDEMNIFICATION

Section 7.01. Limitations on Liability.

(a) THE CUMULATIVE AGGREGATE LIABILITIES OF THE PROVIDER AND ITS SUBSIDIARIES AND THEIR RESPECTIVE REPRESENTATIVES, COLLECTIVELY, UNDER THIS AGREEMENT FOR ANY ACT OR FAILURE TO ACT IN CONNECTION HEREWITH (INCLUDING THE PERFORMANCE OR BREACH OF

THIS AGREEMENT), OR FROM THE SALE, DELIVERY, PROVISION, USE OF OR FAILURE TO PROVIDE ANY SERVICES PROVIDED UNDER OR CONTEMPLATED BY THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE AGGREGATE CHARGES PAID AND PAYABLE TO SUCH PROVIDER FOR ALL SERVICES BY THE RECIPIENT PURSUANT TO THIS AGREEMENT THROUGHOUT THE TERM.

- (b) IN NO EVENT SHALL EITHER PARTY, ITS SUBSIDIARIES OR THEIR RESPECTIVE REPRESENTATIVES BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, EXEMPLARY, REMOTE, SPECULATIVE OR SIMILAR DAMAGES IN EXCESS OF COMPENSATORY DAMAGES OF THE OTHER PARTY (INCLUDING LOST PROFITS OR LOST REVENUES) IN CONNECTION WITH THE SALE, DELIVERY, PROVISION OR USE OF OR FAILURE TO PROVIDE SERVICES PROVIDED UNDER OR CONTEMPLATED BY THIS AGREEMENT (OTHER THAN ANY SUCH LIABILITY WITH RESPECT TO A THIRD-PARTY CLAIM), AND EACH PARTY HEREBY WAIVES ON BEHALF OF ITSELF, ITS SUBSIDIARIES AND ITS REPRESENTATIVES ANY CLAIM FOR SUCH DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.
- (c) The limitations in Section 7.01(a) and Section 7.01(b) shall not apply in respect of any Liability arising out of or in connection with (i) either Party's obligations under Section 7.02 or Section 7.03, (ii) the gross negligence, willful misconduct, or fraud of or by the Party to be charged or (iii) either Party's obligations or Liabilities under the Intellectual Property Matters Agreement.
- (d) The limitations in <u>Section 7.01(a)</u> shall not apply in respect of any Liability arising out of or in connection with either Party's Liability for breaches of confidentiality under <u>Article VI</u>.
- Section 7.02. <u>Recipient Indemnity</u>. Subject to <u>Section 7.01</u>, Recipient hereby releases and agrees to indemnify, defend and hold harmless the Provider, its Subsidiaries and each of their respective Representatives, and each of the successors and assigns of any of the foregoing (collectively, the "<u>Provider Indemnitees</u>"), from and against any and all Liabilities arising from, relating to or in connection with the Recipient's breaches of confidentiality obligations under <u>Article VI</u>, gross negligence, willful misconduct or fraud.

Section 7.03. <u>Provider Indemnity</u>. Subject to <u>Section 7.01</u>, the Provider agrees to indemnify, defend and hold harmless the Recipient, its Subsidiaries and each of their respective Representatives, and each of the successors and assigns of any of the foregoing (collectively, the "<u>Recipient Indemnitees</u>"), from and against any and all Liabilities arising from, relating to or in connection with the sale, delivery, provision or use of any Services provided by such Provider hereunder, but only to the extent that such Liabilities relate to, arise out of or are a consequence

of the Provider's breaches of confidentiality obligations under Article VI, gross negligence, willful misconduct or fraud.

Section 7.04. <u>Indemnification Procedures</u>. The procedures for indemnification set forth in Sections 4.5, 4.6 and 4.7 of the Separation and Distribution Agreement shall govern claims for indemnification under this Agreement.

Section 7.05. <u>Liability for Payment Obligations</u>. Nothing in this <u>Article VII</u> shall be deemed to eliminate or limit, in any respect, either Party's express obligation in this Agreement to pay Charges for Services rendered in accordance with this Agreement.

Section 7.06. Exclusion of Other Remedies. The provisions of Section 7.02 and Section 7.03 shall, to the maximum extent permitted by applicable Law, be the sole and exclusive remedies of the Provider Indemnitees and the Recipient Indemnitees, as applicable, for any Liability, whether arising from statute, principle of common or civil law, principles of strict liability, tort, contract or otherwise under this Agreement.

### ARTICLE VIII DISPUTES

Section 8.01. <u>Dispute Resolution</u>. In the event of any controversy, dispute or claim arising out of or relating to any Party's rights or obligations under this Agreement (whether arising in contract, tort or otherwise), calculation or allocation of the costs of any Service or otherwise arising out of or relating in any way to this Agreement (including the interpretation or validity of this Agreement) (a "<u>Dispute</u>"), the Parties agree that each Party's TSA Manager and each Party's applicable Service Manager (or such other persons as the Parties may designate) shall negotiate in good faith in an attempt to resolve such Dispute amicably. If such Dispute has not been resolved to the mutual satisfaction of the Parties within forty-five (45) days after the initial written notice of the Dispute (or such longer period as the Parties may agree), then such Dispute shall be submitted to the Escalation Committee and resolved in accordance with Sections 7.2 to 7.6 of the Separation and Distribution Agreement, which shall be the sole and exclusive procedures for the resolution of any such Dispute unless otherwise specified herein or in Article VII of the Separation and Distribution Agreement.

Section 8.02. <u>Disputes Over Charges and Termination Charges</u>. In any Dispute regarding the amount of a Charge or a Termination Charge, if such Dispute is finally resolved by the applicable Service Managers, the TSA Managers or pursuant to the dispute resolution process set forth or referred to in <u>Section 8.01</u> and it is determined that the Charge or the Termination Charge, as applicable, that the Provider has invoiced the Recipient, and that the Recipient has paid to the Provider, is greater or less than the amount that the Charge or the Termination Charge, as applicable, should have been, then (i) if it is determined that the Recipient has overpaid the Charge or the Termination Charge, as applicable, the Provider shall within five (5) business days after such determination reimburse the Recipient to the time of reimbursement by the Provider; and (ii) if it is determined that the Recipient has underpaid the Charge or the Termination Charge, as applicable, the Recipient shall within five (5) business days after such determination reimburse the Provider an amount of cash equal to

such underpayment, plus the Interest Payment, accruing from the date such payment originally should have been made by the Recipient to the time of payment by the Recipient.

Section 8.03. <u>Litigation and Unilateral Commencement of Arbitration</u>. Notwithstanding the foregoing provisions of this <u>Article VIII</u> or Sections 7.2 to 7.4 of the Separation and Distribution Agreement, a Party may seek preliminary provisional or injunctive judicial relief with respect to a Dispute without first complying with the procedures set forth in <u>Section 8.01</u> of this Agreement or Sections 7.2 to 7.4 of the Separation and Distribution Agreement if such action is reasonably necessary to avoid irreparable damage.

Section 8.04. Conduct During Dispute Resolution Process. Unless otherwise agreed in writing, the Parties shall, and shall cause their respective Subsidiaries to, continue to honor all commitments under this Agreement to the extent required by this Agreement during the course of Dispute resolution pursuant to the provisions of this Article VIII, unless such commitments are the specific subject of the Dispute at issue. Notwithstanding the foregoing, the Provider agrees that its interruption of the Services may cause irreparable harm to the Recipient for which no adequate remedy exists at Law and agrees, during the pendency of any Dispute, not to deny, withdraw, restrict or delay its provision of the Services to the Recipient except as required by court order, by the resolution of the Dispute or as a result of the termination of this Agreement.

# ARTICLE IX MISCELLANEOUS

Section 9.01. <u>Mutual Cooperation</u>. Each Party shall, and shall cause its Subsidiaries to, cooperate with the other Party and its Subsidiaries in connection with the performance of the Services hereunder; <u>provided</u>, that such cooperation shall not unreasonably disrupt the normal operations of such Party or its Subsidiaries; <u>provided</u>, <u>further</u>, that this <u>Section 9.01</u> shall not require such Party to incur any out-of-pocket costs or expenses unless and except as expressly provided in this Agreement or otherwise agreed to in writing by the Parties.

Section 9.02. <u>Further Assurances</u>. Each Party shall take, or cause to be taken, any and all reasonable actions, including the execution, acknowledgment, filing and delivery of any and all documents and instruments that any other Party may reasonably request in order to effect the intent and purpose of this Agreement and the transactions contemplated hereby.

Section 9.03. <u>Audit Assistance</u>. Each of the Parties and their respective Subsidiaries are or may be subject to regulation and audit by a Governmental Authority (including a Taxing Authority), standards organizations, customers or other parties to contracts with such Parties or their respective Subsidiaries under applicable Law, standards or contract provisions. If a Governmental Authority, standards organization, customer or other party to a contract with a Party or its Subsidiary exercises its right to examine or audit such Party's or its Subsidiary's books, records, documents or accounting practices and procedures pursuant to such applicable Law, standards or contract provisions, and such examination or audit relates to the Services, then the other Party shall provide, at the sole cost and expense of the requesting Party, all assistance reasonably requested by the Party that is subject to the examination or audit in responding to such examination or audits or requests for Information, to the extent that such assistance or

Information is within the reasonable control of the cooperating Party and is related to the Services.

Section 9.04. <u>Title to Intellectual Property</u>. Except as expressly provided for under the terms of this Agreement, the Separation and Distribution Agreement or the Intellectual Property Matters Agreement, the Recipient acknowledges that it shall acquire no right, title or interest (except for the express license rights set forth in <u>Section 9.05(a)(ii)</u>) in any Intellectual Property Rights, Information Technology, Information, Software or other Technology which are owned or licensed by the Provider by reason of the provision of the Services hereunder. The Recipient shall not remove or alter any copyright, trademark, confidentiality or other proprietary notices that appear on any Information Technology, Information, Software or other Technology owned or licensed by the Provider, and the Recipient shall reproduce any such notices on any and all copies thereof. The Recipient shall not attempt to decompile or reverse engineer copies of any Software owned or licensed by the Provider that is provided in object code form only, and the Recipient shall promptly notify the Provider of any such attempt, regardless of whether by the Recipient or any Third Party, of which the Recipient becomes aware.

### Section 9.05. License.

- (a) Without affecting the rights and obligations of the Parties in the Separation and Distribution Agreement and the Intellectual Property Matters Agreement, with respect to each of the Services set forth in <u>Exhibit A</u>:
- (i) Recipient hereby grants to Provider, and Provider hereby accepts, a non-exclusive, non-transferable (subject to <u>Section 9.07</u>), worldwide right during the Service Period to use Recipient Systems only to the extent necessary and for the sole purpose of performing Provider's obligations under this Agreement, and not for any other purpose; and
- (ii) Provider hereby grants to Recipient, and Recipient hereby accepts, a non-exclusive, non-transferable (subject to <u>Section 9.07</u>), worldwide right during the Service Period to use the Provider Systems only to the extent necessary and for the sole purpose of receiving the Services under this Agreement, and not for any other purpose.
- (b) For clarity, the limited rights to use the Recipient Systems and Provider Systems granted in this <u>Section 9.05</u> for each of the Services will terminate at the end of the applicable Service Period and will under no circumstances survive the termination or expiration of this Agreement.

Section 9.06. <u>Independent Contractors</u>. The Parties each acknowledge and agree that they are separate entities, each of which has entered into this Agreement for its own independent business reasons. The relationships of the Parties hereunder are those of independent contractors and nothing contained herein shall be deemed to create a joint venture, partnership or any other relationship between the Parties. Personnel performing services hereunder do so on behalf of, under the direction of, and as Personnel of, the Provider, and the Recipient shall have no right, power or authority to direct such Personnel.

Section 9.07. Assignability.

- (a) This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; <u>provided</u>, that except as set forth in <u>Section 9.07(b)</u> and <u>Section 9.07(c)</u>, neither Party nor any such party thereto may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other Party.
- (b) No consent of the other Party shall be required for: (i) the assignment of a Party's rights and obligations under this Agreement in whole or in part to any of its Subsidiaries; provided, that no such assignment shall release such Party from any liability or obligation under this Agreement; or (ii) the assignment of all of a Party's rights and obligations in whole (*i.e.*, the assignment of a party's rights and obligations under this Agreement, the Separation and Distribution Agreement and all Ancillary Agreements all at the same time) under this Agreement in connection with a change of control of a Party so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party; provided, that, (A) in the event of a Change of Control of eBay in which such acquirer is a PayPal Specified Person, PayPal shall, in its capacity as a Provider, have the right to terminate this Agreement solely as it relates to any service for which continued provision of such service by PayPal would materially and adversely affect PayPal's competitive position with respect to such PayPal Specified Person (and will have no other separate right to terminate this Agreement), and (B) in the event of a Change of Control of PayPal in which such acquirer is an eBay Specified Person, eBay shall, in its capacity as a Provider, have the right to terminate this Agreement solely as it relates to any service for which continued provision of such service by eBay would materially and adversely affect eBay's competitive position with respect to such eBay Specified Person (and will have no other separate right to terminate this Agreement).
- (c) If there occurs a divestiture or other disposition of any Subsidiary, division or business that is a Recipient or Provider of Services (a "Divested Asset"), the Party that is divesting or disposing of such Divested Asset shall assign all of its rights and obligations under this Agreement, in respect of the Divested Asset, to the Person that acquired control of such Divested Asset (such Person, the "Divested Asset Acquirer"), without any requirement to obtain the consent of the other Party, and the Divested Asset Acquirer shall accept in writing the terms of the Agreement and the applicable Services with respect to such Divested Asset; provided, that if such Divested Asset is a Recipient of Services and the Divested Asset Acquirer is a PayPal Specified Person (if eBay is divesting or disposing of such Divested Asset) or an eBay Specified Person (if PayPal is divesting or disposing of such Divested Asset), as applicable, the Provider of such Services to the Divested Asset may terminate this Agreement with respect to the Divested Asset.

Section 9.08. <u>Third-Party Beneficiaries</u>. Except as provided in <u>Article VII</u> with respect to the Provider Indemnitees and the Recipient Indemnitees in their capacities as such, (a) the provisions of this Agreement are solely for the benefit of the Parties and are not intended to confer upon any other Person except the Parties any rights or remedies hereunder; and (b) there are no other third-party beneficiaries of this Agreement and this Agreement shall not provide any other Third Party with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement.

Section 9.09. Force Majeure. No Party shall be deemed in default of this Agreement for any delay or failure to fulfill any obligation hereunder (other than a payment obligation) so long as and to the extent to which any delay or failure in the fulfillment of such obligations is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance (other than a payment obligation) shall be extended for a period equal to the time lost by reason of the delay unless this Agreement has previously been terminated under Article V. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such Force Majeure, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable (and in no event later than the date that the affected Party resumes providing analogous services to, or otherwise resumes analogous performance under any other agreement for, itself, its Affiliates or any Third Party) unless this Agreement has previously been terminated under Article V. The Recipient shall be (i) relieved of the obligation to pay Charges for the affected Service(s) throughout the duration of such Force Majeure and (ii) if any Force Majeure prevents, hinders, or delays the performance by the Provider, the Recipient may procure the affected Services from an alternate source, including the Recipient's Personnel (with the Provider reimbursing the Recipient for the cost of procuring the affected Services from such alternate source) throughout the duration of such Force Majeure, and the Provider shall cooperate in good faith with, provide any required Information to, and take such other action as may be reasonable required to enable such alternate source to provide the affected Services.

Section 9.10. No Set-Off. Except as mutually agreed to in writing by the Parties, neither Party shall have any right of set-off or other similar rights with respect to (a) any amounts received pursuant to this Agreement; or (b) any other amounts claimed to be owed to the other Party arising out of this Agreement.

Section 9.11. Incorporation by Reference. Sections 10.1 (excluding Section 10.1(c)), 10.2, 10.5, 10.6, and 10.8 through 10.16, 10.18 and 10.19 of the Separation and Distribution Agreement are incorporated by reference into this Agreement, *mutatis mutandis*, except that (a) each reference to "this Agreement", "any Ancillary Agreement" or "each Ancillary Agreement," in such sections of the Separation and Distribution Agreement shall be deemed to refer to this Agreement, and (b) all notices regarding routine matters involving a Service under this Agreement shall be directed to the applicable Services Manager(s) or TSA Managers, as specified in Section 2.09, and notices regarding all other matters under this Agreement shall be directed as required under Section 10.5 of the Separation and Distribution Agreement with a copy to each Party's TSA Manager.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Par	rties hereto have executed this Agreement by persons duly authorized as of the date and year
first above written.	
[]	
By:	
Name:	
Title:	
[]	
By:	
Name:	
Title:	
	[Signature Page to Transition Services Agreement]

FORM OF

## EMPLOYEE MATTERS AGREEMENT

BY AND BETWEEN

EBAY INC.

AND

PAYPAL HOLDINGS, INC.

DATED AS OF [●], 2015

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### EMPLOYEE MATTERS AGREEMENT

This EMPLOYEE MATTERS AGREEMENT, dated as of [●], 2015 (this "<u>Agreement</u>"), is by and between eBay Inc., a Delaware corporation ("<u>eBay</u>"), and PayPal Holdings, Inc., a Delaware corporation ("<u>PayPal</u>").

### RECITALS:

WHEREAS, the board of directors of eBay (the "eBay Board") has determined that it is in the best interests of eBay and its shareholders to create a new publicly traded company that shall operate the PayPal Business (as defined below);

WHEREAS, in furtherance of the foregoing, the eBay Board has determined that it is appropriate and desirable to separate the PayPal Business from the eBay Business (the "Separation") and, following the Separation, make a distribution, on a pro rata basis, to holders of eBay Shares on the Record Date of all the outstanding PayPal Shares owned by eBay (the "Distribution");

WHEREAS, in order to effectuate the Separation and Distribution, eBay and PayPal have entered into a Separation and Distribution Agreement, dated as of [•], 2015 (the "Separation and Distribution Agreement"); and

WHEREAS, in addition to the matters addressed by the Separation and Distribution Agreement, the Parties desire to enter into this Agreement to set forth the terms and conditions of certain employment, compensation and benefit matters that have been agreed by the Parties in connection with the Separation.

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

# ARTICLE I DEFINITIONS

Section 1.01. <u>Definitions</u>. For purposes of this Agreement, the following terms shall have the meanings set forth below. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings ascribed to them in the Separation and Distribution Agreement.

"Action" shall have the meaning set forth in the Separation and Distribution Agreement.

"Affiliate" shall have the meaning set forth in the Separation and Distribution Agreement.

"Agreement" shall have the meaning set forth in the preamble to this Agreement and shall include all Schedules hereto and all amendments, modifications, and changes hereto entered into pursuant to Section 9.17.

- "Ancillary Agreement" shall have the meaning set forth in the Separation and Distribution Agreement.
- "Assets" shall have the meaning set forth in the Separation and Distribution Agreement.
- "Benefit Plan" shall mean any contract, agreement, policy, practice, program, plan, trust, commitment or arrangement providing for benefits, perquisites, fringe benefits or compensation of any nature from an employer to any Employee, or to any family member, dependent, or beneficiary of any such Employee, including cash or deferred arrangement plans, profit sharing plans, pension plans, thrift plans, supplemental pension plans and health and welfare plans, stock option, stock purchase, restricted stock, restricted stock units, deferred stock award and other equity and/or equity-based compensation plans and contracts, commitments and arrangements providing for terms of employment, severance benefits, change of control protections or benefits, travel and accident, life, accidental death and dismemberment, disability and accident insurance, tuition reimbursement, travel reimbursement, paid time off, sick, personal or bereavement days, leaves of absences and holidays and sabbatical leave; provided, however, the term "Benefit Plan" does not include any government-sponsored benefits, such as workers' compensation, government-sponsored retirement plans, unemployment or any similar plans, programs or policies or Individual Agreements.
- "COBRA" shall mean the U.S. Consolidated Omnibus Budget Reconciliation Act of 1985, as codified at Section 601 *et seq.* of ERISA and at Section 4980B of the Code.
  - "Code" shall have the meaning set forth in the Separation and Distribution Agreement.
- "Continuing eBay Director" shall mean each member of the eBay Board, as of the Effective Time, who continues to serve on the eBay Board immediately after the Effective Time.
  - "Distribution" shall have the meaning set forth in the recitals to this Agreement.
  - "Distribution Date" shall have the meaning set forth in the Separation and Distribution Agreement.
  - "eBay" shall have the meaning set forth in the preamble to this Agreement.
  - "eBay 401(k) Plan" shall mean the eBay Inc. 401(k) Savings Plan, as amended and restated effective January 1, 2015.
  - "eBay 401(k) Trust" shall have the meaning set forth in Section 5.01(b).
- "<u>eBay Benefit Plan</u>" shall mean any Benefit Plan established, sponsored or maintained by eBay or any of its Subsidiaries immediately prior to the Effective Time, excluding any PayPal Benefit Plan.
  - "eBay Board" shall have the meaning set forth in the recitals to this Agreement.

"eBay Business" shall have the meaning set forth in the Separation and Distribution Agreement.

"eBay Change of Control" shall have the meaning set forth in Section 4.02(g).

"eBay Compensation Committee" shall mean the Compensation Committee of the eBay Board.

"eBay Deferred Compensation Plan" shall mean the eBay Inc. Deferred Compensation Plan, effective January 1, 2008.

"eBay Equity Plan" shall mean any equity compensation plan sponsored or maintained by eBay immediately prior to the Effective Time, including the eBay Inc. 2008 Equity Incentive Award Plan, eBay Inc. 2003 Deferred Stock Unit Plan, eBay Inc. 2001 Equity Incentive Plan eBay Inc. 1999 Global Equity Incentive Plan eBay Inc. 1998 Directors Stock Option Plan, eBay Inc. 1998 Equity Incentive Plan, Braintree, Inc. 2011 Equity Incentive Plan, Bill Me Later 2000 Stock Incentive Plan, NPX Technologies LTD Amended and Restated 2005 Share Option Plan, CyberActive Security LTD. 2014 Israeli Employee Share Option Plan, Paydiant, Inc. 2011 Stock Option and Grant Plan, Paydiant Inc. Stock Restriction Agreements, GSI Commerce, Inc. 2005 Equity Incentive Plan, GSI Commerce, Inc. 2010 Equity Incentive Plan, Hunch Inc. 2007 Stock Plan, Magento, Inc. 2010 Equity Incentive Plan, SHUTL Limited Enterprise Management Incentive Scheme, StubHub, Inc. 2000 Stock Plan, Venmo Inc. 2010 Equity Compensation Plan, uLocate Communications, Inc. 2003 Stock Option and Incentive Plan, and Zong S.A. Equity Incentive Plan.

"eBay Fringe Benefit Plans" shall mean the eBay fringe benefit plans as in effect immediately prior to the Effective Time and listed on Schedule 1.01(a).

"eBay Group" shall have the meaning set forth in the Separation and Distribution Agreement.

"eBay Group Employees" shall have the meaning set forth in Section 3.01(a).

"eBay HSA" shall have the meaning set forth in Section 7.01(c).

"eBay Incentive Plans" shall mean the eBay Incentive Plan and any other non-equity based incentive plan maintained by eBay as in effect immediately prior to the Effective Time and listed on Schedule 1.01(a).

"eBay IP" shall have the meaning set forth in the Separation and Distribution Agreement.

"eBay Liability" shall have the meaning set forth in the Separation and Distribution Agreement.

"eBay Non-U.S. Retirement Plan" means an eBay Benefit Plan, the primary purpose of which is to provide retirement benefits to eBay Group Employees and/or Former eBay Group Employees who are or were employed by a non-U.S. Subsidiary of eBay.

"eBay Sabbatical Plans" shall mean the eBay Inc. Sabbatical Plan, as amended and restated effective December 1, 2014, and any other sabbatical policies or programs maintained by eBay outside of the United States, as applicable, as in effect immediately prior to the Effective Time and listed on Schedule 1.01(b).

"eBay Sabbatical Trusts" shall mean the eBay Inc. Sabbatical Plan Trust Agreement effective June 1, 2005, and any other trusts or other funding arrangements maintained for the benefit of any eBay Sabbatical Plans outside of the United States, as applicable, as in effect immediately prior to the Effective Time and listed on Schedule 1.01(b).

"eBay Welfare Plan" shall mean any Welfare Plan established, sponsored, maintained or contributed to by eBay or any of its Subsidiaries for the benefit of Employees or Former Employees, including each Welfare Plan listed on Schedule 1.01(b) but excluding any PayPal Welfare Plan.

"Effective Time" shall have the meaning set forth in the Separation and Distribution Agreement.

"Employee" shall mean any eBay Group Employee or PayPal Group Employee.

"ERISA" shall mean the U.S. Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"Exchange Act" shall have the meaning set forth in the Separation and Distribution Agreement.

"Force Majeure" shall have the meaning set forth in the Separation and Distribution Agreement.

"Former eBay Group Employee" shall mean any individual who is a former employee of the eBay Group as of the Effective Time and who is not a Former PayPal Group Employee.

"Former Employees" shall mean Former eBay Group Employees and Former PayPal Group Employees.

"Former PayPal Group Employee" shall mean (i) any individual identified as a Former PayPal Group Employee on the list previously prepared by eBay, and (ii) any individual who is a former employee of eBay or any of its Subsidiaries or former Subsidiaries as of the Effective Time, in each case, whose most recent employment with eBay was with a member of the PayPal Group or the PayPal Business.

"Governmental Authority" shall have the meaning set forth in the Separation and Distribution Agreement.

"HIPAA" shall mean the U.S. Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations promulgated thereunder.

"Individual Agreement" shall mean any individual (i) offer letter or employment contract, (ii) retention, severance or change of control agreement, (iii) expatriate (including any international assignee) contract or agreement (including agreements and obligations regarding repatriation, relocation, equalization of taxes and living standards in the host country), (iv) proprietary information and/or inventions agreement or (v) any agreement containing restrictive covenants (including confidentiality, intellectual property assignment, license, waiver and disclosure provisions, non-competition and non-solicitation provisions) between a member of the eBay Group or PayPal Group and a PayPal Group Employee or any Former PayPal Group Employee, or between a member of the eBay Group or PayPal Group and an eBay Group Employee or any Former eBay Group Employee, as applicable, as in effect immediately prior to the Effective Time.

"Intellectual Property Matters Agreement" shall have the meaning set forth in the Separation and Distribution Agreement.

"Intellectual Property Rights" shall have the meaning set forth in the Separation and Distribution Agreement.

"IRS" shall mean the United States Internal Revenue Service.

"Law" shall have the meaning set forth in the Separation and Distribution Agreement.

"Liabilities" shall have the meaning set forth in the Separation and Distribution Agreement.

"NASDAQ" shall have the meaning set forth in the Separation and Distribution Agreement.

"Non-U.S. eBay Benefit Plan" shall mean an eBay Benefit Plan established, maintained, or contributed to by a member of the eBay Group that is primarily for the benefit of eBay Group Employees who are or were employed by a non-U.S. Subsidiary of eBay.

"Non-U.S. PayPal Benefit Plan" shall mean a PayPal Benefit Plan established, maintained, or contributed to by a member of the PayPal Group that is primarily for the benefit of PayPal Group Employees who are or were employed by a non-U.S. Subsidiary of PayPal or eBay.

"Offering Period" shall have the meaning set forth in the eBay ESPP or PayPal ESPP, as the context requires.

"Party" shall mean a party to this Agreement.

"PayPal" shall have the meaning set forth in the preamble to this Agreement.

"PayPal 401(k) Plan" shall mean the PayPal 401(k) Savings Plan, to be adopted by PayPal prior to or on the Distribution as described in Section 5.01.

"PayPal 401(k) Trust" shall have the meaning set forth in Section 5.01(a).

"PayPal Benefit Plan" shall mean any Benefit Plan established, sponsored, maintained or contributed to by a member of the PayPal Group as of or after the Effective Time.

- "PayPal Board" shall mean the Board of Directors of PayPal.
- "PayPal Business" shall have the meaning set forth in the Separation and Distribution Agreement.
- "PayPal Change of Control" shall have the meaning set forth in Section 4.02(g).
- "PayPal Compensation Committee" shall mean the Compensation Committee of the PayPal Board.
- "<u>PayPal Deferred Compensation Plan</u>" shall mean a PayPal Deferred Compensation Plan established pursuant to <u>Section 6.01</u>.
  - "PayPal Designees" shall have the meaning set forth in the Separation and Distribution Agreement.
  - "PayPal Fringe Benefit Plans" shall mean the PayPal fringe benefit plans to be established by PayPal pursuant to Section 7.9.
  - "PayPal Group" shall have the meaning set forth in the Separation and Distribution Agreement.
  - "PayPal Group Employees" shall have the meaning set forth in Section 3.01(a).
  - "PayPal HSA" shall have the meaning set forth in Section 7.01(c).
  - "PayPal Incentive Plans" shall mean the PayPal Incentive Plans established pursuant to Section 4.04(a).
  - "PayPal IP" shall have the meaning set forth in the Separation and Distribution Agreement.
  - "PayPal Liabilities" shall have the meaning set forth in the Separation and Distribution Agreement.
- "PayPal Non-U.S. Retirement Plan" means a PayPal Benefit Plan, the primary purpose of which is to provide retirement benefits to PayPal Group Employees and/or Former PayPal Group Employees who are or were employed by a non-U.S. Subsidiary of PayPal or eBay.
  - "PayPal Sabbatical Plans" shall mean the PayPal Sabbatical Plans established by PayPal pursuant to Section 7.05.
  - "PayPal Sabbatical Trusts" shall mean the Sabbatical Trusts established by PayPal pursuant to Section 7.05.

"PayPal Welfare Plans" shall mean the Welfare Plans established, sponsored, maintained or contributed to by any member of the PayPal Group for the benefit of PayPal Group Employees and Former PayPal Group Employees.

"Person" shall have the meaning set forth in the Separation and Distribution Agreement.

"QDRO" shall mean a qualified domestic relations order within the meaning of Section 206(d) of ERISA and Section 414(p) of the Code.

"Qualification Requirements" shall mean, in the aggregate, the tax qualification requirements of Section 401(a) of the Code, the tax exemption requirements of Section 501(a) of the Code, and the requirements described in Sections 401(k) and 401(m) of the Code in respect of a plan intended to meet such requirements.

"Record Date" shall have the meaning set forth in the Separation and Distribution Agreement.

"Securities Act" shall mean the U.S. Securities Act of 1933, as amended, together with the rules and regulations promulgated thereunder.

"Separation" shall have the meaning set forth in the recitals to this Agreement.

"Separation and Distribution Agreement" shall have the meaning set forth in the recitals to this Agreement.

"Subsidiary" shall have the meaning set forth in the Separation and Distribution Agreement.

"Third Party" shall have the meaning set forth in the Separation and Distribution Agreement.

"Transferred Account Balances" shall have the meaning set forth in Section 7.01(d).

"<u>Transferring Director</u>" shall mean each member of the PayPal Board, as of the Effective Time, who served on the eBay Board immediately prior to the Effective Time.

"<u>Transitioning eBay Group Employee</u>" shall mean an eBay Group Employee covered under the Transition Success and Retention Program, whose last date of employment with the eBay Group is the Distribution Date, and who is not becoming a PayPal Group Employee upon the Separation.

"Transition Services Agreement" shall have the meaning set forth in the Separation and Distribution Agreement.

"<u>Transition Success and Retention Program</u>" shall mean the Transition Success and Retention Program adopted by the eBay Board on December 15, 2014.

"U.S." shall mean the United States of America.

"Welfare Plan" shall mean any "welfare plan" (as defined in Section 3(1) of ERISA) or a "cafeteria plan" under Section 125 of the Code, and any benefits offered thereunder, and any other plan offering health benefits (including medical, prescription drug, dental, vision, mental health and substance abuse), disability benefits, or life, accidental death and dismemberment, and business travel insurance, pre-tax premium conversion benefits, dependent care assistance programs, employee assistance programs, paid time-off programs, contribution funding toward a health savings account, flexible spending accounts or severance.

Section 1.02. <u>Interpretation</u>. Section 10.16 of the Separation and Distribution Agreement is hereby incorporated by reference.

# ARTICLE II GENERAL PRINCIPLES FOR ALLOCATION OF LIABILITIES

### Section 2.01. General Principles.

- (a) Acceptance and Assumption of PayPal Liabilities. On or prior to the Effective Time, but in any case prior to the Distribution, and except as expressly set forth in this Agreement, PayPal and the applicable PayPal Designees shall accept, assume and agree to faithfully perform, discharge and fulfill all of the following Liabilities in accordance with their respective terms (each of which shall be considered a PayPal Liability), regardless of when or where such Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Effective Time, regardless of where or against whom such Liabilities are asserted or determined (including any Liabilities arising out of claims made by eBay's or PayPal's respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates against any member of the eBay Group or the PayPal Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the eBay Group or the PayPal Group, or any of their respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates:
  - (i) any and all wages, salaries, incentive compensation (as the same may be modified by this Agreement), equity compensation (as the same may be modified by this Agreement), commissions, bonuses and any other employee compensation or benefits payable, provided or made available to or on behalf of any PayPal Group Employees and Former PayPal Group Employees after the Effective Time, without regard to when such wages, salaries, incentive compensation, equity compensation, commissions, bonuses or other employee compensation or benefits are or may have been awarded or earned;
  - (ii) any and all Liabilities whatsoever with respect to claims made by or with respect to any PayPal Group Employees or Former PayPal Group Employees in connection with any Benefit Plan obligations not retained or assumed by any member of the eBay Group pursuant to this Agreement, the Separation and Distribution Agreement or any Ancillary Agreement or as otherwise provided in section 7.01(e); and
  - (iii) any and all Liabilities expressly assumed or retained by any member of the PayPal Group pursuant to this Agreement.

- (b) Acceptance and Assumption of eBay Liabilities. On or prior to the Effective Time, but in any case prior to the Distribution and except as set forth in this Agreement, eBay and certain members of the eBay Group designated by eBay shall accept, assume and agree to faithfully perform, discharge and fulfill all of the following Liabilities held by PayPal or any PayPal Designee and eBay and the applicable members of the eBay Group shall be responsible for such Liabilities in accordance with their respective terms (each of which shall be considered an eBay Liability), regardless of when or where such Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Effective Time, regardless of where or against whom such Liabilities are asserted or determined (including any Liabilities arising out of claims made by eBay's or PayPal's respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates against any member of the eBay Group or the PayPal Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the eBay Group or the PayPal Group, or any of their respective directors, officers, Employees, Former Employees, agents, Subsidiaries or Affiliates:
  - (i) any and all wages, salaries, incentive compensation (as the same may be modified by this Agreement), equity compensation (as the same may be modified by this Agreement), commissions, bonuses and any other employee compensation or benefits payable, provided or made available to or on behalf of any eBay Group Employees and Former eBay Group Employees after the Effective Time, without regard to when such wages, salaries, incentive compensation, equity compensation, commissions, bonuses or other employee compensation or benefits are or may have been awarded or earned;
  - (ii) any and all Liabilities whatsoever with respect to claims made by or with respect to any eBay Group Employees or Former eBay Group Employees in connection with any Benefit Plan obligations not retained or assumed by any member of the PayPal Group pursuant to this Agreement, the Separation and Distribution Agreement or any Ancillary Agreement; and
  - (iii) any and all Liabilities expressly assumed or retained by any member of the eBay Group pursuant to this Agreement.
- (c) *Unaddressed Liabilities*. To the extent that this Agreement does not address particular Liabilities under any Benefit Plan or with respect to any Employees and the Parties later determine that they should be allocated in connection with the Distribution, the Parties shall agree in good faith on the allocation, taking into account the handling of comparable Liabilities under this Agreement.
- (d) *Fiduciary Liability Insurance*. Treatment of claims covered by fiduciary liability insurance shall be governed by Section 5.1 of the Separation and Distribution Agreement.

Section 2.02. <u>Service Credit</u>. The PayPal Benefit Plans shall, and PayPal shall cause each member of the PayPal Group to, recognize each PayPal Group Employee's and each Former

PayPal Group Employee's full service with eBay or any of its Subsidiaries or predecessor entities at or before the Effective Time, to the same extent that such service was recognized by eBay for similar purposes prior to the Effective Time as if such full service had been performed for a member of the PayPal Group, for purposes of eligibility, vesting and determination of level of benefits under any such PayPal Benefit Plan but only with respect to those PayPal Benefit Plans in existence immediately following the Effective Time.

### Section 2.03. Benefit Plans.

- (a) Establishment of Benefit Plans. Except as otherwise specified herein, before the Effective Time, PayPal shall, or shall cause an applicable member of the PayPal Group to, adopt Benefit Plans (and related trusts and other funding instruments, if applicable), which through December 31, 2015 shall have substantially the same terms as of immediately prior to the Effective Time (or such other standard as is specified in this Agreement with respect to any particular Benefit Plan) to those of the corresponding eBay Benefit Plans, including in particular those listed on Schedule 2.03(a); provided, however, that PayPal may limit participation in any such PayPal Benefit Plan to PayPal Group Employees and Former PayPal Group Employees who participated in the corresponding eBay Benefit Plan immediately prior to the Effective Time. Notwithstanding the foregoing, PayPal may make such changes, modifications or amendments to the PayPal Benefit Plans as may be required by applicable Law or as are necessary and appropriate to reflect the Separation or vendor limitations.
- (b) *Benefit Plans Not Required to Be Adopted*. Notwithstanding Section 2.03(a) above, PayPal shall not be required to adopt any Benefit Plan (or related trust, if applicable) (i) to the extent that such adoption would not be permitted under applicable Law, regulation, practice, or vendor limitations, (ii) if the parties agree that such Benefit Plan should not be so adopted by PayPal, or (iii) if such Benefit Plan is listed on Schedule 2.03(b). With respect to any eBay Benefit Plan not listed on Schedule 2.03(a) and Schedule 2.03(b), the parties shall agree in good faith on the treatment of such plan taking into account the handling of any comparable plan under this Agreement.
- (c) Information and Operation. eBay shall, subject to and in compliance with applicable Law, provide PayPal with information describing each eBay Benefit Plan election made by a PayPal Group Employee, Former PayPal Group Employee and (with respect to any fees payable after the Effective Time), any Continuing eBay Director or Transferring Director, that may have application to PayPal Benefit Plans from and after the Effective Time, and PayPal shall use its commercially reasonable efforts to administer the PayPal Benefit Plans using those elections; and, further, to the extent necessary in order for eBay to administer any eBay Benefit Plan, PayPal shall provide eBay with such same information. Each Party shall, upon reasonable request, provide the other Party and the other Party's respective Affiliates, agents, and vendors all information reasonably necessary to the other Party's operation or administration of its Benefit Plans.
- (d) No Duplication or Acceleration of Benefits. Notwithstanding anything to the contrary in this Agreement, the Separation and Distribution Agreement or any Ancillary Agreement, (i) no participant in any PayPal Benefit Plan shall receive service credit or benefits to the extent that receipt of such service credit or benefits would result in duplication of benefits provided to such participant by the corresponding eBay Benefit Plan or any other plan, program or

arrangement sponsored or maintained by a member of the eBay Group and (ii) no participant in any eBay Benefit Plan shall receive service credit or benefits to the extent receipt of such service credit or benefits would result in duplication of benefits provided to such participant in the corresponding PayPal Benefit Plan or any other plan, program or agreement sponsored or maintained by a member of the PayPal Group. Furthermore, unless expressly provided for in this Agreement, the Separation and Distribution Agreement or in any Ancillary Agreement or required by applicable Law, no provision in this Agreement shall be construed to create any right to accelerate vesting or entitlements under any Benefit Plan sponsored or maintained by a member of the eBay Group or member of the PayPal Group on the part of any Employee or Former Employee, including in connection with the termination of employment.

- (e) No Expansion of Participation. Unless otherwise expressly provided in this Agreement, as otherwise determined or agreed to by eBay and PayPal, as required by applicable Law, or as explicitly set forth in a PayPal Benefit Plan, a PayPal Group Employee or Former PayPal Group Employee shall be entitled to participate in the PayPal Benefit Plans at the Effective Time only to the extent that such PayPal Group Employee or Former PayPal Group Employee was entitled to participate in the corresponding eBay Benefit Plan as in effect immediately prior to the Effective Time (to the extent that such PayPal Group Employee or Former PayPal Group Employee does not participate in the respective PayPal Benefit Plan immediately prior to the Effective Time), it being understood that this Agreement does not expand (i) the number of PayPal Group Employees or Former PayPal Group Employees entitled to participate in any PayPal Benefit Plan or (ii) the participation rights of PayPal Group Employees or Former PayPal Group Employees under the corresponding eBay Benefit Plans, in each case, after the Effective Time. Unless otherwise expressly provided by this Agreement or otherwise agreed by the Parties, as of the Effective Time, a PayPal Group Employee or Former PayPal Group Employee shall not be a participant in an eBay Benefit Plan.
- (f) *Transition Services*. The Parties acknowledge that eBay Group and PayPal Group may (i) agree that eBay Group may provide certain PayPal Benefit Plan administration for a period of time after the Distribution Date and (ii) share certain tools and programs relating to human resource functions as specified under the Transition Services Agreement and, if required by HIPAA or other applicable privacy laws, shall enter into any applicable business associate agreement with respect to such arrangement.
- (g) *Beneficiaries*. References to eBay Group Employees, Former eBay Group Employees, PayPal Group Employees, Former PayPal Group Employees, and non-employee directors of either eBay or PayPal (including Transferring Directors), shall be deemed to include reference to their beneficiaries, dependents, survivors and alternate payees, as applicable.
- (h) *Non-U.S. Benefit Plan*. Prior to the Distribution Date, the PayPal Group shall, subject to and in compliance with applicable Law, except as otherwise mutually agreed upon by the parties or as otherwise provided in Section 2.03(b), adopt the Non-U.S. PayPal Benefit Plans, with terms comparable to those of the corresponding Non-U.S. eBay Benefit Plans through December 31, 2015 or undertake negotiations to this extent within the mandatory time periods provided by applicable Law, as applicable; provided, however, that PayPal may limit participation in any Non-U.S. PayPal Benefit Plan to PayPal Group Employees who participated in the corresponding Non-U.S. eBay Benefit Plan immediately prior to the Distribution Date except where such differentiation is prohibited by applicable Law.

## Section 2.04. Individual Agreements.

- (a) Assignment by eBay. To the extent necessary, eBay shall assign, or cause an applicable member of the eBay Group to assign, to PayPal or another member of the PayPal Group, as designated by PayPal, all Individual Agreements between such member of the eBay Group and any PayPal Group Employee or Former PayPal Group Employee, with such assignment to be effective as of the Effective Time; provided, however, that to the extent that assignment of any such Individual Agreement is not permitted by the terms of such agreement or by applicable Law, effective as of the Effective Time, each member of the PayPal Group shall be considered to be a successor to each member of the eBay Group for purposes of, and a third-party beneficiary with respect to, such Individual Agreement, such that each member of the PayPal Group shall enjoy all of the rights and benefits under such agreement (including rights and benefits as a third-party beneficiary and the right to enforce any such agreement), with respect to the business operations of the PayPal Group; provided, further, that in no event shall eBay be permitted to enforce any Individual Agreement (including any agreement containing non-competition or non-solicitation covenants) against a PayPal Group Employee or Former PayPal Group Employee for action taken in such individual's capacity as a PayPal Group Employee or Former PayPal Group Employee that such action is commercially reasonable under the circumstances as they exist at such time.
- (b) Assumption by PayPal. Effective as of the Effective Time, PayPal will assume and honor, or will cause a member of the PayPal Group to assume and honor, any Individual Agreement to which any PayPal Group Employee or Former PayPal Group Employee is a party with any member of the eBay Group, and all obligations and responsibilities of the applicable member of the eBay Group thereunder.
- (c) Residual Intellectual Property Rights under any Individual Agreement. Effective as of the Effective Time, notwithstanding the fact that any Individual Agreement that contains covenants regarding Intellectual Property Rights with respect to both eBay IP and PayPal IP may be retained or assumed by either a member of the eBay Group or the PayPal Group, as applicable, the party that is not retaining or assuming any such Individual Agreement shall nevertheless retain all rights and benefits under such agreement with respect to its Intellectual Property Rights, including the right to enforce any such covenants.

Section 2.05. Collective Bargaining. Effective no later than immediately prior to the Effective Time, to the extent necessary under and permitted by applicable Law, PayPal shall, in compliance with applicable Law, cause the appropriate member of the PayPal Group to (a) assume all collective bargaining agreements (including any national, sector or local collective bargaining agreement), works council and other similar labor relations agreements and arrangements that cover PayPal Group Employees and/or Former PayPal Group Employees, and all Liabilities arising under any such collective bargaining, works council and other similar labor relations agreements and arrangements, and (b) join any industrial, employer or similar association or federation if membership is required for such relevant collective bargaining, works council and other similar labor relations agreement or arrangement to continue to apply and cover the relevant PayPal Group Employees and Former PayPal Group Employees, as applicable.

Section 2.06. Non-U.S. Regulatory Compliance. The Parties shall have the authority to adjust the treatment described in this Agreement, including the treatment under any Benefit Plan, with respect to PayPal Group Employees and/or Former PayPal Group Employees who are located outside of the United States in order to ensure compliance with the applicable Laws of countries outside of the United States or to preserve the tax benefits provided under local tax Law before the Distribution or as are necessary and appropriate to reflect the Separation or vendor limitations.

# ARTICLE III ASSIGNMENT OF EMPLOYEES

Section 3.01. Employees.

(a) Assignment and Transfer of Employees. Effective no later than immediately prior to the Effective Time and except as otherwise agreed by the Parties, (i) the applicable member of the Parties shall have taken such actions as are necessary to ensure to the extent possible that each individual who is intended to be an employee of the PayPal Group as of immediately after the Effective Time (including any such individual who is not actively working as of the Effective Time as a result of an illness, injury or leave of absence (including due to a short-term or long-term disability) approved by the eBay Human Resources department or otherwise taken in accordance with applicable Law) (collectively, the "PayPal Group Employees") is employed by a member of the PayPal Group as of immediately after the Effective Time, on terms and conditions of employment which are substantially comparable to the terms of employment governing such individuals prior to their assignment and (ii) the Parties shall have taken such actions as are necessary to ensure to the extent possible that each individual who is intended to be an employee of the eBay Group as of immediately after the Effective Time (including any such individual who is not actively working as of the Effective Time as a result of an illness, injury or leave of absence (including due to a short-term or long-term disability) approved by the eBay Human Resources department or otherwise taken in accordance with applicable Law) and any other individual employed by the eBay Group as of the Effective Time who is not a PayPal Group Employee (collectively, the "eBay Group Employees") is employed by a member of the eBay Group as of immediately after the Effective Time, on terms and conditions of employment which are substantially comparable to the terms of employment governing such individuals prior to their assignment. Each of the Parties agrees to execute, and to seek to have the applicable Employees execute, such documentation, if any, as may be necessary to reflect such assignment and/or to comply with applicable Law in relation to the automatic transfer of the employment of applicable Employees including, but not limited to, any transfer pursuant to any regulation or other legislation that has implemented the Acquired Rights Directive 2001. To the extent applicable, independent contractors shall also be allocated between the PayPal Group and the eBay Group by the Parties taking such actions as are necessary to ensure that each individual who is intended to be an independent contractor of either Party or both Parties immediately after the Effective Time is an independent contractor of either Party or both Parties as applicable.

(b) At-Will Status. Nothing in this Agreement shall create any obligation to any Employee on the part of any member of the eBay Group or any member of the PayPal Group to

- (i) continue the employment of any Employee or permit the return from a leave of absence for any period after the date of this Agreement (except as required by applicable Law) or (ii) change the employment status of any Employee from "at-will," to the extent that such Employee is an "at-will" employee under applicable Law.
- (c) *Severance*. Except as required by applicable Law the Parties acknowledge and agree that the Distribution and the assignment, transfer or continuation of the employment of Employees as contemplated by this <u>Section 3.01</u> shall not be deemed an involuntary termination of employment entitling any PayPal Group Employee or eBay Group Employee to severance payments or benefits, <u>provided</u> that any severance payments or benefits that become payable notwithstanding the intent of the Parties shall be subject to <u>Section 7.04</u>.
- (d) *Not a Change of Control/Change in Control*. The Parties acknowledge and agree that neither the consummation of the Separation, Distribution nor any transaction contemplated by this Agreement, the Separation and Distribution Agreement or any other Ancillary Agreement shall be deemed a "change of control," "change in control," or term of similar import for purposes of any Benefit Plan sponsored or maintained by any member of the eBay Group or member of the PayPal Group.
- (e) *Payroll and Related Taxes*. Except as otherwise agreed by the Parties, for purposes of payroll taxes with respect to PayPal Group Employees or group of PayPal Group Employees, the Parties and their respective Affiliates agree to implement this treatment by utilizing solely Section 4 of Revenue Procedure 2004-53, STANDARD PROCEDURE FOR PREDECESSORS AND SUCCESSORS.
- (f) *Information and Consultation*. The Parties shall comply, or shall cause their respective Affiliates to comply, with any obligations to inform, consult with, negotiate and/or obtain the consent of, or formal rendering of advice from, all applicable labor or trade unions, works councils and any other employee representative bodies and shall make any notifications necessary as a result of the Separation, Distribution or any of the transactions contemplated by this Agreement, as required by applicable Law or any written agreement.

# ARTICLE IV EQUITY, INCENTIVE AND EXECUTIVE COMPENSATION

Section 4.01. Generally; Definitions.

(a) *Generally*. Each eBay Equity Award that is outstanding as of immediately prior to the Effective Time shall be adjusted as described below; <u>provided</u>, <u>however</u>, that, effective immediately prior to the Effective Time, the eBay Compensation Committee may provide for different adjustments with respect to some or all eBay Equity Awards to the extent that the eBay Compensation Committee deems such adjustments necessary and appropriate and in accordance with the terms of the applicable eBay Equity Plan. Any adjustments made by the eBay Compensation Committee pursuant to the foregoing sentence shall be deemed incorporated by reference herein as if fully set forth below and shall be binding on the Parties and their respective Affiliates. Before the Effective Time, the PayPal Equity Plan shall be established, with such terms as are necessary to permit the implementation of the provisions of <u>Section 4.02</u>.

- (b) *Definitions*. For ease of reference, the following additional terms as used in this Agreement (and specifically this Article IV) shall have the meanings set forth below.
- "<u>Distributed PayPal Stock Value</u>" shall mean the product obtained by multiplying (x) the Post-Spin PayPal Stock Value by (y) the Distribution Ratio.
  - "Distribution Ratio" shall have the meaning set forth in the Separation and Distribution Agreement.
- "eBay Equity Awards" shall mean, collectively, eBay Options, eBay RSU Awards, eBay Restricted Stock Awards, eBay PSU Awards, eBay DSU Awards, eBay PBRSU Awards and GSI LTIP Awards.
- "eBay DSU Award" shall mean a deferred stock unit award, granted pursuant to the eBay Equity Plan, that is outstanding immediately prior to the Effective Time.
- "eBay ESPP" shall mean the eBay Inc. Employee Stock Purchase Plan, effective November 1, 2012 and any sub-plan maintained outside of the U.S.
- "<u>eBay ESPP Option</u>" shall mean an option granted pursuant to the eBay ESPP, that is outstanding prior to the Effective Time.
- "<u>eBay Option</u>" shall mean an option to purchase eBay Shares granted pursuant to an eBay Equity Plan that is outstanding as of immediately prior to the Effective Time.
- "eBay Option Exercise Price Ratio" shall mean, with respect to an eBay Option or eBay ESPP Option, as applicable, the quotient obtained by dividing (x) the per share exercise price of such eBay Option or eBay ESPP Option, as applicable, immediately prior to the Effective Time, by (y) the Pre-Spin eBay Stock Value.
- "<u>eBay PBRSU Award</u>" shall mean a performance-based restricted stock unit award, which, for accounting purposes, has been deemed granted and outstanding as of immediately prior to the Effective Time.
- "<u>eBay PSU Award</u>" shall mean a performance stock unit award, granted pursuant to an eBay Equity Plan, that is outstanding immediately prior to the Effective Time.
- "eBay Restricted Stock Award" shall mean a restricted stock award, granted pursuant to an eBay Equity Plan, that is outstanding as of immediately prior to the Effective Time, which does not otherwise become vested solely by virtue of the Distribution.
- "<u>eBay Retained Award Conversion Ratio</u>" shall mean the quotient obtained by dividing (x) the Pre-Spin eBay Stock Value, by (y) the Post-Spin eBay Stock Value.
- "<u>eBay RSU Award</u>" shall mean a restricted stock unit award, granted pursuant to an eBay Equity Plan, that is outstanding as of immediately prior to the Effective Time, which is not otherwise accelerated solely by virtue of the Distribution.

- "eBay Shares" shall have the meaning set forth in the Separation and Distribution Agreement.
- "eBay Stock Value Ratio" shall mean the quotient obtained by dividing (x) the Pre-Spin eBay Stock Value by (y) the sum of (1) the Distributed PayPal Stock Value and (2) the Post-Spin eBay Stock Value.
- "GSI LTIP Award" shall mean a performance-based long-term incentive award, payable in shares or cash, under the applicable eBay Equity Plan.
- "PayPal DSU Award" shall mean a deferred stock unit award issued under the PayPal Equity Plan, in respect of a corresponding eBay DSU Award that has been assumed by PayPal in accordance with Section 4.02(e).
- "<u>PayPal Equity Award Conversion Ratio</u>" shall mean the quotient obtained by dividing (x) the Pre-Spin eBay Stock Value, by (y) the Post-Spin PayPal Stock Value.
- "PayPal Equity Awards" shall mean, collectively, PayPal Options, PayPal RSU Awards, PayPal PBRSU Awards, PayPal PSU Awards, PayPal RSU Awards, PayPal PSU Awards, PayPal DSU Awards and PayPal-GSI LTIP Awards.
- "PayPal Equity Plan" shall mean the PayPal 2015 Equity Incentive Plan, to be adopted by PayPal prior to the Distribution Date as described in Section 4.01.
- "PayPal ESPP" shall mean the PayPal Employee Stock Purchase Plan, to be adopted by PayPal prior to the Distribution Date as described in Section 4.03.
- "<u>PayPal ESPP Option</u>" shall mean an option to purchase PayPal Shares issued under the PayPal ESPP in respect of a corresponding eBay ESPP Option that has been assumed by PayPal in accordance with <u>Section 4.03</u>.
- "<u>PayPal GSI LTIP Award</u>" shall mean an award issued under the PayPal Equity Plan in respect of the corresponding GSI LTIP Award that has been assumed by PayPal in accordance with Section 4.02(f).
- "<u>PayPal Option</u>" shall mean an option to purchase PayPal Shares issued under the PayPal Equity Plan in respect of a corresponding eBay Option that has been assumed by PayPal in accordance with Section 4.02(a).
- "<u>PayPal PBRSU Award</u>" shall mean a performance base restricted stock unit award issued under the PayPal Equity Plan, in respect of a corresponding eBay PBRSU Award that has been assumed by PayPal in accordance with <u>Section 4.02(c)</u>.
- "PayPal PSU Award" shall mean a performance stock unit award issued under the PayPal Equity Plan in respect of a corresponding eBay PSU Award that has been assumed by PayPal in accordance with Section 4.02(c).

"PayPal Restricted Stock Award" shall mean a restricted stock award issued under the PayPal Equity Plan in respect of a corresponding eBay Restricted Stock Award that has been assumed by PayPal in accordance with Section 4.02(d).

"PayPal RSU Award" shall mean a restricted stock unit award issued under the PayPal Equity Plan in respect of a corresponding eBay RSU Award that has been assumed by PayPal in accordance with Section 4.02(b).

"PayPal Shares" shall have the meaning set forth in the Separation and Distribution Agreement.

"PayPal Stock Value Ratio" shall mean the quotient obtained by dividing (x) the Pre-Spin eBay Stock Value by (y) the sum of (1) the Post-Spin PayPal Stock Value and (2) the quotient obtained by dividing (A) the Post-Spin eBay Stock Value by (B) the Distribution Ratio.

"<u>Post-Spin eBay DSU Award</u>" shall mean an eBay DSU Award, as adjusted as of the Effective Time in accordance with <u>Section 4.02(e)</u>.

"<u>Post-Spin eBay Equity Awards</u>" shall mean, collectively, Post-Spin eBay Options, Post-Spin eBay RSU Awards, Post-Spin eBay PBRSU Awards, Post-Spin eBay PSU Awards and Post-Spin eBay DSU Awards.

"Post-Spin eBay ESPP Option" shall mean an eBay ESPP Option, as adjusted as of the Effective Time in accordance with Section 4.03.

"<u>Post-Spin eBay Option</u>" shall mean an eBay Option, as adjusted as of the Effective Time in accordance with Section 4.02(a).

"<u>Post-Spin eBay PBRSU Award</u>" shall mean an eBay PBRSU Award, as adjusted or granted, as applicable, in accordance with Section 4.02(c).

"<u>Post-Spin eBay PSU Award</u>" shall mean an eBay PSU Award, as adjusted as of the Effective Time in accordance with <u>Section 4.02(d)</u>.

"<u>Post-Spin eBay RSU Award</u>" shall mean an eBay RSU Award, as adjusted as of the Effective Time in accordance with <u>Section 4.02(b)</u>.

"Post-Spin eBay Stock Value" shall mean [•].

"Post-Spin PayPal Stock Value" shall mean [•].

"Pre-Spin eBay Stock Value" shall mean [•].

## Section 4.02. Equity Incentive Awards.

- (a) *Stock Options*. Each eBay Option that is outstanding immediately prior to the Effective Time shall be converted as of the Effective Time into either a Post-Spin eBay Option or a PayPal Option, as described below:
  - (i) eBay Group Employees who are not Transitioning eBay Group Employees. Each vested and unvested eBay Option held by an eBay Group Employee (and not otherwise adjusted as provided in subsection (iii) hereof) shall (1) be converted, as of the Effective Time, into a Post-Spin eBay Option through an adjustment thereto as provided in this Section 4.02(a)(i), and (2) otherwise be subject to the same terms and conditions (including with respect to vesting and expiration) after the Effective Time as applicable to such corresponding eBay Option immediately prior to the Effective Time, in accordance with the following:
    - (A) the number of eBay Shares subject to such Post-Spin eBay Option (rounded down to the nearest whole share) shall be equal to the product obtained by multiplying (x) the number of eBay Shares subject to the corresponding eBay Option immediately prior to the Effective Time, by (y) the eBay Retained Award Conversion Ratio: and
    - (B) the per share exercise price of such Post-Spin eBay Option (rounded up to the nearest cent) shall be equal to the product obtained by multiplying (x) the Post-Spin eBay Stock Value, by (y) the eBay Option Exercise Price Ratio.

- (ii) *PayPal Group Employees*. Each vested and unvested eBay Option held by a PayPal Group Employee shall (1) be converted, as of the Effective Time, into a PayPal Option outstanding under the PayPal Equity Plan through an adjustment thereto as provided in this <u>Section 4.02(a)(ii)</u>, and (2) otherwise be subject to the same terms and conditions (including with respect to vesting and expiration) after the Effective Time as applicable to such eBay Option immediately prior to the Effective Time, in accordance with the following:
  - (A) the number of PayPal Shares subject to such PayPal Option (rounded down to the nearest whole share) shall be equal to the product obtained by multiplying (x) the number of eBay Shares subject to the corresponding eBay Option immediately prior to the Effective Time, by (y) the PayPal Equity Award Exchange Ratio; and
  - (B) the per share exercise price of such PayPal Option (rounded up to the nearest cent) shall be equal to the product obtained by multiplying (x) the Post-Spin PayPal Stock Value, by (y) the eBay Option Exercise Price Ratio of the corresponding eBay Option.
- (iii) *Transitioning eBay Group Employees*. Each vested eBay Option that is outstanding as of immediately prior to the Effective Time and held by a Transitioning eBay Group Employee shall (1) be converted, as of the Effective Time, through an adjustment thereto as provided in this Section 4.02(a)(iii), into both a Post-Spin eBay Option outstanding under the eBay Equity Plan and a PayPal Option outstanding under the PayPal Equity Plan and (2) otherwise be subject to the same terms and conditions (including with respect to vesting and expiration, as applicable) after the Effective Time as were applicable to such eBay Option immediately prior to the Effective Time (as such terms and conditions may be modified by the Transition Success and Retention Program) in accordance with the following:
  - (A) the number of eBay Shares subject to such Post-Spin eBay Option shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of eBay Shares subject to the corresponding eBay Option immediately prior to the Effective Time, by (y) the eBay Stock Value Ratio; and
  - (B) the per share exercise price of such Post-Spin eBay Option shall be equal to the quotient (rounded up to the nearest cent) obtained by dividing (x) the per share exercise price of the corresponding eBay Option immediately prior to the Effective Time, by (y) the eBay Retained Award Conversion Ratio; and
  - (C) the number of PayPal Shares subject to such PayPal Option shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of eBay Shares subject to the corresponding eBay Option immediately prior to the Effective Time, by (y) the PayPal Stock Value Ratio; and
  - (D) the per share exercise price of such PayPal Option shall be equal to the quotient (rounded up to the nearest cent) obtained by dividing (x) the per share exercise price of the corresponding eBay Option immediately prior to the Effective Time, by (y) the PayPal Equity Award Conversion Ratio.
- (iv) *Directors*. Each vested and unvested eBay Option that is outstanding and held by an eBay non-employee director as of immediately prior to the Effective Time shall (1) be converted, as of the Effective Time, through an adjustment

thereto as provided in this Section 4.02(a)(iv), into both a Post-Spin eBay Option outstanding under the eBay Equity Plan and a PayPal Option outstanding under the PayPal Equity Plan and (2) otherwise be subject to the same terms and conditions (including with respect to vesting and expiration, as applicable) after the Effective Time as were applicable to such eBay Option immediately prior to the Effective Time, in accordance with the following:

- (A) the number of eBay Shares subject to such Post-Spin eBay Option shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of eBay Shares subject to the corresponding eBay Option immediately prior to the Effective Time, by (y) the eBay Stock Value Ratio;
- (B) the per share exercise price of such Post-Spin eBay Option shall be equal to the quotient (rounded up to the nearest cent) obtained by dividing (x) the per share exercise price of the corresponding eBay Option immediately prior to the Effective Time, by (y) the eBay Retained Award Conversion Ratio; and
- (C) the number of PayPal Shares subject to such PayPal Option shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of eBay Shares subject to the corresponding eBay Option immediately prior to the Effective Time, by (y) the PayPal Stock Value Ratio;
- (D) the per share exercise price of such PayPal Option shall be equal to the quotient (rounded up to the nearest cent) obtained by dividing (x) the per share exercise price of the corresponding eBay Option immediately prior to the Effective Time, by (y) the PayPal Equity Award Conversion Ratio.

Notwithstanding anything to the contrary in this <u>Section 4.02(a)</u>, the exercise price, the number of eBay Shares and PayPal Shares subject to each Post-Spin eBay Option and PayPal Option, as applicable, and the terms and conditions of exercise of such options, shall be determined in a manner consistent with the requirements of Section 409A of the Code; <u>provided</u>, <u>further</u>, that, in the case of any eBay Option to which Section 421 of the Code applies by reason of its qualification under Section 422 of the Code as of immediately prior to the Effective Time, the exercise price, the number of eBay Shares and PayPal Shares subject to such option, and the terms and conditions of exercise of such option shall be determined in a manner consistent with the requirements of Section 424(a) of the Code.

- (b) RSU Awards. Each eBay RSU Award that is outstanding immediately prior to the Effective Time shall be converted as of the Effective Time into either a Post-Spin eBay RSU Award or a PayPal RSU Award, as described below:
  - (i) *eBay Group Employees who are not Transitioning eBay Group Employees*. Each eBay RSU Award held by an eBay Group Employee who is not a Transitioning eBay Group Employee shall (1) be converted as of the Effective Time, into a Post-Spin eBay RSU Award through an adjustment thereto as provided in this

Section 4.02(b)(i), and (2) otherwise be subject to the same terms and conditions (including with respect to vesting) after the Effective Time as applicable to such eBay RSU Award immediately prior to the Effective Time, in accordance with the following: the number of eBay Shares subject to each Post-Spin eBay RSU Award (rounded down to the nearest whole share) shall be equal to the product obtained by multiplying (x) the number of eBay Shares subject to the corresponding eBay RSU Award immediately prior to the Effective Time, by (y) the eBay Retained Award Conversion Ratio.

- (ii) *Transitioning eBay Group Employees*. Each eBay RSU Award that is outstanding as of immediately prior to the Effective Time and held by a Transitioning eBay Group Employee shall (1) be converted as of the Effective Time, through an adjustment thereto as provided in this Section 4.02(b)(ii), into a Post-Spin eBay RSU Award outstanding under the eBay Equity Plan and a PayPal RSU Award outstanding under the PayPal Equity Plan and (2) otherwise be subject to the same terms and conditions after the Effective Time as were applicable to such eBay RSU Award prior to the Effective Time as such terms and conditions may be modified by the Transition Success and Retention Program, in accordance with the following:
  - (A) the number of shares subject to the Post-Spin eBay RSU Award shall remain the same number of eBay Shares subject to the eBay RSU Award immediately prior to the Effective Time; and
  - (B) the number of shares subject to the PayPal RSU Award shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of eBay Shares subject to the eBay RSU Award immediately prior to the Effective Time, by (y) the Distribution Ratio.
- (iii) PayPal Group Employees. Each eBay RSU Award held by a PayPal Group Employee shall (1) be converted as of the Effective Time into a PayPal RSU Award outstanding under the PayPal Equity Plan through an adjustment thereto as provided in this Section 4.02(b)(iii) and (2) otherwise be subject to the same terms and conditions (including with respect to vesting) after the Effective Time as applicable to such eBay RSU Award immediately prior to the Effective Time, in accordance with the following: the number of PayPal Shares subject to such PayPal RSU Award (rounded down to the nearest share) shall be equal to the product obtained by multiplying (x) the number of eBay Shares subject to the corresponding eBay RSU Award immediately prior to the Effective Time, by (y) the PayPal Equity Award Conversion Ratio.
- (c) PBRSU Awards and PSU Awards.

(i) Adjustment of Performance Targets of PBRSU Awards for eBay Group Employees who are not Transitioning eBay Group Employees, and PayPal Group Employees. As of the Effective Time, each target eBay PBRSU Award with a fiscal year 2014-2015 performance period or a fiscal year 2015-2016 performance period that has been granted under the applicable eBay Equity Plan and is outstanding immediately prior to the Effective Time (an "Outstanding eBay PBRSU Award"), if any, shall be converted as of the Effective Time into either a target Post-Spin eBay PBRSU Award or a target PayPal PBRSU

Award, in either such case with the performance criteria for the 2014-2015 eBay PBRSU Awards being adjusted such that the performance goal for 2015 shall be based on the performance of the relevant business unit, rather than eBay Inc., in accordance with the following:

- (A) Target PBRSU Awards for eBay Group Employees who are not Transitioning eBay Group Employees. Any Outstanding eBay PBRSU Award held by an eBay Group Employee (and not described in subsection (iii) hereof) shall (1) be converted as of the Effective Time, through an adjustment thereto as provided in this Section 4.02(c)(i)(A), into a target Post-Spin eBay PBRSU Award and (2) otherwise be subject to the same terms and conditions (including with respect to vesting and performance conditions) after the Effective Time as applicable to such Outstanding eBay PBRSU Award immediately prior to the Effective Time, in accordance with the following: the target number of eBay Shares subject to such target Post-Spin eBay PBRSU Award shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of eBay Shares subject to the corresponding Outstanding eBay PBRSU Award immediately prior to the Effective Time, by (y) the eBay Retained Award Conversion Ratio.
- (B) Target PBRSU Award for PayPal Group Employees. Any Outstanding eBay PBRSU Award held by a PayPal Group Employee shall (1) be converted as of the Effective Time, into a target Post-Spin PayPal PBRSU Award through an adjustment thereto as provided in this Section 4.02(c)(i)(B), and (2) otherwise be subject to the same terms and conditions (including with respect to vesting and performance conditions) after the Effective Time as applicable to such Outstanding eBay PBRSU Award immediately prior to the Effective Time, in accordance with the following: the target number of PayPal Shares subject to such target PayPal PBRSU Award (rounded down to the nearest whole share) shall be equal to the product obtained by multiplying (x) the number of eBay Shares subject to the corresponding Outstanding eBay PBRSU Award immediately prior to the Effective Time, by (y) the PayPal Equity Award Conversion Ratio.
- (ii) PBRSU Awards to be Granted to eBay Group Employees who are not Transitioning eBay Group Employees, and PayPal Employees. With respect to any target eBay PBRSU Award with a fiscal year 2014-2015 performance period or a fiscal year 2015-2016 performance period (collectively, "Future PBRSU Awards") which has not yet been granted pursuant to the applicable eBay Equity Plan, the following provisions shall apply:
  - (A) any eBay Group Employee who would, in accordance with the normal practices of eBay, be granted Future PBRSU Awards pursuant to the applicable eBay Equity Plan, shall be granted, subject to the eBay Group's actual achievement of applicable performance goals and such eBay Group Employee's continuous service with any member of the eBay Group through the date of grant, a number of RSUs subject to the Future PBRSU Awards pursuant to the applicable eBay Equity Plan, determined using the formula provided in Section 4.02(c)(i)(A) above, as if such Future PBRSU Awards had been Outstanding eBay PBRSU Awards as of immediately prior to the Effective Time and otherwise determined under the normal grant practices of eBay; and

- (B) any PayPal Group Employee who would, if he or she had remained an eBay Group Employee through the date Future PBRSU Awards would, in accordance with the normal practices of eBay, have been granted, shall be granted, subject to the PayPal Group's actual achievement of applicable performance goals and such PayPal Group Employee's continuous service with any member of the PayPal Group from the Distribution Date through the date of grant, a number of RSUs subject to the PayPal PBRSU Awards pursuant to the PayPal Equity Plan, determined using the formula provided in Section 4.02(c)(i)(B) above, as if the Future PBRSU Awards to which such PayPal PBRSU Awards correspond had been Outstanding eBay PBRSU Awards as of immediately prior to the Effective Time, and otherwise determined under the applicable grant practices of PayPal.
- (iii) PBRSU Awards and PSU Awards for Transitioning eBay Group Employees. Each Outstanding eBay PBRSU Award and eBay PSU Award that is outstanding as of immediately prior to the Effective Time and held by a Transitioning eBay Group Employee shall (1) be converted, as of the Effective Time, into a Post-Spin eBay PBRSU Award and Post-Spin eBay PSU Award, respectively, outstanding under the eBay Equity Plan and a PayPal PBRSU Award and a PayPal PSU Award, respectively, outstanding under the PayPal Equity Plan through an adjustment thereto as provided in this <a href="Section 4.02(iii">Section 4.02(iii</a>), and (2) otherwise be subject to the same terms and conditions after the Effective Time as were applicable to such Outstanding eBay PBRSU Award and eBay PSU Award, respectively, prior to the Effective Time (as such terms and conditions may be modified by the Transition Success and Retention Program) in accordance with the following:
  - (A) the number of shares subject to the Post-Spin eBay PBRSU Award and Post-Spin eBay PSU Award, respectively, shall be equal to the same number of eBay Shares subject to the Outstanding eBay PBRSU Award and eBay PSU Award, respectively, immediately prior to the Effective Time; and
  - (B) the number of shares subject to the PayPal PBRSU Award and PayPal PSU Award, respectively, shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of eBay Shares subject to the Outstanding eBay PBRSU Award and eBay PSU Award, respectively, immediately prior to the Effective Time, by (y) the Distribution Ratio.
- (d) Restricted Stock Awards. Each eBay Restricted Stock Award that is outstanding as of immediately prior to the Effective Time and held by a PayPal Group Employee shall (1) be converted, as of the Effective Time, into a PayPal Restricted Stock Award outstanding under the PayPal Equity Plan as provided in this Section 4.02(d) and (2) otherwise be subject to the same terms and conditions (including with respect to vesting) after the Effective Time as were applicable to such eBay Restricted Stock Award prior to the Effective Time, in accordance with the following: the number of PayPal Shares subject to such PayPal Restricted Stock Award shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of eBay Shares subject to the corresponding eBay Restricted Stock Award immediately prior to the Effective Time, by (y) the PayPal Equity Award Conversion Ratio.

- (e) DSU Awards. Each eBay DSU Award that is outstanding and held by a non-employee director of eBay as of immediately prior to the Effective Time shall (1) be converted, as of the Effective Time, into a Post-Spin eBay DSU Award outstanding under the eBay Equity Plan and a PayPal DSU Award outstanding under the PayPal Equity Plan as provided in this Section 4.02(e) and (2) otherwise be subject to the same terms and conditions (including with respect to vesting) after the Effective Time as were applicable to such eBay DSU Award prior to the Effective Time, in accordance with the following:
  - (i) the number of shares subject to the Post-Spin eBay DSU Award shall be equal to the same number of eBay Shares subject to the eBay DSU Award immediately prior to the Effective Time; and
  - (ii) the number of shares subject to the PayPal DSU Award shall be equal to the product (rounded down to the nearest whole share) obtained by multiplying (x) the number of eBay Shares subject to the eBay DSU Award immediately prior to the Effective Time by (y) the Distribution Ratio.
- (f) GSI LTIP Awards. Each GSI LTIP Award that is outstanding prior to the Effective Time and held by a PayPal Group Employee shall (1) be converted, as of the Effective Time, into a PayPal-GSI LTIP Award outstanding under the PayPal Equity Plan as provided in this Section 4.02(f) and (2) otherwise be subject to the same terms and conditions (including with respect to vesting) after the Effective Time as were applicable to such GSI LTIP Award prior to the Effective Time, provided that such award may be settled in PayPal Shares and shall not be settled in eBay Shares.

## (g) Miscellaneous Terms.

(i) With respect to Post-Spin eBay Equity Awards and PayPal Equity Awards: (A) employment or service with the eBay Group or the PayPal Group, as applicable, prior to the Effective Time shall be treated as employment with or service to eBay with respect to Post-Spin eBay Equity Awards held by any person who is employed by or provides services to any member of the eBay Group immediately following the Effective Time (including any Continuing eBay Director); and (B) employment with or service to the eBay Group or the PayPal Group, as applicable, prior to the Effective Time shall be treated as employment with or service to PayPal with respect to PayPal Equity Awards held by any person who is employed by or provides services to any member of the PayPal Group immediately following the Effective Time (including any Transferring Director). In addition, (I) none of the Separation, the Distribution or any employment transfer described in Section 3.01(a), nor the fact that upon Separation certain nonemployee members of the eBay Board will serve as Continuing eBay Directors but (relative to any PayPal Equity Award) cease to provide services to the PayPal Group and other nonemployee members of the eBay Board will serve as Transferring Directors but (relative to Post-Spin eBay Equity Awards) cease to provide services to the eBay Group, shall constitute a termination of employment or service for any Employee or any such nonemployee member of the eBay Board for purposes of any Post-Spin eBay Equity Award or any PayPal Equity Award, as applicable, and (II) after the Effective Time, for any equity award adjusted under this Section 4.02, any reference to a "change of control," "change in control" or similar definition in an award agreement, offer letter, employment agreement, equity side letter or eBay Equity Plan applicable to such award (x) with

respect to Post-Spin eBay Equity Awards, shall be deemed to refer to a "change of control," "change in control" or similar definition as set forth in the applicable award agreement, offer letter, employment agreement, equity side letter or eBay Equity Plan (an "eBay Change of Control"), and (y) with respect to PayPal Equity Awards, shall be deemed to refer to a "change in control" as defined in the PayPal Equity Plan (a "PayPal Change of Control").

- (ii) Any determination in respect of any Post-Spin eBay Equity Award held by a nonemployee of eBay shall be made by the Compensation Committee of the eBay Board or its designee, and any determination in respect of any Post-Spin PayPal Equity Award held by a nonemployee of PayPal shall be made by the Compensation Committee of the PayPal Board or its designee.
- (iii) The PayPal Equity Plan shall assume and honor the terms of all QDROs and any other domestic relations orders in effect under the eBay Equity Plan (and any award agreements granted thereunder) in respect of PayPal Group Employees and Former PayPal Group Employees immediately prior to the Distribution Date (for PayPal Group Employees and Former PayPal Group Employees, as applicable).
  - (h) Settlement and Forfeiture of Equity Awards.
- (i) Allocation of Responsibility for Settlement of Equity Awards. Except as otherwise provided in this Section 4.02(h) and Section 4.02(j), after the Effective Time, Post-Spin eBay Equity Awards, regardless of whether held by Employees or Former Employees, shall be settled by eBay, and PayPal Equity Awards, regardless of whether held by Employees or Former Employees, shall be settled by PayPal. eBay and PayPal shall cooperate, in accordance with the terms of Section 2.03(c), to coordinate the prompt settlement of any such awards that become vested on the Distribution Date and any such awards that are exercised on or after the Distribution Date, as applicable, in accordance with the terms of Section 4.02(j).
- (ii) *Forfeiture of Equity Awards*. Following the Effective Time, if any Post-Spin eBay Equity Award held by a PayPal Group Employee, Former PayPal Group Employee or Transferring Director shall fail to become vested, such Post-Spin eBay Equity Award shall be forfeited to eBay, and if any PayPal Equity Award held by an eBay Group Employee, Former eBay Group Employee or non-employee director of eBay shall fail to become vested, such PayPal Equity Award shall be forfeited to PayPal.
  - (i) Equity Award Tax Reporting and Withholding.
- (i) Tax Withholding for PayPal Equity Awards. Upon the vesting, payment or settlement, as applicable, of PayPal Equity Awards, the PayPal Group shall be solely responsible for ensuring (A) the satisfaction of all applicable tax withholding requirements on behalf of each PayPal Group Employee or Former PayPal Group Employee and (B) the collection and remittance of applicable withholding taxes to the eBay Group with respect to each Transitioning eBay Group Employee (with eBay Group being responsible for remittance of such taxes to the applicable Governmental Authority).
- (ii) *Tax Withholding for Post-Spin eBay Equity Awards*. Upon the vesting, payment or settlement, as applicable, of Post-Spin eBay Equity Awards, the eBay Group

shall be solely responsible for ensuring (A) the satisfaction of all applicable tax withholding requirements on behalf of each eBay Group Employee or Former eBay Group Employee and (B) the collection and remittance of applicable withholding taxes to the PayPal Group with respect to each Transitioning eBay Group Employee (with PayPal Group being responsible for remittance of such taxes to the applicable Governmental Authority).

- (iii) Applicable Withholding Rates. The applicable tax withholding requirements, for an Employee subject to tax in the United States shall be based on the minimum statutory rates and except as otherwise required by applicable Law, for Employees subject to tax outside the United States shall be based on the maximum statutory requirements.
- (iv) *Tax Reporting*. Following the Effective Time: (A) the eBay Group shall be responsible for all income and social tax reporting in respect of Post-Spin eBay Equity Awards held by eBay Group Employees, and any Post-Spin eBay Equity Awards and PayPal Equity Awards held by Former eBay Group Employees and individuals who are or were eBay non-employee directors (excluding Transferring Directors), as applicable; and (B) the PayPal Group shall be responsible for all income and social tax reporting in respect of Post-Spin eBay Equity Awards held by Transferring Directors, and PayPal Equity Awards held by PayPal Group Employees, Former PayPal Group Employees and Transferring Directors, as applicable.
- (j) Cooperation. Each of the Parties shall establish an appropriate administration system in order to administer, in an orderly manner, (i) exercises of vested Post-Spin eBay Options and PayPal Options, (ii) the vesting and forfeiture of unvested Post-Spin eBay Equity Awards and PayPal Equity Awards, and (iii) the withholding and reporting requirements with respect to all equity awards. Each of the Parties shall use their reasonable best efforts together to unify and consolidate all indicative data and payroll and employment information on regular timetables and make certain that each applicable Person's data and records in respect of such awards are correct and updated on a timely basis. The foregoing shall include employment status (e.g., disability or termination of employment) and other information that may be required for vesting and forfeiture of awards and tax withholding/remittance, compliance with trading windows and compliance with the requirements of the Exchange Act and other applicable Laws.
- (k) Establishment of PayPal Equity Plan. Effective as of or prior to the Effective Time, the PayPal Board shall (i) adopt the PayPal Equity Plan under which the PayPal Options, PayPal RSU Awards, PayPal PBRSU Awards, PayPal Restricted Stock Awards, PayPal PSU Awards and PayPal DSU Awards, as applicable, shall be granted and (ii) cause PayPal to assume the obligations under the eBay Equity Awards that are, pursuant to this Agreement, being replaced with the applicable PayPal Options, PayPal RSU Awards, PayPal PBRSU Awards, PayPal Restricted Stock Awards, PayPal PSU Awards and PayPal DSU Awards. To the extent necessary for any such awards to qualify for transitional relief under Treasury Regulation Section 1.162-27(f)(4)(iii), eBay shall take the necessary action to grant or approve the PayPal Equity Awards. The PayPal Equity Plan shall have substantially comparable terms, as of immediately prior to the Effective Time, as the eBay Equity Plan under which the corresponding eBay Equity Awards were governed prior to the Distribution with such changes as are necessary and appropriate to reflect the Separation and such other changes, modifications or amendments to the PayPal Equity Plans as may be required by applicable Law. PayPal shall also assume and

honor the terms of all QDROs and any other domestic relations orders in effect under the eBay Equity Plan in respect of PayPal Group Employees immediately prior to the Distribution Date (for PayPal Group Employees) for all purposes of PayPal Equity Awards under the PayPal Equity Plan.

(l) Registration and Other Regulatory Requirements. PayPal agrees to file Forms S-1, S-3 and/or S-8 registration statements with respect to, and to cause to be registered pursuant to the Securities Act, the PayPal Shares authorized for issuance under the PayPal Equity Plan, as required pursuant to the Securities Act, no later than the Effective Time and in any event before the date of issuance of any PayPal Shares pursuant to the PayPal Equity Plan. The parties shall take such additional actions as are deemed necessary or advisable to effectuate the foregoing provisions of Article IV, including compliance with securities Laws and other legal requirements associated with equity compensation awards in affected non-U.S. jurisdictions.

## Section 4.03. Employee Stock Purchase Plans.

- (a) *eBay ESPP*. Each eBay ESPP Option that is outstanding immediately prior to the Effective Time shall be converted as of the Effective Time into either a Post-Spin eBay ESPP Option or a PayPal ESPP Option as described below:
  - (i) Each eBay ESPP Option held by an eBay Group Employee shall (1) be converted as of the Effective Time into a Post-Spin eBay ESPP Option through an adjustment thereto as provided in this Section 4.03, and (2) otherwise be subject to the same terms and conditions (including with respect to expiration) after the Effective Time as applicable to such eBay ESPP Option immediately prior to the Effective Time, in accordance with the following:
    - (A) The maximum number of eBay Shares subject to such Post-Spin eBay ESPP Option for the purchase period in effect on the Distribution Date (rounded down to the nearest whole share) shall be equal to the product obtained by multiplying (x) the maximum number of shares subject to the eBay ESPP Option, by (y) the eBay Retained Award Conversion Ratio; and
    - (B) the per share offering date purchase price for each Offering Period in effect on the Distribution Date of such Post-Spin eBay ESPP Option (rounded up to the nearest cent) shall be equal to the product obtained by multiplying (x) the Post-Spin eBay Stock Value, by (y) the eBay Option Exercise Price Ratio of the corresponding eBay ESPP Option.
  - (ii) Each eBay ESPP Option held by a PayPal Group Employee shall be converted as of the Effective Time into a PayPal ESPP Option outstanding under the PayPal ESPP Plan and shall, except as otherwise provided in this Section 4.03, be subject to the same terms and conditions (including with respect to expiration) after the Effective Time as applicable to such eBay ESPP Option immediately prior to the Effective Time in accordance with the following:
    - (A) The maximum number of PayPal Shares subject to such PayPal ESPP Option for the purchase period in effect on the Distribution Date (rounded down to the nearest whole share), shall be equal to the product obtained by multiplying (1) the maximum number of share subject to an eBay Option, by (2) the PayPal Equity Award Conversion Ratio; and

(B) the per share offering date purchase price for the Offering Period in effect on the Distribution Date of such PayPal ESPP Option (rounded up to the nearest cent), shall be equal to the product obtained by multiplying (1) the Post-Spin PayPal Stock Value, by (2) the eBay Option Exercise Price Ratio of the corresponding eBay ESPP Option.

Notwithstanding anything to the contrary in this Section 4.03, in the case of any eBay ESPP Option to which Section 421 of the Code applies by reason of its qualification under Section 423 of the Code as of immediately prior to the Effective Time, the exercise price, the number of eBay Shares and PayPal Shares subject to such option, and the terms and conditions of exercise of such option shall be determined in a manner consistent with the requirements of Section 424(a) of the Code.

- (b) *Establishment of PayPal ESPP*. Prior to the Effective Time, PayPal shall (i) adopt the PayPal ESPP under which the PayPal ESPP Options shall be granted and (ii) assume the obligations under the eBay ESPP Options that are, pursuant to this Agreement, being replaced with the PayPal ESPP Options. The PayPal ESPP may have terms that are comparable to those in effect, as of immediately prior to the Effective Time, under which the corresponding eBay ESPP Options were governed prior to the Distribution, including with such changes as are necessary and appropriate to reflect the Separation and such other changes, modifications or amendments to the PayPal Equity Plans as may be required by applicable Law. The PayPal ESPP will include authority to grant options which do not meet the requirements of Section 423(b) of the Code (as well as options which meet such requirements).
- (c) *Elections under the ESPP*. PayPal and eBay shall use their reasonable best efforts to cooperate to facilitate: (i) the carryover of current elections made by each PayPal Group Employee in effect under the eBay ESPP to the PayPal ESPP and (ii) the transfer of contributions associated with such elections from the eBay ESPP to the PayPal ESPP.

Section 4.04. Non-Equity Incentive Plans.

(a) Corporate Bonus Plans.

(i) No later than the Effective Time, PayPal shall establish the PayPal Incentive Plans, which, through December 31, 2015, shall have substantially comparable terms as of immediately prior to the Effective Time as the corresponding eBay Incentive Plans in which the PayPal Group Employee participated as of immediately prior to the Effective Time, with such changes to the applicable performance goals as may be necessary in order to reflect the PayPal Business following the Separation, and such other changes, modifications or amendments to the PayPal Incentive Plans as may be required by applicable Law. PayPal Group Employees shall be eligible to participate in the PayPal Incentive Plans as of the Effective Time to the extent that they were eligible to participate in the eBay Incentive Plans as of immediately prior to the Effective Time.

- (ii) The applicable determining body, person or group of persons of the PayPal Group shall be responsible for determining all bonus awards that would otherwise be payable under the PayPal Incentive Plans to PayPal Group Employees or Former PayPal Group Employees for any performance periods that are open when the Effective Time occurs. The PayPal Group shall also determine for PayPal Group Employees or Former PayPal Group Employees (A) the extent to which established performance criteria (as interpreted by the applicable determining body, person or group of persons of the PayPal Group, in its sole discretion) have been met, and (B) the payment level for each PayPal Group Employee or Former PayPal Group Employee. The PayPal Group shall assume all Liabilities with respect to any such bonus awards payable to PayPal Group Employees or Former PayPal Group Employees for any performance periods that are open when the Effective Time occurs and thereafter, and any other Liabilities relating to PayPal Group Employees or Former PayPal Group Employees under the eBay Incentive Plans and no member of the eBay Group shall have any obligations with respect thereto.
- (iii) The applicable determining body, person or group of persons of eBay Group shall be responsible for determining all bonus awards that would otherwise be payable under the eBay Incentive Plans to eBay Group Employees or Former eBay Group Employees for any performance periods that are open when the Effective Time occurs. The eBay Group shall also determine for eBay Group Employees or Former eBay Group Employees (A) the extent to which established performance criteria (as interpreted by the applicable determining body, person or group of persons of the eBay Group, in its sole discretion) have been met, and (B) the payment level for each eBay Group Employee or Former eBay Group Employee. The eBay Group shall retain (or assume as necessary) all Liabilities with respect to any such bonus awards payable to eBay Group Employees or Former eBay Group Employees for any performance periods that are open when the Effective Time occurs and thereafter, and no member of the PayPal Group shall have any obligations with respect thereto.
- (b) *eBay Retained Bonus Plans*. No later than the Effective Time, the eBay Group shall continue to retain (or assume as necessary) any incentive compensation plan (including any sales incentive or other incentive plans applicable at the individual business unit level) for the exclusive benefit of eBay Group Employees and Former eBay Group Employees, whether or not sponsored by the eBay Group, and, from and after the Effective Time, shall be solely responsible for all Liabilities thereunder.
- (c) *PayPal Retained Bonus Plans*. No later than the Effective Time, the PayPal Group shall continue to retain (or assume as necessary) any incentive plan (including any sales incentive or other incentive plans applicable at the individual business unit level) for the exclusive benefit of PayPal Group Employees and Former PayPal Group Employees, whether or not sponsored by the PayPal Group, and, from and after the Effective Time, shall be solely responsible for all Liabilities thereunder.

## Section 4.05. <u>Director Compensation</u>.

- (a) *Director Compensation Allocable to Service*. eBay shall be responsible for the payment of any fees for service on the eBay Board that are earned at, before, or after the Effective Time, and PayPal shall not have any responsibility for any such payments. With respect to any PayPal non-employee director, PayPal shall be responsible for the payment of any fees for service on the PayPal Board that are earned at any time after the Effective Time and eBay shall not have any responsibility for any such payments. Notwithstanding the foregoing, PayPal shall commence paying quarterly cash retainers to PayPal non-employee directors in respect of the quarter in which the calendar date immediately following the Distribution Date occurs; provided that eBay will pay PayPal an amount equal to the portion of such payment that is attributable to Transferring Directors' service to eBay on and prior to the Effective Time (including, for the avoidance of doubt, the grant date fair value of any PayPal deferred stock units that may be issued in respect of any partial quarterly service on the eBay Board during the quarter on which the Distribution Date occurs, if applicable). For the avoidance of doubt, eBay Equity Awards held by non-employee directors as of immediately prior to the Effective Time shall be treated as described in Section 4.02.
- (b) Impact of Change of Control on Director Equity Awards. With respect to provisions related to vesting of eBay Equity Awards and, to the extent applicable, following the Effective Time, PayPal Equity Awards, an eBay Change of Control shall be treated as a PayPal Change of Control for purposes of PayPal Equity Awards held, after the Effective Time, by Continuing eBay Directors, and a PayPal Change of Control shall be treated as an eBay Change of Control for purposes of Post-Spin eBay Equity Awards held by Transferring Directors.

# ARTICLE V RETIREMENT PLANS

Section 5.01. PayPal 401(k) Plan.

- (a) Establishment of Plan. Effective on or before the Distribution Date, the PayPal Board shall adopt and establish the PayPal 401(k) Plan and a related trust (the "PayPal 401(k) Trust") which shall be intended to meet the Qualification Requirements (including under Sections 401(k) and (m) of the Code) and which through December 31, 2015 shall have substantially the same terms as of immediately prior to the Distribution Date as the eBay 401(k) Plan. Notwithstanding the foregoing, PayPal may make such changes, modifications or amendments to the PayPal 401(k) Plan as may be required by applicable Law or as are necessary and appropriate to reflect the Separation or which result from vendor limitations. Before the Distribution Date, PayPal shall provide eBay with (i) a copy of the PayPal 401(k) Plan, PayPal 401(k) Trust and volume submitter approval letter and (ii) a copy of certified resolutions of the PayPal Board (or its authorized committee or other delegate) evidencing adoption of the PayPal 401(k) Plan and PayPal 401(k) Trust and the assumption by the PayPal 401(k) Plan of the Liabilities described in Section 5.01(b).
- (b) *Transfer of Account Balances*. No later than 30 days following the Effective Time (or such other times as mutually agreed to by the parties), eBay shall cause the trustee of the eBay 401(k) Plan to transfer from the trust which forms a part of the eBay 401(k)

Plan (the "<u>eBay 401(k) Trust</u>") to the PayPal 401(k) Trust, the account balances of PayPal Group Employees under the eBay 401(k) Plan, determined as of the date of the transfer. Unless otherwise agreed by the parties, such transfers shall be made in kind, including promissory notes evidencing the transfer of outstanding loans. Any Asset and Liability transfers pursuant to this <u>Section 5.01</u> shall comply in all respects with Sections 414(l) and 411(d)(6) of the Code and if required, shall be made not less than thirty (30) days after eBay shall have filed the notice under Section 6058(b) of the Code. The parties agree that to the extent that any assets are not transferred in kind, the assets transferred will be mapped into an appropriate investment vehicle.

- (c) PayPal 401(k) Plan Provisions. The PayPal 401(k) Plan shall provide that:
- (i) PayPal Group Employees shall be eligible to participate in the PayPal 401(k) Plan as of the Effective Time to the extent that they were eligible to participate in the eBay 401(k) Plan as of immediately prior to the Effective Time;
- (ii) the account balance of each PayPal Group Employee under the eBay 401(k) Plan as of the date of the transfer of Assets from the eBay 401(k) Plan (including any outstanding promissory notes relating to outstanding loans) shall be credited to such individual's account under the PayPal 401(k) Plan; and
- (iii) the PayPal 401(k) Plan shall assume and honor the terms of all QDROs in effect under the eBay 401(k) Plan in respect of PayPal Group Employees immediately prior to the Effective Time (for PayPal Group Employees).
- (d) *Plan Fiduciaries*. For all periods at and after the Effective Time, the parties agree that the applicable fiduciaries of each of the eBay 401(k) Plan and the PayPal 401(k) Plan, respectively, shall have the authority with respect to the eBay 401(k) Plan and the PayPal 401(k) Plan, respectively, to determine the investment alternatives, the terms and conditions with respect to those investment alternatives and such other matters as are within the scope of their duties under ERISA and the terms of the applicable plan documents.
- (e) *No Distributions*. No PayPal Group Employee shall be entitled to a right to a distribution of his or her benefit under the eBay 401(k) Plan as a result of his or her transfer of employment from the eBay Group to the PayPal Group nor as a result of the completion of the Separation.

#### Section 5.02. Non-U.S. Retirement Plans.

(a) Establishment of PayPal Non-U.S. Retirement Plans. Before the Effective Time, subject to and in compliance with applicable Law or as otherwise provided in Section 2.03(b), the applicable determining body, person or group of persons of the PayPal Group shall adopt and establish PayPal Non-U.S. Retirement Plans for PayPal Group Employees and Former PayPal Group Employees which through December 31, 2015 shall have terms comparable to those terms as of immediately prior to the Distribution Date as the eBay Non-U.S. Retirement Plans. Notwithstanding the foregoing, the applicable determining body, person or group of persons of the PayPal Group may make such changes, modifications, or amendments to the PayPal Non-U.S. Retirement Plans as may be required by applicable Law or as are necessary to reflect the Separation.

(b) *Transfer of Assets and Assumption of Liabilities*. As soon as practicable following the Effective Time, subject to and in compliance with applicable Law, account balances (including statutory contributions and funds), or contracts of the PayPal Group Employees and, if applicable, Former PayPal Group Employees, shall be transferred from a member of the eBay Group or the eBay Non-U.S. Retirement Plan to a member of the PayPal Group or the PayPal Non-U.S. Retirement Plan, as applicable. In the event any Non-U.S. Retirement Plan is a defined benefit plan, then if permissible under applicable Law, the Parties shall cooperate to transfer the Assets and Liabilities, with respect to the benefits of PayPal Group Employees and Former PayPal Group Employees, in a manner reasonably acceptable to the Parties in consultation with the applicable actuary for, or other relevant third-party administrator or other service provider of, any such plan. As of the Effective Time and subject to the transfer described herein, eBay and the eBay Non-U.S. Retirement Plans shall be relieved of all Liabilities for those benefits transferred and PayPal shall, and shall cause the PayPal Non-U.S. Retirement Plan, to assume all Liabilities under the eBay Non-U.S. Retirement Plans for the benefits of PayPal Group Employees and, if applicable, Former PayPal Group Employees determined immediately prior to the Effective Time. For the avoidance of doubt, in any non-U.S. jurisdiction where account balances, contracts or assets relating to benefits are not permitted to be transferred, eBay shall remain liable to the extent it is otherwise liable under applicable Law with respect to such benefits relating to account balances, contracts or assets not transferred.

## ARTICLE VI NONQUALIFIED DEFERRED COMPENSATION PLAN

## Section 6.01. PayPal Deferred Compensation Plan.

- (a) Establishment of the Deferred Compensation Plan. Before the Effective Time, PayPal shall establish the PayPal Deferred Compensation Plan, which through December 31, 2015, shall have substantially the same terms as of immediately prior to the Effective Time as the eBay Deferred Compensation Plan. Notwithstanding the foregoing, PayPal may make such changes, modifications or amendments to the PayPal Deferred Compensation Plan as may be required by applicable Law or as are necessary and appropriate to reflect the Separation. The PayPal Deferred Compensation Plan shall assume and honor the terms of all QDROs and any other domestic relations orders in effect under the eBay Deferred Compensation Plan in respect of PayPal Group Employees immediately prior to the Effective Time.
- (b) Assumption of Liabilities from eBay. As of the Effective Time, PayPal shall, and shall cause the PayPal Deferred Compensation Plan to, assume all Liabilities under the eBay Deferred Compensation Plan for the benefits of PayPal Group Employees determined as of immediately prior to the Effective Time, and the eBay Deferred Compensation Plan shall be relieved of all Liabilities for those benefits. eBay shall retain all Liabilities under the eBay Deferred Compensation Plan for the benefits for eBay Group Employees, Former eBay Group Employees and Former PayPal Group Employees. From and after the Effective Time, PayPal Group Employees shall cease to be participants in the eBay Deferred Compensation Plan.

Section 6.02. <u>Participation; Distributions</u>. The Parties acknowledge that none of the transactions contemplated by this Agreement, the Separation and Distribution Agreement or any Ancillary Agreement will trigger a payment or distribution of compensation under any of the eBay

Deferred Compensation Plans or the PayPal Deferred Compensation Plans for any participant and, consequently, that the payment or distribution of any compensation to which such participant is entitled under any of the eBay Deferred Compensation Plans or the PayPal Deferred Compensation Plans will occur upon such participant's separation from service from the PayPal Group or at such other time as provided in the applicable PayPal Nonqualified Plan or participant's deferral election.

## ARTICLE VII WELFARE BENEFIT PLANS

#### Section 7.01. Welfare Plans.

- (a) Establishment of PayPal Welfare Plans. Before the Effective Time and except as otherwise set forth in this Article VII, PayPal shall, or shall cause the applicable member of the PayPal Group to, or shall engage in negotiations to, establish the PayPal Welfare Plans (including statutorily required plans such as provident funds, gratuity and insurance to the extent applicable), which through December 31, 2015 shall have terms substantially similar in the aggregate as of immediately prior to the Effective Time as to those of the corresponding eBay Welfare Plans. Notwithstanding the foregoing, PayPal may make such changes, modifications or amendments to the PayPal Welfare Plans as may be required by applicable Law or as are necessary and appropriate to reflect the Separation or which result from vendor limitations.
- (b) Waiver of Conditions; Benefit Maximums. PayPal shall use commercially reasonable efforts to cause the PayPal Welfare Plans to:
  - (i) with respect to initial enrollment as of the Effective Time, waive (A) all limitations as to preexisting conditions, exclusions, and service conditions with respect to participation and coverage requirements applicable to any PayPal Group Employee or Former PayPal Group Employee, other than limitations that were in effect with respect to the PayPal Group Employee or Former PayPal Group Employee under the applicable eBay Welfare Plan as of immediately prior to the Effective Time, and (B) any waiting period limitation or evidence of insurability requirement applicable to a PayPal Group Employee or Former PayPal Group Employee other than limitations or requirements that were in effect with respect to such PayPal Group Employee or Former PayPal Group Employee under the applicable eBay Welfare Plans as of immediately prior to the Effective Time; and
  - (ii) take into account (A) with respect to aggregate annual, lifetime, or similar maximum benefits available under the PayPal Welfare Plans, a PayPal Group Employee's or Former PayPal Group Employee's prior claim experience under the eBay Welfare Plans and any eBay Benefit Plan that provides leave benefits; and (B) any eligible expenses incurred by a PayPal Group Employee or Former PayPal Group Employee during the portion of the plan year of the applicable eBay Welfare Plan ending as of the Effective Time to be taken into account under such PayPal Welfare Plan for purposes of satisfying all deductible, coinsurance, and maximum out-of-pocket requirements applicable to such PayPal Group Employee or Former PayPal Group Employee for the applicable plan year to the same extent as such expenses were taken into account by eBay for similar purposes prior to the Effective Time as if such amounts had been paid in accordance with such PayPal Welfare Plan.

- (c) *Health Savings Accounts*. Before the Effective Time, PayPal shall, or shall cause a member of the PayPal Group to, establish a PayPal Welfare Plan that will provide health savings account benefits to PayPal Group Employees on and after the Effective Time (a "PayPal HSA"). It is the intention of the Parties that all activity under a PayPal Group Employee's health savings account under an eBay Welfare Plan (a "eBay HSA") for the year in which the Effective Time occurs be treated instead as activity under the corresponding account under the PayPal HSA, such that (i) any period of participation by a PayPal Group Employee in an eBay HSA during the year in which the Effective Time occurs will be deemed a period when such PayPal Group Employee participated in the corresponding PayPal HSA; (ii) all expenses incurred during such period will be deemed incurred while such PayPal Group Employee's coverage was in effect under the corresponding PayPal HSA; (iii) all elections and reimbursements made with respect to such period under the eBay HSA will be deemed to have been made with respect to the corresponding PayPal HSA; and (iv) for purposes of determining the total annual employer contribution made on behalf of a PayPal Group Employee, employer contributions made with respect to such period under the eBay HSA will be deemed to have been made with respect to the corresponding PayPal HSA.
- (d) Flexible Spending Accounts. The Parties shall use commercially reasonable efforts to ensure that as of the Effective Time any health or dependent care flexible spending accounts of PayPal Group Employees (whether positive or negative) (the "Transferred Account Balances") under eBay Welfare Plans that are health or dependent care flexible spending account plans are transferred, as soon as practicable after the Effective Time, from the eBay Welfare Plans to the corresponding PayPal Welfare Plans. Such PayPal Welfare Plans shall assume responsibility as of the Effective Time for all outstanding health or dependent care claims under the corresponding eBay Welfare Plans of each PayPal Group Employee for the year in which the Effective Time occurs and shall assume and agree to perform the obligations of the corresponding eBay Welfare Plans from and after the Effective Time. As soon as practicable after the Effective Time, and in any event within 30 days after the amount of the Transferred Account Balances is determined or such later date as mutually agreed upon by the Parties, PayPal shall pay eBay the net aggregate amount of the Transferred Account Balances, if such amount is positive, and eBay shall pay PayPal the net aggregate amount of the Transferred Account Balances, if such amount is negative.
  - (e) Allocation of Welfare Liabilities. Except as otherwise set forth in Article VII:
  - (i) The eBay Group and the eBay Welfare Plans shall remain responsible for all Liabilities to, or in respect of, PayPal Group Employees and Former PayPal Group Employees relating to or arising in connection with any claims relating to medical, dental, hospitalization, vision, prescription drug or other health arrangement, long-term disability, life, accidental death and dismemberment and business travel accident insurance, which claims are incurred before the Effective Time and the PayPal Group and the PayPal Group Welfare Plans shall be responsible for all Liabilities to, or in respect of, PayPal Group Employees and Former PayPal Group Employees relating to or

arising in connection with any claims for medical, dental, hospitalization, vision, prescription drug or other health arrangement, long-term disability, life, accidental death and dismemberment and business travel accident insurance, which claims are incurred at or after the Effective Time;

- (ii) With respect to claims for short-term disability (a) the PayPal Group shall be responsible for (i) claims incurred in respect of PayPal Group Employees and Former PayPal Group Employees, occurring at or after the Effective Time and (ii) amounts owed with respect to the period commencing on the Effective Time with respect to a claim incurred prior to the Effective Time (for the avoidance of doubt, if a PayPal Group Employee is on short-term disability on the Effective Time for a claim incurred prior to the Effective Time, the PayPal Group shall be responsible for short-term disability payments with respect to the period commencing at the Effective Time and if such claim as incurred prior to the Effective Time becomes a long-term disability claim, such claim shall be subject to the provision of subsection (i) hereof);
- (iii) The PayPal Group shall assume Liability relating to, arising out of or resulting from all other welfare coverage or claims incurred by or on behalf of any PayPal Group Employee or Former PayPal Group Employee under any eBay Welfare Plan or PayPal Welfare Plan before, at or after the Effective Time;
- (iv) For these purposes, a claim or Liability is deemed to be incurred: (a) with respect to medical, dental, vision and/or prescription drug benefits, upon the rendering of health services giving rise to such claim or Liability; (b) with respect to life insurance, accidental death and dismemberment and business travel accident insurance, upon the occurrence of the event giving rise to such claim or Liability; and (c) with respect to disability benefits, upon the date of an Employee's disability, as determined by the disability benefit insurance carrier or claim administrator, giving rise to such claim or Liability;
- (v) The eBay Group and the eBay Welfare Plans shall remain liable for any Liabilities relating to audit or compliance of the eBay Welfare Plans; and
- (vi) At and after the Effective Time, no eBay Welfare Plan shall provide coverage to any PayPal Group Employee or Former PayPal Group Employee.
- (f) Establishment of High Deductible Health Plan. Effective as of the Effective Time, PayPal shall or cause a member of the PayPal Group to establish a high deductible health plan option with related health savings account and limited purpose health care spending account benefits.

Section 7.02. <u>COBRA</u>. The eBay Group shall be responsible for complying with, and providing coverage pursuant to, the health care continuation requirements of COBRA, and the corresponding provisions of the eBay Welfare Plans with respect to any Employees and any Former Employees (and their covered dependents) who incur a qualifying event or loss of coverage (within the meaning of COBRA) before the Effective Time. Effective as of the Effective Time, the PayPal Group shall be responsibility for complying with, and providing coverage

pursuant to, the health care continuation requirements of COBRA, and the corresponding provisions of the PayPal Welfare Plans with respect to any PayPal Group Employees or Former PayPal Group Employees (and their covered dependents) who incur a qualifying event or loss of coverage (within the meaning of COBRA) under the PayPal Welfare Plans at or after the Effective Time. The Parties agree that the consummation of the transactions contemplated by the Separation and Distribution Agreement shall not constitute a COBRA qualifying event for any purpose of COBRA for purposes of applying the principals set forth in this Section 7.02.

Section 7.03. Paid Time Off, Holidays and Leaves of Absence. Effective as of the Effective Time, the PayPal Group shall assume all Liabilities of the eBay Group with respect to paid time off, holiday, annual leave or other leave of absence, and required payments related thereto regardless of whether such liabilities originated prior to the Effective Time, for each PayPal Group Employee or Former PayPal Group Employee unless otherwise required by applicable Law. The eBay Group shall retain all Liabilities with respect to paid time off, holiday, annual leave or other leave of absence (including sabbatical leave), and required payments related thereto, for each eBay Group Employee and Former eBay Group Employee.

Section 7.04. Severance and Unemployment Compensation. Effective as of the Effective Time, the PayPal Group shall assume any and all Liabilities to, or relating to, PayPal Group Employees and Former PayPal Group Employees in respect of severance and unemployment compensation, regardless of whether the event giving rise to the Liability occurred before, at or after the Effective Time. The eBay Group shall be responsible for any and all Liabilities to, or relating to, eBay Group Employees and Former eBay Group Employees in respect of severance and unemployment compensation, regardless of whether the event giving rise to the Liability occurred before, at or after the Effective Time.

Section 7.05. Sabbatical Plans and Sabbatical Trusts. Effective as of the Effective Time, the applicable determining body, person or group of persons of the PayPal Group shall establish the PayPal Sabbatical Plans, which through December 31, 2015 shall have substantially the same terms as of immediately prior to the Effective Time as the corresponding eBay Sabbatical Plans. Notwithstanding the foregoing, the applicable determining body, person or group of persons of the PayPal Group may make such changes, modifications or amendments to the PayPal Sabbatical Plans as may be required by applicable Law or as are necessary and appropriate to reflect the Separation. PayPal shall adopt the PayPal Sabbatical Trusts. From and after the Effective Time, the PayPal Group and the PayPal Sabbatical Plans and PayPal Sabbatical Trusts shall be responsible for and assume all Liabilities relating to PayPal Group Employees and Former PayPal Group Employees that would have been satisfied by the eBay Group and the eBay Sabbatical Trusts had the Distribution not occurred, and neither any member of the eBay Group nor the eBay Sabbatical Plans or eBay Sabbatical Trusts shall have any Liabilities with respect thereto. In connection with the establishment by the PayPal Group of the PayPal Sabbatical Plans, as of the Effective Time, the applicable determining body, person or group of persons of the eBay Group shall, or shall cause the eBay Sabbatical Trusts to, transfer Assets (whether in cash or in kind as determined by eBay) to the PayPal Sabbatical Trusts in an amount equal to the product of (i) the fair market value of the Assets of the eBay Sabbatical Trusts immediately prior to the Effective Time (or such other date or time as may be agreed by the Parties) and (ii) the percentage of Liabilities to be assumed by the PayPal Group under the eBay Sabbatical Plans as of April 1, 2015 (or such other date or time as may be agreed by the Parties) out of the total Liabilities of the eBay

Sabbatical Plans as of April 1, 2015 (or such other date or time as may be agreed by the Parties) (for the avoidance of doubt and as an example, if PayPal Group's portion of the liability of the eBay Sabbatical Plans is 41.24%, the PayPal Sabbatical Trusts will receive 41.24% of the Assets of the eBay Sabbatical Trusts, subject to any adjustments described below). For purposes of the preceding sentence, Liabilities under the eBay Sabbatical Plans shall be measured as of immediately prior to April 1, 2015 (or such other date or time as may be agreed by the Parties) on a target funding basis without regard to interest discounting and otherwise based on the assumptions set forth in the December 31, 2014 actuarial valuation for the eBay Sabbatical Plan prepared by Buck Consultants, LLC. The amount of assets to be transferred shall be adjusted for earnings and distributions, if any, through the actual date of transfer.

Section 7.06. Workers' Compensation. With respect to claims for workers' compensation in the United States, (a) the PayPal Group shall be responsible for claims in respect of PayPal Group Employees and Former PayPal Group Employees, occurring at or after the Effective Time, (b) the eBay Group shall be responsible for all claims in respect of eBay Group Employees and Former eBay Group Employees, whether occurring at or after the Effective Time and (c) the eBay Group should be responsible for all claims in respect of PayPal Group Employees and Former PayPal Group Employees occurring before the Effective Time. The treatment of workers' compensation claims by PayPal with respect to eBay insurance policies shall be governed by Section 5.1 of the Separation and Distribution Agreement; provided, that for purposes of claims referenced in this Section 7.06, a claim shall be deemed incurred when the injury giving rise to any claim made under the applicable workers compensation policy occurs.

Section 7.07. <u>Insurance Contracts</u>. To the extent that any eBay Welfare Plan is funded through the purchase of an insurance contract or is subject to any stop loss contract, the Parties will cooperate and use their commercially reasonable efforts to replicate such insurance contracts for PayPal (except to the extent that changes are required under applicable state insurance Laws or filings by the respective insurers) and to maintain any pricing discounts or other preferential terms for both eBay and PayPal for a reasonable term. Neither Party shall be liable for failure to obtain such insurance contracts, pricing discounts, or other preferential terms for the other Party. Each Party shall be responsible for any additional premiums, charges, or administrative fees that such Party may incur pursuant to this Section 7.07.

Section 7.08. Third-Party Vendors. Except as provided below, to the extent that any eBay Welfare Plan is administered by a third-party vendor, the Parties will cooperate and use their commercially reasonable efforts to replicate any contract with such third-party vendor for PayPal and to maintain any pricing discounts or other preferential terms for both eBay and PayPal for a reasonable term. Neither Party shall be liable for failure to obtain such pricing discounts or other preferential terms for the other Party. Each Party shall be responsible for any additional premiums, charges, or administrative fees that such Party may incur pursuant to this Section 7.08.

Section 7.09. Fringe Benefits. Effective as of the Effective Time, PayPal shall or shall cause the applicable member of the PayPal Group to adopt the PayPal Fringe Benefit Plans, which through December 31, 2015 shall have terms that are substantially similar in the aggregate as of immediately prior to the Effective Time as those of the eBay Fringe Benefit Plans. Notwithstanding the foregoing, PayPal may make such changes, modifications or amendments to the PayPal Fringe Benefit Plans as may be required by applicable Law or as are necessary and

appropriate to reflect the Separation or which result from vendor limitations. As of the Effective Time, PayPal shall, and shall cause the PayPal Fringe Benefit Plans to, assume all Liabilities under the eBay Fringe Benefit Plans for the benefits of PayPal Group Employees and Former PayPal Group Employees regardless of whether the event giving rise to the Liability occurred before, at or after the Effective Time, and the eBay Fringe Benefit Plans shall be relieved of all Liabilities for those benefits. eBay shall retain all Liabilities under the eBay Fringe Benefit Plans for the benefits for eBay Group Employees and Former eBay Group Employees and after the Effective Time, PayPal Group Employees and Former PayPal Group Employees shall cease to be participants in the eBay Fringe Benefit Plans.

## ARTICLE VIII NON-U.S. EMPLOYEES

PayPal Group Employees and Former PayPal Group Employees who are residents outside of the United States or otherwise are subject to non-U.S. Law and their related benefits and Liabilities shall be treated in the same manner as the PayPal Group Employees and Former PayPal Group Employees, respectively, who are residents of the United States and are not subject to non-U.S. Law. Notwithstanding anything in this Agreement to the contrary, all actions taken with respect to non-U.S. Employees or U.S. Employees working in non-U.S. jurisdictions, including any action under a Benefit Plan, shall be subject to and accomplished in accordance with applicable Law in the custom of the applicable jurisdictions and PayPal may make such changes, modifications or amendments to the PayPal Benefit Plans as may be required by applicable Law, vendor limitations or as are necessary to reflect the Separation.

# ARTICLE IX MISCELLANEOUS

Section 9.01. Employee Records.

- (a) Sharing of Information. Subject to and in compliance with any limitations imposed by applicable Law, eBay and PayPal (acting directly or through members of the eBay Group or the PayPal Group, respectively) shall provide to the other and their respective authorized agents and vendors all information necessary (including information for purposes of determining benefit eligibility, participation, vesting and calculation of benefits) on a timely basis under the circumstances for the parties to perform their respective duties under this Agreement. To the extent that such information is maintained by a third party vendor, each party shall use its commercially reasonable best efforts to require the third party vendor to provide the necessary information and assist in resolving discrepancies or obtaining missing data.
- (b) *Transfer of Personnel Records and Authorization*. Subject to and in compliance with any limitation imposed by applicable Law and to the extent that it has not done so before the Effective Time, eBay shall transfer to PayPal any and all employment records (including any Form I-9, Form W-2 or other IRS and relevant tax forms applicable in any non-U.S. jurisdiction) with respect to PayPal Group Employees and Former PayPal Group Employees and other records reasonably required by PayPal to enable PayPal properly to carry out its obligations under this Agreement. Subject to and in compliance with any limitation imposed by applicable Law and to the extent that it has not done so before the Effective Time, PayPal shall transfer to

eBay any and all employment records (including any Form I-9, Form W-2 or other IRS and relevant tax forms applicable in any non-U.S. jurisdiction) with respect to eBay Group Employees and Former eBay Group Employees and other records reasonably required by eBay to enable eBay properly to carry out its obligations under this Agreement. The transfer of records generally shall occur as soon as administratively practicable at or after the Effective Time. Each Party will permit the other Party reasonable access to Employee records, to the extent reasonably necessary for such accessing Party to carry out its obligations hereunder.

- (c) Access to Records. To the extent not inconsistent with this Agreement, the Separation and Distribution Agreement or any applicable privacy protection Laws or regulations, reasonable access to Employee-related and benefit plan-related records after the Effective Time will be provided to members of the eBay Group and members of the PayPal Group pursuant to the terms and conditions of Article VI of the Separation and Distribution Agreement.
- (d) *Maintenance of Records*. With respect to retaining, destroying, transferring, sharing, copying and permitting access to all Employee-related information, eBay and PayPal shall comply with all applicable Laws, regulations and internal policies, and shall indemnify and hold harmless each other from and against any and all Liability, claims, actions, and damages that arise from a failure (by the indemnifying Party or its Subsidiaries or their respective agents) to so comply with all applicable Laws, regulations and internal policies applicable to such information.
- (e) *Cooperation*. Each Party shall use commercially reasonable efforts to cooperate and work together to unify, consolidate and share (to the extent permissible under applicable privacy/data protection laws) all relevant documents, resolutions, government filings, data, payroll, employment and benefit plan information on regular timetables and cooperate as needed with respect to (i) any claims or reasonable inquiry under or audit of or litigation with respect to any employee benefit plan, policy or arrangement contemplated by this Agreement, (ii) efforts to seek a determination letter, private letter ruling or advisory opinion from the IRS or U.S. Department of Labor, or other comparable non-U.S. letter, ruling or opinion from any other Governmental Authority as applicable, in any such case on behalf of any employee benefit plan, policy or arrangement contemplated by this Agreement, (iii) any filings that are required to be made or supplemented to the IRS, U.S. Pension Benefit Guaranty Corporation, U.S. Department of Labor or any other Governmental Authority and (iv) any audits by a Governmental Authority or corrective actions in either case, relating to any Benefit Plan, labor or payroll practices, and (v) reconciliation and administration of post-closing compensation, benefit, employment, and payroll issues; provided, however, that requests for cooperation must be reasonable and not interfere with daily business operations.
- (f) *Confidentiality*. Notwithstanding anything in this Agreement to the contrary, all confidential records and data relating to Employees to be shared or transferred pursuant to this Agreement shall be subject to Section 6.9 of the Separation and Distribution Agreement and the requirements of applicable Law.
- (g) *Interaction with Other Agreements*. To the extent not inconsistent with this Agreement or any applicable privacy protection Laws or regulations, the foregoing rights and obligations of this Section 9.01 shall be in addition to any similar or related rights and obligations

that may be provided or applicable to members of the eBay Group or members of the PayPal Group, as applicable, under the Separation and Distribution Agreement, Tax Matters Agreement and/or Intellectual Property Matters Agreement, if and as applicable.

Section 9.02. <u>Preservation of Rights to Amend</u>. The rights of each member of the eBay Group and each member of the PayPal Group to amend, waive, or terminate any plan, arrangement, agreement, program, or policy referred to herein shall not be limited in any way by this Agreement.

Section 9.03. Fiduciary Matters. eBay and PayPal each acknowledges that actions required to be taken pursuant to this Agreement may be subject to fiduciary duties or standards of conduct under ERISA or other applicable Law, and no Party shall be deemed to be in violation of this Agreement if it fails to comply with any provisions hereof based upon its good-faith determination (which determination may include, but shall not be required to be, based on advice from counsel experienced in such matters) that to do so would violate such a fiduciary duty or standard. Each Party shall be responsible for taking such actions as are deemed necessary and appropriate to comply with its own fiduciary responsibilities and shall fully release and indemnify the other Party for any Liabilities caused by the failure to satisfy any such responsibility.

Section 9.04. <u>Further Assurances</u>. Each Party hereto shall take, or cause to be taken, any and all reasonable actions, including the execution, acknowledgment, filing and delivery of any and all documents and instruments that any other Party hereto may reasonably request in order to effect the intent and purpose of this Agreement and the transactions contemplated hereby.

## Section 9.05. Counterparts; Entire Agreement; Corporate Power.

- (a) This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party.
- (b) This Agreement, the Separation and Distribution Agreement and the Ancillary Agreements and the Exhibits, Schedules and appendices hereto and thereto contain the entire agreement between the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties other than those set forth or referred to herein or therein. eBay represents on behalf of itself and, to the extent applicable, each other member of the eBay Group, and PayPal represents on behalf of itself and, to the extent applicable, each other member of the PayPal Group, as follows:
  - (i) each such Person has the requisite corporate or other power and authority and has taken all corporate or other action necessary in order to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby; and
  - (ii) this Agreement has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms hereof.

(c) Each Party acknowledges that it and each other Party is executing this Agreement by facsimile, stamp or mechanical signature and that delivery of an executed counterpart of a signature page to this Agreement (whether executed by manual, stamp or mechanical signature) by facsimile or by email in portable document format (PDF) shall be effective as delivery of such executed counterpart of this Agreement. Each Party expressly adopts and confirms each such facsimile, stamp or mechanical signature (regardless of whether delivered in person, by mail, by courier, by facsimile or by email in portable document format (PDF)) made in its respective name as if it were a manual signature delivered in person, agrees that it will not assert that any such signature or delivery is not adequate to bind such Party to the same extent as if it were signed manually and delivered in person and agrees that, at the reasonable request of the other Party at any time, it will as promptly as reasonably practicable cause this Agreement to be manually executed (any such execution to be as of the date of the initial date thereof) and delivered in person, by mail or by courier.

Section 9.06. <u>Governing Law</u>. This Agreement (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby or to the inducement of any Party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware, irrespective of the choice of Laws principles of the State of Delaware, including all matters of validity, construction, effect, enforceability, performance and remedies.

Section 9.07. <u>Assignability</u>. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, that neither Party may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other Party. Notwithstanding the foregoing, no such consent will be required for (i) the assignment of a Party's rights and obligations under this Agreement in whole or in part to any of its Subsidiaries; provided, that no such assignment shall release such Party from any liability or obligation under this Agreement; or (ii) the assignment of a Party's rights and obligations under this in whole (*i.e.*, the assignment of a party's rights and obligations under this Agreement, the Separation and Distribution Agreement and all Ancillary Agreements all at the same time) in connection with a change of control of a Party so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party. Nothing herein is intended to, or will be construed to, prohibit either Party or any member of its Group from being party to or undertaking a change of control.

Section 9.08. Third-Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the Parties and are not intended to confer upon any other Person except the Parties any rights or remedies hereunder. There are no third-party beneficiaries of this Agreement and this Agreement shall not provide any other third person with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement. Nothing in this Agreement is intended to amend any employee benefit plan or affect the applicable plan sponsor's right to amend or terminate any employee benefit plan pursuant to the terms of such plan. The provisions of this Agreement are solely for the benefit of the Parties, and no current or former Employee, officer, director, independent contractor, consultant, alternative workforce (AWF) individual or any other individual associated therewith shall be regarded for any purpose as a third-party beneficiary of this Agreement.

Section 9.09. <u>Notices</u>. All notices, requests, claims, demands or other communications under this Agreement shall be in writing, together with a copy by electronic mail (which shall not constitute notice) and shall be given or made (and shall be deemed to have been duly given or made upon acknowledgement of receipt) by delivery in person, by overnight courier service, by facsimile, or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this <u>Section 9.09</u>):

If to eBay, to:

eBay Inc.
2065 Hamilton Avenue
San Jose, California 95125
Attention: General Counsel
Facsimile: [●]
Email: [●]

If to PayPal, to:

PayPal Holdings, Inc. 2211 North First Street San Jose, California 95131 Attention: General Counsel Facsimile: [•]

Facsimile: [●] Email: [●]

A Party may, by notice to the other Party, change the address to which such notices are to be given.

Section 9.10. Severability. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.

Section 9.11. Force Majeure. No Party shall be deemed in default of this Agreement or, unless otherwise expressly provided therein, any Ancillary Agreement for any delay or failure to fulfill any obligation (other than a payment obligation) hereunder or thereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance of such obligation (other than a payment obligation) shall be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence

of any such event, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement and the Ancillary Agreements, as applicable, as soon as reasonably practicable.

- Section 9.12. <u>Headings</u>. The article, section and paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- Section 9.13. <u>Survival of Covenants</u>. Except as expressly set forth in this Agreement, the covenants, representations and warranties and other agreements contained in this Agreement, and Liability for the breach of any obligations contained herein, shall survive the Separation and the Distribution and shall remain in full force and effect in accordance with its terms.
- Section 9.14. Waivers of Default. Waiver by a Party of any default by the other Party of any provision of this Agreement shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of the other Party. No failure or delay by Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.
- Section 9.15. <u>Dispute Resolution</u>. The dispute resolution procedures set forth in Article VII of the Separation and Distribution Agreement shall apply to any dispute, controversy or claim arising out of or relating to this Agreement.
- Section 9.16. Specific Performance. Subject to Article VII of the Separation and Distribution Agreement, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the Party or Parties who are, or are to be, thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief (on an interim or permanent basis) in respect of its rights or their rights under this Agreement, in addition to any and all other rights and remedies at Law or in equity, and all such rights and remedies shall be cumulative. The Parties agree that the remedies at Law for any breach or threatened breach, including monetary damages, may be inadequate compensation for any loss and that any defense in any Action for specific performance that a remedy at Law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are hereby waived by each of the Parties.
- Section 9.17. <u>Amendments</u>. No provisions of this Agreement shall be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the Party against whom it is sought to enforce such waiver, amendment, supplement or modification.

Section 9.18. <u>Interpretation</u>. In this Agreement, (a) words in the singular shall be deemed to include the plural and vice versa and words of one gender shall be deemed to include the other genders as the context requires; (b) the terms "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules, Exhibits and Appendices hereto and thereto) and not to any

particular provision of this Agreement; (c) Article, Section, Schedule, Exhibit, and Appendix references are to the Articles, Sections, Schedules, Exhibits, and Appendices to this Agreement unless otherwise specified; (d) unless otherwise stated, all references to any agreement shall be deemed to include the exhibits, schedules and annexes to such agreement; (e) the word "including" and words of similar import when used in this Agreement shall mean "including, without limitation," unless otherwise specified; (f) the word "or" shall not be exclusive; (g) unless otherwise specified in a particular case, the word "days" refers to calendar days; (h) references to "business day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by law to close in the United States or San Jose, California; (i) references herein to this Agreement or any other agreement contemplated herein shall be deemed to refer to this Agreement or such other agreement as of the date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified; and (j) unless expressly stated to the contrary in this Agreement, all references to "the date hereof," "the date of this Agreement," "hereby" and "hereupon" and words of similar import shall all be references to [•], 2015.

Section 9.19. <u>Limitations of Liability</u>. Notwithstanding anything in this Agreement to the contrary, neither PayPal or any member of the PayPal Group, on the one hand, nor eBay or any member of the eBay Group, on the other hand, shall be liable under this Agreement to the other for any indirect, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages of the other arising in connection with the transactions contemplated hereby (other than any such Liability with respect to a Third-Party Claim).

Section 9.20. <u>Mutual Drafting</u>. This Agreement shall be deemed to be the joint work product of both Parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable to this Agreement.

[Remainder of page intentionally left blank]

representatives.				
[•]				
By:		_		
	Name:			
	Title:			
[•]				
By:				
	Name:	_		
	Title:			

IN WITNESS WHEREOF, the Parties have caused this Employee Matters Agreement to be executed by their duly authorized

## FORM OF

## INTELLECTUAL PROPERTY MATTERS AGREEMENT

BY AND AMONG

EBAY INC.,

EBAY INTERNATIONAL AG,

PAYPAL HOLDINGS, INC.,

PAYPAL, INC.,

PAYPAL PTE. LTD.

AND

PAYPAL PAYMENTS PTE. HOLDINGS S.C.S.

DATED AS OF [●]

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## INTELLECTUAL PROPERTY MATTERS AGREEMENT

This INTELLECTUAL PROPERTY MATTERS AGREEMENT ("<u>Agreement</u>"), dated as of [●], is by and among eBay Inc., a Delaware corporation ("<u>eBay</u>"), eBay International AG, a company organized under the laws of Switzerland ("<u>eBay AG</u>"), PayPal Holdings, Inc., a Delaware corporation ("<u>PayPal</u>"), PayPal, Inc., a Delaware corporation ("<u>PPI</u>"), PayPal Pte. Ltd., a company organized under the laws of Singapore ("<u>3PL</u>"), and PayPal Payments Pte. Holdings S.C.S., a company organized under the laws of Luxembourg ("<u>PPLUX</u>") (collectively, the "<u>Parties</u>" and each, individually, a "<u>Party</u>"). Unless otherwise defined herein, all capitalized terms used in this Agreement will have the meanings set forth in <u>Exhibit A</u>. Any capitalized term used and not otherwise defined in this Agreement will have the meaning ascribed to such term in the Separation and Distribution Agreement between the Parties, dated as of [●] (the "<u>Separation and Distribution Agreement</u>").

#### **RECITALS**

WHEREAS, the board of directors of eBay (the "eBay Board") has determined that it is in the best interests of eBay and its shareholders to create a new publicly traded company that will operate the PayPal Business;

WHEREAS, in furtherance of the foregoing, the eBay Board has determined that it is appropriate and desirable to separate the PayPal Business from the eBay Business (the "Separation") and, following the Separation, make a distribution, on a *pro rata* basis, to holders of eBay Shares on the Record Date of all the outstanding PayPal Shares owned by eBay (the "Distribution");

WHEREAS, to effectuate the Separation and the Distribution, eBay and PayPal have entered into the Separation and Distribution Agreement; and

WHEREAS, to facilitate and provide for an orderly transition in connection with the Separation and the Distribution, the Parties desire to enter into this Agreement to (i) memorialize their mutual agreement as to each Party's ownership of Technology and Intellectual Property Rights as of the IPMA Effective Time and (ii) set forth the terms and conditions pursuant to which each Party will, effective as of the IPMA Effective Time, grant certain rights to the other Party and cooperate and coordinate on the conduct of the defense or prosecution of certain Proceedings.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties, intending to be legally bound, hereby agree as follows:

#### 1. OWNERSHIP OF INTELLECTUAL PROPERTY

- 1.1 <u>eBay Ownership</u>. PayPal acknowledges and agrees that: (i) as between the Parties and their Groups, eBay and the eBay Group own all right, title and interest in and to the eBay IP; and (ii) such ownership includes the exclusive right of eBay and the eBay Group to conduct clearance, prosecute, maintain, protect, enforce and defend eBay's interest in the eBay IP, including to file any Intellectual Property Rights applications anywhere in the world, to abandon prosecution of such applications, and to discontinue payment of any maintenance or renewal fees with respect to any patents.
- 1.2 PayPal Ownership. eBay acknowledges and agrees that: (i) as between the Parties and their Groups, PayPal and the PayPal Group own all right, title and interest in and to the PayPal IP; and (ii) such ownership includes the exclusive right of PayPal and the PayPal Group to conduct clearance, prosecute, maintain, protect, enforce and defend PayPal's interest in the PayPal IP, including to file any Intellectual Property Rights applications anywhere in the world, to abandon prosecution of such applications, and to discontinue payment of any maintenance or renewal fees with respect to any patents.

#### 1.3 Transfers.

- a. By eBay. If eBay or any eBay Group member assigns, sells, transfers or grants enforcement rights to any Person (such Person, the "eBay IP Transferee") with respect to any Intellectual Property Rights for which eBay or any eBay Group Member has granted a license or covenant not to sue under this Agreement (an "eBay IP Transfer"), eBay covenants that it, or the applicable eBay Group member, will cause the eBay IP Transferee to execute a written agreement in which the eBay IP Transferee agrees that (a) the eBay IP Transferee will take title or rights to such Intellectual Property Rights subject to this Agreement (and the licenses and covenants not to sue granted by eBay hereunder) and (b) PayPal and the PayPal Group members are express third-party beneficiaries of such agreement. Any purported eBay IP Transfer in violation of this Section 1.3a is null and void. For the avoidance of doubt, the foregoing obligation does not apply with respect to any Intellectual Property Rights that eBay or any eBay Group member may acquire after the Effective Time (by way of merger, acquisition, stock purchase, asset purchase or otherwise) other than those Intellectual Property Rights for which eBay expressly grants a covenant not to sue under Section 2.1.
- b. By PayPal. If PayPal or any PayPal Group member assigns, sells, transfers or grants enforcement rights to any Person (such Person, the "PayPal IP Transferee") with respect to any Intellectual Property Rights for which PayPal or any PayPal Group member has granted a license or covenant not to sue under this Agreement (an "PayPal IP Transfer"), PayPal covenants that it, or the applicable PayPal Group member, will cause the PayPal IP Transferee to execute a written agreement in which the PayPal IP Transferee agrees that (a) the PayPal IP Transferee will take title or rights to such Intellectual Property Rights subject to this Agreement (and the licenses and covenants not to sue granted by PayPal hereunder) and (b) eBay and the eBay Group members are express third-party beneficiaries of such agreement. Any purported PayPal IP Transfer in violation of this Section 1.3b is null and void. For the avoidance of doubt, the foregoing obligation does not apply with respect to any Intellectual Property Rights that PayPal or any PayPal Group member may acquire after the Effective Time (by way of merger, acquisition, stock purchase, asset purchase or otherwise) other than those Intellectual Property Rights for which PayPal expressly grants a covenant not to sue under Section 2.2.

#### 2. COVENANTS NOT TO SUE

- 2.1 By eBay. eBay hereby covenants and agrees that, for the duration of the eBay CNS Period, neither it nor any member of the eBay Group will bring suit or otherwise assert any claim against any PayPal Covenantee before any court, arbitrator, mediator, tribunal or administrative agency anywhere in the world alleging infringement of any eBay Patents based on any PayPal Covenantee making, using, importing, offering for sale or selling any PayPal Product, in each case at any time prior to the expiration or termination of the eBay CNS Period.
- 2.2 <u>By PayPal</u>. PPI hereby covenants and agrees that, for the duration of the PayPal CNS Period, neither it nor any member of the PayPal Group will bring suit or otherwise assert any claim against any eBay Covenantee before any court, arbitrator, mediator, tribunal or administrative agency anywhere in the world alleging infringement of any PayPal Patents based on any eBay Covenantee making, using, importing, offering for sale or selling any eBay Product, in each case at any time prior to the expiration or termination of the PayPal CNS Period.

## 2.3 <u>Termination</u>

## a. By eBay

- (i) Specified eBay Patents. With respect to the Specified eBay Patents, eBay may terminate the covenant set forth in Section 2.1 before the expiration of the eBay CNS Period by delivering written notice thereof to PayPal upon PayPal' s breach of any material term of the Operating Agreement that remains uncured for a period of 120 days after eBay' s delivery to PayPal of written notice thereof; provided, however, that: (A) eBay may not do so until the Parties have completed the dispute resolution procedures set forth in Section 9.6; and (B) any such termination will also automatically and immediately result in termination of the covenant set forth in Section 2.2 before the expiration of the PayPal CNS Period. In addition, upon the consummation of a PayPal Specified Change-of Control, the covenant set forth in Section 2.1 will, with respect to the Specified eBay Patents, automatically become limited to and thereafter apply solely with respect to the particular PayPal Products (including the particular sub-components and sub-assemblies within such PayPal Products) offered by PayPal and its Subsidiaries at the time of such PayPal Specified Change-of Control (and not, for the avoidance of doubt, any other products or services, including those of any other Person).
- (ii) Other eBay Patents. Other than with respect to the Specified eBay Patents, eBay may terminate the covenant set forth in Section 2.1 before the expiration of the eBay CNS Period by delivering written notice thereof to PayPal upon the occurrence of either of the following events: (A) PayPal's breach of any material term of the Operating Agreement that remains uncured for a period of 120 days after eBay's delivery to PayPal of written notice thereof (provided, however, that eBay may not do so until the Parties have completed the dispute resolution procedures set forth in Section 9.6); or (B) upon the consummation of a PayPal Specified Change-of Control; provided, however, that any termination pursuant to this Section 2.3a(ii) will, other than with respect to the Specified PayPal Patents, also automatically and immediately result in termination of the covenant set forth in Section 2.2 before the expiration of the PayPal CNS Period.

#### b. By PPI

(i) Specified PayPal Patents. With respect to the Specified PayPal Patents, PPI may terminate the covenant set forth in Section 2.2 before the expiration of the PayPal CNS Period by delivering written notice thereof to eBay upon eBay's breach of any material term of the Operating Agreement that remains uncured for a period of 120 days after PPI's delivery to eBay of written notice thereof; provided, however, that: (A) PPI may not do so until the Parties have completed the dispute resolution procedures set forth in Section 9.6; and (B) any such termination will also automatically and immediately result in termination of the covenant set forth in Section 2.1 before the expiration of the eBay CNS Period. In addition, upon the consummation of an eBay Specified Change-of Control, the covenant set forth in Section 2.2 will, with respect to the Specified PayPal Patents, automatically become limited to and thereafter apply solely with respect to the particular eBay Products (including the particular subcomponents and sub-assemblies within such eBay Products) offered by eBay and its

- Subsidiaries at the time of such eBay Specified Change-of Control (and not, for the avoidance of doubt, any other products or services, including those of any other Person).
- Other PayPal Patents. Other than with respect to the Specified PayPal Patents, PPI may terminate the covenant set forth in Section 2.2 before the expiration of the PayPal CNS Period by delivering written notice thereof to eBay upon the occurrence of either of the following events: (A) eBay's breach of any material term of the Operating Agreement that remains uncured for a period of 120 days after PPI's delivery to eBay of written notice thereof (provided, however, that eBay may not do so until the Parties have completed the dispute resolution procedures set forth in Section 9.6); or (B) upon the consummation of an eBay Specified Change-of Control; provided, however, that any termination pursuant to this Section 2.3b(ii) will, other than with respect to the Specified eBay Patents, also automatically and immediately result in termination of the covenant set forth in Section 2.1 before the expiration of the eBay CNS Period.

#### 3. LICENSE GRANTS

## 3.1 <u>Licensed PayPal Software</u>

- a. Subject to the terms and conditions of this Agreement, PPI hereby grants, in all those territories where it is authorized to grant such license, 3PL hereby grants, in all those territories where it is authorized to grant such license, and PPLUX hereby grants, in all those territories where it is authorized to grant such license, to eBay and each eBay Group member, as appropriate (i.e., in the territories in which the applicable eBay or eBay Group member operates), an irrevocable, non-exclusive, non-transferable (subject to Section 9.1), fully paid-up, royalty-free right and license, with no right to sublicense (except as expressly provided in Section 3.1b), under any and all copyrights and trade secrets in the Licensed PayPal Software owned by PayPal as of the Effective Time, to use, reproduce and prepare derivative works of the Licensed PayPal Software, in each case solely for eBay's and any eBay Group member's internal business operations.
- b. Subject to the terms and conditions of this Agreement, eBay and each eBay Group member may grant sublicenses under the license set forth in Section 3.1a of the same or lesser scope to their Affiliates, suppliers, contractors and consultants authorizing such sublicensees to exercise any or all of such rights solely on behalf of, for the benefit of and at the direction of eBay and each eBay Group member (and not for the benefit of such suppliers, contractors and consultants).
- c. eBay acknowledges that the Source Code (including its structure and organization) for the Licensed PayPal Software constitutes valuable trade secrets of PayPal. Accordingly, eBay will not (and will ensure that each eBay Group member does not):
  - (i) disclose or otherwise grant access to the Source Code for the Licensed PayPal Software to any Person other than to any employee of eBay or any eBay Group member, or to any supplier, contractor or consultant to which eBay or any eBay Group member grants a sublicense under Section 3.1b, in each case on a need-to-know basis solely for purposes authorized under this Agreement;
  - (ii) disclose or otherwise grant access to the Source Code for the Licensed PayPal Software to any Person unless, prior to any such disclosure or access, such Person has entered into an enforceable written agreement obligating such Person to (1) maintain the confidentiality of the Source Code (including its structure and

- organization) for the Licensed PayPal Software and (2) use the Source Code for the Licensed PayPal Software solely for purposes authorized under this Agreement;
- reproduce all or any portion of the Source Code for the Licensed PayPal Software, in any form or medium, except as necessary for exercising its rights under this Section 3.1, or for archival storage;
- (iv) allow hard copy printouts of any portion of the Source Code for the Licensed PayPal Software to exist except within secured locations; or
- (v) allow soft copy versions of any portion of the Source Code for the Licensed PayPal Software to reside on computers or networks unless such computers or networks are password protected (with such passwords only being made available to Persons who are authorized to access such Source Code pursuant to the terms hereof).
- d. If, after obtaining approval to do so in accordance with at least as rigorous an internal legal and business approval process as eBay uses as of the Effective Time, eBay or any eBay Group member determines that it is necessary or desirable to distribute any Licensed PayPal Software as open source software (as such term is commonly understood in the software industry), eBay may notify PayPal thereof in writing and the Parties will discuss whether PayPal is willing to amend the terms of this Agreement to allow eBay or any eBay Group member to do so; provided, in no event will PayPal have any obligation to accommodate any such request by eBay.
- e. The license granted under Section 3.1a to each eBay Group member that is a Subsidiary of eBay will apply only while such Person is and remains a Subsidiary of eBay; provided, if eBay determines, in connection with the sale or other divestiture of any Subsidiary of eBay, that it is necessary or desirable to grant such Subsidiary a sublicense under the license granted under Section 3.1a, eBay may notify PayPal thereof in writing and the Parties will discuss whether PayPal is willing to amend the terms of this Agreement to allow eBay to do so; provided, in no event will PayPal have any obligation to accommodate any such request by eBay.
- f. PayPal acknowledges and agrees that, subject to PayPal's ownership of any Licensed PayPal Software upon which any such derivative work is based (in whole or in part), as between the Parties, eBay will own all property rights, including Intellectual Property Rights, in and to any derivative work of any Licensed PayPal Software developed solely by eBay or any eBay Group member under the license set forth in Section 3.1a (each, an "eBay Derivative Work"). If and to the extent that, as a matter of law in any jurisdiction, either: (i) PayPal or any PayPal Group member retains any right, title and interest in and to any eBay Derivative Work (excluding, for the avoidance of doubt, any Licensed PayPal Software upon which any such eBay Derivative work is based (in whole or in part)), then PayPal and each PayPal Group member hereby assigns, conveys and transfers to eBay any such right, title and interest; or (ii) PayPal or any PayPal Group member cannot assign any such right, title or interest, then such eBay Derivative Work will be deemed to be Licensed PayPal Software for purposes of the license set forth in Section 3.1a.

# 3.2 <u>Licensed eBay Software</u>

- a. Subject to the terms and conditions of this Agreement, eBay hereby grants, in all those territories where it is authorized to grant such license, and eBay AG hereby grants, in all those territories where it is authorized to grant such license, to PayPal and each PayPal Group member, as appropriate (i.e., in the territories in which PayPal or the applicable PayPal Group member operates), an irrevocable, non-exclusive, non-transferable (subject to Section 9.1), fully paid-up, royalty-free right and license, with no right to sublicense (except as expressly provided in Section 3.2b), under any and all copyrights and trade secrets in the Licensed eBay Software owned by eBay as of the Effective Time, to use, reproduce and prepare derivative works of the Licensed eBay Software, in each case solely for PayPal's and any PayPal Group member's internal business operations.
- b. Subject to the terms and conditions of this Agreement, PayPal and each PayPal Group member may grant sublicenses under the license set forth in Section 3.2a of the same or lesser scope to their Affiliates, suppliers, contractors and consultants authorizing such sublicensees to exercise any or all of such rights solely on behalf of, for the benefit of and at the direction of PayPal and each PayPal Group member (and not for the benefit of such suppliers, contractors and consultants).
- c. PayPal acknowledges that the Source Code (including its structure and organization) for the Licensed eBay Software constitutes valuable trade secrets of eBay. Accordingly, PayPal will not (and will ensure that each PayPal Group member does not):
  - (i) disclose or otherwise grant access to the Source Code for the Licensed eBay Software to any Person other than to any employee of PayPal or any PayPal Group member, or to any supplier, contractor or consultant to which PayPal or any PayPal Group member grants a sublicense under Section 3.2b, in each case on a need-to-know basis solely for purposes authorized under this Agreement;
  - (ii) disclose or otherwise grant access to the Source Code for the Licensed eBay Software to any Person unless, prior to any such disclosure or access, such Person has entered into an enforceable written agreement obligating such Person to (1) maintain the confidentiality of the Source Code (including its structure and organization) for the Licensed eBay Software and (2) use the Source Code for the Licensed eBay Software solely for purposes authorized under this Agreement;
  - (iii) reproduce all or any portion of the Source Code for the Licensed eBay Software, in any form or medium, except as necessary for exercising its rights under this Section 3.2, or for archival storage;
  - (iv) allow hard copy printouts of any portion of the Source Code for the Licensed eBay Software to exist except within secured locations; or
  - (v) allow soft copy versions of any portion of the Source Code for the Licensed eBay Software to reside on computers or networks unless such computers or networks are password protected (with such passwords only being made available to Persons who are authorized to access such Source Code pursuant to the terms hereof).
- d. If, after obtaining approval to do so in accordance with at least as rigorous an internal legal and business approval process as eBay uses as of the Effective Time, PayPal or any PayPal Group member determines that it is necessary or desirable to distribute any

Licensed eBay Software as open source software (as such term is commonly understood in the software industry), PayPal may notify eBay thereof in writing and the Parties will discuss whether eBay is willing to amend the terms of this Agreement to allow PayPal or any PayPal Group member to do so; provided, in no event will eBay have any obligation to accommodate any such request by PayPal.

- e. The license granted under Section 3.2a to each PayPal Group member that is a Subsidiary of PayPal will apply only while such Person is and remains a Subsidiary of PayPal; provided, if PayPal determines, in connection with the sale or other divestiture of any Subsidiary of PayPal, that it is necessary or desirable to grant such Subsidiary a sublicense under the license granted under Section 3.2a, PayPal may notify eBay thereof in writing and the Parties will discuss whether eBay is willing to amend the terms of this Agreement to allow PayPal to do so; provided, in no event will eBay have any obligation to accommodate any such request by PayPal.
- f. eBay acknowledges and agrees that, subject to eBay's ownership of any Licensed eBay Software upon which any such derivative work is based (in whole or in part), as between the Parties, PPI will own all property rights, including Intellectual Property Rights, in and to any derivative work of any Licensed eBay Software developed solely by PayPal or any PayPal Group member under the license set forth in Section 3.2a (each, an "PayPal Derivative Work"). If and to the extent that, as a matter of law in any jurisdiction, either: (i) eBay or any eBay Group member retains any right, title and interest in and to any PayPal Derivative Work (excluding, for the avoidance of doubt, any Licensed eBay Software upon which any such PayPal Derivative work is based (in whole or in part)), then eBay and each eBay Group member hereby assigns, conveys and transfers to PPI any such right, title and interest; or (ii) eBay or any eBay Group member cannot assign any such right, title or interest, then such PayPal Derivative Work will be deemed to be Licensed eBay Software for purposes of the license set forth in Section 3.2a.
- 3.3 <u>Sublicensing Conditions</u>. The right to grant any sublicense authorized to be granted hereunder is, in each case, subject to the following restrictions and conditions:
  - a. Each sublicense must be in writing and must include a provision that identifies PayPal (in the case of any sublicense granted by eBay or any eBay Group member under Section 3.1) or eBay (in the case of any sublicense granted by PayPal or any PayPal Group member under Section 3.2) as an intended third-party beneficiary thereof;
  - b. A copy of each sublicense must be delivered to PayPal (in the case of any sublicense granted by eBay or any eBay Group member under Section 3.1) or eBay (in the case of any sublicense granted by PayPal or any PayPal Group member under Section 3.2) within thirty (30) days after it is executed;
  - c. Neither Party nor any member of such Party's Group will grant any sublicense hereunder to any other Person that exceeds the scope of the licenses granted to such Party and such Party's Group hereunder. If such a sublicense is granted, it will be null and void.
  - d. Each sublicense must be subject to the applicable terms and conditions of this Agreement, including (i) any and all provisions regarding warranty disclaimers and limitations of liability on the licensing Party's behalf, (ii) any and all restrictions on the use or exploitation of the licensed Technology contained in this Agreement, (iii) any provisions regarding ownership and (iv) any provisions regarding protection of confidential or proprietary information;

- e. Each sublicense will terminate upon termination of this Agreement and must include a statement to that effect therein; and
- f. Neither Party nor any member of such Party's Group may make any representations or warranties on behalf of the other Party or any member of the other Party's Group to any sublicensee.
- 3.4 Reservation of Rights. All rights not expressly granted by a Party under this Agreement are reserved by such Party. Nothing in this Agreement will be deemed to grant, by implication, estoppel, or otherwise, a license under a Party's Intellectual Property Rights that is not expressly set forth in this Agreement. For clarity, nothing contained in this Agreement obligates any Party to license to any other Party any Technology or Intellectual Property Rights of any other Person (a) for which such Party does not have the rights to do so or (b) that, as a result of granting such license, would require the payment of fees or other consideration by such Party or its Affiliates to any other Person.
- 3.5 <u>Consideration</u>. To the extent any consideration is required with respect to the license set forth in Section 3.1a, the terms relating to the payment of such consideration will be set forth in a separate written agreement to be mutually agreed by the relevant Parties. The Parties intend that the licenses set forth in Section 3.2a qualify as tax-free transfers of property pursuant to sections 351 and/or 368(a)(1)(D) and 355 of the U.S. Internal Revenue Code of 1986, as amended.

# 4. COOPERATION

The Parties will each perform such acts, execute and deliver such information, instruments and documents, and do all such other things as may be reasonably necessary to accomplish the transactions contemplated in this Agreement, including, without limitation, providing or executing any affidavits, providing any testimony, and/or rendering any other assistance, as is necessary or useful for: (a) eBay or any eBay Group member to secure and perfect sole and exclusive ownership of, and obtain registrations in the name of solely eBay or any eBay Group member, for the eBay IP and any part thereof; and (b) PayPal or any PayPal Group member to secure and perfect sole and exclusive ownership of, and obtain registrations in the name of solely PayPal or any PayPal Group member, for the PayPal IP and any part thereof. Such acts may include: (i) execution of prosecution-related documents; (ii) assistance in the registration of Intellectual Property Rights (including providing prosecution files in the possession or under the or control of such Party or members of its Group); and (iii) assistance in the enforcement of Intellectual Property Rights (including providing documents and materials in the possession or under the or control of such Party or members of its Group and making its employees available to testify as a witness), provided that the other Party pays or reimburses such Party the reasonable out-of-pocket costs and expenses incurred by such Party in connection therewith.

### 5. CONFIDENTIAL INFORMATION

5.1 Confidentiality. Subject to Section 5.5, from and after the Effective Time until the five (5) year anniversary of the Effective Time (other than in the case of any item of Technical Information, for which the obligations in this Section 5 will continue until such time as any of the exceptions set forth in clauses (A) through (C) of this Section 5.1 have been satisfied with respect to such item of Technical Information), each of eBay and PayPal, on behalf of itself and each member of its respective Group, agrees: (a) to hold, and to cause its respective Representatives to hold, in strict confidence, with at least the same degree of care that applies to eBay's confidential and proprietary information pursuant to policies in effect as of the Effective Time, all confidential and proprietary information concerning the other Party or any member of the other Party's Group or their respective businesses that is either (i) in its possession (including confidential and proprietary information in its possession prior to the date hereof) or (ii) furnished by any such other Party or any member of such Party's Group or their respective Representatives at any time pursuant to this Agreement; and (b) not to use any such confidential and proprietary information other than for such purposes as are expressly permitted hereunder, except, in each case, to the extent that such confidential and proprietary information is or was:

(A) in the public domain or

generally available to the public, other than as a result of a disclosure by such Party or any member of such Party's Group or any of their respective Representatives in violation of this Agreement; (B) later lawfully acquired from other sources by such Party (or any member of such Party's Group) which sources are not themselves bound by a confidentiality obligation or other contractual, legal or fiduciary obligation of confidentiality with respect to such confidential and proprietary information; or (C) independently developed or generated without reference to or use of any proprietary or confidential information of the other Party or any member of such Party's Group. If any confidential and proprietary information of one Party or any member of its Group is disclosed to the other Party or any member of such other Party's Group in connection with this Agreement, then such disclosed confidential and proprietary information will be used only for purposes of exercising its rights under and in accordance with this Agreement.

- 5.2 No Release; Return or Destruction. Each Party agrees not to release or disclose, or permit to be released or disclosed, any information addressed in Section 5.1 to any other Person, except its Representatives who need to know such information in their capacities as such (who will be advised of their obligations hereunder with respect to such information), and except in compliance with Section 5.5. Without limiting the foregoing, when any such information is no longer needed for the purposes contemplated by this Agreement, each Party will, at its option and as promptly as practicable after receiving a written request from the other Party, either: (a) return to the other Party all such information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon); or (b) certify to the other Party that it has destroyed such information (and such copies thereof and such notes, extracts or summaries based thereon); provided, that such Party's Representatives may retain one (1) copy of such information to the extent required by applicable Law or professional standards, and will not be required to destroy any such information located in back-up, archival electronic storage).
- 5.3 Third-Party Information; Privacy or Data Protection Laws. Each Party acknowledges that it and members of its Group may presently have and, following the Effective Time, may gain access to or possession of confidential or proprietary information of, or personal information relating to, Third Parties: (a) that was received under confidentiality or non-disclosure agreements entered into between such Third Parties, on the one hand, and the other Party or members of such Party's Group, on the other hand, prior to the Effective Time; or (b) that, as between the Parties, was originally collected by the other Party or members of such Party's Group and that may be subject to and protected by privacy, data protection or other applicable Laws. Subject to the Data Sharing Agreement and any other Ancillary Agreement, each Party agrees that it will hold, protect and use, and will cause the members of its Group and its and their respective Representatives to hold, protect and use, in strict confidence the confidential and proprietary information of, or personal information relating to, Third Parties in accordance with privacy, data protection or other applicable Laws and the terms of any agreements that were either entered into before the Effective Time or affirmative commitments or representations that were made before the Effective Time by, between or among the other Party or members of the other Party's Group, on the one hand, and such Third Parties, on the other hand.
- 5.4 <u>Residual Information</u>. Notwithstanding anything to the contrary herein, each Party and the members of such Party's Group will be free to use for any purpose the Residual Information resulting from access Representatives of such Party or the members of its Group have had to confidential and proprietary information concerning the other Party or any member of the other Party's Group. The Parties acknowledge and understand that the foregoing does not constitute a license under any patents or copyrights.

5.5 Protective Arrangements. In the event that a Party or any member of its Group either determines on the advice of its counsel that it is required to disclose any information pursuant to applicable Law or receives any request or demand under lawful process or from any Governmental Authority to disclose or provide information of the other Party (or any member of the other Party's Group) that is subject to the confidentiality provisions hereof, such Party will notify the other Party (to the extent legally permitted) as promptly as practicable under the circumstances prior to disclosing or providing such information and will cooperate, at such other Party's cost and expense, in seeking any appropriate protective order reasonably requested by the other Party. In the event that such other Party fails to receive such appropriate protective order in a timely manner and the Party receiving the request or demand reasonably determines that its failure to disclose or provide such information will actually prejudice the Party receiving the request or demand, then the Party that received such request or demand may thereafter disclose or provide information to the extent required by such Law (as so advised by its counsel) or by lawful process or such Governmental Authority provided such Party identifies such information as confidential, and the disclosing Party will promptly provide the other Party with a copy of the information so disclosed, in the same form and format so disclosed, together with a list of all Persons to whom such information was disclosed, in each case to the extent legally permitted.

# 6. TERM AND TERMINATION

- 6.1 <u>Term.</u> This Agreement is effective as of the IPMA Effective Time and, unless earlier terminated by the Parties in accordance with Section 6.2, will remain in effect until the expiration of the last to expire Intellectual Property Right under which either Party grants the other Party a license or covenant not to sue hereunder.
- 6.2 <u>Termination</u>. This Agreement may not be terminated except by an agreement in writing signed by a duly authorized officer of each of the Parties.
- 6.3 <u>Survival</u>. The terms and conditions of the following provisions will survive termination of this Agreement: Section 1, Section 2, Section 3, Section 5, Section 7, Section 8 and Section 9. The termination of this Agreement will not relieve either Party of any Liability under this Agreement that accrued prior to such termination.

# 7. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, THE TECHNOLOGY AND INTELLECTUAL PROPERTY RIGHTS LICENSED BY THE PARTIES PURSUANT TO THIS AGREEMENT ARE FURNISHED "AS IS", WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUALITY, USEFULNESS, COMMERCIAL UTILITY, ADEQUACY, COMPLIANCE WITH ANY LAW, DOMESTIC OR FOREIGN, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

# 8. LIMITATION OF LIABILITY

EXCEPT FOR ANY LIABILITY ARISING FROM OR RELATING TO A BREACH BY EITHER PARTY, ANY MEMBER OF SUCH PARTY'S GROUP, OR ANY OF THEIR RESPECTIVE REPRESENTATIVES OF ANY LICENSE SET FORTH IN SECTION 3 OR THE TERMS OF SECTION 5, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PAYPAL OR ANY MEMBER OF THE PAYPAL GROUP,

ON THE ONE HAND, NOR EBAY OR ANY MEMBER OF THE EBAY GROUP, ON THE OTHER HAND, WILL BE LIABLE UNDER THIS AGREEMENT TO THE OTHER FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, REMOTE, SPECULATIVE OR SIMILAR DAMAGES IN EXCESS OF COMPENSATORY DAMAGES OF THE OTHER ARISING IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY.

# 9. MISCELLANEOUS

# 9.1 Assignability.

- a. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, that neither Party may assign its rights or delegate its obligations under this Agreement without the express prior written consent of the other Party. Notwithstanding the foregoing, no such consent will be required for (i) the assignment of a Party's rights and obligations under this Agreement in whole or in part to any of its Subsidiaries; provided, that no such assignment will release such Party from any liability or obligation under this Agreement; or (ii) the assignment of a Party's rights and obligations under this Agreement in whole (*i.e.*, the assignment of a party's rights and obligations under this Agreement, the Separation and Distribution Agreement and all Ancillary Agreements all at the same time) in connection with a change of control of a Party so long as the resulting, surviving or transferee Person assumes all the obligations of the relevant party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party. Nothing herein is intended to, or will be construed to, prohibit either Party or any member of its Group from being party to or undertaking a change of control.
- b. Effective immediately after the IPMA Effective Time, PayPal hereby assigns to PayPal, Inc. all of its rights, entitlements and obligations under Section 3.2.
- 9.2 <u>Bankruptcy</u>. All rights and licenses granted under this Agreement are, and will be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "<u>Bankruptcy Code</u>"), licenses of rights to "intellectual property" as defined under Section 101(35A) of the Bankruptcy Code, and if a case under the Bankruptcy Code is filed by or against a Party, and in that case this Agreement is rejected pursuant to Section 365 of the Bankruptcy Code, then the other Party may exercise all rights provided by Section 365(n) of the Bankruptcy Code, including the right to retain its rights and the full benefits under the licenses granted to the other Party hereunder.
- 9.3 <u>Amendments</u>. No provisions of this Agreement will be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the Party against whom it is sought to enforce such waiver, amendment, supplement or modification.
- 9.4 <u>Severability</u>. If any provision of this Agreement or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties will negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties.
- 9.5 Governing Law. This Agreement (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby or to the inducement of any party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) will be governed by and construed and interpreted in accordance with the Laws of the State of Delaware irrespective of the choice of laws principles of the State of Delaware including all matters of validity, construction, effect, enforceability, performance and remedies.

- 9.6 <u>Dispute Resolution</u>. Article VII of the Separation and Distribution Agreement is incorporated by reference into this Agreement, *mutatis mutandis*, except that: (a) each reference to "this Agreement", "any Ancillary Agreement" or "each Ancillary Agreement" in the Separation and Distribution Agreement will be deemed to refer to this Agreement; and (b) the phrase "in the Delaware Court of Chancery (or, if such court does not have subject matter jurisdiction thereof, any other federal or state court located in the State of Delaware with subject matter jurisdiction)" will be replaced with the phrase "exclusively in any state or federal court located in the County of Santa Clara, State of California."
- 9.7 <u>Waivers of Default</u>. Waiver by a Party of any default by the other Party of any provision of this Agreement will not be deemed a waiver by the waiving Party of any subsequent or other default, nor will it prejudice the rights of the other Party. No failure or delay by a Party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege.
- 9.8 <u>Counterparts; Entire Agreement</u>. This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement, and will become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party. This Agreement, and the Exhibits, Schedules and appendices hereto, contain the entire agreement between the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties other than those set forth or referred to herein or therein.
- 9.9 Interpretation. In this Agreement: (a) words in the singular will be deemed to include the plural and vice versa and words of one gender will be deemed to include the other genders as the context requires; (b) the terms "hereof," "herein," and "herewith" and words of similar import will, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules, Exhibits and Appendices hereto) and not to any particular provision of this Agreement; (c) Article, Section, Schedule, Exhibit and Appendix references are to the Articles, Sections, Schedules, Exhibits and Appendices to this Agreement unless otherwise specified; (d) unless otherwise stated, all references to any agreement will be deemed to include the exhibits, schedules and annexes to such agreement; (e) the word "including" and words of similar import when used in this Agreement will mean "including, without limitation," unless otherwise specified; (f) the word "or" will not be exclusive; (g) unless otherwise specified in a particular case, the word "days" refers to calendar days; (h) references to "business day" will mean any day other than a Saturday, a Sunday or a day on which banking institutions are generally authorized or required by law to close in the United States or San Jose, California; (i) references herein to this Agreement or any other agreement contemplated herein will be deemed to refer to this Agreement or such other agreement as of the date on which it is executed and as it may be amended, modified or supplemented thereafter, unless otherwise specified; and (j) unless expressly stated to the contrary in this Agreement, all references to "the date hereof," "the date of this Agreement," "hereby" and "hereupon" and words of similar import will all be references to  $[\bullet]$ ,  $201[\bullet]$ .
- 9.10 Notices. All notices, requests, claims, demands or other communications under this Agreement will be in writing, together with a copy by electronic mail (which will not constitute notice), and will be given or made (and will be deemed to have been duly given or made upon acknowledgment of receipt) by delivery in person, by overnight courier service, or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 9.10):

If to eBay or any eBay Group member, to:

eBay Inc.

2065 Hamilton Avenue San Jose, California 95125 Attention: General Counsel

Email: [●]

If to PayPal or any PayPal Group member, to:

PayPal Holdings, Inc. 2211 North First Street San Jose, California 95131 Attention: General Counsel

Email: [●]

A Party may, by notice to any other Party, change the address to which such notices are to be given.

- 9.11 Third-Party Beneficiaries. The provisions of this Agreement are solely for the benefit of each Party and its Group and are not intended to confer upon any Person except each Party and its Group any rights or remedies hereunder. There are no third-party beneficiaries of this Agreement and this Agreement does not, and is not intended to, provide any other Person any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this Agreement. For the avoidance of doubt, the covenants not to sue set forth herein are not intended to confer upon any Person except the PayPal Covenantees (in the case of Section 2.1) and the eBay Covenantees (in the case of Section 2.2) any rights, remedies or defenses hereunder.
- 9.12 Force Majeure. No Party will be deemed in default of this Agreement for any delay or failure to fulfill any obligation (other than a payment obligation) hereunder so long as and to the extent to which any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. In the event of any such excused delay, the time for performance of such obligations (other than a payment obligation) will be extended for a period equal to the time lost by reason of the delay. A Party claiming the benefit of this provision will, as soon as reasonably practicable after the occurrence of any such event, (a) provide written notice to the other Party of the nature and extent of any such Force Majeure condition; and (b) use commercially reasonable efforts to remove any such causes and resume performance under this Agreement as soon as reasonably practicable.
- 9.13 No Set-Off. Except as otherwise mutually agreed to in writing by the Parties, neither Party nor any member of such Party's Group will have any right of set-off or other similar rights with respect to (a) any amounts received pursuant to this Agreement; or (b) any other amounts claimed to be owed to the other Party or any member of its Group arising out of this Agreement.
- 9.14 Expenses. Except as otherwise expressly set forth in this Agreement, or as otherwise agreed to in writing by the Parties, all fees, costs and expenses whenever incurred in connection with the preparation, execution, delivery and implementation of this Agreement and the consummation of the transactions contemplated hereby will be borne by the Party or its applicable Subsidiary incurring such fees, costs or expenses.

- 9.15 <u>Headings</u>. The article, section and paragraph headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.
- 9.16 Survival of Covenants. Except as expressly set forth in this Agreement, the covenants, representations and warranties contained in this Agreement, and Liability for the breach of any obligations contained herein, will survive the Separation and the Distribution and will remain in full force and effect in accordance with their terms.
- 9.17 Specific Performance. Subject to the provisions of Section 9.6, in the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the Party or Parties who are, or are to be, thereby aggrieved will have the right to specific performance and injunctive or other equitable relief in respect of its or their rights under this Agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies will be cumulative. The Parties agree that the remedies at law for any breach or threatened breach, including monetary damages, are inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by each of the Parties.
- 9.18 <u>Performance</u>. eBay will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement to be performed by any member of the eBay Group. PayPal will cause to be performed, and hereby guarantees the performance of, all actions, agreements and obligations set forth in this Agreement to be performed by any member of the PayPal Group. Each Party (including its permitted successors and assigns) further agrees that it will (a) give timely notice of the terms, conditions and continuing obligations contained in this Agreement to all of the other members of its Group and (b) cause all of the other members of its Group not to take any action or fail to take any such action inconsistent with such Party's obligations under this Agreement or the transactions contemplated hereby.
- 9.19 <u>Mutual Drafting</u>. This Agreement will be deemed to be drafted jointly by the Parties and any rule of construction that a document will be interpreted or construed against a drafter of such document will not be applicable.

[Remainder of page intentionally left blank]

EBAY INC.
By:
Name: Title:
EBAY INTERNATIONAL AG
By:
Name: Title:
PAYPAL HOLDINGS, INC.
By: Name:
Title:
PAYPAL, INC.
By:
Name: Title:
PAYPAL PTE. LTD.
By:
Name: Title:
PAYPAL PAYMENTS PTE. HOLDINGS S.C.S.
By:
Name: Title:

[Signature Page to Intellectual Property Matters Agreement]

IN WITNESS WHEREOF, the Parties have caused this Intellectual Property Matters Agreement to be executed by their duly authorized

# EXHIBIT A

# **DEFINITIONS**

For purposes of this Agreement, the following definitions will apply to the terms set forth below wherever they appear:

- 1. ["2015 H2 Product Development Agreement"] means [].
- 2. "Change-of Control" means, with respect to a Party, the occurrence after the Effective Time of any of the following: (a) the sale, conveyance or disposition, in one or a series of related transactions, of all or substantially all of the assets of such Party to a third party that is not an Affiliate of such Party prior to such transaction or the first of such related transactions; (b) the consolidation, merger or other business combination of a Party with or into any other Person, immediately following which the stockholders of the Party prior to such transaction fail to own in the aggregate the Majority Voting Power of the surviving Party in such consolidation, merger or business combination or of its ultimate publicly traded parent Person; or (c) a transaction or series of transactions in which any Person or "group" (as such term is used in Section 13(d) of the Exchange Act) acquires the Majority Voting Power of such Party (other than a reincorporation or similar corporate transaction in which each of such Party's s stockholders own, immediately thereafter, interests in the new parent company in substantially the same percentage as such stockholder owned in such Party immediately prior to such transaction).
- 3. "<u>Develop</u>" means to create, prepare, produce, author, edit, amend, conceive, develop, assemble, reduce to practice or, in the case of works of authorship, to fix in a tangible medium of expression.
- 4. "<u>eBay CNS Period</u>" means: (a) other than with respect to the Specified eBay Patents, a period of 5 years after the Effective Time; and (b) with respect to the Specified eBay Patents, until the expiration of the last valid claim of any Specified eBay Patent.
- 5. "<u>eBay Covenantee</u>" means any member of the eBay Group (only for so long as any such Person continues to be a member of the eBay Group) other than (a) any Person that is not a Subsidiary of eBay as of the Effective Time, (b) GSI Commerce, Inc. DBA eBay Enterprise Group, Inc. ("<u>GSI</u>"), (c) X.commerce, Inc. DBA Magento, Inc. ("<u>Magento</u>") and (d) any Person that is a Subsidiary of GSI or Magento.
- 6. "<u>eBay IP</u>" means all Technology and Intellectual Property Rights to which the Separation and Distribution Agreement allocates ownership to eBay as an eBay Asset.
- 7. "eBay Products" means the products, platforms, services and solutions of eBay and its Subsidiaries, excluding those offered in connection with the activities of the Enterprise segment of eBay (a) as it was conducted at any time prior to the Effective Time by either Party or any member of its Group or (b) as it may be conducted at any time after the Effective Time by eBay or any member of the eBay Group.
- 8. "eBay Specified Change-of-Control" means a Change-of-Control of eBay with any PayPal Specified Person or their direct or indirect Subsidiaries or controlled Affiliates.
- 9. "Intellectual Property Rights" means all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights and moral rights; (b) trademark

and trade name rights and similar rights; (c) trade secret rights; (d) patent and industrial property rights; (e) other proprietary rights in Technology; (f) rights in or relating to registrations, renewals, extensions, combinations, divisions, and reissues of, and applications for, any of the rights referred to in clauses (a) through (e) of this definition; and (g) together with, in each of clauses (a) through (f) of this definition, all claims for damages by reason of past infringement, misappropriation, or other unauthorized use thereof, with the right to sue for, and collect the same.

- 10. "IPMA Effective Time" means 11:58:59 p.m., New York City time, on the Distribution Date.
- 11. "Majority Voting Power" means a majority of the voting power in the election of directors of all outstanding voting securities of the Person in question.
- 12. "<u>PayPal Covenantee</u>" means any member of the PayPal Group (only for so long as any such Person continues to be a member of the eBay Group) other than any Person that is not a Subsidiary of PayPal as of the Effective Time.
- 13. "PayPal CNS Period" means: (a) other than with respect to the Specified PayPal Patents, a period of 5 years after the Effective Time; and (b) with respect to the Specified PayPal Patents, until the expiration of the last valid claim of any Specified PayPal Patent.
- 14. "PayPal IP" means: (a) all Technology and Intellectual Property Rights to which the Separation and Distribution Agreement allocates ownership to PayPal as a PayPal Asset; (b) all Technology that is Developed by or on behalf of PayPal or any PayPal Group member, alone or jointly with eBay, under the Product Development Agreement and all Intellectual Property Rights embodied therein or relating thereto; and (c) all Technology that is Developed by or on behalf of PayPal or any PayPal Group member, alone or jointly with eBay, under the [2015 H2 Product Development Agreement] and all Intellectual Property Rights embodied therein or relating thereto.
- 15. "PayPal Products" means the products, platforms, services and solutions of PayPal and its Subsidiaries.
- 16. "PayPal Specified Change-of-Control" means a Change-of-Control of PayPal with any eBay Specified Person or their direct or indirect Subsidiaries or controlled Affiliates.
- 17. "<u>Technical Information</u>" means Information that embodies or describes any Technology of a Party or any member of such Party's Group.
- 18. "Technology" means sales methodologies and processes, training protocols and similar methods and processes, algorithms, APIs, apparatus, circuit designs and assemblies, gate arrays, net lists, test vectors, databases, data collections, diagrams, formulae, inventions (whether or not patentable), innovations, products, services, know-how, logos, marks (including brand names, product names, logos, and slogans), methods, network configurations and architectures, processes, proprietary information, protocols, schematics, specifications, software, software code (in any form, including source code and executable or object code), subroutines, techniques, user interfaces, URLs, web sites, works of authorship and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing, such as instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries).

### **FORM OF COLOCATION SERVICES AGREEMENT**

(Data Center Facility Located at \_\_\_\_\_\_, \_\_\_\_\_,

This Colocation Services Agreement (this "<u>CSA</u>") is entered into by and between (i) **eBay Inc.**, a Delaware corporation ("<u>Provider</u>" or "<u>eBay</u>"), and (ii) **PayPal Holdings, Inc.**, a Delaware corporation ("<u>Customer</u>" or "<u>PayPal</u>"). Provider and Customer are referred to individually herein as a "<u>Party</u>" and collectively as the "<u>Parties</u>."

WHEREAS, the board of directors of eBay (the "eBay Board") has determined that it is in the best interests of eBay and its stockholders to create a new publicly traded company that shall operate the PayPal Business;

WHEREAS, in furtherance of the foregoing, the eBay Board has determined that it is appropriate and desirable to separate the PayPal Business from the eBay Business (the "Separation") and, following the Separation, make a distribution, on a *pro rata* basis, to holders of eBay Shares on the Record Date of all the outstanding PayPal Shares owned by eBay (the "Distribution");

WHEREAS, to effectuate the Separation and the Distribution, eBay and PayPal have entered into a Separation and Distribution Agreement, dated as of [•], 201[•] (the "Separation and Distribution Agreement" and capitalized terms used in the recitals but not defined in this CSA are defined in the Separation and Distribution Agreement):

WHEREAS, the Distribution will be effective at the Effective Time; and

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained in this CSA, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

 <u>GENERAL</u> Undefined capitalized terms used in this CSA are defined in <u>Section 14</u> of this CSA, except that any such terms used in the recitals of this CSA are defined in the Separation and Distribution Agreement.

### 2. LICENSE & TERM; RENEWAL

- (A) For the Term, Provider shall license the Space to Customer for the purposes described in this CSA, and Provider shall provide the Services to Customer, subject to and in accordance with the provisions of this CSA. Provider hereby grants to Customer a license, for the Term, to use the Space to install, maintain, repair and operate the Equipment, and Customer shall license the Space from Provider in accordance with the provisions of this CSA and agrees to pay all amounts under this CSA in connection with such license and the Services provided to it.
- (B) The Parties acknowledge and agree that this CSA is a space license and services agreement and shall not constitute a lease, sublease or easement. Except to the extent set forth in this CSA, no Party shall have any right to cancel or terminate this CSA, and the Parties shall remain fully responsible for all obligations and amounts payable, subject to this CSA, for the entire Term. In no event shall Customer record this CSA or any memorandum or notice thereof. Except with respect to Customer's right to use the interior of any cabinet, room, and suite constituting the Space defined in this CSA, all rights of Customer (and all licenses hereunder) shall be on a non-exclusive basis.
- (C) Provider shall use commercially reasonable efforts to deliver the Space to Customer by the Commencement Date.
- (D) Subject to any renewals agreed to between the parties, on the date of the expiration or termination of the Term, Customer shall have no further rights with respect to the Space and shall, within thirty (30) days after such expiration, (i) remove all Equipment, and repair all damage resulting from such removal, and (ii) vacate and return and surrender the Space to Provider in the same condition as it was when delivered to Customer, ordinary wear and tear and casualty damage excepted.

Customer continues to use or occupy the Space after the expiration or termination of the Term (such period of use or occupancy following the end of the Term, the "Holdover Period"), such use shall be month-to-month and terminable by either Provider or Customer upon thirty (30) days' written notice. Such use or occupation of the Space shall not constitute a renewal or extension of this CSA. In such case, during the Holdover Period, Customer shall pay Provider Fees for the Space at the rate of 200% of the Fees charged at the end of the Term. Provider shall provide Services and/or power to Customer during the Holdover Period if requested by Customer and Customer shall pay whatever rates are required by Provider for such Services and power, which rates may be in excess of market rates or rates otherwise charged by Provider.

- (F) Unless an express renewal option in favor of Customer is provided for in the Service Order, Customer shall have no right to renew this CSA. If the Service Order does provide for a renewal option in favor of Customer, that option shall be subject to the following terms and conditions of this subsection (F).
  - (i) The renewal option must be exercised, if at all, by written notice given by Customer to Provider not later than six (6) months prior to expiration of the initial Term of this CSA. Notwithstanding the foregoing, at Provider's election, this renewal option shall be null and void and Customer shall have no right to renew this CSA if, on the date Customer exercises the option to renew or on the date immediately preceding the commencement date of the renewal period, Customer is in material default of any of its obligations under this CSA beyond any applicable grace or cure period.
  - (ii) If Customer exercises the renewal option, then the only licensed rights and services provided by Provider to Customer shall be the space license for the Space to house Customer's Equipment, and the providing of power in accordance with Article 10 of this CSA, with all other licenses and services, if any, provided during the initial Term no longer applicable.
  - (iii) Unless expressly provided otherwise in the Service Order, fees for any services during the renewal period shall be at Provider's then customary rate for such services (or, if Provider does not have a customary rate, at a reasonable fair market rate, as determined by Provider).

- (E) If Customer does not timely remove the Equipment, or if Customer is past due or otherwise delinquent in any payments when the license expires or is terminated (excluding holdover), Provider may, without limiting any other rights or remedies, at Customer's expense, remove and securely store the Equipment. If
- (iv) Except as otherwise provided above in this subsection (F) or as otherwise expressly provided in the Service

Order, all terms and conditions set forth in this CSA and in the Service Order shall continue to apply during the renewal period in the same manner as during the initial Term.

# 3. <u>FEES; PAYMENT</u>

- (A) Customer shall pay Provider the fees and all other amounts payable by Customer to Provider for Space, Power and Services as are set forth on the Service Order attached hereto as <u>EXHIBIT A</u>.
- (B) Customer will pay to Provider all Fees, and other amounts in advance, by the first day of each calendar quarter. Provider may require Customer upon signing this CSA to pay the Fees for the first calendar quarter in which Fees are payable and any initial non-recurring fees for the Space. Payments for partial calendar quarters shall be prorated based on the number of days in such quarter. Any other amounts payable by Customer not included on standard quarterly invoices (i.e. off-cycle billing adjustments or non-recurring fees) shall be paid by Customer to Provider within thirty (30) days after Customer's receipt of Provider's invoice. Fees shall be payable for the entire Term regardless of whether Customer uses the Space or Services.
- (C) Without limiting any other rights or remedies of Provider, if any amounts payable by Customer are not paid when due (a "Shortfall"), Customer shall owe Provider a late fee of five percent (5%) of the Shortfall and the unpaid amount shall bear interest at the rate of one and one-half percent (1.5%) per month.
- (D) All Fees are exclusive of all value added, goods and services, sales, use, transfer, privilege, excise, gross receipts, ad valorem, stamp, business, occupation, consumption or any similar taxes, fees, duties, governmental assessments, impositions and levies, including any and all of the foregoing relating to carbon and climate/environment control ("Taxes") imposed on the transaction in question (including the delivery of Services), all of which Customer shall pay in full, other than Provider's income, estate, gift or real estate Taxes.
- (E) The Parties agree to work cooperatively to determine the correct application of any Taxes. If it is determined that Taxes are applicable to a particular transaction, Provider shall collect and remit Taxes on recurring or non-recurring fees related to this CSA. If it is later determined that the Provider should have withheld and/or paid additional Taxes but did not withhold and pay such Taxes, then Customer shall pay Provider applicable Taxes and hold Provider harmless from any penalties or interests, thereon. Where applicable, Provider must disclose to the pertinent Governmental Authority information required to support Customer's right to claim exemption from Taxes. The Provider shall issue proper invoices usable by the Customer to recover (by way of credit or refund) Taxes in jurisdictions where they are recoverable. The Provider and Customer shall cooperate to minimize any Taxes and in obtaining any refund, return or rebate or abatement, or providing valid VAT identification or other relevant registration numbers, certificates or other documents.
- (F) All payments by Customer shall be made in United States Dollars in immediately available funds (via check, wire transfer, electronic funds transfer, or ACH), to the address designated by Provider in writing from time to time. All non-recurring fees are non-refundable and shall be paid by Customer to Provider, and shall belong to Provider.
- (G) If Customer believes that Provider has billed Customer incorrectly, Customer must contact Provider in writing no later than thirty (30) days after the receipt by Customer of Provider's invoice in which the error or problem appeared, in order to request an adjustment or credit, otherwise the invoice is deemed accepted.
- (H) Customer and Provider shall attempt in good faith to negotiate a resolution of any billing dispute described in Section 3(G) within thirty (30) days from the receipt of the written notice by

Provider. If the resolution of any such dispute is that Customer owes a payment of any amount to Provider or that Customer's payment was in excess of the actual amount due, the Party that owes such payment or that received the excess payment, as applicable, shall pay such amount due or amount in excess to the other Party, plus interest accruing at the Interest Rate from the date that is thirty (30) days following the date of Provider's invoice. If any such dispute is not resolved within such thirty (30)-day period, the dispute may be resolved in accordance with Section 7. The existence of a dispute (pursuant to Section 3(G) or otherwise) shall not excuse any Party from any other obligation under this CSA, including Customer's obligation to pay any undisputed amounts and Providers obligation to continue to perform Services hereunder, unless and until this CSA is validly terminated pursuant to this Section 3.

# 4. SPACE AND EQUIPMENT

- Customer, at Customer's sole cost and expense, is responsible for providing, installing, maintaining, repairing and operating the Equipment. The Equipment shall be industry-accepted and UL listed information and communication technology equipment suitable for use in a data center. All Equipment, where possible, must be accompanied by industry-standard blanking panels and must be installed in a hot/cold row configuration reasonably acceptable to Provider, and the location and power density of all racks and other Equipment shall be subject to the prior consent of Provider, which consent shall not be unreasonably withheld or delayed. The Equipment, and placement thereof, shall comply with all of Provider's reasonable, floor load requirements. Customer shall, at its sole cost and expense, maintain the Space in accordance with the highest industry standards and procedures for cleaning mission critical data center environments. Unless otherwise designated by Provider (in its sole and absolute discretion), any equipment or other property of any of the Customer Parties shall, at Provider's option, be deemed part of the Equipment.
- Customer may use the Space only for the purpose of installing, maintaining, repairing and operating Equipment in accordance with the terms of this CSA. Notwithstanding anything to the contrary in this CSA, no improvements, modifications, changes or alterations to the Space or Building shall be performed by Customer unless approved in writing by Provider (in its reasonable discretion). Customer shall obtain and maintain all necessary and required approvals, permits, certificates and licenses relating to the Equipment and/or use of the Space and Services. Provider shall consult with Customer in good faith as to how any impact to Customer may be minimized or avoided. Subject to the terms of this CSA, and the Building rules, regulations and policies, Customer shall have access to the Space during the Building's regular business hours, and as reasonably required by Customer. Provider shall provide prior notice (which may be oral) to Customer prior to entering the Space and Provider shall not unreasonably interfere with Customer's permitted use of the Space in connection with any such entry. Both Parties shall comply with all Laws in all material respects.
- Provider reserves the right, but only under the conditions in this provision, to change the location or configuration of Customer's Space within the Building Provider shall use commercially reasonable efforts to avoid such relocation or reconfiguration, and shall consult with Customer in good faith as to how any impact to Customer may be minimized or avoided. Provider shall not arbitrarily, unreasonably or discriminatorily require Customer to relocate any Space. Provider shall use commercially reasonable efforts to notify Customer in writing at least 60 days in advance of any possible relocation or reconfiguration. Provider shall work in good faith with Customer to minimize any disruption in Customer's Services that may be caused by such changes in location or reconfiguration of the Space. Provider shall (i) pay all reasonable out-of-pocket labor and materials expenses of any such relocation and the expenses of moving and construction of improvements substantially similar to the original Space and other improvements installed prior to the date of the Relocation Notice and (ii) pay for the reasonable cost to install and connect utilities and telecommunication and data cabling and other infrastructure in the relocation Space in the manner and to the extent the same existed in the original Space prior to the relocation.

- (D) Customer shall not cause or permit any Hazardous Material to be brought, kept or used in the Space or Building, other than *de minimis* amounts of such materials as are ordinarily and customarily used and stored in space utilized as a data center facility and which are used and stored at all times in full compliance with all Laws and all rules, regulations and policies of Provider. Customer shall not unreasonably interfere with the use, systems, equipment or operations of Provider or Provider's other customers.
- Except to the extent caused by Provider or unless conduct expressly and specifically designated by Provider, Customer will be responsible for all acts and omissions of the Customer and all such acts and omissions shall be attributed to Customer for all purposes under this CSA. Customer shall not cause or allow any liens or encumbrances to be imposed upon the Space or Building (or any related property), or upon any of Provider's property; in the event of a breach of this sentence, without limiting any other rights or remedies, Provider may pay all amounts necessary to extinguish, eliminate and remove (including, without limitation, from public record) any such liens and encumbrances, and Customer shall reimburse Provider for such actual amounts paid plus any other actual out of pocket costs reasonably incurred by Provider, within 30 days after receipt of invoice. Any dispute over the preceding sentence shall be addressed in the same manner set forth in Section 3(H) for the resolution of disputes over billing. Customer shall ensure that all parties performing work for Customer work in harmony with any workers at the Building, and comply with all non-discriminatory union labor, bonding, insurance and other requirements imposed by Provider in connection therewith.
- (F) Except to the extent expressly set forth in this CSA, Customer shall not be entitled to (i) access or use outside of the Space except for common areas, any space, conduits, innerducts, shafts, risers, fiber, wiring or cabling; (ii) make connections with any other customer or other Person in connection with the Building or this CSA; or (iii) use or consume any power, electricity, water, gas or other utilities or services otherwise not contemplated or used for typical data center operations.
- (G) Provider shall (i) at its sole cost and expense, maintain the Space in accordance with the highest industry standards and procedures for mission critical data center environments including information security standards; (ii) establish and monitor the physical security of the Space; and (iii) provide the Services set forth in the applicable Service Order at the standards set forth in the applicable SLA.

### 5. <u>SECURITY REQUIREMENTS</u>

(A) Security Deposit. None.

# 6. <u>INSURANCE AND INDEMNITY</u>

Customer shall, at its sole cost and expense, procure and maintain the following insurance: (i) commercial general liability insurance in an amount not less than \$2,000,000 per occurrence and \$3,000,000 in the annual aggregate for bodily injury and property damage and personal injury coverage; and (ii) a policy of standard fire, extended coverage and special extended coverage insurance (all risks), in an amount equal to the full replacement value new without deduction for depreciation of all Equipment and other property of Customer. All insurance under this paragraph shall be with reputable insurers licensed to do business in the state where the Space is located, shall have commercially reasonable deductibles, shall be written on an occurrence basis, shall name Provider and its designated lenders, lessors and managers as additional insureds, and shall not be canceled or modified upon less than thirty (30) days prior written notice to Provider. Prior to any access to, or installation of Equipment in, the Space and prior to any expiration date of the insurance policies, Customer will furnish copies of certificates to Provider which evidence that Customer has obtained the insurance required hereunder, and shall provide evidence to Provider of the deductibles in connection with all policies hereunder. Customer shall

require its insurers to waive (and its insurers shall waive) any rights of subrogation that such companies may have, and Customer waives, any and all rights, remedies, claims, actions and causes of action, against Provider Indemnified Parties, as a result of any loss or damage to Equipment or other property which is (or would have been, had the insurance required by this CSA been carried) covered by insurance.

- (B) Except to the extent caused by Provider Indemnified Parties' negligence, willful misconduct or bad-faith, Customer shall and does hereby indemnify, defend, protect and hold harmless Provider Indemnified Parties from and against any and all Claims resulting from any legal claim, suit, action, or proceeding ("Action") brought by any third Person alleging or arising out of (i) the use by Customer or any of the Customer Parties of the Space, Services or Building; or (ii) any breach or claim by a third Person that if true would be a breach or alleged breach of any Customer's covenants contained in this CSA.
- (C) Except to the extent caused by Customer Indemnified Parties' negligence or willful misconduct or bad-faith, Provider shall and does hereby indemnify, defend, protect and hold harmless Customer Indemnified Parties from and against any Action brought by any third Person alleging or arising out of (i) the use by Customer or any of the Customer Parties of the Space, Services or Building (including any lapse in Building security); or (ii) any breach or claim by a third Person that if true would be a breach or alleged breach of any of Provider's covenants contained in this CSA. In addition, Provider will pass through to Customer Indemnified Parties any indemnification that Provider receives from a third-Person covering the Services, and such pass through indemnification will be set forth in the applicable SLA.

### 7. <u>ENFORCEMENT; DISPUTE RESOLUTION</u>

In the event of a Customer Default, Provider shall have the right to exercise all of the available rights and remedies at law and in equity, and may, without limitation and free from any and all Liability, (i) terminate the license provided under this CSA; (ii) recover from Customer the applicable Basic Contract Damages, subject to any mitigation requirements under Law (provided that Provider shall not be required to give preference to the Space over any other space in its mitigation efforts); (iii) prevent Customer from ordering or licensing any Services; (iv) prevent Customer from accessing or using the Space and Building and/or prevent Customer from removing any Equipment from the Space or Building (including, without limitation, by means of locks or other access barriers); and/or (v) perform such acts necessary to cure the Customer Default, on Customer's part, and all costs incurred by Provider in connection therewith shall be paid by Customer to Provider; provided, that Provider may not take the actions specified in clauses (i), (iii) or (iv) until the Parties have completed the dispute resolution procedures set forth in Sections 7(F) and 7(G).

### (B) [Reserved.]

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CSA, NO PARTY SHALL, UNDER ANY CIRCUMSTANCES, BE LIABLE UNDER THIS CSA TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES OF ANY NATURE, OR FOR ANY LOSS OF DATA, LOST REVENUES, LOST PROFITS, LOSS OF BUSINESS, LOSS OF GOODWILL OR ANTICIPATORY PROFITS, REGARDLESS OF THE FORM OF ACTION. WHETHER IN CONTRACT. TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT LIMIT OR AFFECT, AND (I) CUSTOMER SHALL BE RESPONSIBLE FOR, ANY LIABILITY TO THE EXTENT PAYABLE TO A THIRD PERSON WITH RESPECT TO A THIRD PARTY CLAIM, THE BASIC CONTRACT DAMAGES, FEES AND ALL OTHER AMOUNTS PAYABLE BY CUSTOMER UNDER THIS CSA (INCLUDING FUTURE AMOUNTS,

REGARDLESS OF WHEN PAYABLE), AND (II) PROVIDER SHALL BE RESPONSIBLE FOR, ANY LIABILITY, TO THE EXTENT PAYABLE TO CUSTOMER OR A THIRD PERSON. WITH RESPECT TO ANY THIRD-PARTY CLAIM AND ANY LAPSES IN SECURITY CAUSED BY PROVIDER'S WILLFUL MISCONDUCT. ADDITIONALLY, EACH PARTY'S CUMULATIVE AGGREGATE LIABILITIES TO THE OTHER PARTY FOR ANY DAMAGES (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT OF SUMS PAID AND OWING UNDER THIS CSA OVER THE TWELVE (12)-MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE PARTICULAR CLAIM ARISES; PROVIDED, HOWEVER, THAT SUCH CAP ON DAMAGES SHALL NOT LIMIT (X) EITHER PARTY'S LIABILITY FOR BREACHES OF SUCH PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER SECTION 9(D); (Y) CUSTOMER'S LIABILITY FOR (I) THE BASIC CONTRACT DAMAGES; (II) LIABILITIES ARISING OUT OF CUSTOMER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 6(B); OR (III) OTHER EARLY TERMINATION LIABILITIES INCURRED BY CUSTOMER OR (Y) PROVIDER'S LIABILITY FOR (I) SECURITY BREACHES CAUSED BY PROVIDER'S WILLFUL MISCONDUCT; OR (II) LIABILITIES ARISING OUT OF PROVIDER'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 6(C). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CSA, CUSTOMER SHALL NOT BE PERMITTED TO EXERCISE ANY SELF-HELP OR OFFSET REMEDIES, OR TO PERFORM ANY OF PROVIDER'S OBLIGATIONS. EXCEPT AS SET FORTH IN THIS CSA, NO PARTY MAKES ANY EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS AND TITLE, OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

- (D) In the event Provider agrees to provide any Service consisting of any maintenance or support of any Equipment provided by Customer, Provider's sole obligation in connection with such Service shall be to provide such Service in material conformance with the written instructions of Customer. Provider shall have no Liability for any loss or damage resulting from Provider's compliance with such materials as provided by Customer.
- (E) The obligations of Customer shall not be affected or impaired, and Provider shall not be in breach or default, in the event Provider is unable to fulfill any of its obligations under this CSA or is delayed in doing so, if such inability or delay is caused by reason of a Force Majeure Event, and Provider's obligations under this CSA shall be suspended by any such Force Majeure Event. In order to claim the benefit of this provision, Provider shall, as soon as reasonably practicable after the occurrence of any Force Majeure Event, (i) provide written notice to Customer of the nature and extent of any such Force Majeure Event; and (ii) use commercially reasonable efforts to remove any such causes and resume performance under this CSA as soon as reasonably practicable.
- Subject to the last sentence of Section 7(G), either Party seeking resolution of any dispute, controversy or claim arising out of or relating to this CSA, including the breach, termination or validity of this CSA (a "Dispute"), shall provide written notice thereof to the other Party (the "Initial Notice"), and within thirty (30) days of the delivery of the Initial Notice, the Parties shall attempt in good faith to negotiate a resolution of the Dispute. The negotiations shall be conducted by executives who hold, at a minimum, the title of senior vice president or general counsel and who have authority to settle the Dispute. All such negotiations shall be confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Parties are unable for any reason to resolve a Dispute within thirty (30) days after the delivery of such notice or if a Party reasonably concludes that the other Party is not willing to negotiate as contemplated by the preceding sentences of this Section 7(F), the Dispute shall be resolved in accordance with Section 7(G). Unless otherwise agreed in writing, the Parties shall continue to honor all commitments under this CSA to the extent required by this CSA during the course of dispute resolution pursuant

to the provisions of Sections 7(F) and 7(G), unless such commitments are the specific subject of the Dispute at issue. Notwithstanding the foregoing, Provider agrees that its interruption of the Services may cause irreparable harm to Customer for which no adequate remedy exists at Law and agrees, during the pendency of any Dispute not to deny, withdraw, restrict or delay its provision of the Services except as required by court order, by the resolution of the Dispute or as a result of the termination of this CSA.

- (G) Any Dispute that cannot be resolved by good faith negotiations between the Parties shall be submitted to the Escalation Committee (as defined in the Separation and Distribution Agreement) and resolved in accordance with Sections 7.2 to 7.6 of the Separation and Distribution Agreement. Notwithstanding Section 7(F), the immediately preceding sentence of this Section 7(G) or Sections 7.2 to 7.4 of the Separation and Distribution Agreement, a Party may seek preliminary provisional or injunctive judicial relief with respect to a Dispute without first complying with the procedures set forth in Section 7(F), the immediately preceding sentence of Section 7(G) or Sections 7.2 to 7.4 of the Separation and Distribution Agreement if such action is reasonably necessary to avoid irreparable damage.
- (H) Time is of the essence with respect to the performance of this CSA. In any action, legal proceeding or suit relating to this CSA, the losing Party shall pay the prevailing Party reasonable attorneys' fees and costs in such action, legal proceeding or suit, as applicable. Any obligations of the Parties occurring prior to the expiration or termination of this CSA shall survive such expiration or termination In connection with the expiration or termination of this CSA, Sections 1, 2(E), 3(E), 3(F), 6(B), 6(C), 7, 8, 9, 14 and all confidentiality obligations under this CSA and Liability for due and unpaid Basic Contract Damages, Fees shall continue to survive indefinitely.
- If any provision of this CSA or the application thereof to any Person or circumstance is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof or thereof, or the application of such provision to Persons or circumstances or in jurisdictions other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby. Upon such determination, the Parties shall negotiate in good faith in an effort to agree upon such a suitable and equitable provision to effect the original intent of the Parties. No provisions of this CSA or any Ancillary Agreement shall be deemed waived, amended, supplemented or modified by a Party, unless such waiver, amendment, supplement or modification is in writing and signed by the authorized representative of the Party against whom it is sought to enforce such waiver, amendment, supplement or modification. Waiver by a Party of any default by the other Party of any provision of this CSA shall not be deemed a waiver by the waiving Party of any subsequent or other default, nor shall it prejudice the rights of the other Party. No failure or delay by a Party in exercising any right, power or privilege under this CSA shall operate as a waiver thereof, nor shall a single or partial exercise thereof prejudice any other or further exercise thereof or the exercise of any other right, power or privilege. The acceptance of any amounts by a Party shall not be deemed to be a waiver of any preceding breach or default. No acceptance of a lesser amount than the amount due shall be deemed a waiver of a Party's right to receive the full amount due, nor shall any endorsement or statement on any check or payment or any letter accompanying such check or payment be deemed an accord and satisfaction, and each Party may accept such check or payment without prejudice to its right to recover the full amount due. No acceptance of monies by a Party after the expiration or termination of the Term shall in any way alter the length of that Term or Customer's rights to the Space or any Service, or reinstate, continue or extend the Term. Unless otherwise agreed to in writing by the receiving Party, a Party may apply any payments received from the other Party or its affiliates to any amounts and in any order that the receiving Party may determine from time to time in its sole and absolute discretion, notwithstanding any contrary designation or writing by the paying Party.

(J) This CSA (and any claims or disputes arising out of or related hereto or to the transactions contemplated hereby or to the inducement of any Party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed by and construed and interpreted in accordance with the Laws of the State of \_\_\_\_\_\_\_ irrespective of the choice of laws principles of the State of \_\_\_\_\_\_\_, including all matters of validity, construction, effect, enforceability, performance and remedies.

### 8. <u>ASSIGNMENT</u>

- (A) This CSA shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns; provided, that Customer shall not assign its rights or delegate its obligations under this CSA without the express prior written consent of the Provider.
- (B) Notwithstanding the foregoing, no such consent shall be required (i) the assignment of a Party's rights and obligations under this Agreement in whole or in part to any of its Subsidiaries; provided, that no such assignment shall release such Party from any liability or obligation under this Agreement; or (ii) for the assignment of either Party's rights and obligations under this CSA in whole (i.e., the assignment of either Party's rights and obligations under the Separation and Distribution Agreement, this CSA and all other Ancillary Agreements (as defined in the Separation and Distribution Agreement) all at the same time) in connection with a Change of Control of either Party so long as the resulting, surviving or transferee Person assumes all the obligations of a Party thereto by operation of Law or pursuant to an agreement in form and substance reasonably satisfactory to the other Party. Nothing herein is intended to, or shall be construed to, prohibit either Party or any of its Subsidiaries from being party to or undertaking a Change of Control.
- (C) Customer shall not, without the prior written consent of Provider, which consent may be withheld in Provider's sole and absolute discretion, allow any other Person to use any of the Space or Services, or operate what is commonly known as a meet-me room.
- (D) Provider may require any assignee, sublicensee or other transferee to execute documentation reasonably acceptable to Provider in connection with any assignment, sublicense or other transfer, including, without limitation, an assumption agreement whereby the transferee assumes all of Customer's liabilities, duties and obligations under this CSA. In any event, no assignment, sublicense or other transfer shall relieve or release Customer of its obligations, duties or liabilities, and Customer shall remain fully liable under this CSA, jointly and severally with the transferee.
- (E) Except for the indemnification rights under this CSA of Provider Indemnified Parties and Customer Indemnified Parties in their respective capacities as such, (i) the provisions of this CSA are solely for the benefit of the Parties and are not intended to confer upon any Person except the Parties any rights or remedies hereunder, and (ii) there are no third-party beneficiaries of this CSA, and this CSA shall not provide any third Person with any remedy, claim, Liability, reimbursement, claim of action or other right in excess of those existing without reference to this CSA.

# 9. PROCEDURE.

(A) All notices, requests, claims, demands or other communications under this CSA shall be in writing, together with a copy by electronic mail (which shall not constitute notice), and shall be given or made (and shall be deemed to have been duly given or made upon acknowledgment of receipt) by delivery in person, by overnight courier service, or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 9(A)).

All notices to Provider shall be addressed to the following:

eBay Inc.
2065 Hamilton Avenue
San Jose, California 95125
Attn: [ENTER NAME OF PROVIDER CONTACT]
Email:\_\_\_\_\_\_

All notices to the Customer shall be addressed to the following:

PayPal Holdings, Inc.	
2211 North First Street	
San Jose, California 95131	
Attn:	
Fmail.	

All invoices to the Customer shall be addressed to the following:

PayPal Holdings, Inc.
2211 North First Street
San Jose, California 95131
Attn:
Email:

- The Parties each acknowledge and agree that they are separate entities, each of which has entered into this CSA for its own independent business reasons. The relationships of the Parties hereunder are those of independent contractors and nothing contained herein shall be deemed to create a joint venture, partnership or any other relationship between the Parties. Each Party's personnel performing services hereunder do so on behalf of, under the direction of, and as personnel of. Provider or Customer, and the other Party shall have no right, power or authority to direct such personnel. This CSA may be executed in one or more counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Party. This CSA and the Exhibits hereto contain the entire agreement between the Parties with respect to the subject matter hereof, supersede all previous agreements, negotiations, discussions, writings, understandings, commitments and conversations with respect to such subject matter, and there are no agreements or understandings between the Parties other than those set forth or referred to herein or therein. Each Party acknowledges that it and each other Party is executing this CSA by facsimile, stamp or mechanical signature, and that delivery of an executed counterpart of a signature page to this CSA (whether executed by manual, stamp or mechanical signature) by facsimile or by email in portable document format (PDF) shall be effective as delivery of such executed counterpart of this CSA. Each Party expressly adopts and confirms each such facsimile, stamp or mechanical signature (regardless of whether delivered in person, by mail, by courier, by facsimile or by email in portable document format (PDF)) made in its respective name as if it were a manual signature delivered in person, agrees that it will not assert that any such signature or delivery is not adequate to bind such Party to the same extent as if it were signed manually and delivered in person.
- (C) Customer further represents and warrants that it is not now and has never been listed or named as, nor has it ever acted directly or indirectly for or on behalf or any person, group or entity or nation named in any Executive Order or by the United States Treasury Department or any other state or federal agency as a terrorist, or a "Special Designated National and Blocked Person," or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control ("OFAC") or any other governmental agency.
- (D) Notwithstanding anything to the contrary in this CSA, Provider may, in its sole and absolute discretion, assign this CSA to any third Person without obtaining the consent of Customer or any other Person. Customer shall attorn to Provider's assignee upon any assignment of this CSA and shall recognize such assignee as the Licensor under this CSA. No

assignment or sale by Provider shall	I, in and o	f itself, result	in a termination
of this CSA. In the event of any			

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assignment by Provider, Provider shall automatically be released from all liability under this CSA and Customer agrees to look solely to the assignee for the performance of Provider's prior obligations under this CSA and such assignee shall be deemed to have fully assumed and be liable for all obligations of this CSA to be performed by Provider after the date of the assignment, including, without limitation, the return of any Security Deposit.

The terms and conditions of this CSA are confidential information. The Parties shall keep such confidential information strictly confidential and shall not disclose such confidential information to any third Person other than (i) a Party's partners, assignees, purchasers, investors, lenders. lessors, affiliates and financial and legal consultants, provided such parties agree in writing to keep such information strictly confidential and do not disclose such confidential information to any third Person, (ii) as required by Law, or (iii) in connection with any action to enforce the terms of this CSA. No Party shall release or cause or permit to be released any press release or other publicity, advertising or promotion relating to this CSA or any related documents; provided, however, that Provider may disclose the fact that Customer is a customer in the Building and Provider may use Customer's name or logo in marketing materials, customer lists or other similar materials. Customer shall not use the picture or representation of the Building (or any part thereof) without the prior written consent of Provider. Notwithstanding the foregoing, Provider may provide any information as required to any receiver or governmental or quasi-governmental entity, or to any person or entity with a valid court order. Each Party shall remain exclusively entitled to all right, title and interest in and to such Party's Software, Information Technology, and Technology and the other Party shall not have any right, title or interest whatsoever in or to such Party's Software, Information Technology, or Technology (including, without limitation, any ownership rights). Neither Party shall, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to derive source code from the other Party's Software, Information Technology, or Technology provided in object code form only.

### 10. POWER

(A) Customer shall license power from Provider for the Space set forth in the Service Order and shall pay for such power as described in the Service Order. All power outlets shall be ordered and provided pursuant to this CSA. The minimum breakered circuit shall be \_\_\_\_\_ amps and the provision of power shall be in \_\_\_\_\_-amp increments above the \_\_\_\_\_-amp minimum. The term of the license for power shall commence on the date of installation and shall continue during the remainder of the entire Term.

Notwithstanding anything to the contrary in this CSA, (i) Customer's use/consumption and ordering/licensing of primary power shall never exceed the Primary Power Limit, (ii) Customer shall ensure, at its sole cost and expense, that the load connected to, and the draw on, any and all circuits shall be in compliance with the National Electrical Code (and all other Laws and insurance requirements), and (iii) in no event shall the load connected to any circuit, or the draw on any circuit, exceed eighty percent (80%) of the circuit's breakered capacity. Provider may, from time to time, audit Customer's circuits and use of power and may enter the Space to do so. Customer shall reasonably cooperate with Provider in connection with any such audit. If Provider determines that Customer has violated the Primary Power Limit or violated such eighty percent (80%) limitation, then, without limiting Provider's other rights and remedies, Customer shall pay to Provider the Power Overdraw Charge, and (so long as the Parties have first completed the dispute resolution procedures set forth in Sections 7(F) and 7(G)) Provider may disconnect the circuit in violation until the violation is remedied by Customer to Provider's reasonable satisfaction.

# 11. RULES AND REGULATIONS

Customer and the Customer Parties shall comply at all times with the Rules and Regulations attached hereto as  $\underline{\text{Exhibit B}}$ .

Provider acknowledges the importance of up-time and uninterrupted services in the data center industry. Accordingly, Customer may be entitled to certain abatement under the Service Level Agreement (the "SLA") attached hereto as EXHIBIT C in the event of certain service Failures (as defined in such SLA). Provider shall meet the performance standards and service levels set forth in each SLA.

### 13. AUDIT REQUIREMENTS

Provider agrees to cause an audit of the control procedures within the Building for suitability of design and effectiveness of operations to be performed annually (subject to the last sentence of this paragraph) in accordance with the Service Organization Control Reports ("SOC1") prepared under Statement of Standards for Attestation Engagement No. 16 in order to verify that the control procedures within the Building are suitable in design and effective in operations ("SSAE Compliance"), and Provider shall make available to Customer a copy of each SOC1 report within 30 days after its issuance. Provider covenants to obtain SSAE Compliance annually during the Term at Provider's sole cost and expense.

### 14. <u>DEFINITIONS</u>

For purposes of this CSA, the following terms shall have the following definitions:

<u>Basic Contract Damages</u>: All of Fees that would otherwise have been payable by Customer for all of the remaining Term (i.e., that would otherwise have been payable under this CSA) absent any termination of this CSA.

<u>Claims</u>: All claims, judgments, damages, penalties, fines, costs, Liabilities, Losses and expenses (including, without limitation, reasonable attorneys' fees and costs).

<u>Customer Default</u>: Any of the following items, whereby Customer shall be in default beyond notice and cure periods: (i) the failure by Customer to pay Fees or other amounts for 5 days after written notice that the applicable amount is overdue; (ii) any breach of Section 4 above for five (5) days after Provider's delivery of written notice to Customer; and (iii) the failure by Customer to cure any other breach within fifteen (15) days after written notice by Provider.

<u>Customer Indemnified Parties</u>: Customer, each of Customer's Subsidiaries and each of their respective past, present and future directors, officers, employees and agents, in each case in their respective capacities as such, and each of the heirs, executors, successors and assigns of any of the foregoing.

<u>Customer Parties</u>: Customer's customers, affiliates, representatives, officers, directors, principals, licensees, invitees, employees, agents, trustees, contractors and sublicensees, and their respective successors and assigns.

**Equipment**: The equipment and other property placed by or on behalf of Customer in the Space (including, without limitation, racks, servers, cabling and wiring).

**Fees**: Severally and/or collectively, as the context requires, all Fees and fees of any other nature payable under or in connection with this CSA or any Service Order.

Force Majeure Event: Any event beyond Provider's control, which event (i) does not arise or result from the fault or negligence of such Provider (or any Person acting on its behalf) and (ii) by its nature would not reasonably have been foreseen by Provider (or such Person), or, if it would reasonably have been foreseen, was unavoidable, including war, acts of God, terrorism, earthquake, hurricanes, flood, fire or other casualty, significant regional, national, or global power outages, embargo, riot, explosions, sabotage, labor shortage or dispute, governmental act, insurrections, shortages, epidemics, pandemics, and quarantines.

# 12. <u>SERVICE LEVEL AGREEMENT</u>

<u>Governmental Authority</u>: Any nation or government, any state, municipality or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau, court, tribunal or other instrumentality, whether federal, state, provincial, local,

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domestic, foreign, supranational or multinational, exercising executive, legislative, judicial, regulatory, administrative or other similar functions of, or pertaining to, government and any executive official thereof, including The NASDAQ Stock Market and any similar self-regulatory body under applicable securities Laws.

<u>Hazardous Material</u>: Any material, including, without limitation, any flammable material, which is or becomes regulated by any applicable governmental authority, or any other hazardous or toxic material pursuant to any Law.

**Information Technology**: All technology, hardware, computers, servers, workstations, routers, hubs, switches, data communication lines, network and telecommunications equipment, Internet-related information technology infrastructure and other information technology equipment, in each case, other than Software.

**Law(s)**: Any applicable national, supranational, international, federal, state, provincial, local or similar law (including common law), statute, code, order, ordinance, rule, regulation, treaty (including any Tax treaty), license, permit, authorization, approval, consent, decree, injunction, binding judicial or administrative interpretation or other requirement, in each case, enacted, promulgated, issued or entered by a Governmental Authority.

Liabilities: All debts, guarantees, assurances, commitments, liabilities, responsibilities, Losses, remediation, deficiencies, damages, fines, penalties, settlements, sanctions, costs, expenses, interest and obligations of any nature or kind, whether accrued or fixed, absolute or contingent, matured or unmatured, accrued or not accrued, asserted or unasserted, liquidated or unliquidated, foreseen or unforeseen, known or unknown, reserved or unreserved, or determined or determinable, including those arising under any Law, claim (including any Third Party Claim), demand, Action, or order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority or arbitration tribunal, and those arising under any contract, agreement, obligation, indenture, instrument, lease, promise, arrangement, release, warranty, commitment, undertaking or terms of employment, whether imposed or sought to be imposed by a Governmental Authority, another third Person, or a Party, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, or otherwise, in each case including all costs, expenses, interest, attorneys' fees, disbursements and expenses of counsel, expert and consulting fees and costs related thereto or to the investigation or defense thereof and any equitable relief that is imposed in connection therewith.

<u>Losses</u>: Actual losses, costs, damages, penalties and expenses (including legal and accounting fees and expenses and costs of investigation and litigation), whether or not involving a Third Party Claim.

**Person**: An individual, a general or limited partnership, a corporation, a trust, a joint venture, an unincorporated organization, a limited liability entity, any other entity and any Governmental Authority.

Power Overdraw Charge: \$\_\_\_\_\_ per day, per circuit in violation.

Primary Power Limit: Such limit shall be one of the following: (i) 80% of a breakered capacity limit of primary AC power or DC power (A/B sides combined) (in kilowatts) or (ii) a defined quantity of circuits (or other electrical infrastructure) supplied to the Space by Provider in which Customer shall not exceed of power.

<u>Provider Indemnified Parties</u>: Provider, each of Provider's Subsidiaries and each of their respective past, present and future directors, officers, employees and agents, in each case in their respective capacities as such, and each of the heirs, executors, successors and assigns of any of the foregoing.

<u>Services</u>: All services which may be provided by Provider to Customer from time to time, including without limitation, the provision of Space, power and related services, and the building out of Space in anticipation

form, (b) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (c) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, (d) screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons and (e) documentation, including user manuals and other training documentation, relating to any of the foregoing.

Space: As described in the Service Order.

<u>Subsidiary</u>: With respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities, (ii) the total combined equity interests or (iii) the capital or profit interests, in the case of a partnership, or (b) otherwise has the power to vote, either directly or indirectly, sufficient securities to elect a majority of the board of directors or similar governing body.

Technology: Sales methodologies and processes, training protocols and similar methods and processes, algorithms, APIs, apparatus, circuit designs and assemblies, gate arrays, net lists, test vectors, databases, data collections, diagrams, formulae, inventions (whether or not patentable), innovations, products, services, know-how, logos, marks (including brand names, product names, logos, and slogans), methods, network configurations and architectures, processes, proprietary information, protocols, schematics, specifications, software, software code (in any form, including source code and executable or object code), subroutines, techniques, user interfaces, URLs, web sites, works of authorship and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing, such as instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries).

<u>Term</u>: The term of Customer's license of the Space and Services from Provider shall be as described in the Service Order.

<u>Third Party Claim</u>: Any Action, whether civil or criminal, at Law or in equity, made or brought by a third Person.

[Remainder of Page Intentionally Left Blank]

of the commencement of the term, to the extent expressly set forth in this CSA, including, without limitation, in the Service Order.

<u>Software</u>: Any and all (a) computer programs, including any and all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other

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IN WITNESS WHEREOF, THE PARTIES	HAVE EXECUTED THIS CSA AS OF	, 2015.
CUSTOMER:		
a(n)	,	
By:		
Name:	_	
Title:	_	
PROVIDER:		
a(n)		
Ву:		
Name:	_	

[Signature Page to Colocation Services Agreement]

Title: \_\_\_\_\_

# **EXHIBIT A**

# **SERVICE ORDER**

Customer:  Term:  Two (2) years, commencing as of the Commencement Date and expiring on the Expiration Date, and subject to renewal for the Renewal Term provided below.  Commencement Date:  [], 2015  Expiration Date:  [], 2017  If the Renewal Term is exercised:  Renewal Term:  Three (3) years, commencing as of the Renewal Term Commencement Date and expiring on the Renewal Term Expiration Date, with no further right of renewal.  Renewal Term  Commencement Date:  [], 2017  Renewal Term  Expiration Date:  [], 2020  1. Space. For the purposes of this Service Order, "Space" means that physical space, power, and infrastructure of and within the Building that Provide has designated for Customer's exclusive use shown on the attached "Space Exhibit". Maximum power available to the Space is The Space shall be room(s):  within the Building.  2. Fees:  a. Fees: Customer shall pay the Fees provided below:
the Renewal Term provided below.  Commencement Date:
Expiration Date:
If the Renewal Term is exercised:  Renewal Term: Three (3) years, commencing as of the Renewal Term Commencement Date and expiring on the Renewal Term Expiration Date, with no further right of renewal.  Renewal Term Commencement Date: [], 2017  Renewal Term Expiration Date: [], 2020  1. Space. For the purposes of this Service Order, "Space" means that physical space, power, and infrastructure of and within the Building that Provide has designated for Customer's exclusive use shown on the attached "Space Exhibit". Maximum power available to the Space is The Space shall be room(s): within the Building.
Renewal Term:  Three (3) years, commencing as of the Renewal Term Commencement Date and expiring on the Renewal Term Expiration Date, with no further right of renewal.  Renewal Term Commencement Date:  [], 2017  Renewal Term Expiration Date:  [], 2020  1. Space. For the purposes of this Service Order, "Space" means that physical space, power, and infrastructure of and within the Building that Provide has designated for Customer's exclusive use shown on the attached "Space Exhibit". Maximum power available to the Space is The Space shall be room(s):  within the Building.
Date, with no further right of renewal.  Renewal Term Commencement Date: [], 2017  Renewal Term Expiration Date: [], 2020  1. Space. For the purposes of this Service Order, "Space" means that physical space, power, and infrastructure of and within the Building that Provide has designated for Customer's exclusive use shown on the attached "Space Exhibit". Maximum power available to the Space is The Space shall be room(s): within the Building.
Commencement Date: [], 2017  Renewal Term Expiration Date: [], 2020  1. Space. For the purposes of this Service Order, "Space" means that physical space, power, and infrastructure of and within the Building that Provide has designated for Customer's exclusive use shown on the attached "Space Exhibit". Maximum power available to the Space is The Space shall be room(s): within the Building.  2. Fees.
<ol> <li>Space. For the purposes of this Service Order, "Space" means that physical space, power, and infrastructure of and within the Building that Provide has designated for Customer's exclusive use shown on the attached "Space Exhibit". Maximum power available to the Space is The Space shall be room(s): within the Building.</li> <li>Fees.</li> </ol>
has designated for Customer's exclusive use shown on the attached "Space Exhibit". Maximum power available to the Space is The Space shall be room(s): within the Building.  2. Fees.
a Fees: Customer shall hav the Fees provided below:
a. <u>rees</u> . Gustomer shall pay the rees provided below.

- b. <u>Service Descriptions</u>: See Service Descriptions Exhibit attached hereto and incorporated herein.
- Purchase Commitment. [Reserved].

Exhibit A - Page 1

# SERVICE DESCRIPTION EXHIBIT (ATTACHED TO SERVICE ORDER)

The floor plan which follows is intended solely to identify the general location and, if applicable, dimensions of the Space and should not be used for any other purpose. All areas, dimensions and locations are approximate, and any physical conditions indicated may not exist as shown.

### Asset Life Cycle Management - Hardware Procurement to Hardware Disposal

1. Procurement Services - Complete procurement transaction(s) for Site/GPI Compute, Storage, Network Gear, and Software, in PACE, including:

Process procurement ticket to include submitting purchase requisitions in SRM

Provide backup documentation for invoice approval by PayPal

Additional updating and removal of cost center mapping, model and location information within PACE

Reporting

Asset Lifecycle Management Procurement SLA report - Monthly/Quarterly

Resolved PROCR Tkts - Monthly/Quarterly

PROCR Pending on report - Weekly/Monthly/Quarterly

#### 2. Inventory Management

Asset Cost Center Transfers - perform datacenter inventory analysis, and provide recommendations for asset cost center transfers & execute transfers in SalesForce

Inventory Assessment- Perform inventory assessments using cycle count methodology and provide report to PP

Emergency Spares - Manage onsite datacenter inventory of PP funded emergency networking & load balancer spares including: Network Equipment, Switches, Chassis', Supervisor Cards, Fabric Modules, Fan Trays, Line Cards, Power Supplies, Optics, and Load Balancers

RMA Management (Network Gear/Load Balancers) Monitor RMA process and execute RMA receipts, returns & financial asset true-up

Replenish emergency spare inventory

Compliance Support-Ensure that regulatory/compliance related activities are performed ensuring internal controls are in compliance with Company's internal control framework(s) and guidelines including:

- i provide narrative reviews & recommendations for updates
- support walkthrough activities
- i capture of screenshots for testing samples

Reconciliation of assets - Reconciliation of asset data from SAP to other tools. (e.g. reconciliation between SAP ECC and PACE is performed to verify that assets are properly accounted for and errors are followed up upon

# 3. Reporting

Emergency Spare Reports - Daily/Adhoc

Extract Trace Main Asset - Daily/Adhoc

Sox Recon Report - Monthly

Stock Idle Assets by Region - Monthly/Quarterly

Physical Server Inventory - Monthly/Quarterly

Missing Hardware Report (Write-Off Report and Reactivation Report) - Weekly/Monthly

Daily TMA Extract - Daily/Adhoc

**Physical Server Inventory** 

**Quality Check Tickets** 

# 4. Retirement Services

Owned HW Disposal/Trade-In

Disposal/trade-in of datacenter HW assets no longer deployed in the PP environment per PP disposal policy

Report on datacenter HW asset credits from disposal/trade-in

Existing Lease Returns / Extensions / Buy-outs

Execute asset returns, lease extensions, and/or lease buyouts based on PP lease end decisions

Report of expiring leases in subsequent year

Asset Decommission

Update asset allocation of decommissioned devices within Pace

Reporting

Asset Lifecycle Management Disposal/Trade-In Dashboard - Monthly/Quarterly

# Reporting

Ticket Creation Trend Dashboard

Resolved Ticket Dashboard

Open ticket Dashboard

Ticket Creation Trend Dashboard

DCTS Dependency Dashboard

DCTS Executive Dashboard

DCTS Ticket Update Monitoring Dashboard

### **Smart Hands Services**

- Shipping Outgoing shipments from data center facilities are completed, recorded, and tracked
- Receiving Incoming shipments are received, recorded, and tracked Rack Installation or Decommission Rack installation; to include power cabling. Rack decommission to include removal of unused cabling.
- HW Installation or Decommission HW installation in an existing rack with capacity, HW Decommission from existing rack \*\*(HW

Exhibit A - Page 2

defined as: server, storage device, storage attachment, switches, router, LTMs, firewalls, and all components utilized in the install of the HW)

- 5. Move assets- Execution of plan to move assets within a data center upon request and authorization
- 6. Troubleshoot- Provide continual data center technical support services
- 7. On-Call Support- Availability of on-call support provided 24x7x365
- 8. Escorts- Visitors to datacenters should have appropriate authorization and be escorted as required
- Data Eraser- Remove media of sensitive data prior to return/disposal (Global InfoSec standard "U.S. Department of Defense 5220.22M 3-pass)

### Executing new build-outs, caging and cabling

#### Prerequisite Activities:

Customer to define and provide scope, schedule, cost, and space and power requirements (to include Green Power) in alignment with current eBay build requirements and standards guide.

Space/Power Procurement- Provide co-location facilities assessment and contracting per defined customer requirements
Design- Provide design of new build out per client requirements in alignment with current eBay requirements and standards guide)
Space Build-Out- Build out within existing datacenter with available capacity per design to include structured cabling, containment, and other necessary items based on customer requirements and in accordance with eBay's current build standards guide

Decommissioning- Removal of any remaining HW, racks, cabling, etc. to ensure space is returned to provider specifications upon exiting

#### **Data Center Space and Power**

- 1. Power- Primary and Backup Power Sources to be provided from colocation provider
- 2. Space- Physical Space required for existing builds and available space to extend for new build-outs
- 3. Physical Security-Physical Security and Access to PP Assets is controlled and restricted to only authorized personnel
- 4. Facilities Management- Facilities physical security and environmental are monitored

Exhibit A - Page 3

#### **EXHIBIT B**

#### **RULES AND REGULATIONS**

# **Definitions**

- "Manager" means Provider's agent or contractor designated to manage the Building.
- "Personnel" means Customer Personnel in addition to any of Provider's employees, agents, contractors and invitees.
- "QA" means Manager's quality assurance department.
- "Provider" means eBay Inc., a Delaware corporation, and its successors and assigns.
- "Customer" will mean any person or entity (and its successors and assigns) that has entered into an occupancy or use agreement with Provider relating to the Building.
- "Customer Personnel" means any Customer, any of such Customer's subtenants and licensees and such Customer's, subtenants' and licensees' employees, agents, contractors and invitees.

#### **Details**

- 1. **MOP Usage** All work by Personnel on or around any Critical Building Equipment is <u>prohibited</u> without a Method of Procedure ("**MOP**") that has been approved by Manager and QA for use on the specific procedure being conducted. Personnel must also abide by approved MOPs in non-critical operational areas that directly support a Building critical application (e.g., power, cooling, security and other Building systems), or when determined by Manager to be a prudent safety or operational measure.
  - 1.1. "Critical Building Equipment" includes the following:
    - 1.1.1. All electrical equipment from site utility entrance to individual computer room equipment circuits and power distribution units, and all distribution panels and circuits in between. This includes (but is not limited to) all protective power systems including generators, battery plants, UPS systems, power distribution units, static switches etc. Redundant components are also considered elements of the Critical Building Equipment.
    - 1.1.2. All mechanical equipment that provides cooling to the heat loads within the Building. This includes (but is not limited to) all airhandling units, heat exchange equipment, pumps, piping, etc. Redundant mechanical components are also considered elements of the Critical Building Equipment.
    - 1.1.3. Protective equipment, which includes (but is not limited to) all fire and smoke detection and suppression systems, leak detection systems, security systems and any monitoring equipment.
    - 1.1.4. Control equipment, which includes (but is not limited to) all PLC, Building/Building Management Systems (BMS/FMS/EPMS) or other systems that are in any way connected to Critical Building Equipment elements for control and/or monitoring purposes.
  - 1.2. Every MOP will be directly overseen by a MOP Supervisor, who is in charge of all work activity. The MOP Supervisor will be appointed by Manager.
  - 1.3. Provider will make reasonable efforts to integrate into Customer's change management process for MOP approval so long as by doing so, it does not impact Provider's SLA obligations and/or SLA risk. For example, on a monthly basis, Provider will provide Customer a copy of the MOPs to be performed for the upcoming month. Should changes need to be made to the MOP schedule within the given month, Customer will make reasonable efforts to approve changes within 5 business days. Provider acknowledges that non-emergency changes to the MOP schedule for "high risk" MOP's (i.e. de-energized maintenance on the STS PDU's) may take longer than 5 business days for Customer approval.
  - 1.4. All Personnel performing the MOP must review the approved MOP prior to commencing work.
  - 1.5. Personnel must approach with extreme caution any steps in the approved MOP that could have potential impact on the Critical Building Equipment. All settings need to be double checked and appropriate notifications made when applicable.
  - 1.6. The MOP Supervisor must physically witness all portions of the critical work, unless otherwise specified in the MOP. If the MOP Supervisor must leave the immediate vicinity of the activity, all work must stop until their return.
  - 1.7. The MOP Supervisor must directly witness all changes of state, connections, tests, identifications, measurements and adjustments. Personnel must independently document all measurements and identifications.
  - 1.8. The MOP Supervisor must respond to any alarms/failures occurring within the Building during the execution of the approved MOP. If it is determined that the MOP activities have caused or contributed to the alarm/fault condition, all work will stop (at the next safe or logical juncture) until the cause of the alarm/fault is investigated, verified and corrected.
  - 1.9. The MOP Supervisor will verify that all related equipment is operating normally at the conclusion of the MOP activities. The MOP will include backout steps to address any possible service impacting issues that may arise during the procedure.
  - 1.10. In case of an emergency, the Manager will have authority to waive the formal MOP QA process.
    - 1.10.1. Except in the most extreme circumstances, a MOP will still be necessary to ensure that all work required for restoration of normal service is executed without adversely affecting facility operations.
    - 1.10.2. All instances of emergency procedure implementation must be documented in an Incident Report, which will contain the details of the procedure that was conducted.
- Safety All Personnel performing work in the critical facility must read and abide by Manager's Safety Policy and Procedures.
- Prohibited Work Work on or around Critical Building Equipment that Personnel are prohibited from performing includes (but is not limited to) the removal or opening of <u>any</u> protective panels or doors from Critical Building Equipment that could potentially lead to the exposure of mechanical or electrical components, unless specifically identified in an MOP approved by Manager and QA. Unauthorized tampering with any equipment in the Building will result in automatic ejection of the applicable Personnel from the Building. Customer will limit the number of Customer Personnel authorized to enter the back-of-house areas (i.e. UPS rooms, chiller plant, equipment yard, etc.). Customer Personnel authorized to enter back-of-house areas will be qualified by Customer to do so consistent with industry standards. Customer Personnel will not perform any work that involves touching any equipment, facilities, wiring or conduit of another Customer or occupant of the Building unless and until Customer has delivered to Provider written consent from such other Customer or occupant, which consent will state with specificity the date(s) of such permitted work and the nature of such permitted work. Provider and Manager will have no obligation with regard to any such work.
- 4. **Work Area Containment** All equipment in the vicinity of the work area (i.e., the work area involving work in or around any Critical Building Equipment) will be physically protected against accidental damage and/or contact.
- 5. Cable Connections Personnel will take caution when connecting or removing cables.

- 5.1. No cable will be terminated (connected) until the possibility of a short circuit or fault current is ruled out using a Digital Volt Meter (DVM).
- 5.2. No cable will be disconnected (removed) until verification by clamp-on ammeter that it is not carrying any current. In the case of parallel runs, ensure that remaining circuit is adequately sized to carry the increased load.
- 6. **Labeling** All cables, fuses, breakers, and other related items being installed by Personnel must be correctly identified and labeled at the time of installation
- 7. **Emergency Power Off (EPO) (if applicable)** EPO switches are designed to cut power to the critical load, and their activation is an extremely serious event. Personnel must be aware of the placement and function of all EPO switches in the vicinity of such Personnel's activities and that such Personnel do not confuse them with other devices such as fan actuators, fire alarm stations or door openers. **Emergency Power Off** switches are for emergency use and are to be used ONLY in the event of Personnel injury (e.g. electrocution) or catastrophic fire.
- 8. **Airborne Contaminants** Any activity in the Building that produces or has the potential of producing smoke, dust or other airborne contamination must be specifically identified in the MOP as having this risk. When Personnel are performing any such activity, Personnel must take adequate precautions for ventilation and disabling of the fire detection and suppression systems as appropriate.
- 9. **Debris Containment** Any activity conducted by Personnel in the Building that produces or has the potential to produce debris such as (but not limited to) dust, shavings, residue or other loose debris must utilize an appropriate containment system to prevent release into the environment. When vacuum systems are used, a HEPA filter must be utilized.
- 10. **Liquid Discharges** Any activity conducted by Personnel in the Building that produces or has the potential to produce a liquid discharge must be specifically identified in the MOP as having this risk. When this work is being performed, Personnel must take adequate precautions for isolation, containment and removal using appropriate methods.
- 11. **Penetration Sealing** If Personnel are permitted to make any fire wall/barrier penetrations, Personnel must permanently fire stop all such fire wall/barrier penetrations.
- 12. **Cleanup** All activities by Personnel in the Building will be cleared of trash and large debris as the work progresses. Once completed, the work area will be left as clean or cleaner than the condition in which it was found. No cardboard is allowed in any Customer suites once CRAHs are operational.

### 13. Site/Customer Specific Items:

# 13.1. Building Security

- 13.1.1. Access Badges Access badges are provided to approved personnel only and are reserved for full time employees and approved vendors by Provider Management. Temporary access badges may be provided under the supervision of Manager's approved personnel. All Personnel seeking entrance into the Building must also present a government issued identification (with picture) at the time such Personnel presents the access badge for entry. Personnel will not permit any person or individual to use an access badge other than the specific individual to whom such access badge was issued.
- 13.1.2. **Tailgating** Except as authorized by Management of Manager or Provider, Personnel must not permit tailgating. Personnel will not leave doors in or about the Building ajar. Tailgating is only authorized by either Manager or Provider Management under full time escort ONLY.
- 13.1.1. **Emergency Evacuation:** In the event the emergency horns and strobes activate, CUSTOMER PERSONNEL MUST EVACUATE the Building immediately. If you are on the Building, please find the closest emergency exit door and evacuate the Building. All persons will evacuate to the FRONT of the Building. Please do not leave the Building until you have been accounted for. In the event of a weather emergency, DO NOT leave the Building. Listen to the intercom instructions for directions to an interior location of the Building.

#### 13.2. Critical Area Access

- 13.2.1. **Sign-in** Sign in and/or obtaining an access badge is to occur at the security console upon being granted access to the Building. If work on or around Critical Building Equipment or outside of the Customer's Space is to be performed, an escort will be assigned to for the duration of the applicable Personnel visit to the Building. Anyone performing work in the Building must read the work rules in order to be granted an access badge.
- 13.2.2. **Notification** Manager will be the contact for any required access approved by Provider Management.

### 13.3. Raised Floor Tiles

- 13.3.1. Removal and Installation Customer and Provider acknowledge that management of the data center space is a collaborative endeavor. In effort to achieve consistent temperatures in the cold aisles and to avoid hot spots, perforated floor tiles will be relocated as required by Provider (after reasonable consultation with Customer). In addition, Customer will install blanking panels, end of row doors and/or full height containment as needed. Whenever practical, Customer will install higher density cabinets away from the end of aisles.
- 13.3.2. **Cutouts** Cutouts are to only be performed by Manager or vendor approved by Manager. If a cutout is necessary for equipment installation, Customer will coordinate with Manager or Provider Management. If possible, and as instructed by the Manager, any drilling or cutting of raised floor panels shall be performed outside of the Building to mitigate the risk of introducing dust and debris into the critical environment. Any/all fire watch protocols must be in place before any panel alterations are performed.
- 13.3.2.1. **Creating** In order to maintain efficient operations a cutout must be properly sealed upon completion of component installation. A recommended product list will be provided by Manager.
- 13.3.2.2. **Removing** Upon removal of the cutout, Manager or Provider Management must be informed in order to install a new tile. This is necessary to maintain efficient operations. The Personnel requesting the removal or cut out may be required to supply a new floor tile in the event that spare tiles are not in inventory.
- 13.3.3. **Perforated Tile Placement** Perforated tile placement will be under the direction of Manager.
- 13.3.4. **Maximum Allowable Open Tiles** In order to ensure safety and efficient operations, 6 tiles is the maximum allowable amount to be open at any one time when the raised floor cavity is used as all or a part of the air supply for the Space. If in the event that work must be performed with more than 6 tiles removed permission must be given by the Manager or Provider Management.
- 13.4. **Shipments and Deliveries** If in the event an emergency delivery must occur the vendor and/or delivery company are to communicate and coordinate with Manager for security to receive. Customer is responsible for having palettes, boxes and other shipping containers removed from the Building and grounds promptly after deliveries are uncrated. Customer shall be entitled to dispose of pallettes, boxes, shipping containers and other such debris in recycling areas designated by Provider and/or in a shared dumpster for the Building to be provided and maintained by Provider. Debris shall be broken down to the fullest extent reasonably possible prior to disposal.
- 13.5. **Installation, Removal and Relocation of Equipment** Prior to installing or relocating any equipment or circuit breakers in the Customer's Space, Customer Personnel will notify Manager of the specifications of all equipment and/or circuit breakers proposed to be installed or relocated and the location of such equipment and circuit breakers and will provide Manager with an updated plan for Customer's equipment within the Customer's Space. All installation and relocation of equipment and circuit breakers in Customer's Space will be performed in cooperation with Manager and Provider so that Manager and Provider can confirm that necessary

adjustments to the raised floor tiles and/or systems serving the Customer's Space are made so as to avoid adverse effects on Critical Building Equipment. Customer Personnel will notify Manager if powering up or down equipment that would effect (in the aggregate) a decrease or increase in Customer's demand for critical power by 50kW or more.

### 13.6. Housekeeping

- 13.6.1. **Smoking** Smoking is allowed only in those outside areas designated by Provider. Smoking is strictly prohibited indoors and near outside ventilation ducts. Use of smokeless tobacco, e cigarettes and/or other vapor type devices is also prohibited in and about the Building.
- 13.6.2. **Flammable Material** Personnel must not bring flammable materials into the Building without Manager's approval. If Manager approves such flammable materials, the Personnel requesting such approval must store such flammable materials in storage containers and areas designated by Manager.
- 13.6.3. **Hazardous Material** Personnel must not bring hazardous substances or materials into the Building unless approved by Provider and unless accompanied with the necessary MSDS sheets. This is to ensure the safety of all essential and non-essential personnel at the facility.
- 13.6.4. **Weapons** Weapons are prohibited upon entry to the property on which the Building is located, no exceptions.
- 13.6.5. **Permits** Permits are required to be presented to Manager for Personnel jobs when mandated by local municipalities.
- 13.6.6. Welding/Cutting/Sawing/Anchoring Welding, cutting, sawing and anchoring are to occur under the supervision of Manager unless Customer is granted permission by Provider (such permission not to be unreasonably withheld, conditioned or delayed) to proceed independently under mutually agreed upon and established protocols for such work. The necessary paperwork and fire watch protocols must be in place prior to beginning work.
- 13.6.7. **Coring** If in the event coring must occur, and Provider approves such coring, an x-ray and supporting documents must be provided prior to coring.
- 13.6.8. Fire System Shutdown Fire system shutdown will be performed by only Manager or Provider.
- 13.6.9. **Confined Space** Confined space entry is to be performed only after necessary paperwork is completed and an environmental study has occurred for safe entry.
- 13.6.10. **Excavation** Excavation is not to occur unless an x-ray has occurred and written permission is given by Provider Management. Manager does not have the approval to allow excavation without written permission from Provider Management.
- 13.6.11. **Alcohol and drugs** are strictly prohibited. Visitors may not be under the influence of or in possession of alcohol, illegal drugs or other intoxicants while on Provider property.
- 13.6.12. **Additional Caveats:** Touching, inspection, documenting or any form of tampering with equipment not specifically covered by the Customer's contract is strictly prohibited. Persons seen engaging in such activity may be subject to expulsion from the Building and reporting to law enforcement officials.
- 13.6.13. **Reporting:** Customer agrees to report any violation of these Rules and Regulations, or any other suspicious or improper activity to Provider personnel.

Exhibit B - Page 3

#### **Application**

The Safety Policy & Procedures will be used in conjunction with **all** work that takes place under the direct or indirect supervision of Manager. The responsible Manager employee will review these procedures with all contractors prior to the performance of any work in by those individuals in a workplace under their control.

All occupants must comply with these Safety Policy & Procedures and, for work occurring inside of any occupant's space, such occupant is responsible for implementing, and causing its licensees, employees and contractors to comply with, any additional safety rules and procedures as may be appropriate for the task.

### **Details**

- 1. Safety Policy Provider and Manager have a zero tolerance policy for safety violations.
- 2. **Criticality** The impact of any service interruption in the critical facility environment is extremely severe and must be avoided at all costs. All work procedures have the primary objective of safe and uninterrupted operations. Anyone jeopardizing this goal by exhibiting carelessness or an unsafe attitude will be immediately escorted from the facility and barred from future access.
- 3. Emergency Lighting Ensure that emergency lighting and exits are available and functional in the vicinity of the work area.
- 4. **Fire Extinguishers** Note location and availability of portable fire extinguishers, First Aid stations, and other fire and life safety equipment such as insulated rescue hooks.
- 5. **Barricades** A barricade must be installed whenever an unsafe condition is present in order to provide a safety perimeter to prevent unauthorized personnel from coming into contact with exposed hazards.
- 6. **Insulating Materials** All live exposed conductive surfaces in the immediate vicinity will be insulated to protect against accidental electrical contact. Ensure that insulation blankets will not restrict equipment ventilation.
- 7. Insulated Tools All hand tools must have adequate electrical insulation for the activity being conducted.
- 8. **Fitness** All Parties must be alert and capable of safely carrying out their assigned tasks. Individuals will not be allowed to perform work if there is any indication that they are overtired or under the influence of any alcohol, drugs or medications.
- 9. **Attire** All persons performing work in the back of the house areas such as the mechanical and electrical rooms and equipment yards must fully comply with established site safety procedures and MOP requirements (which follow applicable OSHA, NFPA, and vendor safety requirements), including the removal of any objects or clothing required by Manager during the execution of the approved MOP.
- 10. Personal Protective Equipment Appropriate and fully functional PPE must be worn as necessary by all persons performing the procedure.
- 11. **Training** The following training requirements must be satisfied:
  - 11.1. **First Response** There must be at least two CPR and First Aid qualified people present during all work that involves live electrical connections and/or rotating or moving mechanical apparatus.
  - 11.2. **OSHA** All persons performing work must be current with all required OSHA training and comply with any applicable OSHA requirements.
- 12. **Lockout-Tagout** Lockout-tagout procedures must be used whenever a circuit breaker, disconnect or valve is turned off and the work being done requires a person to place any part of their body in an area where a hazard would exist if the associated device were to be activated. The lockout must provide total energy isolation, without possibility of override.
- 13. Site/Customer Specific Items:
  - 13.1. **Accidents, Illness, Near Misses** All accidents or near misses will be reported to the Building Manager within the proper time of the shift that it happened for proper reporting and documentation and remediation if the issue.
  - 13.2. Medical Emergencies Any medical emergency is to reported to site staff or security immediately or call 911 if needed.
  - 13.3. Fire Safety There is no smoking in or near the facility interiors or near any exterior entrance only at the loading dock exit on ramp.
  - 13.4. Building Evacuation Procedures The evacuation procedures are covered in the EAP plan procedure document available in the control room or main security office.
  - 13.5. **Chemical Use, Storage and Spill Response** Any chemical spill is to be reported to facility staff immediately and contained using appropriate measures.

#### **EXHIBIT C**

## **SERVICE LEVEL AGREEMENT**

### [To be revised as appropriate to fit the specific service level requirements agreed upon for each location.]

This Service Level Agreement (this "<u>SLA</u>") provides certain abatement to Customer in the event of certain Failures (as defined below). This SLA applies only to the Space set forth in this CSA. Notwithstanding anything to the contrary, the abatement described in this SLA shall be Customer's sole and exclusive remedy in connection with the Failures (as defined below), and Customer shall not have any other Claims, rights or remedies, and Provider shall not have any other liabilities, in connection with any Failures, Customer hereby waiving all other Claims, rights and remedies.

### I. Power Availability.

A. <u>Power Failure</u>" shall be deemed to have occurred on a particular day if any particular Redundant UPS Power Circuit (as defined below) licensed by Customer from Provider is unavailable to Customer (on both the A Circuit and B Circuit) for more than ten (10) consecutive minutes at the demarcation point (i.e., the receptacle to which the applicable licensed electrical service is delivered) in the applicable Equipment, provided that such unavailability simultaneously occurs and continues with respect to both the primary A power circuit (the "A Circuit") and the redundant B power circuit (the "B Circuit") at all times in question. A "Redundant UPS Power Circuit" is defined as an A Circuit together with its corresponding B Circuit (not including any panel redundant circuits). Customer shall, at all times, dual cord all of its Equipment and take advantage of the Redundant UPS Power Circuit and if it does not, Customer shall not be entitled to any abatement hereunder.

#### B. Abatement to Customer.

- (i) <u>Power Failure</u>. In the event any Power Failure occurs on any particular day, then Customer's quarterly Fees for that particular day shall be abated by the Daily Circuit Abatement Amount (as defined below). The "<u>Daily Circuit Abatement Amount</u>" is defined as the Quarterly Fees pro rated for that particular day.
- (ii) Total Abatement. Notwithstanding anything to the contrary set forth in this SLA, (y) in no event shall the total abatement in any one (1) calendar month under this Article I exceed the Fees for that calendar month (notwithstanding the amount or length of any Power Failures in that month or otherwise); in the event there would otherwise be abatement under this Article I in excess of such Fees for that month, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect; and (z) in no event shall the total abatement under this Article I on any one (1) day exceed the pro rata quarterly Fees payable for that day (notwithstanding the amount or length of any Power Failures on that day or otherwise); in the event there would otherwise be abatement under this Article I in excess of such quarterly Fees for that day, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect.

### II. <u>Environmental Stability</u>.

# A. ES Failure.

- (i) <u>Humidity-Failure</u>. A "<u>Humidity-Failure</u>" shall be deemed to have occurred on a particular day if (A) conditioned air provided by Provider on that day to a cold aisle reasonably designated by Provider in the Space (a "<u>Cold Aisle</u>") exceeds 80% relative humidity for more than twenty-four (24) consecutive hours, or is below 20% relative humidity for more than twenty-four (24) consecutive hours, all as measured by Provider's humidity sensors, and (B) the Equipment in the Space (which is then being used by Customer in the ordinary course of business) is materially and adversely affected thereby.
- (ii) <u>Temperature-Failure</u>. A "<u>Temperature-Failure</u>" shall be deemed to have occurred on a particular day if (A) sustained temperatures in a Cold Aisle exceed 82.0 degrees Fahrenheit, as measured by Provider's temperature sensors, and such temperatures in such Cold Aisle in excess of 82.0 degrees Fahrenheit continue for a period of more than twenty-four (24) consecutive hours, or sustained temperatures in a Cold Aisle are less than 55 degrees Fahrenheit, as measured by Provider's temperature sensors, and such temperatures in such Cold Aisle less than 55 degrees Fahrenheit continue for a period of more than twenty-four (24) consecutive hours, and (B) the Equipment in the Space (which is then being used by Customer in the ordinary course of business) is materially and adversely affected thereby.

A Humidity-Failure and Temperature Failure are each referred to herein as an "ES Failure."

# B. <u>Abatement to Customer</u>.

- (i) <u>Humidity-Failure</u>. In the event any Humidity-Failure occurs on any particular day, then Customer's quarterly Fees shall be partially abated for that particular day by the Daily ES Abatement Amount (as defined below). The "<u>Daily ES Abatement Amount</u>" is defined as the quarterly Fees for that particular day, multiplied by a fraction, the numerator of which is the square footage of the portion of the Space that is the subject of the ES Failure (as such portion is reasonably determined by Provider), and the denominator of which is the total square footage of the Space.
- (ii) <u>Temperature-Failure</u>. In the event any Temperature-Failure occurs on any particular day, then Customer's pro rata quarterly Fees for the affected Individual Space in question shall be partially abated for that particular day by the Daily ES Abatement Amount.
- (iii) Total Abatement. Notwithstanding anything to the contrary set forth in this SLA, (A) in no event shall the total abatement under this Article II in any one (1) calendar month exceed the Fees for that calendar month (notwithstanding the amount or length of any ES Failures in that month or otherwise); in the event there would otherwise be abatement under this Article II in excess of such Fees for that month, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect; and (B) in no event shall the total abatement under this Article II on any one (1) day exceed the pro rata Fees payable for that day (notwithstanding the amount or length of any ES Failures on that day or otherwise); in the event there would otherwise be abatement under this Article II in excess of such pro rata Fees for that day, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect.

### III. SLA Applicability.

- A. For purposes hereof, a Power Failure and ES Failure shall each be referred to herein as a "Failure." Notwithstanding anything to the contrary in this SLA, Customer shall not be entitled to any abatement whatsoever (and shall have no rights or remedies under this SLA or otherwise), and no Failure of any kind shall be deemed to have occurred, if Customer is in breach or default under the CSA at the time of the Failure in question. Additionally, Customer shall not be entitled to any abatement to the extent a Failure is due to: (i) any equipment (including, without limitation, any Equipment) or applications of (or otherwise used by or in possession of) Customer or any of the other Customer Parties; (ii) any act or omission of Customer or any of the other Customer Parties, (iii) scheduled maintenance or unscheduled emergency maintenance either by Provider or its third-party providers; or (iv) a Force Majeure Event.
- B. Notwithstanding anything to the contrary in this SLA, (i) in no event shall Customer be entitled to abatement under more than one of Article I or II above in connection with the same event that caused the applicable Failures; in the event the same event causes more than one (1) Failure, then Customer shall receive abatement only with respect to one (1) single Failure (and not with respect to multiple Failures), which abatement shall be calculated based on the Failure that would yield the highest abatement to Customer (and if more than one (1) of such Failures exists, Provider shall stipulate which Failure shall apply for purposes of calculating the abatement), and (ii) in the event a particular Failure continues, only one (1) Failure shall be deemed to have occurred (and shall be deemed to have occurred on the day that the Failure first comes into effect), regardless of the length of such Failure.
- C. Notwithstanding anything to the contrary in this SLA, in no event shall the total aggregate abatement for a Power Failure or ES Failure under this SLA exceed an amount equal to 2 quarters' worth of quarterly Fees for the Space under the CSA (calculated at the average rate payable during the initial Term for such Space). In the event there would otherwise be abatement under this SLA in excess of the aggregate amounts set forth herein, then the excess shall not carry over to any subsequent period and shall be deemed extinguished and of no force or effect.

Exhibit C - Page 2

### PAYPAL HOLDINGS, INC.

#### INDEMNITY AGREEMENT

This Indemnity Agreement (this "Agreement"), dated as of [ ], 201[ ], is made by and between PayPal Holdings, Inc., a Delaware corporation (the "Company"), and , a director and/or officer of the Company (the "Indemnitee").

#### RECITALS

- A. The Company is aware that competent and experienced persons are increasingly reluctant to serve as directors or officers of corporations unless they are protected by comprehensive liability insurance and/or indemnification, due to increased exposure to litigation costs and risks resulting from their service to such corporations, and due to the fact that the exposure frequently bears no reasonable relationship to the compensation of such directors and officers;
- B. Based upon their experience as business managers, the Board of Directors of the Company (the "Board") has concluded that, to retain and attract talented and experienced individuals to serve as officers and directors of the Company, and to encourage such individuals to take the business risks necessary for the success of the Company, it is necessary for the Company contractually to indemnify officers and directors and to assume for itself maximum liability for expenses and damages in connection with claims against such officers and directors in connection with their service to the Company;
- C. Section 145 of the General Corporation Law of Delaware, under which the Company is organized ("Section 145"), empowers the Company to indemnify by agreement its officers, directors, employees and agents, and persons who serve, at the request of the Company, as directors, officers, employees or agents of other corporations or enterprises, and expressly provides that the indemnification provided by Section 145 is not exclusive; and
- D. The Company desires and has requested the Indemnitee to serve or continue to serve as a director or officer of the Company free from undue concern for claims for damages arising out of or related to such services to the Company.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

# 1. DEFINITIONS.

1.1. Agent. For the purposes of this Agreement, "agent" of the Company means any person who is or was a director, officer, employee or other agent of the Company or a subsidiary of the Company; or is or was serving at the request of, for the convenience of, or to represent the interest of the Company or a subsidiary of the Company as a director, officer, employee, fiduciary or other agent of another foreign or domestic corporation, limited liability company, partnership, joint venture, trust or other enterprise or an affiliate of the Company, or was a director or officer of a foreign or domestic corporation which was a predecessor corporation or controlling corporation of the Company, including, without limitation, eBay Inc.,

a Delaware corporation, or was a director or officer of another enterprise or affiliate of the Company at the request of, for the convenience of, or to represent the interests of such predecessor or controlling corporation. The term "enterprise" includes any employee benefit plan of the Company, its subsidiaries, affiliates and predecessor corporations.

- 1.2. Exchange Act. For purposes of this Agreement, "Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.
- 1.3. Expenses. For purposes of this Agreement, "expenses" means all direct and indirect costs of any type or nature whatsoever (including, without limitation, all attorneys' fees and related disbursements and other out-of-pocket costs) actually and reasonably incurred by the Indemnitee in connection with the investigation, defense, participating or being a witness in or appeal of a proceeding or establishing or enforcing a right to indemnification or advancement of expenses under this Agreement, Section 145 or otherwise and any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement; provided, however, that expenses shall not include any judgments, fines, ERISA excise taxes or penalties or amounts paid in settlement of a proceeding.
- 1.4. <u>Proceeding</u>. For the purposes of this Agreement, "<u>proceeding</u>" means any threatened, pending or completed action, suit, proceeding or alternative dispute resolution mechanism, whether civil, criminal, administrative, investigative or any other type whatsoever.
- 1.5. <u>Subsidiary</u>. For purposes of this Agreement, "<u>subsidiary</u>" means any corporation of which more than 50% of the outstanding voting securities is owned directly or indirectly by the Company, by the Company and one or more of its subsidiaries or by one or more of the Company's subsidiaries.
- 2. <u>AGREEMENT TO SERVE</u>. The Indemnitee agrees to serve and/or continue to serve as an agent of the Company, at the will of the Company (or under separate agreement, if such agreement exists), in the capacity the Indemnitee currently serves as an agent of the Company, faithfully and to the best of his or her ability, so long as the Indemnitee is duly appointed or elected and qualified in accordance with the applicable provisions of the charter documents of the Company or any subsidiary of the Company; <u>provided</u>, <u>however</u>, that the Indemnitee may at any time and for any reason resign from such position (subject to any contractual obligation that the Indemnitee may have assumed apart from this Agreement), and the Company or any subsidiary shall have no obligation under this Agreement to continue the Indemnitee in any such position.
- 3. <u>DIRECTORS' AND OFFICERS' INSURANCE</u>. The Company shall, to the extent that the Board determines it to be economically reasonable, maintain a policy of directors' and officers' liability insurance ("<u>D&O Insurance</u>"), on such terms and conditions as may be approved by the Board.
- 4. <u>MANDATORY INDEMNIFICATION</u>. Subject to Section 9 below, the Company shall indemnify the Indemnitee to the fullest extent permitted by applicable law:

- 4.1. Third Party Actions. If the Indemnitee was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Company) by reason of the fact that the Indemnitee is or was an agent of the Company, or by reason of anything done or not done by the Indemnitee in any such capacity, against any and all expenses and liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred by the Indemnitee or on the Indemnitee's behalf in connection with such proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Company and, with respect to any criminal proceeding, had no reasonable cause to believe that the Indemnitee's conduct was unlawful; and
- 4.2. <u>Derivative Actions</u>. If the Indemnitee was or is a party or is threatened to be made a party to any proceeding by or in the right of the Company to procure a judgment in its favor by reason of the fact that the Indemnitee is or was an agent of the Company, or by reason of anything done or not done by the Indemnitee in any such capacity, against any amounts paid in settlement of any such proceeding and all expenses actually and reasonably incurred by the Indemnitee in connection with such proceeding if the Indemnitee acted in good faith and in a manner the Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Company; except that no indemnification under this subsection shall be made in respect of any claim, issue or matter as to which such person shall have been finally adjudged to be liable to the Company by a court of competent jurisdiction due to willful misconduct of a culpable nature in the performance of his or her duty to the Company, unless and only to the extent that the Court of Chancery of Delaware or the court in which such proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such amounts which the Court of Chancery of Delaware or such other court shall deem proper; and
- 4.3. Exception for Amounts Covered by Insurance. Notwithstanding the foregoing, the Company shall not be obligated to indemnify the Indemnitee for expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) to the extent such amounts have been paid directly to the Indemnitee by D&O Insurance or other indemnity provision.

## 5. PARTIAL INDEMNIFICATION AND CONTRIBUTION.

- 5.1. <u>Partial Indemnification</u>. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of any expenses or liabilities of any type whatsoever (including, but not limited to, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) incurred by the Indemnitee but is not entitled, however, to indemnification for all of the total amount thereof, then the Company shall nevertheless indemnify the Indemnitee for such total amount except as to the portion thereof to which the Indemnitee is not entitled to indemnification.
- 5.2. <u>Contribution</u>. To the fullest extent permissible under applicable law, if the Indemnitee is not entitled to the indemnification provided in Section 4 for any reason whatsoever, then in respect of any threatened, pending or completed proceeding in which the Company is jointly liable with the Indemnitee (or would be if joined in such proceeding), the

Company shall contribute to the amount of expenses, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement actually and reasonably incurred and paid or payable by the Indemnitee in such proportion as is deemed fair and reasonable in light of all the circumstances of the proceeding to reflect (i) the relative benefits received by the Company on the one hand and the Indemnitee on the other hand from the event(s) and/or transaction from which such proceeding arose and (ii) the relative fault of the Company (and its directors, officers, employees and other agents) on the one hand and of the Indemnitee on the other hand in connection with such event(s) and/or transaction(s). The relative fault of the Company on the one hand and of the Indemnitee on the other hand shall be determined by reference to, among other things, the parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines, ERISA excise taxes or penalties or settlement amounts. The Company agrees that it would not be just and equitable if contribution pursuant to this Section 5 were determined by pro rata allocation or any other method of allocation which does not take account of the foregoing equitable considerations.

## 6. MANDATORY ADVANCEMENT OF EXPENSES.

- 6.1. Advancement. Subject to Section 9 below, the Company shall advance all expenses incurred by the Indemnitee in connection with any proceeding to which the Indemnitee is a party or is threatened to be made a party by reason of the fact that the Indemnitee is or was an agent of the Company or by reason of anything done or not done by him or her in any such capacity. Advances shall be unsecured and interest free. The Indemnitee hereby undertakes to promptly repay such amounts advanced only if, and to the extent that, it shall ultimately be determined that the Indemnitee is not entitled to be indemnified by the Company under the provisions of this Agreement, the Certificate of Incorporation or Bylaws of the Company, the General Corporation Law of Delaware or otherwise. The advances to be made hereunder shall be paid by the Company to the Indemnitee within thirty (30) days following delivery of a written request therefor by the Indemnitee to the Company.
- 6.2. Exception. Notwithstanding the foregoing provisions of this Section 6, the Company shall not be obligated to advance any expenses to the Indemnitee arising from a proceeding initiated directly by the Company against the Indemnitee if an absolute majority of the members of the Board reasonably determines in good faith, within thirty (30) days of the Indemnitee's request to be advanced expenses, that the facts known to them at the time such determination is made demonstrate clearly and convincingly that the Indemnitee acted in bad faith. If such a determination is made, the Indemnitee may have such decision reviewed by another forum, in the manner set forth in Sections 8.3, 8.4 and 8.5 hereof, with all references therein to "indemnification" being deemed to refer to "advancement of expenses," and the burden of proof shall be on the Company to demonstrate clearly and convincingly that, based on the facts known at the time, the Indemnitee acted in bad faith. The Company may not avail itself of this Section 6.2 as to a given proceeding if, at any time after the occurrence of the activities or omissions that are the primary focus of the proceeding, the Company has undergone a change in control. For this purpose, a change in control shall mean a given person or group of affiliated persons or groups increasing their beneficial ownership interest in the Company by at least twenty percent (20%) without advance approval by at least a majority of the Board.

## 7. NOTICE AND OTHER INDEMNIFICATION PROCEDURES.

- 7.1. Promptly after receipt by the Indemnitee of notice of the commencement of or the threat of commencement of any proceeding, the Indemnitee shall, if the Indemnitee believes that indemnification with respect thereto may be sought from the Company under this Agreement, notify the Company of the commencement or threat of commencement thereof. Notwithstanding the foregoing, any failure of the Indemnitee to provide such notice to the Company shall not relieve the Company of any liability that it may have to Indemnitee unless, and only to the extent that, such failure actually prejudices the interests of the Company.
- 7.2. If, at the time of the receipt of a notice of the commencement of a proceeding pursuant to Section 7.1 hereof, the Company has D&O Insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such D&O Insurance policies.
- 7.3. In the event the Company shall be obligated to advance the expenses for any proceeding against the Indemnitee, the Company shall be entitled to assume the defense of such proceeding, with counsel approved by the Indemnitee (which approval shall not be unreasonably withheld), upon the delivery to the Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by the Indemnitee and the retention of such counsel by the Company, the Company will not be liable to the Indemnitee under this Agreement for any fees of counsel subsequently incurred by the Indemnitee with respect to the same proceeding, provided that: (a) the Indemnitee shall have the right to employ the Indemnitee's counsel in any such proceeding at the Indemnitee's expense; (b) the Indemnitee shall have the right to employ the Indemnitee's counsel in connection with any such proceeding, at the expense of the Company, if such counsel serves in a review, observer, advice and counseling capacity and does not otherwise materially control or participate in the defense of such proceeding; and (c) if (i) the employment of counsel by the Indemnitee has been previously authorized by the Company, (ii) the Indemnitee shall have reasonably concluded that there is an actual or potential conflict of interest between the Company and the Indemnitee in the conduct of any such defense or a conflict is likely to arise or (iii) the Company shall not, in fact, have employed counsel to assume the defense of such proceeding, then the fees and expenses of the Indemnitee's counsel shall be at the expense of the Company.

## 8. DETERMINATION OF RIGHT TO INDEMNIFICATION.

- 8.1. To the extent the Indemnitee has been successful on the merits or otherwise in defense of any proceeding referred to in Section 4.1 or 4.2 of this Agreement or in the defense of any claim, issue or matter described therein, the Company shall indemnify the Indemnitee against expenses actually and reasonably incurred by him or her in connection with such proceeding, or such claim, issue or matter, as the case may be.
- 8.2. In the event that Section 8.1 is inapplicable, or does not apply to the entire proceeding, the Company shall nonetheless indemnify the Indemnitee unless the Company shall

prove by clear and convincing evidence to a forum listed in Section 8.3 below that the Indemnitee has not met the applicable standard of conduct required to entitle the Indemnitee to such indemnification.

- 8.3. The Indemnitee shall be entitled to select the forum in which the validity of the Company's claim under Section 8.2 hereof that the Indemnitee is not entitled to indemnification will be heard from among the following, except that the Indemnitee can select a forum consisting of the stockholders of the Company only with the approval of the Company:
- (a) A quorum of the Board consisting of directors who are not parties to the proceeding for which indemnification is being sought;
  - (b) The stockholders of the Company;
- (c) Legal counsel mutually agreed upon by the Indemnitee and the Board, which counsel shall make such determination in a written opinion;
- (d) A panel of three arbitrators, one of whom is selected by the Company, another of whom is selected by the Indemnitee and the last of whom is selected by the first two arbitrators so selected; or
  - (e) The Court of Chancery of Delaware or other court having jurisdiction of subject matter and the parties.
- 8.4. As soon as practicable, and in no event later than thirty (30) days after the forum has been selected pursuant to Section 8.3 above, the Company shall, at its own expense, submit to the selected forum its claim that the Indemnitee is not entitled to indemnification, and the Company shall act in the utmost good faith to assure the Indemnitee a complete opportunity to defend against such claim. The Indemnitee shall cooperate with the person, persons or entity making such determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to the Indemnitee and reasonably necessary to such determination.
- 8.5. If the forum selected in accordance with Section 8.3 hereof is not a court, then after the final decision of such forum is rendered, the Company or the Indemnitee shall have the right to apply to the Court of Chancery of Delaware, the court in which the proceeding giving rise to the Indemnitee's claim for indemnification is or was pending or any other court of competent jurisdiction, for the purpose of appealing the decision of such forum; provided that such right is executed within sixty (60) days after the final decision of such forum is rendered. If the forum selected in accordance with Section 8.3 hereof is a court, then the rights of the Company or the Indemnitee to appeal any decision of such court shall be governed by the applicable laws and rules governing appeals of the decision of such court.
- 8.6. The knowledge and/or actions, or failure to act, of any other director, officer, employee or other agent of the Company shall not be imputed to the Indemnitee for purposes of determining the right to indemnification under this Agreement.

- 8.7. Notwithstanding any other provision in this Agreement to the contrary, the Company shall indemnify the Indemnitee against all expenses incurred by the Indemnitee in connection with any hearing or proceeding under this Section 8 involving the Indemnitee and against all expenses incurred by the Indemnitee in connection with any other proceeding between the Company and the Indemnitee involving the interpretation or enforcement of the rights of the Indemnitee under this Agreement unless a court of competent jurisdiction finds that each of the material claims and/or defenses of the Indemnitee in any such proceeding was frivolous or not made in good faith.
- 9. <u>EXCEPTIONS</u>. Any other provision herein to the contrary notwithstanding, the Company shall not be obligated pursuant to the terms of this Agreement:
- 9.1. <u>Claims Initiated by Indemnitee</u>. To indemnify or advance expenses to the Indemnitee with respect to proceedings or claims initiated or brought voluntarily by the Indemnitee and not by way of defense, <u>except</u> with respect to proceedings specifically authorized by the Board or brought to establish or enforce a right to indemnification and/or advancement of expenses arising under this Agreement, the charter documents of the Company or any subsidiary or any statute or law or otherwise, but such indemnification or advancement of expenses may be provided by the Company in specific cases if the Board finds it to be appropriate; or
- 9.2. <u>Payments Made</u>. To indemnify the Indemnitee for any claims made against the Indemnitee for which payment has actually been made to or on behalf of the Indemnitee under any D&O Insurance policy or other indemnity provision, except with respect to any excess beyond the amount paid under any such D&O Insurance policy or other indemnity provision; or
- 9.3. <u>Unauthorized Settlements</u>. To indemnify the Indemnitee hereunder for any amounts paid in settlement of a proceeding unless the Company consents in advance in writing to such settlement, which consent shall not be unreasonably withheld; or
- 9.4. <u>Securities Law Actions</u>. To indemnify the Indemnitee on account of any suit in which judgment is rendered against the Indemnitee for an accounting of profits made from the purchase or sale by the Indemnitee of securities of the Company pursuant to the provisions of Section 16(b) of the Exchange Act and amendments thereto or similar provisions of any federal, state or local statutory law; or
- 9.5. Reimbursement of Certain Compensation and Profits. To reimburse the Indemnitee for the loss or repayment of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act); or
- 9.6. <u>Reimbursement of Certain Recoupments and Clawbacks</u>. To reimburse the Indemnitee for the loss or repayment of any compensation pursuant to any compensation

recoupment or clawback policy adopted by the Board or the compensation committee of the Board, including but not limited to any such policy adopted to comply with stock exchange listing requirements implementing Section 10D of the Exchange Act; or

- 9.7. <u>Unlawful Indemnification</u>. To indemnify the Indemnitee if a final decision by a court having jurisdiction in the matter shall determine that such indemnification is not lawful. In this respect, the Company and the Indemnitee have been advised that the Securities and Exchange Commission takes the position that indemnification for liabilities arising under the federal securities laws is against public policy and is, therefore, unenforceable and that claims for indemnification should be submitted to appropriate courts for adjudication.
- 10. NON-EXCLUSIVITY. The provisions for indemnification and advancement of expenses set forth in this Agreement shall not be deemed exclusive of any other rights which the Indemnitee may have under any provision of law, the Company's Certificate of Incorporation or Bylaws, the vote of the Company's stockholders or disinterested directors, other agreements or otherwise, both as to action in the Indemnitee's official capacity and to action in another capacity while occupying his or her position as an agent of the Company, and the Indemnitee's rights hereunder shall continue after the Indemnitee has ceased acting as an agent of the Company and shall inure to the benefit of the heirs, executors and administrators of the Indemnitee. No amendment, alteration or repeal of this Agreement or any provision hereof shall limit or restrict any right of the Indemnitee under this Agreement with respect to any action taken or omitted by such Indemnitee prior to such amendment, alteration or repeal. To the extent that a change in applicable law, whether by statute or judicial decision, permits greater indemnification or advancement of expenses than would be afforded currently under the Company's Certificate of Incorporation or Bylaws and this Agreement, it is the intent of the parties hereto that the Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy.

## 11. GENERAL PROVISIONS.

- 11.1. <u>Interpretation of Agreement</u>. It is understood that the parties hereto intend this Agreement to be interpreted and enforced so as to provide indemnification and advancement of expenses to the Indemnitee to the fullest extent now or hereafter permitted by law, except as expressly limited herein.
- 11.2. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, then: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Agreement (including, without limitation, all portions of any paragraphs of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not

themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable and to give effect to Section 11.1 hereof.

- 11.3. <u>Modification and Waiver</u>. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver.
- 11.4. <u>Subrogation</u>. In the event of full payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee, who shall execute all documents required and shall do all acts that may be necessary or desirable to secure such rights and to enable the Company effectively to bring suit to enforce such rights.
- 11.5. Counterparts. This Agreement may be executed in one or more counterparts, which shall together constitute one agreement, and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party. Each party acknowledges that it and each other party is executing this Agreement by facsimile, stamp or mechanical signature, and that delivery of an executed counterpart of a signature page to this Agreement (whether executed by manual, stamp or mechanical signature) by facsimile or by email in portable document format (PDF) shall be effective as delivery of such executed counterpart of this Agreement.
- 11.6. <u>Successors and Assigns</u>. The terms of this Agreement shall bind, and shall inure to the benefit of, the successors and assigns of the parties hereto.
- 11.7. <u>Notice</u>. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon acknowledgment of receipt) by delivery in person, by overnight courier service, by facsimile or electronic transmission with receipt confirmed, or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the addresses for notice shown on the signature page of this Agreement or as subsequently modified by written notice.
- 11.8. Governing Law. This Agreement (and any claims or disputes arising out of or related hereto or to the inducement of any party to enter herein, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall be governed exclusively by and construed and interpreted according to the laws of the State of Delaware, as applied to contracts between Delaware residents entered into and to be performed entirely within Delaware, irrespective of the choice of laws principles of the State of Delaware.
- 11.9. <u>Consent to Jurisdiction</u>. The Company and the Indemnitee each hereby irrevocably consent to the jurisdiction of the courts of the State of Delaware for all purposes in connection with any action or proceeding which arises out of or relates to this Agreement.

11.10. Attorneys' Fees. In the event Indemnitee is required to bring any action to enforce rights under this Agreement	
(including, without limitation, the expenses of any Proceeding described in Section 1.4), the Indemnitee shall be entitled to all	
reasonable fees and expenses in bringing and pursuing such action, unless a court of competent jurisdiction finds each of the material	
claims of the Indemnitee in any such action was frivolous and not made in good faith.	

IN WITNESS WHEREOF, the parties hereto have entered into this Indemnity Agreement effective as of the date first written above.

PAYPAL HOLDINGS, INC.:	INDEMNITEE:
By:	By:
Title:	Title:
Address:	Address:

### PAYPAL HOLDINGS, INC.

### 2015 EQUITY INCENTIVE AWARD PLAN

# ADOPTED BY THE BOARD OF DIRECTORS ON [ ], 2015 INITIAL STOCKHOLDER APPROVAL ON [ ], 2015

#### ARTICLE 1.

### **PURPOSE**

The purpose of the PayPal Holdings, Inc. 2015 Equity Incentive Award Plan (the "Plan") is to promote the success and enhance the value of PayPal Holdings, Inc. (the "Company") by linking the personal interests of the members of the Board, Employees, and Consultants (each as defined below) to those of Company stockholders and by providing such individuals with an incentive for outstanding performance to generate superior returns to Company stockholders. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of members of the Board, Employees, and Consultants upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent.

### ARTICLE 2.

# **DEFINITIONS AND CONSTRUCTION**

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

- 2.1 "Assumed Spin-Off Award" means an award granted to certain employees, consultants and directors of the Company, eBay Inc. and their respective subsidiaries under an equity compensation plan maintained by eBay Inc. or a corporation acquired by eBay Inc., which award is assumed by the Company and converted into an Award in connection with the Spin-Off, pursuant to the terms of the Employee Matters Agreement between the Company and eBay Inc., entered into in connection with the Spin-Off, which Assumed Spin-Off Award shall be issued upon the effective time of the Spin-Off.
- 2.2 "Award" means an Option, a Restricted Stock award, a Stock Appreciation Right award, a Performance Share award, a Performance Stock Unit award, a Dividend Equivalents award, a Stock Payment award, a Deferred Stock Unit award, a Restricted Stock Unit award, a Performance Bonus Award, or a Performance-Based Award granted to a Participant pursuant to the Plan, including an Assumed Spin-Off Award.
- 2.3 "Award Agreement" means any written agreement, contract, or other instrument or document evidencing an Award, including through electronic medium.
  - 2.4 "Board" means the Board of Directors of the Company.
  - 2.5 "Change in Control" means and includes each of the following:
  - (a) A transaction or series of transactions (other than an offering of Stock to the general public through a registration statement filed with the U.S. Securities and Exchange Commission) whereby any "person" or related "group" of "persons" (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) (other than the Company, any of its subsidiaries, an employee benefit plan maintained by the Company or any of its subsidiaries or a "person" that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company's securities outstanding immediately after such acquisition; or

- (b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in Section 2.5(a) or Section 2.5(c)) whose election by the Board or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two-year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or
- (c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company's assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:
  - (i) Which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "Successor Entity")) directly or indirectly, at least a majority of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and
  - (ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however*, that no person or group shall be treated for purposes of this Section 2.5(c)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or
  - (d) The Company's stockholders approve a liquidation or dissolution of the Company.

In addition, if the Change in Control constitutes a payment event with respect to any Award which provides for the deferral of compensation and is subject to Section 409A of the Code, to the extent required, the transaction or event described in subsection (a), (b), (c) or (d) with respect to such Award must also constitute a "change in control event" as defined in Treasury Regulation § 1.409A-3(i)(5). The Committee shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change in Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change in Control and any incidental matters relating thereto.

- 2.6 "Code" means the U.S. Internal Revenue Code of 1986, as amended.
- 2.7 "Committee" means the committee of the Board described in Article 13.
- 2.8 "Consultant" means any consultant or adviser if: (a) the consultant or adviser renders bona fide services to the Company or any Subsidiary; (b) the services rendered by the consultant or adviser are not in connection with the offer or sale of securities in a capital-raising transaction and do not directly or indirectly promote or maintain a market for the Company's securities; and (c) the consultant or adviser is a natural person.
- 2.9 "Covered Employee" means an Employee who is, or could be, a "covered employee" within the meaning of Section 162(m) of the Code.
- 2.10 "Deferred Stock Unit" means a right to receive a specified number of shares of Stock during specified time periods pursuant to Section 8.5.
  - 2.11 'Director' means a member of the Board.
- 2.12 "Disability" means that the Participant qualifies to receive long-term disability payments under the Company's long-term disability insurance program, as it may be amended from time to time, or if Participant is otherwise ineligible to participate in the Company's long-term disability insurance program or resides outside the United States and no such program exists, means that the Participant is unable to perform his or her duties with the Company or its Subsidiary by reason of a medically determinable physical or mental impairment, as determined by a physician acceptable to the Company, which is permanent in character or which is expected to last for a continuous period of more than six (6) months.

- 2.13 "Dividend Equivalent" means a right granted to a Participant pursuant to Section 8.3 to receive the equivalent value (in cash or Stock) of dividends paid on Stock.
- 2.14 "DRO" shall mean a domestic relations order as defined by the Code or Title I of the U.S. Employee Retirement Income Security Act of 1974, as amended from time to time, or the rules thereunder.
  - 2.15 "Effective Date" shall have the meaning set forth in Section 14.1.
- 2.16 "Eligible Individual" means any person who is an Employee, a Consultant or an Independent Director, as determined by the Committee.
- 2.17 "Employee" means any person on the payroll records of the Company or a Subsidiary and actively providing services as an employee. Service as a Director or compensation by the Company or a Subsidiary solely for services as a Director shall not be sufficient to constitute "employment" by the Company or a Subsidiary.
- 2.18 "Equity Restructuring" shall mean a nonreciprocal transaction between the Company and its stockholders, such as a stock dividend, stock split, spin-off, rights offering or recapitalization through a large, nonrecurring cash dividend, that affects the shares of Stock (or other securities of the Company) or the share price of Stock (or other securities) and causes a change in the per share value of the Stock underlying outstanding Awards.
  - 2.19 "Exchange Act" means the U.S. Securities Exchange Act of 1934, as amended.
- 2.20 "Fair Market Value" means, as of any given date, (a) if Stock is traded on any established stock exchange, the closing price of a share of Stock as reported in the Wall Street Journal (or such other source as the Company may deem reliable for such purposes) for such date, or if no sale occurred on such date, the first trading date immediately prior to such date during which a sale occurred; or (b) if Stock is not traded on an exchange but is quoted on a national market or other quotation system, the last sales price on such date, as reported in the Wall Street Journal (or such other source as the Company may deem reliable for such purposes), or if no sales occurred on such date, then on the date immediately prior to such date on which sales prices are reported; or (c) if Stock is not publicly traded, the fair market value of a share of Stock as established by the Committee acting in good faith.
- 2.21 "Full Value Award" means any Award other than an Option, Stock Appreciation Right or other Award for which the Participant pays the intrinsic value existing at the date of grant (whether directly or by forgoing a right to receive a payment from the Company or any Subsidiary).
- 2.22 "Incentive Stock Option" means an Option that is intended to meet the requirements of Section 422 of the Code or any successor provision thereto.
  - 2.23 "Independent Director" means a Director of the Company who is not an Employee.
- 2.24 "*Non-Employee Director*" means a Director of the Company who qualifies as a "Non-Employee Director" as defined in Rule 16b-3(b)(3) under the Exchange Act, or any successor rule.
  - 2.25 "Non-Qualified Stock Option" means an Option that is not intended to be an Incentive Stock Option.
- 2.26 "Option" means a right granted to a Participant pursuant to Article 5 of the Plan to purchase a specified number of shares of Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Non-Qualified Stock Option.
- 2.27 "Participant" means any Eligible Individual who, as a member of the Board, Consultant or Employee, has been granted an Award pursuant to the Plan.
- 2.28 "Performance-Based Award" means an Award granted to selected Covered Employees pursuant to Section 6 or 8, but which is subject to the terms and conditions set forth in Article 9. All Performance-Based Awards are intended to qualify as Qualified Performance-Based Compensation.

- 2.29 "Performance Bonus Award" has the meaning set forth in Section 8.7.
- 2.30 "*Performance Criteria*" means the criteria that the Committee selects for purposes of establishing the Performance Goal or Performance Goals for a Participant for a Performance Period, determined as follows:
  - (a) The Performance Criteria that will be used to establish Performance Goals are limited to the following: trading volume, users, gross merchandise volume, total payment volume, revenue, operating income, EBITDA and/or net earnings (either before or after interest, taxes, depreciation and amortization), net income (either before or after taxes), earnings per share, earnings as determined other than pursuant to United States generally accepted accounting principles ("GAAP"), multiples of price to earnings, multiples of price/earnings to growth, return on net assets, return on gross assets, return on equity, return on invested capital, Stock price, cash flow (including, but not limited to, operating cash flow and free cash flow), net or operating margins, economic profit, Stock price appreciation, total stockholder returns, employee productivity, market share, volume, customer satisfaction metrics, and employee engagement/satisfaction metrics any of which may be measured with respect to the Company, or any Subsidiary, affiliate or other business unit of the Company, either in absolute terms, terms of growth or as compared to any incremental increase, as compared to results of a peer group.
  - (b) The Committee may, in its discretion, provide that one or more objectively determinable adjustments shall be made to one or more of the Performance Goals. Such adjustments may include one or more of the following: (i) items related to a change in accounting principle; (ii) items relating to financing activities; (iii) expenses for restructuring or productivity initiatives; (iv) other non-operating items; (v) items related to acquisitions; (vi) items attributable to the business operations of any entity acquired by the Company during the Performance Period; (vii) items related to the disposal of a business or segment of a business; (viii) items related to discontinued operations that do not qualify as a segment of a business under GAAP; (ix) items attributable to any stock dividend, stock split, combination or exchange of shares occurring during the Performance Period; (x) any other items of significant income or expense which are determined to be appropriate adjustments; (xi) items relating to unusual or extraordinary corporate transactions, events or developments; (xii) items related to amortization of acquired intangible assets; (xiii) items that are outside the scope of the Company's core, on-going business activities; or (xiv) items relating to any other unusual or nonrecurring events or changes in applicable laws, accounting principles or business conditions. For all Awards intended to qualify as Qualified Performance-Based Compensation, such determinations shall be made within the time prescribed by, and otherwise in compliance with, Section 162(m) of the Code.
- 2.31 "Performance Goals" means, for a Performance Period, the goals established in writing by the Committee for the Performance Period based upon the Performance Criteria. Depending on the Performance Criteria used to establish such Performance Goals, the Performance Goals may be expressed in terms of overall Company performance or the performance of a division, business unit, or an individual. The Committee, in its discretion, may, within the time prescribed by Section 162(m) of the Code, adjust or modify the calculation of Performance Goals for such Performance Period in order to prevent the dilution or enlargement of the rights of Participants (a) in the event of, or in anticipation of, any unusual or extraordinary corporate item, transaction, event, or development, or (b) in recognition of, or in anticipation of, any other unusual or nonrecurring events affecting the Company, or the financial statements of the Company, or in response to, or in anticipation of, changes in applicable laws, regulations, accounting principles, or business conditions.
- 2.32 "Performance Period" means the one or more periods of time, which may be of varying and overlapping durations, as the Committee may select, over which the attainment of one or more Performance Goals will be measured for the purpose of determining a Participant's right to, and the payment of, a Performance-Based Award.
- 2.33 "Performance Share" means a right granted to a Participant pursuant to Section 8.1, to receive Stock, the payment of which is contingent upon achieving certain Performance Goals or other performance-based targets established by the Committee.
- 2.34 "Performance Stock Unit" means a right granted to a Participant pursuant to Section 8.2, to receive Stock, the payment of which is contingent upon achieving certain Performance Goals or other performance-based targets established by the Committee.

- 2.35 "Plan" means this PayPal Holdings, Inc. 2015 Equity Incentive Award Plan, as it may be amended from time to time.
- 2.36 "Qualified Performance-Based Compensation" means any compensation that is intended to qualify as "qualified performance-based compensation" as described in Section 162(m)(4)(C) of the Code.
- 2.37 "Restricted Stock" means Stock awarded to a Participant pursuant to Article 6 that is subject to certain restrictions and may be subject to risk of forfeiture.
  - 2.38 "Restricted Stock Unit" means an Award granted pursuant to Section 8.6.
  - 2.39 "Securities Act" shall mean the U.S. Securities Act of 1933, as amended.
- 2.40 "Spin-Off" means the distribution of shares of Stock to the stockholders of eBay Inc. in 2015, pursuant to the Separation and Distribution Agreement between the Company and eBay Inc., entered into in connection with such distribution.
- 2.41 "Stock" means the common stock of the Company, par value \$0.001 per share, and such other securities of the Company that may be substituted for Stock pursuant to Article 12.
- 2.42 "Stock Appreciation Right" or "SAR" means a right granted pursuant to Article 7 to receive a payment equal to the excess of the Fair Market Value of a specified number of shares of Stock on the date the SAR is exercised over the Fair Market Value on the date the SAR was granted as set forth in the applicable Award Agreement.
- 2.43 "Stock Payment" means (a) a payment in the form of shares of Stock, or (b) an option or other right to purchase shares of Stock, as part of any bonus, deferred compensation or other arrangement, made in lieu of all or any portion of a benefit or compensation, granted pursuant to Section 8.4.
- 2.44 "Subsidiary" means any entity (other than the Company), whether domestic or foreign, in an unbroken chain of entities beginning with the Company if, at the time of the determination, each of the entities other than the last entity in the unbroken chain beneficially owns securities or interests representing more than fifty percent (50%) of the total combined voting power of all classes of securities or interests in one of the other entities in such chain.
- 2.45 "Substitute Award" shall mean an Option granted under the Plan upon the assumption of, or in substitution for, outstanding equity awards previously granted by a company or other entity in connection with a corporate transaction, such as a merger, combination, consolidation or acquisition of property or stock; provided, however, that in no event shall the term "Substitute Award" be construed to refer to an award made in connection with the cancellation and repricing of an Option.
  - 2.46 "Termination of Service" shall mean,
  - (a) As to a Consultant, the time when the engagement of a Participant as a Consultant to the Company or a Subsidiary is terminated for any reason, with or without cause, including, without limitation, by resignation, discharge, death or retirement, but excluding a termination where there is a simultaneous commencement of employment with the Company or any Subsidiary.
  - (b) As to a Non-Employee Director or Independent Director, the time when a Participant who is a Non-Employee Director or Independent Director ceases to be a Director for any reason, including, without limitation, a termination by resignation, failure to be elected, death or retirement, but excluding: (i) a termination where there is simultaneous employment by the Company or a Subsidiary of such person and (ii) a termination which is followed by the simultaneous establishment of a consulting relationship by the Company or a Subsidiary with such person.
  - (c) As to an Employee, the time when the Participant has ceased to actively be employed by or to provide services to the Company or any Subsidiary for any reason, without limitation, including resignation, discharge, death, disability or retirement; but excluding: (i) a termination where there is a simultaneous reemployment or continuing employment of a Participant by the Company or any Subsidiary, (ii) a termination which is followed by the simultaneous establishment of a consulting relationship by the Company or a Subsidiary with the former employee, and (iii) a termination where a Participant simultaneously becomes an Independent Director.

(d) The Committee, in its absolute discretion, shall determine the effect of all matters and questions relating to Termination of Service, including, without limitation, questions relating to the nature and type of Termination of Service, and all questions of whether particular leaves of absence constitute Termination of Service; provided, however, that, with respect to Incentive Stock Options, unless the Committee otherwise provides in the terms of the Award Agreement, a leave of absence, change in status from an employee to an independent contractor or other change in the employee-employer relationship shall constitute a Termination of Service if, and to the extent that, such leave of absence, change in status or other change interrupts employment for the purposes of Section 422(a)(2) of the Code and the then applicable regulations and revenue rulings under said Section. For purposes of the Plan, a Participant shall be deemed to have a Termination of Service in the event that the Subsidiary employing or contracting with such Participant ceases to remain a Subsidiary following any merger, sale of stock or other corporate transaction or event (including, without limitation, a spin-off).

### ARTICLE 3.

#### SHARES SUBJECT TO THE PLAN

- 3.1 Number of Shares.
- (a) Subject to Article 12 and Section 3.1(b), the aggregate number of shares of Stock which may be issued or transferred pursuant to Awards granted under the Plan is the sum of (i) [ ] and (ii) the aggregate number of shares of Stock subject to all Assumed Spin-Off Awards. Any shares of Stock that are subject to Awards granted under the Plan other than Full Value Awards shall be counted against this limit as [ ] shares for every share of Stock subject to the Award granted. Any shares of Stock subject to Full Value Awards granted under the Plan shall be counted against this limit as one (1) share for every share of Stock subject to the Award granted.
- (b) To the extent that an Award terminates, expires, or lapses for any reason, or such an Award is settled in cash without delivery of shares to the Participant, then any shares of Stock subject to the Award shall again be available for the grant of an Award pursuant to the Plan. Any such shares of Stock that cease to be subject to such an Award other than a Full Value Award shall be added to the number of shares available under the Plan as [ ] shares for every share of Stock that ceases to be subject to such Award. Any such shares of Stock that cease to be subject to a Full Value Award shall be added to the number of shares available under the Plan as one (1) share for every share of Stock that ceases to be subject to such Award. Notwithstanding anything in this Section 3.1(b) to the contrary, shares of Stock subject to an Award may not again be made available for issuance under this Plan if such shares are: (x) shares delivered to or withheld by the Company to pay the exercise price of an Option, (y) shares delivered to or withheld by the Company to satisfy withholding taxes related to such an Award or (z) shares that were subject to an Award and were not issued upon the net settlement of such Award. To the extent permitted by applicable law or any exchange rule, shares of Stock issued in assumption of, or in substitution for, any outstanding Awards of any entity acquired in any form of combination by the Company or any Subsidiary shall not be counted against shares of Stock available for grant pursuant to this Plan. The payment of Dividend Equivalents in cash in conjunction with any outstanding Awards shall not be counted against the shares available for issuance under the Plan. Notwithstanding the provisions of this Section 3.1(b), no shares of Stock may again be optioned, granted or awarded if such action would cause an Incentive Stock Option to fail to qualify as an incentive stock option under Section 422 of the Code.
- 3.2 *Stock Distributed*. Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or Stock purchased on the open market.
- 3.3 Limitation on Number of Shares Subject to Awards. Notwithstanding any provision in the Plan to the contrary, and subject to Article 12, the maximum number of shares of Stock with respect to one or more Awards that may be granted to any one Participant during any calendar year shall be [ ] and the maximum amount that may be paid in cash during any calendar year with respect to any Performance-Based Award (including, without limitation, any Performance Bonus Award) shall be \$[ ]; provided, however, that such limits shall apply without regard to the Assumed Spin-Off Awards. Any shares of Stock that are subject to Awards granted under the Plan other than Full Value Awards shall be counted against this limit as [ ] shares for every share of Stock subject to the Award granted. Any shares of Stock subject to the Award granted.

### ARTICLE 4.

## **ELIGIBILITY AND PARTICIPATION**

- 4.1 *Participation*. Subject to the provisions of the Plan, the Committee may, from time to time, and in its sole discretion, select from among all Eligible Individuals, those to whom Awards shall be granted and shall determine the nature and amount of each Award. No Eligible Individual shall have any right to be granted an Award pursuant to this Plan. In connection with the Spin-Off and pursuant to the terms of the Employee Matters Agreement between the Company and eBay Inc., entered into in connection with the Spin-Off, certain employees, consultants and directors of the Company, eBay Inc. and their respective subsidiaries will receive Assumed Spin-Off Awards.
- 4.2 Foreign Participants. Notwithstanding any provision of the Plan to the contrary, in order to comply with the laws in other countries in which the Company and its Subsidiaries operate or have Eligible Individuals, the Committee, in its sole discretion, shall have the power and authority to: (i) determine which Subsidiaries shall be covered by the Plan; (ii) determine which Eligible Individuals outside the United States are eligible to participate in the Plan; (iii) modify the terms and conditions of any Award granted to Eligible Individuals outside the United States to comply with applicable foreign laws; (iv) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable, including adoption of rules, procedures or sub-plans applicable to particular Subsidiaries or Participants residing in particular locations; provided, however, that no such subplans and/or modifications shall increase the share limitations contained in Sections 3.1 and 3.3 of the Plan; and (v) take any action, before or after an Award is made, that it deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals. Without limiting the generality of the foregoing, the Committee is specifically authorized to adopt rules. procedures and sub-plans with provisions that limit or modify rights on eligibility to receive an Award under the Plan or on death, disability, retirement or other Termination of Service, available methods of exercise or settlement of an Award, payment of income, social insurance contributions and payroll taxes, the shifting of employer tax liability to the Participant, the withholding procedures and handling of any Stock certificates or other indicia of ownership. Notwithstanding the foregoing, the Committee may not take any actions hereunder, and no Awards shall be granted, that would violate the Exchange Act, the Code, any securities law or governing statute or any other law applicable to the Stock or the issuance of Stock under the Plan.

### ARTICLE 5.

## STOCK OPTIONS

- 5.1 General. The Committee is authorized to grant Options to Eligible Individuals on the following terms and conditions:
- (a) *Exercise Price*. The exercise price per share of Stock subject to an Option shall be determined by the Committee and set forth in the Award Agreement; *provided*, that, subject to Section 5.2(c), the exercise price for any Option shall not be less than 100% of the Fair Market Value of a share of Stock on the date of grant.
- (b) *Time and Conditions of Exercise*. The Committee shall determine the time or times at which an Option may be exercised in whole or in part; *provided* that the term of any Option granted under the Plan shall not exceed ten years. The Committee shall determine the time period, including the time period following a Termination of Service, during which the Participant has the right to exercise the vested Options, which time period may not extend beyond the term of the Option. Except as limited by the requirements of Section 409A or Section 422 of the Code and regulations and rulings thereunder, the Committee may extend the term of any outstanding Option, and may extend the time period during which vested Options may be exercised, in connection with any Termination of Service of the Participant, and may amend any other term or condition of such Option relating to such a Termination of Service. The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised.

- (c) *Evidence of Grant*. All Options shall be evidenced by an Award Agreement between the Company and the Participant. The Award Agreement shall include such additional provisions as may be specified by the Committee.
- 5.2 *Incentive Stock Options*. Incentive Stock Options shall be granted only to Employees and the terms of any Incentive Stock Options granted pursuant to the Plan, in addition to the requirements of Section 5.1, must comply with the provisions of this Section 5.2.
- (a) *Expiration*. Subject to Section 5.2(c), an Incentive Stock Option shall expire and may not be exercised to any extent by anyone after the first to occur of the following events:
  - (i) Ten years from the date it is granted, unless an earlier time is set in the Award Agreement;
  - (ii) Three months after the Participant's termination of employment as an Employee; and
  - (iii) One year after the date of the Participant's termination of employment or service on account of Disability or death. Upon the Participant's Disability or death, any Incentive Stock Options exercisable at the Participant's Disability or death may be exercised by the Participant's legal representative or representatives, by the person or persons entitled to do so pursuant to the Participant's slast will and testament, or, if the Participant fails to make testamentary disposition of such Incentive Stock Option or dies intestate, by the person or persons entitled to receive the Incentive Stock Option pursuant to the applicable laws of descent and distribution.
- (b) *Dollar Limitation*. The aggregate Fair Market Value (determined as of the time the Option is granted) of all shares of Stock with respect to which Incentive Stock Options are first exercisable by a Participant in any calendar year may not exceed \$100,000 or such other limitation as imposed by Section 422(d) of the Code, or any successor provision. To the extent that Incentive Stock Options are first exercisable by a Participant in excess of such limitation, the excess shall be considered Non-Qualified Stock Options.
- (c) *Ten Percent Owners*. An Incentive Stock Option shall be granted to any individual who, at the date of grant, owns stock possessing more than ten percent of the total combined voting power of all classes of Stock of the Company only if such Option is granted at a price that is not less than 110% of Fair Market Value on the date of grant (or the date the Option is modified, extended or renewed for purposes of Section 424(h) of the Code) and the Option is exercisable for no more than five years from the date of grant.
- (d) *Notice of Disposition*. The Participant shall give the Company prompt notice of any disposition of shares of Stock acquired by exercise of an Incentive Stock Option within (i) two years from the date of grant of such Incentive Stock Option or (ii) one year after the transfer of such shares of Stock to the Participant.
  - (e) Right to Exercise. During a Participant's lifetime, an Incentive Stock Option may be exercised only by the Participant.
- (f) Failure to Meet Requirements. Any Option (or portion thereof) purported to be an Incentive Stock Option, which, for any reason, fails to meet the requirements of Section 422 of the Code shall be considered a Non-Qualified Stock Option.
- 5.3 Substitution of Stock Appreciation Rights. Subject to Section 10.8, the Committee may provide in the Award Agreement evidencing the grant of an Option that the Committee, in its sole discretion, shall have to right to substitute a Stock Appreciation Right for such Option at any time prior to or upon exercise of such Option; *provided*, that such Stock Appreciation Right shall be exercisable with respect to the same number of shares of Stock for which such substituted Option would have been exercisable.
- 5.4 Substitute Awards. Notwithstanding the foregoing provisions of this Article 5 to the contrary, in the case of an Option that is a Substitute Award, the exercise price per share of the shares subject to such Option may be less than the Fair Market Value per share on the date of grant, provided, that the excess of: (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (b) the aggregate exercise price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Committee) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise price of such shares.

### ARTICLE 6.

### RESTRICTED STOCK AWARDS

- 6.1 Grant of Restricted Stock.
- (a) The Committee is authorized to make Awards of Restricted Stock to any Eligible Individual selected by the Committee in such amounts and subject to such terms and conditions as determined by the Committee. All Awards of Restricted Stock shall be evidenced by an Award Agreement.
- (b) The Committee shall establish the purchase price, if any, and form of payment for Restricted Stock; provided, however, that such purchase price shall be no less than the par value of the Stock to be purchased, unless otherwise permitted by applicable state law. In all cases, legal consideration shall be required for each issuance of Restricted Stock.
- 6.2 Issuance and Restrictions. All shares of Restricted Stock (including any shares received by Participants thereof with respect to shares of Restricted Stock as a result of stock dividends, stock splits or any other form of recapitalization) shall, in the terms of each individual Award Agreement, be subject to such restrictions on transferability and other restrictions and vesting requirements as the Committee shall provide. Such restrictions may include, without limitation, restrictions concerning voting rights and transferability and such restrictions may lapse separately or in combination at such times and pursuant to such circumstances or based on such criteria as selected by the Committee, including, without limitation, criteria based on the Participant's duration of employment, directorship or consultancy with the Company, Performance Criteria, Company performance, individual performance or other criteria selected by the Committee. By action taken after the Restricted Stock is issued, the Committee may, on such terms and conditions as it may determine to be appropriate, accelerate the vesting of such Restricted Stock by removing any or all of the restrictions imposed by the terms of the Award Agreement. Restricted Stock may not be sold or encumbered until all restrictions are terminated or expire.
- 6.3 Repurchase or Forfeiture of Restricted Stock. If no price was paid by the Participant for the Restricted Stock, upon a Termination of Service the Participant's rights in unvested Restricted Stock then subject to restrictions shall lapse, and such Restricted Stock shall be surrendered to the Company without consideration. If a price was paid by the Participant for the Restricted Stock, upon a Termination of Service the Company shall have the right to repurchase from the Participant the unvested Restricted Stock then subject to restrictions at a cash price per share equal to the price paid by the Participant for such Restricted Stock or such other amount as may be specified in the Award Agreement. The Committee in its discretion may provide that in the event of certain events, including a Change in Control, the Participant's death, retirement or disability or any other specified Termination of Service or any other event, the Participant's rights in unvested Restricted Stock shall not lapse, such Restricted Stock shall vest and, if applicable, the Company shall not have a right of repurchase.
- 6.4 Certificates for Restricted Stock. Restricted Stock granted pursuant to the Plan may be evidenced in such manner as the Committee shall determine. If certificates representing shares of Restricted Stock are registered in the name of the Participant, certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, and the Company may, at its discretion, retain physical possession of the certificate until such time as all applicable restrictions lapse.
- 6.5 Section 83(b) Election. If a Participant makes an election under Section 83(b) of the Code to be taxed with respect to the Restricted Stock as of the date of transfer of the Restricted Stock rather than as of the date or dates upon which the Participant would otherwise be taxable under Section 83(a) of the Code, the Participant shall be required to deliver a copy of such election to the Company promptly after filing such election with the Internal Revenue Service.

### ARTICLE 7.

## STOCK APPRECIATION RIGHTS

- 7.1 Grant of Stock Appreciation Rights.
- (a) A Stock Appreciation Right may be granted to any Eligible Individual selected by the Committee. A Stock Appreciation Right shall be subject to such terms and conditions not inconsistent with the Plan as the Committee shall impose and shall be evidenced by an Award Agreement.
- (b) A Stock Appreciation Right shall entitle the Participant (or other person entitled to exercise the Stock Appreciation Right pursuant to the Plan) to exercise all or a specified portion of the Stock Appreciation Right (to the extent then exercisable pursuant to its terms) and to receive from the Company an amount equal to the product of (i) the excess of (A) the Fair Market Value of the Stock on the date the Stock Appreciation Right is exercised over (B) the Fair Market Value of the Stock on the date the Stock Appreciation Right was granted and (ii) the number of shares of Stock with respect to which the Stock Appreciation Right is exercised, subject to any limitations the Committee may impose. Except as described in (c) below, the exercise price per share of Stock subject to each Stock Appreciation Right shall be set by the Committee, but shall not be less than 100% of the Fair Market Value on the date the Stock Appreciation Right is granted.
- (c) Notwithstanding the foregoing provisions of Section 7.1(b) to the contrary, in the case of a Stock Appreciation Right that is a Substitute Award, the price per share of the shares subject to such Stock Appreciation Right may be less than the Fair Market Value per share on the date of grant, provided, that the excess of: (a) the aggregate Fair Market Value (as of the date such Substitute Award is granted) of the shares subject to the Substitute Award, over (b) the aggregate exercise price thereof does not exceed the excess of: (x) the aggregate fair market value (as of the time immediately preceding the transaction giving rise to the Substitute Award, such fair market value to be determined by the Committee) of the shares of the predecessor entity that were subject to the grant assumed or substituted for by the Company, over (y) the aggregate exercise price of such shares.
  - 7.2 Payment and Limitations on Exercise.
- (a) Subject to Sections 7.2(b) payment of the amounts determined under Section 7.1(b) above shall be in cash, in Stock (based on its Fair Market Value as of the date the Stock Appreciation Right is exercised) or a combination of both, as determined by the Committee in the Award Agreement and subject to any tax withholding requirements.
- (b) To the extent any payment under Section 7.1(b) is effected in Stock, it shall be made subject to satisfaction of all provisions of Article 5 above pertaining to Options.

### ARTICLE 8.

### OTHER TYPES OF AWARDS

- 8.1 *Performance Share Awards*. Any Eligible Individual selected by the Committee may be granted one or more Performance Share awards which shall be denominated in a number of shares of Stock and which may be linked to any one or more of the Performance Criteria or other specific performance criteria determined appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. In making such determinations, the Committee shall consider (among such other factors as it deems relevant in light of the specific type of award) the contributions, responsibilities and other compensation of the particular Participant.
- 8.2 *Performance Stock Units*. Any Eligible Individual selected by the Committee may be granted one or more Performance Stock Unit awards which shall be denominated in unit equivalent of shares of Stock and/or units of value including dollar value of shares of Stock and which may be linked to any one or more of the Performance Criteria or other specific performance criteria determined appropriate by the Committee, in each case on a specified date or dates or over any period or periods determined by the Committee. In making such determinations, the Committee shall consider (among such other factors as it deems relevant in light of the specific type of award) the contributions, responsibilities and other compensation of the particular Participant.

- 8.3 Dividend Equivalents.
- (a) Any Eligible Individual selected by the Committee may be granted Dividend Equivalents based on the dividends declared on the shares of Stock that are subject to any Award, to be credited as of dividend payment dates, during the period between the date the Award is granted and the date the Award is exercised, vests or expires, as determined by the Committee. Such Dividend Equivalents shall be converted to cash or additional shares of Stock by such formula and at such time and subject to such limitations as may be determined by the Committee; provided that to the extent shares of Stock subject to an Award are subject to performance-based vesting conditions, any Dividend Equivalents relating to such shares shall be subject to the same performance-based vesting conditions.
  - (b) Notwithstanding the foregoing, no Dividend Equivalents shall be payable with respect to Options or SARs.
- 8.4 Stock Payments. Any Eligible Individual selected by the Committee may receive Stock Payments in the manner determined from time to time by the Committee. The number of shares shall be determined by the Committee and may be based upon the Performance Criteria or other specific performance criteria determined appropriate by the Committee, determined on the date such Stock Payment is made or on any date thereafter.
- 8.5 Deferred Stock Units. Any Eligible Individual selected by the Committee may be granted an award of Deferred Stock Units in the manner determined from time to time by the Committee. The number of shares of Deferred Stock Units shall be determined by the Committee and may be linked to the Performance Criteria or other specific performance criteria determined to be appropriate by the Committee, including service to the Company or any Subsidiary, in each case on a specified date or dates or over any period or periods determined by the Committee. Stock underlying a Deferred Stock Unit award will not be issued until the Deferred Stock Unit award has vested, pursuant to a vesting schedule or performance criteria set by the Committee. Unless otherwise provided by the Committee, a Participant awarded Deferred Stock Units shall have no rights as a Company stockholder with respect to such Deferred Stock Units until such time as the Deferred Stock Unit Award has vested and the Stock underlying the Deferred Stock Unit Award has been issued.
- 8.6 Restricted Stock Units. The Committee is authorized to make Awards of Restricted Stock Units to any Eligible Individual selected by the Committee in such amounts and subject to such terms and conditions as determined by the Committee. At the time of grant, the Committee shall specify the date or dates on which the Restricted Stock Units shall become fully vested and nonforfeitable, and may specify such conditions to vesting as it deems appropriate. The Committee shall specify, or permit the Participant to elect, the conditions and dates upon which the shares of Stock underlying the Restricted Stock Units shall be issued, which dates shall not be earlier than the date as of which the Restricted Stock Units vest and become nonforfeitable and which conditions and dates shall be subject to compliance with Section 409A of the Code. On the distribution dates, the Company shall, subject to Section 10.6(b), transfer to the Participant one unrestricted, fully transferable share of Stock for each Restricted Stock Unit scheduled to be paid out on such date and not previously forfeited.
- 8.7 Performance Bonus Awards. Any Eligible Individual selected by the Committee may be granted one or more Performance-Based Awards in the form of a cash bonus (a "Performance Bonus Award") payable upon the attainment of Performance Goals that are established by the Committee and relate to one or more of the Performance Criteria, in each case on a specified date or dates or over any period or periods determined by the Committee. Any such Performance Bonus Award paid to a Covered Employee shall be based upon objectively determinable bonus formulas established in accordance with Article 9.
- 8.8 *Term.* Except as otherwise provided herein, the term of any Award of Performance Shares, Performance Stock Units, Dividend Equivalents, Stock Payments, Deferred Stock Units or Restricted Stock Units shall be set by the Committee in its discretion.
- 8.9 Exercise or Purchase Price. The Committee may establish the exercise or purchase price, if any, of any Award of Performance Shares, Performance Stock Units, Deferred Stock Units, Stock Payments or Restricted Stock Units; provided, however, that such price shall not be less than the par value of a share of Stock on the date of grant, unless otherwise permitted by applicable state law.

- 8.10 Exercise or Payment upon Termination of Service. An Award of Performance Shares, Performance Stock Units, Dividend Equivalents, Deferred Stock Units, Stock Payments and Restricted Stock Units shall only be exercisable or payable while the Participant is an Employee, Consultant or Director, as applicable; provided, however, that the Committee in its sole and absolute discretion may provide that an Award of Performance Shares, Performance Stock Units, Dividend Equivalents, Stock Payments, Deferred Stock Units or Restricted Stock Units may be exercised or paid subsequent to a Termination of Service, as applicable, or following a Change in Control of the Company, or because of the Participant's retirement, death or disability, or otherwise; provided, however, that any such provision with respect to Performance Shares or Performance Stock Units shall be subject to the requirements of Section 162(m) of the Code that apply to Qualified Performance-Based Compensation.
- 8.11 *Form of Payment*. Payments with respect to any Awards granted under this Article 8 shall be made in cash, in Stock or a combination of both, as determined by the Committee and set forth in the applicable Award Agreement.
- 8.12 *Award Agreement*. All Awards under this Article 8 shall be subject to such additional terms and conditions as determined by the Committee and shall be evidenced by an Award Agreement.

#### ARTICLE 9.

## PERFORMANCE-BASED AWARDS

- 9.1 *Purpose.* The purpose of this Article 9 is to provide the Committee the ability to qualify Awards other than Options and SARs and that are granted pursuant to Articles 6 and 8 as Qualified Performance-Based Compensation. If the Committee, in its discretion, decides to grant a Performance-Based Award to a Covered Employee, the provisions of this Article 9 shall control over any contrary provision contained in the Plan; *provided, however*, that the Committee may in its discretion grant Awards to Covered Employees that are based on Performance Criteria or Performance Goals but that do not satisfy the requirements of this Article 9.
- 9.2 Applicability. This Article 9 shall apply only to those Covered Employees selected by the Committee to receive Performance-Based Awards. The designation of a Covered Employee as a Participant for a Performance Period shall not in any manner entitle the Participant to receive an Award for the period. Moreover, designation of a Covered Employee as a Participant for a particular Performance Period shall not require designation of such Covered Employee as a Participant in any subsequent Performance Period and designation of one Covered Employee as a Participant shall not require designation of any other Covered Employees as a Participant in such period or in any other period.
- 9.3 *Types of Awards*. Notwithstanding anything in the Plan to the contrary, the Committee may grant any Award to a Covered Employee intended to qualify as Performance-Based Compensation, including, without limitation, Restricted Stock, the restrictions with respect to which lapse upon the attainment of specified Performance Goals and any other performance or incentive Awards that vest or become exercisable or payable upon the attainment of one or more specified Performance Goals.
- 9.4 Procedures with Respect to Performance-Based Awards. To the extent necessary to comply with the Qualified Performance-Based Compensation requirements of Section 162(m)(4)(C) of the Code, with respect to any Award granted under Articles 6 or 8 which may be granted to one or more Covered Employees, no later than ninety (90) days following the commencement of any fiscal year in question or any other designated fiscal period or period of service (or such other time as may be required or permitted by Section 162(m) of the Code), the Committee shall, in writing, (a) designate one or more Covered Employees, (b) select the Performance Criteria applicable to the Performance Period, (c) establish the Performance Goals, and amounts of such Awards, as applicable, which may be earned for such Performance Period, and (d) specify the relationship between Performance Criteria and the Performance Goals and the amounts of such Awards, as applicable, to be earned by each Covered Employee for such Performance Period. Following the completion of each Performance Period, the Committee shall certify in writing whether the applicable Performance Goals have been achieved for such Performance Period. In determining the amount earned by a Covered Employee, the Committee shall have the right to reduce or eliminate (but not to increase) the amount payable at a given level of performance to take into account additional factors that the Committee may deem relevant to the assessment of individual or corporate performance for the Performance Period.

- 9.5 Payment of Performance-Based Awards. Unless otherwise provided in the applicable Award Agreement, a Participant must be employed by the Company or a Subsidiary on the day a Performance-Based Award for such Performance Period is paid to the Participant. Furthermore, a Participant shall be eligible to receive payment pursuant to a Performance-Based Award for a Performance Period only if the Performance Goals for such period are achieved. In determining the amount earned under a Performance-Based Award, the Committee may reduce or eliminate the amount of the Performance-Based Award earned for the Performance Period, if in its sole and absolute discretion, such reduction or elimination is appropriate.
- 9.6 Additional Limitations. Notwithstanding any other provision of the Plan, any Award which is granted to a Covered Employee and is intended to constitute Qualified Performance-Based Compensation shall be subject to any additional limitations set forth in Section 162(m) of the Code (including any amendment to Section 162(m) of the Code) or any regulations or rulings issued thereunder that are requirements for qualification as qualified performance-based compensation as described in Section 162(m)(4)(C) of the Code, and the Plan and the applicable Award Agreement shall be deemed amended to the extent necessary to conform to such requirements.

## ARTICLE 10.

### PROVISIONS APPLICABLE TO AWARDS

- 10.1 *Stand-Alone and Tandem Awards*. Awards granted pursuant to the Plan may, in the discretion of the Committee, be granted either alone, in addition to, or in tandem with, any other Award granted pursuant to the Plan. Awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.
- 10.2 Award Agreement. Awards under the Plan shall be evidenced by Award Agreements that set forth the terms, conditions and limitations for each Award which may include the term of an Award, the provisions applicable in the event the Participant's employment or service terminates, and the Company's authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind an Award.
- 10.3 Payment. The Committee shall determine the methods by which payments by any Participant with respect to any Awards granted under the Plan may be paid, the form of payment including, without limitation: (i) cash, (ii) shares of Stock (including, in the case of payment of the exercise price of an Award, shares of Stock issuable pursuant to the exercise of the Award) held for such period of time as may be required by the Committee in order to avoid adverse accounting consequences and having a Fair Market Value on the date of delivery equal to the aggregate payments required, or (iii) other property acceptable to the Committee (including through the delivery of a notice that the Participant has placed a market sell order with a broker with respect to shares of Stock then issuable upon exercise or vesting of an Award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate payments required; provided that payment of such proceeds is then made to the Company upon settlement of such sale). The Committee shall also determine the methods by which shares of Stock shall be delivered or deemed to be delivered to Participants. Notwithstanding any other provision of the Plan to the contrary, no Participant who is a Director or an "executive officer" of the Company within the meaning of Section 13(k) of the Exchange Act shall be permitted to pay the exercise price of an Option with a loan from the Company or a loan arranged by the Company in violation of Section 13(k) of the Exchange Act.
  - 10.4 Limits on Transfer.
  - (a) Except as otherwise provided in Section 10.4(b):
  - (i) No Award under the Plan may be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution or, subject to the consent of the Committee, pursuant to a DRO, unless and until such Award has been exercised, or the shares underlying such Award have been issued, and all restrictions applicable to such shares have lapsed;
  - (ii) No Award or interest or right therein shall be liable for the debts, contracts or engagements of the Participant or his successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, hypothecation, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence; and

- (iii) During the lifetime of the Participant, only the Participant may exercise an Award (or any portion thereof) granted to him under the Plan, unless it has been disposed of pursuant to a DRO; after the death of the Participant, any exercisable portion of an Award may, prior to the time when such portion becomes unexercisable under the Plan or the applicable Award Agreement, be exercised by his personal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.
- (b) Notwithstanding Section 10.4(a), the Committee, in its sole discretion, may determine to permit a Participant to transfer an Award other than an Incentive Stock Option to any one or more Permitted Transferees (as defined below), subject to the following terms and conditions: (i) an Award transferred to a Permitted Transferee shall not be assignable or transferable by the Permitted Transferee other than by will or the laws of descent and distribution; (ii) an Award transferred to a Permitted Transferee shall continue to be subject to all the terms and conditions of the Award as applicable to the original Participant (other than the ability to further transfer the Award); and (iii) the Participant and the Permitted Transferee shall execute any and all documents requested by the Committee, including, without limitation documents to (A) confirm the status of the transferee as a Permitted Transferee, (B) satisfy any requirements for an exemption for the transfer under applicable federal, state and foreign securities laws and (C) evidence the transfer. For purposes of this Section 10.4(b), "Permitted Transferee" shall mean, with respect to a Participant, any "family member" of the Participant, as defined under the instructions to use of the Form S-8 Registration Statement under the Securities Act, or any other transferee specifically approved by the Committee after taking into account any state, federal, local or foreign tax and securities laws applicable to transferable Awards.
- 10.5 Beneficiaries. Notwithstanding Section 10.4, if provided in the applicable Award Agreement, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights pursuant to the Plan is subject to all terms and conditions of the Plan and any Award Agreement applicable to the Participant, except to the extent the Plan and Award Agreement otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If the Participant is married and resides in a community property state, a designation of a person other than the Participant's spouse as his or her beneficiary with respect to more than 50% of the Participant's interest in the Award shall not be effective without the prior written consent of the Participant's spouse. If no beneficiary designation is provided in the applicable Award Agreement or if no beneficiary has been designated or survives the Participant (or if a beneficiary designation is not enforceable and/or valid under the inheritance and other laws in the Participant's country, as determined by the Committee in its sole discretion), payment shall be made to the person entitled thereto pursuant to the Participant at any time provided the change or revocation is filed with the Committee.
  - 10.6 Stock Certificates; Book Entry Procedures.
- (a) Notwithstanding anything herein to the contrary, the Company shall not be required to issue or deliver any certificates or make any book entries evidencing shares of Stock pursuant to the exercise of any Award, unless and until the Board has determined, with advice of counsel, that the issuance and delivery of such shares is in compliance with all applicable laws, regulations of governmental authorities and, if applicable, the requirements of any exchange on which the shares of Stock are listed or traded. All Stock certificates delivered pursuant to the Plan are subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal, state, or foreign jurisdiction, securities or other laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate to reference restrictions applicable to the Stock. In addition to the terms and conditions provided herein, the Board may require that a Participant make such reasonable covenants, agreements, and representations as the Board, in its discretion, deems advisable in order to comply with any such laws, regulations, or requirements. The Committee shall have the right to require any Participant to comply with any timing or other restrictions with respect to the settlement or exercise of any Award, including a window-period limitation, as may be imposed in the discretion of the Committee.

- (b) Notwithstanding any other provision of the Plan, unless otherwise determined by the Committee or required by any applicable law, rule or regulation, the Company shall not deliver to any Participant certificates evidencing shares of Stock issued in connection with any Award and instead such shares of Stock shall be recorded in the books of the Company (or, as applicable, its transfer agent or stock plan administrator).
- 10.7 Paperless Administration. In the event that the Company establishes, for itself or using the services of a third party, an automated system for the documentation, granting or exercise of Awards, such as a system using an internet website or interactive voice response, then the paperless documentation, granting or exercise of Awards by a Participant may be permitted through the use of such an automated system.
- 10.8 *Prohibition on Repricing*. Subject to Section 12.1, the Committee shall not, without the approval of the stockholders of the Company, authorize the amendment of any outstanding Award to reduce its price per share. Furthermore, subject to Section 12.1, no Award shall be canceled and replaced or substituted for with the grant of an Award having a lesser price per share without the further approval of stockholders of the Company. Subject to Section 12.1, the Committee shall have the authority, without the approval of the stockholders of the Company, to amend any outstanding award to increase the price per share or to cancel and replace or substitute for an Award with the grant of an Award having a price per share that is greater than or equal to the price per share of the original Award. Subject to Section 12.1, absent the approval of the stockholders of the Company, the Committee shall not offer to buyout for a payment in cash, an Option or Stock Appreciation Right previously granted.
- 10.9 Full Value Award Vesting Limitations. Notwithstanding any other provision of the Plan to the contrary, but subject to Sections 6.2, 12.1, 12.2 and 13.3(d) of the Plan, Full Value Awards made to Employees or Consultants, other than Assumed Spin-Off Awards, shall become vested on one or more vesting dates over a period of not less than three years (or, in the case of vesting based upon the attainment of Performance Goals or other performance-based objectives, over a period of not less than one year measured from the commencement of the period over which performance is evaluated) following the date the Award is granted; provided, however, that, notwithstanding the foregoing, the following Awards may be granted without regard to such minimum vesting provisions: (i) Full Value Awards that result in the issuance to one or more Participants of an aggregate of up to 5% of the shares of Stock available pursuant to Section 3.1(a), (ii) Full Value Awards granted to Independent Directors in lieu of cash retainers and (iii) Full Value Awards granted to certain Eligible Individuals who are subject to laws and/or regulations imposing certain requirements or restrictions on the remuneration of such individuals. Nothing in this Section 10.9 shall preclude the Board or the Committee from taking action, in its sole discretion, to accelerate the vesting of any Award in connection with or following a Change in Control.

### **ARTICLE 11.**

## INDEPENDENT DIRECTOR AWARDS

11.1 The Board may grant Awards to Independent Directors, subject to the limitations of the Plan, pursuant to a written non-discretionary formula established by the Committee, or any successor committee thereto carrying out its responsibilities on the date of grant of any such Award (the "Independent Director Equity Compensation Policy"). The Independent Director Equity Compensation Policy shall set forth the type of Award(s) to be granted to Independent Directors, the number of shares of Stock to be subject to Independent Director Awards, the conditions on which such Awards shall be granted, become exercisable and/or payable and expire, and such other terms and conditions as the Committee (or such other successor committee as described above) shall determine in its discretion, except that any Assumed Spin-Off Awards shall be subject to the terms as in existence as of the completion of the Spin-Off.

### ARTICLE 12.

### CHANGES IN CAPITAL STRUCTURE

### 12.1 Adjustments.

- (a) In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation or other distribution (other than normal cash dividends) of Company assets to stockholders, or any other change affecting the shares of Stock or the share price of the Stock other than an Equity Restructuring, the Committee shall make such equitable adjustments, if any, as the Committee in its discretion may deem appropriate to reflect such change with respect to (i) the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Sections 3.1 and 3.3); (ii) the number and kind of shares (or other securities or property) subject to outstanding Awards; (iii) the terms and conditions of any outstanding Awards (including, without limitation, any applicable performance targets or criteria with respect thereto); and (iv) the grant or exercise price per share for any outstanding Awards under the Plan. Any adjustment affecting an Award intended as Qualified Performance-Based Compensation shall be made consistent with the requirements of Section 162(m) of the Code.
- (b) In the event of any transaction or event described in Section 12.1 or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any of its affiliates, or of changes in applicable laws, regulations or accounting principles, the Committee, in its sole and absolute discretion, and on such terms and conditions as it deems appropriate, either by the terms of the Award or by action taken prior to the occurrence of such transaction or event and either automatically or upon the Participant's request, is hereby authorized to take any one or more of the following actions whenever the Committee determines that such action is appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any Award under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles:
  - (i) To provide for either (A) termination of any such Award in exchange for an amount of cash, if any, equal to the amount that would have been attained upon the exercise of such Award or realization of the Participant's rights (and, for the avoidance of doubt, if as of the date of the occurrence of the transaction or event described in this Section 12.1 the Committee determines in good faith that no amount would have been attained upon the exercise of such Award or realization of the Participant's rights, then such Award may be terminated by the Company without payment) or (B) the replacement of such Award with other rights or property selected by the Committee in its sole discretion;
  - (ii) To provide that such Award be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar options, rights or awards covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices;
  - (iii) To make adjustments in the number and type of shares of Stock (or other securities or property) subject to outstanding Awards, and in the number and kind of outstanding Restricted Stock or Deferred Stock Units and/or in the terms and conditions of (including the grant or exercise price), and the criteria included in, outstanding options, rights and awards and options, rights and awards which may be granted in the future;
  - (iv) To provide that such Award shall be exercisable or payable or fully vested with respect to all shares covered thereby, notwithstanding anything to the contrary in the Plan or the applicable Award Agreement; and
    - (v) To provide that the Award cannot vest, be exercised or become payable after such event.
- (c) In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Sections 12.1(a) and 12.1(b):
  - (i) The number and type of securities subject to each outstanding Award and the exercise price or grant price thereof, if applicable, will be equitably adjusted. The adjustments provided under this Section 12.1(c)(i) shall be nondiscretionary and shall be final and binding on the affected Participant and the Company.
  - (ii) The Committee shall make such equitable adjustments, if any, as the Committee in its discretion may deem appropriate to reflect such Equity Restructuring with respect to the aggregate number and kind of shares that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Sections 3.1 and 3.3).
  - (iii) To the extent that such equitable adjustments result in tax consequences to the Participant, the Participant shall be responsible for payment of such taxes and shall not be compensated for such payments by the Company or its Subsidiaries.

- (d) The existence of the Plan, the Award Agreement and the Awards granted hereunder shall not affect or restrict in any way the right or power of the Company or the stockholders of the Company to make or authorize any adjustment, recapitalization, reorganization or other change in the Company's capital structure or its business, any merger or consolidation of the Company, any issue of stock or of options, warrants or rights to purchase stock or of bonds, debentures, preferred or prior preference stocks whose rights are superior to or affect the Stock or the rights thereof or which are convertible into or exchangeable for Stock, or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.
- 12.2 Acceleration Upon a Change in Control. Notwithstanding Section 12.1, and except as may otherwise be provided in any applicable Award Agreement or other written agreement entered into between the Company and a Participant, if a Change in Control occurs and a Participant's Awards are not converted, assumed, or replaced by a successor entity, then immediately prior to the Change in Control such Awards shall become fully exercisable and all forfeiture restrictions on such Awards shall lapse. Upon, or in anticipation of, a Change in Control, the Committee may cause any and all Awards outstanding hereunder to terminate at a specific time in the future, including but not limited to the date of such Change in Control, and shall give each Participant the right to exercise such Awards during a period of time as the Committee, in its sole and absolute discretion, shall determine. In the event that the terms of any agreement between the Company or any Company subsidiary or affiliate and a Participant contains provisions that conflict with and are more restrictive than the provisions of this Section 12.2, this Section 12.2 shall prevail and control and the more restrictive terms of such agreement (and only such terms) shall be of no force or effect. Further, to the extent that there are tax consequences to the Participant as a result of the acceleration or lapsing of forfeiture restriction upon a Change in Control, the Participant shall be responsible for payment of such taxes and shall not be compensated for such payment by the Company or its Subsidiaries.
- 12.3 No Other Rights. Except as expressly provided in the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to action of the Committee under the Plan, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of shares of Stock subject to an Award or the grant or exercise price of any Award.

## ARTICLE 13.

## ADMINISTRATION

13.1 Committee. Except as otherwise provided herein, the Plan shall be administered by a committee consisting of two or more members of the Board (the "Committee"). Unless otherwise determined by the Board, the Committee shall consist solely of two or more members of the Board each of whom is an "outside director," within the meaning of Section 162(m) of the Code, a Non-Employee Director and an "independent director" under the rules of the Nasdaq Stock Market (or other principal securities market on which shares of Stock are traded); provided that any action taken by the Committee shall be valid and effective, whether or not members of the Committee at the time of such action are later determined not to have satisfied the requirements for membership set forth in this Section 13.1 or otherwise provided in any charter of the Committee. Notwithstanding the foregoing: (a) the full Board, acting by a majority of its members in office, shall conduct the general administration of the Plan with respect to all Awards granted to Independent Directors and for purposes of such Awards the term "Committee" as used in this Plan shall be deemed to refer to the Board and (b) the Committee may delegate its authority hereunder to the extent permitted by Section 13.5. In its sole discretion, the Board may at any time and from time to time exercise any and all rights and duties of the Committee under the Plan except with respect to matters which under Rule 16b-3 under the Exchange Act or Section 162(m) of the Code, or any regulations or rules issued thereunder, are required to be determined in the sole discretion of the Committee. Except as may otherwise be provided in any charter of the Committee, appointment of Committee members shall be effective upon acceptance of appointment; Committee members may resign at any time by delivering written notice to the Board; and vacancies in the Committee may only be filled by the Board.

- 13.2 Action by the Committee. Unless otherwise established by the Board or in any charter of the Committee, a majority of the Committee shall constitute a quorum and the acts of a majority of the members present at any meeting at which a quorum is present, and acts approved in writing by a majority of the Committee in lieu of a meeting, shall be deemed the acts of the Committee. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Subsidiary, the Company's independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.
- 13.3 *Authority of Committee*. Subject to any specific designation in the Plan, the Committee has the exclusive power, authority and discretion to:
  - (a) Designate Participants to receive Awards;
  - (b) Determine the type or types of Awards to be granted to each Participant;
  - (c) Determine the number of Awards to be granted and the number of shares of Stock to which an Award will relate;
- (d) Determine the terms and conditions of any Award granted pursuant to the Plan, including, but not limited to, the exercise price, grant price, or purchase price, any restrictions or limitations on the Award, any schedule for vesting, lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, any provisions related to non-competition and recapture of gain on an Award, based in each case on such considerations as the Committee in its sole discretion determines; *provided, however*, that, except as provided in Article 12 of the Plan, the Committee shall not have the authority to accelerate the vesting or waive the forfeiture of any Performance-Based Awards;
- (e) Determine whether, to what extent, and pursuant to what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;
  - (f) Prescribe the form of each Award Agreement, which need not be identical for each Participant;
  - (g) Decide all other matters that must be determined in connection with an Award;
- (h) Establish, adopt, or revise any rules and regulations as it may deem necessary or advisable to administer the Plan, including adopting sub-plans to the Plan or special terms for Award Agreements, for the purposes of complying with non-U.S. laws and/or taking advantage of tax favorable treatment for Awards granted to Participants outside the United States (as further set forth in Section 4.2 of the Plan) as it may deem necessary or advisable to administer the Plan;
  - (i) Interpret the terms of, and any matter arising pursuant to, the Plan or any Award Agreement; and
- (j) Make all other decisions and determinations that may be required pursuant to the Plan or as the Committee deems necessary or advisable to administer the Plan.
- 13.4 *Decisions Binding*. The Committee's interpretation of the Plan, any Awards granted pursuant to the Plan, any Award Agreement and all decisions and determinations by the Committee with respect to the Plan are final, binding, and conclusive on all parties.
- 13.5 Delegation of Authority. To the extent permitted by applicable law, the Board or the Committee may from time to time delegate to a committee of one or more members of the Board or one or more officers of the Company the authority to grant or amend Awards to Participants or to exercise any of the power, authority and discretion granted to the Committee pursuant to Section 13.3; provided that (i) the Committee shall have the sole authority with respect to Awards granted to or held by (a) Employees who are subject to Section 16 of the Exchange Act and (b) Covered Employees, and (ii) officers of the Company (or Directors) to whom authority has been delegated hereunder shall not be delegated such authority with respect to Awards granted to or held by such officers (or Directors). Any delegation hereunder shall be subject to the restrictions and limits that the Board or the Committee specifies at the time of such delegation, and the Board or the Committee may at any time rescind the authority so delegated or appoint a new delegatee. At all times, the delegatee appointed under this Section 13.5 shall serve in such capacity at the pleasure of the Board or the Committee.

### ARTICLE 14.

## EFFECTIVE AND EXPIRATION DATE

- 14.1 *Effective Date*. The Plan is effective as of [ ] (the "*Effective Date*"), subject to approval of the Plan by the Company's stockholders. The Plan will be deemed to be approved by the stockholders if it is approved either:
  - (a) By a majority of the votes cast at a duly held stockholder's meeting at which a quorum representing a majority of outstanding voting stock is, either in person or by proxy, present and voting on the plan; or
  - (b) By a method and in a degree that would be treated as adequate under Delaware law in the case of an action requiring stockholder approval.
- 14.2 Expiration Date. The Plan will expire on, and no Award may be granted pursuant to the Plan after the tenth anniversary of the Effective Date, except that no Incentive Stock Options may be granted under the Plan after the earlier of the tenth anniversary of (a) the date the Plan is approved by the Board or (b) the Effective Date. Any Awards that are outstanding on the tenth anniversary of the Effective Date shall remain in force according to the terms of the Plan and the applicable Award Agreement.

## ARTICLE 15.

## AMENDMENT, MODIFICATION, AND TERMINATION

- 15.1 Amendment, Modification, and Termination. Subject to Section 16.16, with the approval of the Board, at any time and from time to time, the Committee may terminate, amend or modify the Plan; provided, however, that (a) to the extent necessary and desirable to comply with any applicable law, regulation, or stock exchange rule, the Company shall obtain stockholder approval of any Plan amendment in such a manner and to such a degree as required, and (b) stockholder approval shall be required for any amendment to the Plan that (i) increases the number of shares available under the Plan (other than any adjustment as provided by Article 12), (ii) permits the Committee to grant Options with an exercise price that is below Fair Market Value on the date of grant, (iii) permits the Committee to extend the exercise period for an Option beyond ten years from the date of grant or (iv) amends Section 10.8 of the Plan.
- 15.2 Awards Previously Granted. Except with respect to amendments made pursuant to Section 16.16, no termination, amendment, or modification of the Plan shall adversely affect in any material way any Award previously granted pursuant to the Plan without the prior written consent of the Participant.

## ARTICLE 16.

## **GENERAL PROVISIONS**

- 16.1 *No Rights to Awards*. No Eligible Individual or other person shall have any claim to be granted any Award pursuant to the Plan, and neither the Company nor the Committee is obligated to treat Eligible Individuals, Participants or any other persons uniformly.
- 16.2 No Stockholders Rights. Except as otherwise provided herein, a Participant shall have none of the rights of a stockholder with respect to shares of Stock covered by any Award until the Participant becomes the record owner of such shares of Stock.
- 16.3 Withholding. The Company or any Subsidiary shall have the authority and the right to deduct or withhold (by any means set forth herein or in an Award Agreement), or require a Participant to remit to the Company or a Subsidiary, an amount sufficient to satisfy federal, state, local and foreign income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to participation in the Plan and legally applicable to Participant and required by law to be withheld (including any amount deemed by the Company or the Participant's employer, in its discretion, to be an appropriate charge to the Participant even if

legally applicable to the Company or the Participant's employer). The Committee may, in its discretion and in satisfaction of the foregoing requirement, allow a Participant to elect to have the Company withhold shares of Stock otherwise issuable under an Award (or allow the return of shares of Stock) having a Fair Market Value equal to the sums required to be withheld. Notwithstanding any other provision of the Plan, the number of shares of Stock which may be withheld with respect to the issuance, vesting, exercise or payment of any Award (or which may be repurchased from the Participant of such Award within six months (or such other period as may be determined by the Committee) after such shares of Stock were acquired by the Participant from the Company) in order to satisfy the Participant's federal, state, local and foreign income and payroll tax liabilities with respect to the issuance, vesting, exercise or payment of the Award (as described above) shall be limited to the number of shares which have a Fair Market Value on the date of withholding or repurchase equal to the aggregate amount of such liabilities based on the minimum statutory withholding amounts or other applicable withholding rates.

- 16.4 No Right to Employment or Services. Nothing in the Plan or any Award Agreement shall interfere with or limit in any way the right of the Company or any Subsidiary to terminate any Participant's employment or services at any time, nor confer upon any Participant any right to continue in the employ or service of the Company or any Subsidiary.
- 16.5 *Unfunded Status of Awards*. The Plan is intended to be an "unfunded" plan for incentive compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award Agreement shall give the Participant any rights that are greater than those of a general creditor of the Company or any Subsidiary.
- 16.6 Assumed Spin-Off Awards. Notwithstanding anything in this Plan to the contrary, each Assumed Spin-Off Award shall be subject to the terms and conditions of the equity compensation plan and award agreement to which such Award was subject immediately prior to the Spin-Off, subject to the adjustment of such Award by the Compensation Committee of eBay Inc. and the terms of the Employee Matters Agreement between the Company and eBay Inc., entered into in connection with the Spin-Off, provided that following the date of the Spin-Off, each such Award shall relate solely to shares of Stock and be administered by the Committee in accordance with the administrative procedures in effect under this Plan.
- 16.7 Indemnification. To the extent allowable pursuant to applicable law, each member of the Committee or of the Board and each person to whom the Committee delegates its authority under Section 13.5 shall be indemnified and held harmless by the Company from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by such member in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action or failure to act pursuant to the Plan and against and from any and all amounts paid by him or her in satisfaction of judgment in such action, suit, or proceeding against him or her; provided he or she gives the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled pursuant to the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.
- 16.8 *Relationship to Benefits*. No payment pursuant to the Plan shall be taken into account in determining any benefits pursuant to any severance, resignation, termination, redundancy, end of service payments, long-term service awards, pension, retirement, savings, profit sharing, group insurance, welfare or benefit plan of the Company or any Subsidiary except to the extent otherwise expressly provided in writing in such other plan or an agreement thereunder.
- 16.9 Effect of Plan upon Compensation Plans. The adoption of the Plan shall not affect any compensation or incentive plans in effect for the Company or any Subsidiary. Nothing in the Plan shall be construed to limit the right of the Company or any Subsidiary: (a) to establish any forms of incentives or compensation for Employees, Directors or Consultants of the Company or any Subsidiary, or (b) to grant or assume options or other rights or awards otherwise than under the Plan in connection with any proper corporate purpose including, without limitation, the grant or assumption of options in connection with the acquisition by purchase, lease, merger, consolidation or otherwise, of the business, stock or assets of any corporation, partnership, limited liability company, firm or association.

- 16.10 Awards Subject to Clawback. The Awards and any cash payment or shares of Stock delivered pursuant to an Award are subject to forfeiture, recovery by the Company or other action pursuant to the applicable Award Agreement or any clawback or recoupment policy which the Company may adopt from time to time, including without limitation any such policy which the Company may be required to adopt under the Dodd-Frank Wall Street Reform and Consumer Protection Act and implementing rules and regulations thereunder, or as otherwise required by law.
  - 16.11 Expenses. The expenses of administering the Plan shall be borne by the Company and its Subsidiaries.
- 16.12 *Titles and Headings*. The titles and headings of the Sections in the Plan are for convenience of reference only and, in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.
- 16.13 *Fractional Shares*. No fractional shares of Stock shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional shares or whether such fractional shares shall be eliminated by rounding up or down as appropriate.
- 16.14 *Limitations Applicable to Section 16 Persons*. Notwithstanding any other provision of the Plan, the Plan, and any Award granted or awarded to any Participant who is then subject to Section 16 of the Exchange Act, shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 under the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.
- 16.15 Compliance with Laws. The Plan, the granting and vesting of Awards under the Plan and the issuance and delivery of shares of Stock and the payment of money under the Plan or under Awards granted or awarded hereunder are subject to compliance with all applicable federal, state, local and foreign laws, rules and regulations (including but not limited to state, federal and foreign securities law and margin requirements) and to such approvals by any listing, regulatory or governmental authority as may, in the opinion of counsel for the Company, be necessary or advisable in connection therewith. The Company shall have no obligation to issue or deliver shares of Stock prior to obtaining any approvals from listing, regulatory or governmental authority that the Company determines are necessary or advisable. Any securities delivered under the Plan shall be subject to such restrictions, and the person acquiring such securities shall, if requested by the Company, provide such assurances and representations to the Company as the Company may deem necessary or desirable to assure compliance with all applicable legal requirements. The Company shall be under no obligation to register pursuant to the Securities Act, any of the shares of Stock paid pursuant to the Plan. To the extent permitted by applicable law, the Plan and Awards granted or awarded hereunder shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.
- 16.16 *Governing Law.* The Plan and all Award Agreements shall be construed in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflict of laws of that State.
- 16.17 Section 409A. To the extent that the Committee determines that any Award granted under the Plan is subject to Section 409A of the Code, the Award Agreement evidencing such Award shall incorporate the terms and conditions required by Section 409A of the Code. To the extent applicable, the Plan and Award Agreements shall be interpreted in accordance with Section 409A of the Code and Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the Effective Date. Notwithstanding any provision of the Plan to the contrary, in the event that following the Effective Date the Committee determines that any Award may be subject to Section 409A of the Code and related Department of Treasury guidance (including such Department of Treasury guidance as may be issued after the Effective Date), the Committee may adopt such amendments to the Plan and the applicable Award Agreement or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, that the Committee determines are necessary or appropriate to (a) exempt the Award from Section 409A of the Code and/or preserve the intended tax treatment of the benefits provided with respect to the Award, or (b) comply with the requirements of Section 409A of the Code and related Department of Treasury guidance and thereby avoid the application of any penalty taxes under such Section.

\* \* \* \* \*

I hereby certify that the foregoing Plan was duly adopted by the Board of Directors of PayPal Holdings, Inc. on [ ], 2015.

\* \* \* \* \*

I hereby certify that the foregoing Plan was approved by the stockholders of PayPal Holdings, Inc. on [ ], 2015.

Executed on this [ ] day of [ ], 2015.

/s/[]
Corporate Secretary

### PAYPAL EMPLOYEE INCENTIVE PLAN

# ADOPTED BY THE COMPENSATION COMMITTEE OF THE BOARD OF DIRECTORS ON [●]

#### 1. PURPOSE.

The PayPal Employee Incentive Plan is an element of PayPal's overall compensation strategy to align employee compensation with PayPal's business objectives, strategy, and performance. The Plan is designed to reward PayPal's employees for delivering measurable results. The purpose of the Plan is to align compensation with quarterly and annual performance and to enable PayPal to attract, retain, and reward highly qualified individuals who contribute to PayPal's success and motivate them to enhance the value of the Company.

### 2. **DEFINITIONS.**

- (a) "Board" means PayPal' s Board of Directors.
- **(b)** "Code" means the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent federal internal revenue law.
- **(c)** "Committee" means the Compensation Committee of PayPal's Board of Directors (and any committee to which the Compensation Committee has delegated its authority as set forth in Section 3(b) hereof); in any event the Committee shall be comprised of not less than two directors of the Company, each of whom shall qualify in all respects as an "outside director" for purposes of Section 162(m) of the Code.
- (d) "Company" or "PayPal" means PayPal Holdings, Inc. or any corporation or business entity of which PayPal (i) directly or indirectly has an ownership interest of 50% or more, or (ii) has a right to elect or appoint 50% or more of the board of directors or other governing body.
  - (e) "eBay Plan" means the eBay Incentive Plan as in effect immediately prior to the effective time of the Spin-Off.
- **(f)** "Eligible Employee" means all active regular full-time and part-time employees who are notified by the Company that they are eligible to participate in the Plan.
  - (g) "Employee Matters Agreement" means the Employee Matters Agreement between PayPal and eBay Inc., dated [ ], 2015.
  - (h) 'Incentive Award' means any cash or equity incentive payment made under the Plan.
- (i) "Performance Period" means the period in which performance is measured for which Incentive Awards are paid, as determined by the Committee.
  - (i) "Plan" means this plan, which shall be known as the PayPal Employee Incentive Plan.
  - (k) "Plan Year" means the calendar year.
- (I) "Spin-Off" means the distribution of shares of common stock of PayPal to the stockholders of eBay Inc. pursuant to the Separation and Distribution Agreement, dated [ ], 2015.

# 3. ADMINISTRATION.

- (a) The Plan shall be administered by the Committee. The Committee shall have full power and authority to:
  - (i) interpret, construe, and administer all questions of policy and expediency pertaining to the Plan;
  - (ii) adopt such rules, regulations, agreements, and instruments as it deems necessary for its proper administration;
  - (iii) select Eligible Employees to receive Incentive Awards;
  - (iv) determine the terms of the Incentive Awards;

- (v) determine the amounts subject to Incentive Awards, including the exclusive right to establish, adjust, pay or decline to pay the Incentive Award for each Eligible Employee, provided that the exercise of such discretion shall not have the effect of increasing any Incentive Award that is intended to qualify as "performance-based compensation" under Section 162(m) of the Code;
- (vi) determine whether Incentive Awards will be granted in replacement of, or alternatives to, any other incentive or compensation plan of PayPal or an acquired business unit;
  - (vii) grant waivers of Plan or Incentive Award conditions;
- (viii) determine the form of payment of an Incentive Award, which may be in cash, stock or other property as determined by the Committee;
  - (ix) correct any defect, supply any omission, or reconcile any inconsistency in the Plan, or any Incentive Award or notice;
  - (x) take any and all actions it deems necessary or advisable for the proper administration of the Plan;
- (xi) adopt such Plan procedures, regulations, subplans and the like as deemed necessary to enable Eligible Employees to receive awards; and
- (xii) amend the Plan at any time and from time to time, provided that no amendment to the Plan shall be effective unless approved by PayPal's stockholders to the extent that such stockholder approval is required under Section 162(m) of the Code with respect to Incentive Awards that are intended to qualify under that Section.
- **(b)** The Committee may delegate its authority to grant and administer Incentive Awards to a separate committee or officer of the Company; however, only the Committee may grant and administer Incentive Awards that are intended to qualify as "performance-based compensation" under Section 162(m) of the Code.

### 4. ELIGIBILITY.

All active regular full-time and part-time employees who are notified by the Company that they are eligible to participate in the Plan are eligible to participate in the Plan. Except as otherwise provided by the Committee, Participation begins January 1 or the first full Performance Period of employment for newly hired employees. Employees joining PayPal via an acquisition during the Plan Year will generally be eligible as of the first full Performance Period of employment unless otherwise notified by the Company. Employees who participate in other bonus programs, such as any sales incentive plan, are not eligible to participate in the Plan unless they are specifically made eligible in writing by an executive officer of the Company. In addition, the Company may, in its sole discretion, provide for a payout under the Plan for any employee who has changed positions and, as a result, may have been eligible to participate in the Plan and another bonus program during a Performance Period.

Notwithstanding the above, in connection with the Spin-Off and pursuant to the terms of the Employee Matters Agreement, each employee of the Company or its subsidiaries who was participating in the eBay Plan as of the effective date of the Plan shall become an Eligible Employee as of such effective date.

### 5. PERFORMANCE MEASURES AND GOALS.

- (a) The Committee shall establish performance measures and goals applicable to a particular Performance Period, provided that the outcome of the performance goals are substantially uncertain at the time such goals are established. Under ordinary circumstances, these performance measures shall be established within 90 days of the commencement of an annual Performance Period, or within the period that is the first 25% of any Performance Period that is shorter than twelve (12) months in duration.
- **(b)** Each performance measure applicable to a Performance Period shall identify one or more of the following criteria that are to be monitored for PayPal or any business unit during the Performance Period:
  - (i) trading volume;
  - (ii) users;
  - (iii) gross merchandise volume;
  - (iv) total payment volume;
  - (iii) revenue;

- (vii) operating income;
- (viii) EBITDA and/or net earnings (either before or after interest, taxes, depreciation and amortization);
- (viii) net income (either before or after taxes);
- (ix) earnings per share;
- (x) earnings as determined other than pursuant to United States generally accepted accounting principles ("GAAP");
- (xi) multiples of price to earnings;
- (xii) multiples of price/earnings to growth;
- (xiii) return on net assets;
- (xi) return on gross assets;
- (xii) return on equity;
- (xiii) return on invested capital;
- (xiv) cash flow (including, but not limited to, operating cash flow and free cash flow);
- (xv) net or operating margin;
- (xvi) economic profit;
- (xvii) stock price appreciation;
- (xviii) total stockholder return;
- (xix) employee productivity;
- (xx) market share;
- (xxi) volume;
- (xxii) customer satisfaction metrics; and
- (xxiii) employee engagement/satisfaction metrics.

The measures may be described in terms of growth, an absolute number, or relative to an external group, and may be calculated on a pro forma basis or in accordance with GAAP. The Committee may set Performance Periods and performance goals that differ among Eligible Employees.

(c) The Committee may base performance measures and goals on one or more of the foregoing business criteria.

### 6. ESTABLISHMENT OF TARGET BONUSES.

The Committee will designate those Eligible Employees who are to be participants in the Plan for that year and will specify the terms and conditions for the determination and payment of an Incentive Award to each Eligible Employee. The Committee may condition the payment of an Incentive Award upon the satisfaction of such objective or subjective standards as it deems appropriate. Under ordinary circumstances, these performance measures shall be established within 90 days of the commencement of a Performance Period, or within the period that is the first 25% of any Performance Period that is shorter than twelve (12) months in duration.

### 7. INCENTIVE AWARDS.

- (a) Incentive Awards may be made on the basis of PayPal and/or business unit performance measures, goals, and formulas determined by the Committee.
- **(b)** No Eligible Employee may receive an Incentive Award of more than [●] or an equivalent amount of equity based on the fair market value of the Company's common stock on the date of grant in any Plan Year.

- (c) As soon as practicable after the end of each Performance Period, the Committee will certify in writing whether the stated performance goals have been met and will determine the amount, if any, of the Incentive Award to be paid to each Eligible Employee.
- (d) In determining the Incentive Award, the Committee will consider the target goals established at the beginning of the Plan Year or applicable Performance Period, the degree to which the established goals were satisfied and any other objective or subjective factors it deems appropriate. The Committee may reduce the amount of, or eliminate altogether, any Incentive Award that would otherwise be payable. Individuals who enter the Plan during the Plan Year may have their awards prorated.

### 8. PAYMENT OF INCENTIVE AWARDS.

Subject to any election duly and validly made by an Eligible Employee with respect to the deferral of all or a portion of his or her Incentive Award, Incentive Awards shall be paid in cash or equity pursuant to a PayPal equity-based award plan under which securities have been registered on Form S-8 at such times and on such terms as are determined by the Committee in its sole and absolute discretion.

### 9. Spin-Off and Assumption of Incentive Awards under the eBay Plan.

In connection with the Spin-Off, all incentive awards granted to any Eligible Employee under the eBay Plan for any performance period (as defined under the eBay Plan) that is pending at the time that the Spin-Off occurs shall be assumed by the Company and shall become administered and paid by the Company pursuant to this Plan and the terms of the Employee Matters Agreement, with such changes, if any, to the performance goals that were applicable to such incentive awards under the eBay Plan as may be necessary in order to reflect the business of the Company following the Spin-Off.

### 10. NO RIGHT TO BONUS OR CONTINUED EMPLOYMENT.

- (a) Neither the establishment of the Plan, the provision for or payment of any amounts hereunder nor any action of the Company, the Board or the Committee with respect to the Plan shall be held or construed to confer upon any person:
  - (i) any legal right to receive, or any interest in, an Incentive Award or any other benefit under the Plan, or
- (ii) any legal right to continue to serve as an officer or employee of the Company or any subsidiary or affiliate of the Company.
- **(b)** The Company expressly reserves any and all rights to discharge any Eligible Employee without incurring liability to any person under the Plan or otherwise. Upon such discharge and notwithstanding any other provision hereof and regardless of whether or not specified performance goals have been achieved or the amount of an Incentive Award has been determined, the Company shall have no obligation to pay any Incentive Award, unless the Committee otherwise expressly provides by written contract or other written commitment.

# 11. WITHHOLDING.

The Company shall have the right to withhold, or require an Eligible Employee to remit to the Company, an amount sufficient to satisfy any applicable federal, state, local or foreign withholding tax requirements imposed with respect to the payment of any Incentive Award.

### 12. NONTRANSFERABILITY.

Except as expressly provided by the Committee, the rights and benefits under the Plan are personal to an Eligible Employee and shall not be subject to any voluntary or involuntary alienation, assignment, pledge, transfer or other disposition.

## 13. UNFUNDED PLAN.

The Company shall have no obligation to reserve or otherwise fund in advance any amounts that are or may in the future become payable under the Plan. Any funds that the Company, acting in its sole and absolute discretion, determines to reserve for future payments under the Plan may be commingled with other funds of the Company and need not in any way be segregated from other assets or funds held by the Company. An Eligible Employee's rights to payment under the Plan shall be limited to those of a general creditor of the Company.

### 14. INCENTIVE AWARDS SUBJECT TO CLAWBACK.

The Incentive Awards and any cash payment, stock or other property delivered pursuant to an Incentive Award are subject to forfeiture, recovery by the Company or other action pursuant to any agreement evidencing an Incentive Award or any clawback or recoupment policy which the Company may adopt from time to time, including without limitation any such policy which the Company may be required to adopt under the Dodd-Frank Wall Street Reform and Consumer Protection Act and implementing rules and regulations thereunder, or as otherwise required by law.

### 15. ADOPTION, AMENDMENT, SUSPENSION AND TERMINATION OF THE PLAN.

- (a) The Plan shall be effective for (i) Awards granted under this Plan on or after the consummation of the Spin-Off and (ii) Awards granted under the eBay Plan and assumed by the Company pursuant to Section 9 hereof.
- **(b)** Subject to the limitations set forth in this subsection, the Board may at any time suspend or terminate the Plan and may amend it from time to time in such respects as the Board may deem advisable; provided, however, that the Board shall not amend the Plan in any of the following respects without the approval of stockholders then sufficient to approve the Plan in the first instance:
- (i) To increase the maximum amount of Incentive Award that may be paid under the Plan or otherwise materially increase the benefits accruing to any Eligible Employee under the Plan;
  - (ii) To materially modify the requirements as to eligibility for participation in the Plan; or
  - (iii) To change the material terms of the stated performance goals.
- (c) No Incentive Award may be awarded during any suspension or after termination of the Plan, and no amendment, suspension or termination of the Plan shall, without the consent of the person affected thereby, alter or impair any rights or obligations under any Incentive Award previously awarded under the Plan.

### 16. GOVERNING LAW.

The validity, interpretation and effect of the Plan, and the rights of all persons hereunder, shall be governed by and determined in accordance with the laws of Delaware without regard to principles of conflict of laws.

Restricted Stock Unit Award Grant Notice ("Grant N and Restricted Stock Unit Award Agreement	otice")	PayPal Holdings, Inc. 2211 North First Street San Jose, California 95131 Company Tax ID: [ ]
%%FIRST_NAME%-% %%LAST_NAME%-% %%ADDRESS_LINE_1%-% %%ADDRESS_LINE_2%-% %%ADDRESS_LINE_3%-% %%CITY%-%, %%STATE%-% %%ZIPCODE%- %%COUNTRY%-%	Award Number: Plan: Type:	%%RSU_NUMBER%-% 2015 RSU
Effective as of <b>%%OPTION_DATE%-%</b> (the "Grant pursuant to its 2015 Equity Incentive Award Plan, as ame below ("Participant"), a Restricted Stock Unit ("RSU") This Restricted Stock Unit Award (the "Award") is subject Restricted Stock Unit Award Agreement attached hereto on the Shares set forth in the Agreement), the special proplan, all of which are incorporated herein by reference. A meanings ascribed to such terms in the Plan.	ended from time to time, (the "Plan"), hereby with respect to %%TOTAL_SHARES_GREET to all of the terms and conditions set forth as Exhibit A (the "Agreement") (including vovisions for Participant's country, if any, attack	y grants to the individual listed RANTED%-% (the "Shares"). in this Grant Notice, the vithout limitation the restrictions ched hereto as Exhibit B and the
The Award will vest in increments on the date(s) shown.		
Shares	Full Vest	
%%SHARES_PERIOD1%-% %%SHARES_PERIOD2%-% %%SHARES_PERIOD3%-%	%%VEST_DATE_PERIOD1% %%VEST_DATE_PERIOD2% %%VEST_DATE_PERIOD3%	0-%
%%SHARES_PERIOD4%-%	%%VEST_DATE_PERIOD4%	
All vesting is subject to Participant's continued service verespect to Participants who are subject to taxation in the I following Participant's separation from service (within the I)	U.S. under the Code, in no event shall any Re	estricted Stock Units vest
By Participant's signature and the Company's signature and this Grant Notice which includes Exhibit A (the Agre Participant has reviewed and fully understands all provise B, and has had an opportunity to obtain the advice of coubinding, conclusive and final all decisions or interpretation Notice, including Exhibits A and B.	eement) and Exhibit B (the special provisions ions of the Plan and this Grant Notice in their insel prior to executing this Grant Notice. Par	s for Participant's country, if any). r entirety, including Exhibits A and rticipant hereby agrees to accept as

PayPal Holdings, Inc.

%%FIRST\_NAME%-% %%LAST\_NAME%-%, the

%%GRANT DATE%-%

Date

Date

# EXHIBIT A TO RESTRICTED STOCK UNIT AWARD GRANT NOTICE

### PAYPAL HOLDINGS, INC. RESTRICTED STOCK UNIT AWARD AGREEMENT

Pursuant to the Restricted Stock Unit Award Grant Notice (the "Grant Notice") to which this Restricted Stock Unit Award Agreement (the "Agreement") is attached, PayPal Holdings, Inc., a Delaware corporation (the "Company") has granted to Participant the right to receive the number of Restricted Stock Units ("RSUs") under the 2015 Equity Incentive Award Plan, as amended from time to time (the "Plan"), as set forth in the Grant Notice.

### **GENERAL**

- 1. <u>Definitions</u>. Any capitalized terms used in this Agreement without definition shall have the meanings ascribed to such terms in the Plan or the Grant Notice, as applicable.
- 2. <u>Incorporation of Terms of Plan</u>. The Award is subject to the terms and conditions of the Plan which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

### **AGREEMENT**

- 1. <u>Grant of the RSUs</u>. As set forth in the Grant Notice, the Company hereby grants to Participant the RSUs, subject to all the terms and conditions in the Grant Notice, including this Exhibit A and Exhibit B, and the Plan. However, no shares of Stock ("**Shares**") shall be issued to Participant until the time set forth in Section 2. Prior to actual issuance of any Shares, such RSUs will represent an unsecured obligation of the Company, payable only from the general assets of the Company.
- 2. <u>Issuance of Stock</u>. Shares shall be issued to Participant on or as soon as administratively practicable following each vesting date as set forth in the Grant Notice (the "*Vesting Date*") (and in no event later than 2-1/2 months following each such Vesting Date), provided that Participant has not experienced a Termination of Service on or prior to such Vesting Date. After each such Vesting Date, the Company shall promptly cause to be issued (either in book-entry form or otherwise) to Participant or Participant's beneficiaries, as the case may be, Shares with respect to RSUs that become vested on such Vesting Date. No fractional Shares shall be issued under this Agreement. In the event Participant experiences a Termination of Service, the RSUs shall cease vesting immediately upon such Termination of Service, as further described in Section 8(j) below, and the unvested RSUs awarded by this Agreement and the Grant Notice shall be forfeited.
- 3. Responsibility for Taxes. Participant acknowledges that, regardless of any action taken by the Company and/or Participant's employer (the "Employer"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to Participant's participation in the Plan and legally applicable to Participant as a result of participation in the Plan ("Tax-Related Items"), is and remains Participant's responsibility and may exceed the amount (if any) withheld by the Company or the Employer. Participant further acknowledges that the Company and/or the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Award, including, but not limited to, the grant, vesting, settlement, release or cancellation of the RSUs, the issuance of Shares upon settlement of the RSUs, the subsequent sale of Shares acquired pursuant to such issuance and the receipt of any dividends, and (b) do not commit to and are

under no obligation to structure the terms of the grant or any aspect of the RSUs to reduce or eliminate Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if Participant has become subject to Tax-Related Items in more than one jurisdiction, Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the relevant taxable or tax withholding event, as applicable, Participant agrees to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy the Tax-Related Items. In this regard, Participant authorizes the Company and/or the Employer (or their respective agents), at their discretion and pursuant to such procedures as they may specify from time to time, to satisfy the obligations with regard to the Tax-Related Items by one or a combination of the following:

- (i) withholding a net number of otherwise issuable vested Shares having a then current Fair Market Value not exceeding the amount necessary to satisfy the withholding obligation of the Company and/or the Employer based on the applicable minimum statutory withholding amounts or other applicable withholding rates; and/or
- (ii) arranging for the Company-designated broker to sell on the market a portion of the otherwise issuable vested Shares that have an aggregate market value sufficient to pay the Tax-Related Items (a "*Sell to Cover*"), on Participant's behalf and at Participant's direction pursuant to this authorization; and/or
- (iii) withholding from Participant's wages or other cash compensation paid to Participant by the Company and/or the Employer; and/or
- (iv) requiring Participant to make a payment in cash (or cash equivalent) to the Company or the Employer;

provided, however, that if Participant is an executive officer, within the meaning of Section 16 of the Exchange Act, then the obligations with regard to the Tax-Related Items shall be satisfied by withholding a net number of otherwise issuable vested Shares upon the relevant taxable or tax withholding event, as applicable, as described in clause (i) above, unless the use of such withholding method would result in adverse consequences under applicable tax or securities law or accounting principles, in which case the obligations with regard to the Tax-Related Items shall be satisfied by the method described in clause (ii) above.

No fractional Shares will be sold to cover or withheld to cover Tax-Related Items. The Company may withhold or account for Tax-Related Items by considering maximum applicable rates in which case Participant will receive a refund of any over-withheld amount in cash and will have no entitlement to the equivalent amount in Shares. If the obligation for Tax-Related Items is satisfied by withholding a number of Shares as described in (ii) above, for tax purposes Participant will be deemed to have been issued the full number of Shares subject to the vested RSUs, notwithstanding that a number of Shares are held back solely for the purpose of paying the Tax-Related Items. The Company may refuse to issue or deliver the Shares or refuse to deliver the proceeds of the sale of Shares if Participant fails to comply with Participant's obligations in connection with the Tax-Related Items.

4. <u>Rights as Stockholder</u>. Neither Participant nor any person claiming under or through Participant will have any of the rights or privileges of a stockholder of the Company in respect of any Shares deliverable hereunder unless and until certificates representing such Shares (which may be in book entry form) will have been issued and recorded on the records of the Company or its transfer agents or registrars, and delivered to Participant (including through electronic delivery to a brokerage account). After such

issuance, recordation and delivery, Participant will have all the rights of a stockholder of the Company with respect to voting such Shares and receipt of dividends and distributions on such Shares.

- 5. Conditions to Issuance of Certificates. Notwithstanding any other provision of this Agreement, the Company shall not be required to issue or deliver any certificate or certificates for any Shares prior to the fulfillment of all of the following conditions: (a) the admission of the Shares to listing on all stock exchanges on which such Shares are then listed, (b) the completion of any registration or other qualification of the Shares under any U.S. state or federal or non-U.S. law or under rulings or regulations of the U.S. Securities and Exchange Commission or other governmental regulatory body (including any applicable non-U.S. governmental regulatory body), which the Company shall, in its sole and absolute discretion, deem necessary and advisable, (c) the obtaining of any approval or other clearance from any U.S. state or federal or non-U.S. governmental agency that the Company shall, in its absolute discretion, determine to be necessary or advisable and (d) the lapse of any such reasonable period of time following the date the RSUs vest as the Company may from time to time establish for reasons of administrative convenience.
- 6. <u>Plan Governs</u>. This Agreement is subject to all terms and provisions of the Plan. In the event of a conflict between one or more provisions of this Agreement and one or more provisions of the Plan will govern.
- 7. <u>Award Not Transferable</u>. This Award and the rights and privileges conferred hereby will not be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and will not be subject to sale under execution, attachment or similar process. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of this Award, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this Award and the rights and privileges conferred hereby immediately will become null and void.
  - 8. Nature of Grant. In accepting the Award, Participant acknowledges, understands and agrees that:
- (a) the Plan is established voluntarily by the Company, it is discretionary in nature, and it may be modified, amended or terminated by the Company at any time, to the extent permitted by the Plan;
- (b) the grant of the RSUs is voluntary and occasional and does not create any contractual or other right to receive future grants of RSUs, or benefits in lieu of RSUs, even if RSUs have been granted in the past;
  - (c) all decisions with respect to future grants of RSUs, if any, will be at the sole discretion of the Company;
  - (d) Participant is voluntarily participating in the Plan;
- (e) the grant of the RSUs and Participant's participation in the Plan shall not create a right to employment or service or be interpreted as forming an employment or service contract with the Company, the Employer or any Subsidiary and shall not interfere with the ability of the Company, the Employer or any Subsidiary to terminate Participant's employment or service relationship (if any);
  - (f) the RSUs and any Shares subject to the RSUs are not intended to replace any pension rights or compensation;
- (g) the RSUs and any Shares subject to the RSUs, and the income and value of the same, are not part of normal or expected compensation or salary for purposes of calculating any severance,

resignation, termination, redundancy, dismissal, end of service payments, bonuses, long-service awards, holiday pay, pension or retirement or welfare benefits or similar mandatory payments;

- (h) the future value of the Shares subject to the RSUs is unknown, indeterminable and cannot be predicted with certainty;
- (i) no claim or entitlement to compensation or damages shall arise from forfeiture of the RSUs resulting from Participant ceasing to provide services to the Company, the Employer or any Subsidiary (for any reason whatsoever and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Participant is employed or providing services or the terms of Participant's employment agreement or service contract, if any) and in consideration of the grant of the RSUs to which Participant is otherwise not entitled, Participant irrevocably agrees never to institute any claim against the Company, the Employer or any Subsidiary, waives his or her ability, if any, to bring any such claim, and releases the Company, the Employer and any Subsidiary from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, Participant shall be deemed irrevocably to have agreed not to pursue such claim and agrees to execute any and all documents necessary to request dismissal or withdrawal of such claims;
- (j) in the event of Participant's Termination of Service (whether or not later found to be invalid or in breach of employment laws in the jurisdiction where Participant is employed or providing services or the terms of Participant's employment agreement or service contract, if any), unless otherwise provided by this Agreement or determined by the Company, Participant's right to vest in the RSUs, if any, will terminate effective as of the date that Participant is no longer actively providing services and will not be extended by any notice period (e.g., active service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where Participant is employed or providing services or the terms of Participant's employment agreement or service contract, if any); the Committee shall have the exclusive discretion to determine when Participant is no longer actively providing services for purposes of the RSUs; and
- (k) neither the Company, the Employer nor any Subsidiary will be liable for any foreign exchange rate fluctuation between Participant's local currency and the United States dollar that may affect the value of the RSUs or any amounts due to Participant pursuant to the vesting of the RSUs or the subsequent sale of any Shares acquired under the Plan.
- 9. No Advice Regarding Grant. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding participation in the Plan, or Participant's acquisition or sale of Shares. Participant is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.
- 10. <u>Insider Trading Restrictions/Market Abuse Laws</u>. Participant acknowledges that he or she is subject to any applicable Company insider trading policy. In addition, depending on his or her country of residence, Participant may be subject to additional insider trading restrictions and/or market abuse laws, which may affect his or her ability to acquire or sell Shares or rights to Shares (e.g., RSUs) under the Plan during such times as Participant is considered to have "inside information" regarding the Company (as defined by the laws in Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. Participant acknowledges that it is Participant's responsibility to comply with any applicable Company insider trading policy and any additional restrictions that may apply due to local insider trading restrictions or market abuse laws. Participant is advised to speak to his or her personal legal advisor regarding any applicable local insider trading restrictions or market abuse laws.

11. <u>Data Privacy</u>. Participant hereby voluntarily consents to the collection, use and transfer, in electronic or other form, of Participant's personal data as described in this Agreement and any other RSU grant materials by and among, as applicable, the Employer, the Company and any Subsidiary for the exclusive purpose of implementing, administering and managing Participant's participation in the Plan.

Participant understands that the Company, the Employer and any Subsidiary may hold certain personal information about Participant, including, but not limited to, Participant's name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all RSUs or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in Participant's favor, for the exclusive purpose of implementing, administering and managing the Plan ("Personal Data").

Participant understands that Personal Data will be transferred to E\*Trade Corporate Financial Services, Inc. and/or its affiliates or such other stock plan service provider as may be selected by the Company in the future (the "Plan Service Provider"), which is assisting the Company with the implementation, administration and management of the Plan. Participant understands that the recipients of Personal Data may be located in the United States or elsewhere, and that the recipient's country may have different data privacy laws and protections than Participant's country. Participant authorizes the Company, the Plan Service Provider and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Personal Data, in electronic or other form, for the purpose of implementing, administering and managing his or her participation in the Plan, including any requisite transfer of such Personal Data as may be required to a broker or other third party with whom Participant may elect to deposit any Shares received upon vesting of the RSUs. Participant understands that he or she may request a list with the names and addresses of any potential recipients of Personal Data by contacting Participant's regional human resources ("MyHR") representative. Participant understands that Personal Data will be held only as long as is necessary to implement, administer and manage Participant's participation in the Plan. Participant understands that he or she may, at any time, request access to Personal Data, request additional information about the storage and processing of Personal Data, require any necessary amendments to Personal Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her MyHR representative. Further, Participant understands that Participant is providing the consents herein on a purely voluntary basis. If Participant does not consent, or if Participant later seeks to revoke his or her consent, Participant's employment status or service with the Employer will not be adversely affected; the only consequence of refusing or withdrawing consent is that the Company would not be able to grant RSUs or other equity awards to Participant or administer or maintain such awards. Therefore, Participant understands that refusal or withdrawal of consent may affect Participant's ability to participate in the Plan. For more information on the consequences of Participant's refusal to consent or withdrawal of consent, Participant understands that he or she may contact his or her MyHR representative.

- 12. <u>Electronic Delivery and Participation</u>. The Company may, in its sole discretion, decide to deliver any documents related to the RSUs or any future RSUs granted under the Plan by electronic means or request Participant's consent to participate in the Plan by electronic means. Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.
- 13. <u>Language</u>. If Participant has received this Agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.

14. Governing Law and Choice of Venue. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of the Grant Notice, this Agreement and the special provisions for Participants outside the U.S. attached to the Grant Notice as Exhibit B, regardless of the law that might be applied under such state's conflict of laws principles.

For purposes of litigating any dispute that arises directly or indirectly in respect of this Award, the parties hereby submit to and consent to the jurisdiction of the State of California and agree that such litigation shall be conducted in the courts of Santa Clara County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed.

- 15. <u>Conformity to U.S. Securities Laws</u>. Participant acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the U.S. Securities Act and the U.S. Exchange Act, and any and all regulations and rules promulgated thereunder by the U.S. Securities and Exchange Commission, including without limitation Rule 16b-3 under the Exchange Act. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Award is granted, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.
- 16. <u>Award Subject to Clawback</u>. The Award and any cash payment or Shares delivered pursuant to the Award are subject to forfeiture, recovery by the Company or other action pursuant to any clawback or recoupment policy which the Company may adopt from time to time, including without limitation any such policy which the Company may be required to adopt under the Dodd-Frank Wall Street Reform and Consumer Protection Act and implementing rules and regulations thereunder, or as otherwise required by law.
- 17. <u>Amendment, Modification and Termination</u>. To the extent permitted by the Plan, this Agreement (and the Grant Notice and Exhibit B) may be wholly or partially amended or otherwise modified or terminated at any time or from time to time by the Committee or the Board, *provided*, that, except as may otherwise be provided by the Plan, no amendment, modification or termination of this Agreement shall adversely effect the Award in any material way without the prior written consent of Participant.
- 18. <u>Notices</u>. Notices required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the post by certified mail, or its non-U.S. equivalent, with postage and fees prepaid, addressed to Participant at his or her address shown in the Company records, and to the Company at its principal executive office.
- 19. Successors and Assigns. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer herein set forth, and to the extent permissible under local law, this Agreement shall be binding upon Participant and his or her heirs, executors, administrators, successors and assigns.
- 20. Compliance in Form and Operation. This Agreement and the RSUs are intended to comply with Section 409A of the Code and the Treasury Regulations thereunder ("Section 409A") and shall be interpreted in a manner consistent with that intention, to the extent Participant is or becomes subject to U.S. federal income taxation. Notwithstanding any other provisions of this Agreement or the Grant Notice, the Company reserves the right, to the extent the Company deems necessary or advisable, if Participant is or becomes subject to U.S. federal income taxation, and without any obligation to do so or to indemnify Participant for any failure to do so, to unilaterally amend the Plan and/or this Agreement to ensure that all RSUs are awarded in a manner that qualifies for exemption from or complies with Section 409A, provided,

however, that the Company makes no representation that the RSUs will comply with or be exempt from Section 409A and makes no undertaking to preclude Section 409A from applying to the RSUs.

- 21. Exhibit B. The Award shall be subject to any special provisions set forth in Exhibit B for Participant's country, if any. If Participant relocates to one of the countries included in Exhibit B during the vesting period or while holding Shares issued upon vesting of the RSUs, the special provisions for such country shall apply to Participant, to the extent the Company determines that the application of such provisions is advisable or necessary for legal or administrative reasons. Exhibit B constitutes part of this Agreement.
- 22. <u>Imposition of Other Requirements</u>. The Company reserves the right to impose other requirements on the RSUs and on any Shares issued upon vesting of the RSUs, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.
- 23. Entire Agreement: Severability. The Plan and the Grant Notice (including Exhibit B) are incorporated herein by reference. The Plan, the Grant Notice (including this Agreement and Exhibit B) constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and Participant with respect to the subject matter hereof. If any provision of this Agreement, the Grant Notice, Exhibit B or the Plan is determined to be illegal or unenforceable, then such provision will be enforced to the maximum extent possible and the other provisions will remain fully effective and enforceable.
- 24. <u>Waiver</u>. Participant acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by Participant or any other participant.

\* \* \* \* \*

PayPal Holdings, Inc.
2211 North First Street
San Jose, California 95131
Company Tax ID: [ ]

Award Number: %%OPTION NUMBER%-%

2015

NO

Plan:

Type:

Notice of Grant of Stock Option (the "Grant Notice") and Stock Option Agreement

%%FIRST\_NAME%-% %%LAST\_NAME%-%
%%ADDRESS\_LINE\_1%-%
%%ADDRESS\_LINE\_2%-%
%%ADDRESS\_LINE\_3%-%
%%CITY%-%, %%STATE%-% %%ZIPCODE%-%
%%COUNTRY%-%

Effective as of %%OPTION\_DATE%-% (the "Grant Date"), PayPal Holdings, Inc., a Delaware corporation (the "Company"), pursuant to its 2015 Equity Incentive Award Plan, as amended from time to time (the "Plan"), hereby grants to the individual noted above (the "Participant") a Non-Qualified Stock Option (the "Option") to purchase %%TOTAL\_SHARES\_GRANTED%-% shares of the Company's common stock (the "Stock") at US \$%%OPTION\_PRICE%-% per share (the "Exercise Price"). This Option is subject to all of the terms and conditions set forth in this Grant Notice, the Stock Option Agreement attached hereto as Exhibit A (the "Agreement"), the special provisions for the Participant's country, if any, attached hereto as Exhibit B and the Plan, all of which are incorporated herein by reference. Any capitalized terms used in this Grant Notice without definition shall have the meanings ascribed to such terms in the Plan.

The Option will vest in increments on the date(s) shown.

Shares of Stock	Vest Type	Full Vest *	Expiration
%%SHARES_	%%VEST_TYPE_	%%VEST_DATE_	%%EXPIRE_DATE_
PERIOD1%-%	PERIOD1%-%	PERIOD1%-%	PERIOD1%-%
%%SHARES_	%%VEST_TYPE_	%%VEST_DATE_	%%EXPIRE_DATE_
PERIOD2%-%	PERIOD2%-%	PERIOD2%-%	PERIOD2%-%
%%SHARES_	%%VEST_TYPE_	%%VEST_DATE_	%%EXPIRE_DATE_
PERIOD3%-%	PERIOD3%-%	PERIOD3%-%	PERIOD3%-%
%%SHARES_	%%VEST_TYPE_	%%VEST_DATE_	%%EXPIRE_DATE_
PERIOD4%-%	PERIOD4%-%	PERIOD4%-%	PERIOD4%-%
%%SHARES_	%%VEST_TYPE_	%%VEST_DATE_	%%EXPIRE_DATE_
PERIOD5%-%	PERIOD5%-%	PERIOD5%-%	PERIOD5%-%

<sup>\*</sup> Vesting ceases upon the Participant's Termination of Service, as further described in the Agreement.

By the Participant's signature and the Company's signature below, the Participant agrees to be bound by the terms and conditions of the Plan and this Grant Notice which includes Exhibit A (the Agreement) and Exhibit B (the special provisions for the Participant's country, if any). The Participant has reviewed and fully understands all provisions of the Plan and this Grant Notice in their entirety, including Exhibits A and B, and has had an opportunity to obtain the advice of counsel prior to executing this Grant Notice. The Participant hereby agrees to accept as binding, conclusive and final all decisions or interpretations of the Company upon any questions arising under the Plan and this Grant Notice, including Exhibits A and B.

	%%OPTION DATE%-%
PayPal Holdings, Inc.	Date
%%FIRST NAME%-% %%LAST NAME%-%. the	Date

# EXHIBIT A TO NOTICE OF GRANT OF STOCK OPTION UNDER THE PAYPAL HOLDINGS, INC. 2015 EQUITY INCENTIVE AWARD PLAN

# STOCK OPTION AGREEMENT (NON-QUALIFIED STOCK OPTION)

Pursuant to the Notice of Grant of Stock Options (the "Grant Notice") to which this Non-Qualified Stock Option Agreement (this "Agreement") is attached, PayPal Holdings, Inc., a Delaware corporation (the "Company"), has granted to the Participant an option under the Company's 2015 Equity Incentive Award Plan (the "Plan") to purchase the number of shares of Stock indicated in the Grant Notice. Capitalized terms not specifically defined herein shall have the meanings specified in the Plan and the Grant Notice, as applicable. The Option is subject to the terms and conditions of the Plan, which are incorporated herein by reference. In the event of any inconsistency between the Plan and this Agreement, the terms of the Plan shall control.

# **GRANT OF OPTION**

- 1.1 <u>Grant of Option</u>. Effective as of the Grant Date set forth in the Grant Notice (the "*Grant Date*"), the Company grants to the Participant the Option to purchase any part or all of an aggregate of the number of shares of Stock set forth in the Grant Notice, upon the terms and conditions set forth in the Plan, this Agreement and the Grant Notice (including all exhibits thereto).
- 1.2 Exercise Price. The Exercise Price of the shares of Stock subject to the Option shall be as set forth in the Grant Notice; *provided*, *however*, that the price per share of the shares of Stock subject to the Option shall not be less than 100% of the Fair Market Value of a share of Stock on the Grant Date.

### PERIOD OF EXERCISABILITY

- 2.1 <u>Commencement of Exercisability</u>. Subject to Sections 2.2, 2.3, 4.13 and 4.15 of this Agreement, the Option shall become vested and exercisable in such amounts and at such times as are set forth in the Grant Notice.
  - 2.2 Effect of Termination of Service on Exercisability.
- (a) No portion of the Option which has not become vested and exercisable as of the date of the Participant's Termination of Service shall thereafter become vested and exercisable, as further described in Section 4.5(l) below.
- (b) In the event of the Participant's Termination of Service for any reason except the Participant's death, Disability or for Cause, the portion of the Option which has become vested and exercisable as of the date of the Participant's Termination of Service may be exercised by the Participant for a period of three (3) months as measured from the date of Termination of Service, as further described in Section 4.5(1) below.
- (c) In the event of the Participant's Termination of Service because of death or Disability (or in the event the Participant dies within three (3) months after Termination of Service other than for Cause or because of Disability), the portion of the Option which has become vested and exercisable as of the date of the Participant's Termination of Service may be exercised by the Participant (or by the Participant's personal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution, in the case of the Participant's death) for a period of one (1) year as measured from the date of Termination of Service.

- (d) In the event of the Participant's Termination of Service for Cause or for a reason that is comparable to Cause under local law as determined by the Committee at its sole discretion, this Option will expire on the date of the Participant's Termination of Service, as further described in Section 4.5(l) below, and no portion of the Option may be exercised thereafter. For purposes of this provision, "Cause" shall mean any of the following: the commission of an act of theft, embezzlement, fraud, dishonesty, material violation of corporate policy, or a breach of fiduciary duty to the Company or a Subsidiary. The Company shall have the sole discretion to determine whether any Participant has been terminated for Cause, and its decision shall be final and binding.
- (e) Notwithstanding the above provisions, no portion of the Option may be exercised by anyone after the expiration of the Option described in Section 2.3(a) below.
  - 2.3 Expiration of Option. The Option may not be exercised to any extent by anyone after the first to occur of the following events:
    - (a) The expiration of seven (7) years from the Grant Date;
- (b) The expiration of three (3) months from the date of the Participant's Termination of Service, unless such termination occurs by reason of the Participant's death or Disability or for Cause;
- (c) The expiration of one (1) year from the date of the Participant's Termination of Service by reason of the Participant's death or Disability; or
  - (d) The date of the Participant's Termination of Service for Cause.

### EXERCISE OF OPTION

- 3.1 <u>Person Eligible to Exercise</u>. During the Participant's lifetime, only the Participant may exercise the Option or any portion thereof. After the death of the Participant, any exercisable portion of the Option may, prior to the time when the Option becomes unexercisable under Section 2.3 above, be exercised by the Participant's personal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.
- 3.2 <u>Manner of Exercise</u>. The Option, or any exercisable portion thereof, may be exercised solely by delivery to the Secretary of the Company (or any third party administrator or other person or entity designated by the Company) of all of the following:
- (a) An exercise notice in a form specified by the Company, stating that the Option or portion thereof is thereby exercised, such notice complying with all applicable rules established by the Company;
- (b) The receipt by the Company of full payment of the Exercise Price for the shares of Stock with respect to which the Option or portion thereof is exercised, which may be in one or more of the forms of consideration permitted under Section 3.3 below, as well as payment of any Tax-Related Items as defined in Section 4.4 below;
- (c) Any other written representations as may be required in the Company's reasonable discretion to evidence compliance with the Securities Act or any other applicable law, rule, or regulation.

Notwithstanding any of the foregoing, the Company shall have the right to specify all conditions of the manner of exercise, which conditions may vary by country and which may be subject to change from time to time.

- 3.3 Method of Payment. Payment of the Exercise Price may be by any of the following, or a combination thereof:
  - (a) Cash (or cash equivalent acceptable to the Committee); or
- (b) Delivery of a notice that the Participant has placed a market sell order with a broker with respect to shares of Stock then issuable upon exercise of the Option, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to the Company in satisfaction of the aggregate payment required; *provided*, that payment of such proceeds is then made to the Company upon settlement of such sale (a "cashless exercise" or "same day sale"); or
- (c) With the consent of the Committee, shares of Stock (including shares of Stock issuable pursuant to the exercise of the Option) having a Fair Market Value on the date of delivery equal to the aggregate payment required.

The Company reserves the right to restrict the available methods of payment to the extent it determines in its sole discretion that such restriction is required to comply with local law or desirable for the administration of the Plan, or to otherwise modify the available methods of payment to the extent permitted under the terms of the Plan.

- 3.4 <u>Conditions to Issuance of Stock Certificates</u>. The shares of Stock deliverable upon the exercise of the Option, or any portion thereof, may be either previously authorized but unissued shares of Stock or issued shares of Stock which have then been reacquired by the Company. Such shares of Stock shall be fully paid and nonassessable. The Company shall not be required to issue or deliver any shares of Stock purchased upon the exercise of the Option or portion thereof prior to fulfillment of all of the following conditions:
  - (a) The admission of such shares of Stock to listing on all stock exchanges on which such Stock is then listed;
- (b) The completion of any registration or other qualification of such shares of Stock under any local, state, federal or foreign law or under rulings or regulations of the U.S. Securities and Exchange Commission or of any other governmental regulatory body, which the Company shall, in its absolute discretion, deem necessary or advisable;
- (c) The obtaining of any approval or other clearance from any local, state, federal or foreign governmental agency which the Company shall, in its absolute discretion, determine to be necessary or advisable;
- (d) The receipt by the Company of full payment of the Exercise Price for such shares of Stock and full payment of any Tax-Related Items; and
- (e) The lapse of such reasonable period of time following the exercise of the Option as the Company may from time to time establish for reasons of administrative convenience.
- 3.5 <u>Rights as Stockholder</u>. The holder of the Option shall not be, nor have any of the rights or privileges of, a stockholder of the Company in respect of any shares of Stock purchasable upon the exercise of any part of the Option unless and until such shares of Stock shall have been issued by the Company to such holder (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment will be made for a dividend or other right for which the record date is prior to the date the shares of Stock are issued, except as provided in Section 12.1 of the Plan.

### OTHER PROVISIONS

- 4.1 <u>Administration</u>. The Committee or its delegates shall have the power to interpret the Plan and this Agreement and to adopt such rules for the administration, interpretation and application of the Plan as are consistent therewith and to interpret, amend or revoke any such rules. All actions taken and all interpretations and determinations made in good faith by the Committee or its delegates shall be final and binding upon the Participant, the Company and all other interested persons. No member of the Committee or the Board (or their delegates) shall be personally liable for any action, determination or interpretation made in good faith with respect to the Plan, this Agreement or the Option.
- 4.2 Option Not Transferable. Unless otherwise permitted by the Committee in accordance with Section 10.4 of the Plan, this Option may not be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution.
- 4.3 <u>Adjustments</u>. The Participant acknowledges that the Option is subject to modification and termination in certain events as provided in this Agreement and the Plan.
- 4.4 Responsibility for Taxes. The Participant acknowledges that, regardless of any action taken by the Company or the Participant's employer (the "Employer"), the ultimate liability for all income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to the Participant's participation in the Plan and legally applicable to the Participant as a result of participation in the Plan ("Tax-Related Items"), is and remains the Participant's responsibility and may exceed the amount (if any) withheld by the Company or the Employer. The Participant further acknowledges that the Company and/or the Employer (a) make no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Option, including, but not limited to, the grant, vesting or exercise of the Option, the subsequent sale of shares of Stock acquired pursuant to such exercise and the receipt of any dividends; and (b) do not commit to and are under no obligation to structure the terms of the grant or any aspect of the Option to reduce or eliminate the Participant's liability for Tax-Related Items or achieve any particular tax result. Further, if the Participant has become subject to Tax-Related Items in more than one jurisdiction, the Participant acknowledges that the Company and/or the Employer (or former employer, as applicable) may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Prior to the relevant taxable or tax withholding event, as applicable, the Participant agrees to make adequate arrangements satisfactory to the Company and/or the Employer to satisfy all Tax-Related Items. In this regard, the Participant authorizes the Company and/or the Employer, or their respective agents, at their discretion, to satisfy the obligations with regard to all Tax-Related Items by one or a combination of the following: (i) withholding from the Participant's wages or other cash compensation paid to the Participant by the Company and/or the Employer; (ii) withholding from proceeds of the sale of shares of Stock acquired upon exercise of the Option either through a voluntary sale or through a mandatory sale arranged by the Company (on the Participant's behalf pursuant to this authorization); or (iii) withholding in shares of Stock to be issued at exercise of the Option.

Depending on the withholding method, the Company may withhold or account for Tax-Related Items by considering applicable minimum statutory withholding amounts or other applicable withholding rates, including maximum applicable rates in which case the Participant will receive a refund of any over-withheld amount in cash and will have no entitlement to the equivalent in shares of Stock. If the obligation for Tax-Related Items is satisfied by withholding in shares of Stock, for tax purposes the Participant will be deemed to have been issued the full number of shares of Stock subject to the exercised portion of the Option, notwithstanding that a number of the shares of Stock are held back solely for the purpose of paying the Tax-Related Items.

Finally, the Participant shall pay to the Company or the Employer any amount of Tax-Related Items that the Company or the Employer may be required to withhold or account for as a result of the

Participant's participation in the Plan that cannot be satisfied by the means previously described. The Company may refuse to honor the exercise and refuse to issue or deliver the shares of Stock or the proceeds of the sale of shares of Stock if the Participant fails to comply with the Participant's obligations in connection with the Tax-Related Items.

- 4.5 Nature of Grant. In accepting the Option, the Participant acknowledges, understands and agrees that:
- (a) the Plan is established voluntarily by the Company, it is discretionary in nature, and may be amended, suspended or terminated by the Company at any time;
- (b) the grant of the Option is voluntary and occasional and does not create any contractual or other right to receive future grants of options, or benefits in lieu of options, even if options have been granted repeatedly in the past;
  - (c) all decisions with respect to future option grants, if any, will be at the sole discretion of the Company;
  - (d) the Participant is voluntarily participating in the Plan;
- (e) the grant of the Option and the Participant's participation in the Plan shall not create a right to employment or service or be interpreted as forming an employment or service contract with the Company, the Employer or any Subsidiary and shall not interfere with the ability of the Company, the Employer or any Subsidiary, as applicable, to terminate the Participant's employment or service relationship (if any);
  - (f) the Option and any shares of Stock subject to the Option are not intended to replace any pension rights or compensation;
- (g) the Option and any shares of Stock subject to the Option, and the income and value of same, are not part of normal or expected compensation for purposes of calculating any severance, resignation, termination, redundancy, dismissal, end-of-service payments, bonuses, long-service awards, holiday pay, pension or retirement or welfare benefits or similar mandatory payments;
  - (h) the future value of the shares of Stock subject to the Option is unknown and cannot be predicted with certainty;
  - (i) if the shares of Stock subject to the Option do not increase in value, the Option will have no value;
- (j) if the Participant exercises the Option and acquires shares of Stock, the value of such Stock may increase or decrease, even below the Exercise Price;
- (k) no claim or entitlement to compensation or damages shall arise from forfeiture of the Option resulting from the Participant's Termination of Service by the Company, the Employer or any Subsidiary (for any reason whatsoever and whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or providing services or the terms of the Participant's employment agreement or service contract, if any) and in consideration of the grant of the Option to which the Participant is otherwise not entitled, the Participant irrevocably agrees never to institute any claim against the Company, the Employer or any Subsidiary, waives his or her ability, if any, to bring any such claim, and releases the Company, the Employer and any Subsidiary from any such claim; if, notwithstanding the foregoing, any such claim is allowed by a court of competent jurisdiction, then, by participating in the Plan, the Participant shall be deemed irrevocably to have agreed not to pursue

such claim and agrees to execute any and all documents necessary to request dismissal or withdrawal of such claims;

- (l) in the event of the Participant's Termination of Service (whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or providing services or the terms of the Participant's employment agreement or service contract, if any), unless otherwise provided by this Agreement or determined by the Company the Participant's right to vest in the Option, if any, will terminate effective as of the date that the Participant is no longer actively providing services and will not be extended by any notice period (*e.g.*, active service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where the Participant is employed or providing services or the terms of the Participant's employment agreement or service contract, if any); furthermore, in the event of the Participant's Termination of Service (whether or not later found to be invalid or in breach of employment laws in the jurisdiction where the Participant is employed or providing services or the terms of the Participant's employment agreement or service contract, if any), the Participant's right to exercise the Option after Termination of Service, if any, will be measured by the date that the Participant is no longer actively providing services and will not be extended by any notice period; the Committee shall have the exclusive discretion to determine when the Participant is no longer actively providing services for purposes of the Option; and
- (m) neither the Company, the Employer nor any Subsidiary will be liable for any foreign exchange rate fluctuation between the Participant's local currency and the United States Dollar that may affect the value of the Option or any amounts due to the Participant pursuant to the exercise of the Option or the subsequent sale of any shares of Stock acquired under the Plan.
- 4.6 No Advice Regarding Grant. The Company is not providing any tax, legal or financial advice, nor is the Company making any recommendations regarding the Participant's participation in the Plan or the Participant's acquisition or sale of the shares of Stock subject to the Option. The Participant is hereby advised to consult with his or her own personal tax, legal and financial advisors regarding his or her participation in the Plan before taking any action related to the Plan.
- 4.7 <u>Insider Trading Restrictions/Market Abuse Laws</u>. The Participant acknowledges that he or she is subject to any applicable Company insider trading policy. In addition, depending on his or her country of residence, the Participant may be subject to additional insider trading restrictions and/or market abuse laws, which may affect his or her ability to acquire or sell shares of Stock or rights to shares of Stock (*e.g.*, Options) under the Plan during such times as the Participant is considered to have "inside information" regarding the Company (as defined by the laws in the Participant's country). Any restrictions under these laws or regulations are separate from and in addition to any restrictions that may be imposed under any applicable Company insider trading policy. The Participant acknowledges that it is the Participant's responsibility to comply with any applicable Company insider trading policy and any additional restrictions that may apply due to local insider trading restrictions or market abuse laws. The Participant is advised to speak to his or her personal legal advisor regarding any applicable local insider trading restrictions or market abuse laws.
- 4.8 <u>Data Privacy</u>. The Participant hereby voluntarily consents to the collection, use and transfer, in electronic or other form, of the Participant's personal data as described in this Agreement and any other Option grant materials by and among, as applicable, the Employer, the Company and its Subsidiaries for the exclusive purpose of implementing, administering and managing the Participant's participation in the Plan.

The Participant understands that the Company, the Employer and any Subsidiary may hold certain personal information about the Participant, including, but not limited to, the Participant's name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any shares of stock or directorships held in the

Company, details of all Options or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor, for the exclusive purpose of implementing, administering and managing the Plan ("Data").

The Participant understands that Data will be transferred to E\*Trade Corporate Financial Services, Inc. and or its affiliates or such other stock plan service provider as may be selected by the Company in the future (the "Plan Service Provider"), which is assisting the Company with the implementation, administration and management of the Plan. The Participant understands that the recipients of Data may be located in the United States or elsewhere, and that the recipient's country may have different data privacy laws and protections than the Participant's country. The Participant authorizes the Company, the Plan Service Provider and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer Data, in electronic or other form, for the purpose of implementing, administering and managing his or her participation in the Plan including any requisite transfer of such Data as may be required to a broker or other third party until which the Participant may elect to deposit any shares of Stock received upon exercise of the Option. The Participant understands that he or she may request a list with the names and addresses of any potential recipients of Data by contacting the Participant's regional human resources ("MyHR") representative. The Participant understands that Data will be held only as long as is necessary to implement, administer and manage the Participant's participation in the Plan. The Participant understands that he or she may, at any time, request access to Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case without cost, by contacting in writing his or her MyHR representative. Further, the Participant understands that the Participant is providing the consents herein on a purely voluntary basis. If the Participant does not consent, or if the Participant later seeks to revoke his or her consent, the Participant's employment status or service with the Employer will not be adversely affected; the only consequence of refusing or withdrawing consent is that the Company would not be able to grant options or other equity awards to the Participant or administer or maintain such awards. Therefore, the Participant understands that refusing or withdrawing his or her consent may affect the Participant's ability to participate in the Plan. For more information on the consequences of the Participant's refusal to consent or withdrawal of consent, the Participant understands that he or she may contact his or her MyHR representative.

- 4.9 <u>Notices</u>. Notices required or permitted hereunder shall be given in writing and shall be deemed effectively given upon personal delivery or upon deposit in the post by certified mail, or its non-U.S. equivalent, with postage and fees prepaid, addressed to Participant at his or her address shown in the Company records, and to the Company at its principal executive office.
- 4.10 <u>Titles</u>. Section titles are provided herein for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.
- 4.11 <u>Governing Law; Choice of Venue</u>. The laws of the State of Delaware shall govern the interpretation, validity, administration, enforcement and performance of the terms of the Grant Notice, this Agreement and the special provisions for Participants outside the U.S. attached to the Grant Notice as Exhibit B, regardless of the law that might be applied under such state's conflict of laws rules.

For purposes of litigating any dispute that arises directly or indirectly in respect of the Option, the parties hereby submit to and consent to the exclusive jurisdiction of the State of California and agree that such litigation shall be conducted only in the courts of Santa Clara County, California, or the federal courts for the United States for the Northern District of California, and no other courts, where this grant is made and/or to be performed.

- 4.12 <u>Conformity to U.S. Securities Laws</u>. The Participant acknowledges that the Plan and this Agreement are intended to conform to the extent necessary with all provisions of the U.S. Securities Act and the U.S. Exchange Act and any and all regulations and rules promulgated by the U.S. Securities and Exchange Commission thereunder, and state securities laws and regulations. Notwithstanding anything herein to the contrary, the Plan shall be administered, and the Option is granted and may be exercised, only in such a manner as to conform to such laws, rules and regulations. To the extent permitted by applicable law, the Plan and this Agreement shall be deemed amended to the extent necessary to conform to such laws, rules and regulations.
- 4.13 <u>Amendments, Suspension and Termination</u>. To the extent permitted by the Plan, this Agreement (and the Grant Notice and Exhibit B) may be wholly or partially amended or otherwise modified, suspended or terminated at any time or from time to time by the Committee or the Board, *provided*, that, except as may otherwise be provided by the Plan, no amendment, modification, suspension or termination of this Agreement shall adversely effect the Option in any material way without the prior written consent of the Participant.
- 4.14 <u>Successors and Assigns</u>. The Company may assign any of its rights under this Agreement to single or multiple assignees, and this Agreement shall inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on transfer set forth in Section 4.1 above, this Agreement shall be binding upon the Participant and his or her heirs, executors, administrators, successors and assigns.
- 4.15 <u>Limitations Applicable to Section 16 Persons</u>. Notwithstanding any other provision of the Plan or this Agreement, if the Participant is subject to Section 16 of the Exchange Act, the Plan, the Option and this Agreement shall be subject to any additional limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3 of the Exchange Act) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, this Agreement shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.
- 4.16 <u>Electronic Delivery and Participation</u>. The Company may, in its sole discretion, decide to deliver any documents related to current or future participation in the Plan by electronic means. The Participant hereby consents to receive such documents by electronic delivery and agrees to participate in the Plan through an on-line or electronic system established and maintained by the Company or a third party designated by the Company.
- 4.17 <u>Language</u>. If the Participant has received this Agreement or any other document related to the Option and/or the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control.
- 4.18 <u>Severability</u>. The provisions of this Agreement are severable and if any provision is determined to be illegal or otherwise unenforceable, then such provision will be enforced to the maximum extent possible and the remaining provisions will be fully effective and enforceable.
- 4.19 Exhibit B. The Option shall be subject to any special provisions set forth in Exhibit B for the Participant's country, if any. If the Participant relocates to one of the countries included in Exhibit B during the life of the Option or while holding shares of Stock acquired upon exercise of the Option, the special provisions for such country shall apply to the Participant, to the extent the Company determines that the application of such provisions is necessary or advisable for legal or administrative reasons. Exhibit B constitutes part of this Agreement.
- 4.20 <u>Imposition of Other Requirements</u>. The Company reserves the right to impose other requirements on the Option and the shares of Stock acquired upon exercise of the Option, to the extent the Company determines it is necessary or advisable for legal or administrative reasons, and to require the

Participant to sign any additional agreements or undertakings that may be necessary to accomplish the foregoing.

- 4.21 Entire Agreement. The Plan and the Grant Notice (including Exhibit B) are incorporated herein by reference and this Agreement constitute the entire agreement of the parties with respect to the subject matter hereof and supersede in their entirety all prior undertakings and agreements of the Company and the Participant with respect to the subject matter hereof.
- 4.22 Section 409A. Notwithstanding any other provision of the Plan, this Agreement or the Grant Notice, and to the extent the Participant is or becomes subject to U.S. federal income taxation, the Plan, this Agreement and the Grant Notice shall be interpreted in accordance with, and incorporate the terms and conditions required by, Section 409A of the U.S. Internal Revenue Code of 1986, as amended (together with any Department of Treasury regulations and other interpretive guidance issued thereunder, including without limitation any such regulations or other guidance that may be issued after the date hereof, "Section 409A") in order for the Option to be exempt from Section 409A. The Committee may, in its discretion, adopt such amendments to the Plan, this Agreement or the Grant Notice or adopt other policies and procedures (including amendments, policies and procedures with retroactive effect), or take any other actions, as the Committee determines are necessary or appropriate to comply with the exemption requirements under Section 409A.
- 4.23 <u>Waiver</u>. The Participant acknowledges that a waiver by the Company of breach of any provision of this Agreement shall not operate or be construed as a waiver of any other provision of this Agreement, or of any subsequent breach by the Participant or any other participant.

# PAYPAL HOLDINGS, INC. 2015 EQUITY INCENTIVE AWARD PLAN DIRECTOR ANNUAL AWARD AGREEMENT

This award agreement (this "Award Agreement") sets forth the terms and conditions of an award (this "Award") of deferred stock units ("DSUs") granted to you under the PayPal Holdings, Inc. 2015 Equity Incentive Award Plan, as amended from time to time (the "Plan").

- 1. <u>The Plan</u>. This Award is made pursuant to the Plan, the terms of which are incorporated in this Award Agreement. Capitalized terms used in this Award Agreement that are not defined in this Award Agreement have the meanings as used or defined in the Plan.
- 2. <u>Award</u>. The number of DSUs subject to this Award is set forth at the end of this Award Agreement. Each DSU constitutes an unfunded and unsecured promise of PayPal Holdings, Inc. (the "*Company*") to deliver (or cause to be delivered) to you, subject to the terms of this Award Agreement, one share of Stock (the "*Share*" or the "*Shares*" as the context requires) as soon as practicable but in no case more than 10 days following the Delivery Date as provided herein. You shall also be entitled to receive an amount in cash equal to the sum of any regular cash dividends declared on the Shares for which the record date occurred after the date of grant and prior to the issuance or delivery of the Shares upon or after the Delivery Date (the "dividend equivalent rights"). Except as otherwise provided herein, until the Shares are issued or transferred to you, you have only the rights of a general unsecured creditor, and no rights as a stockholder, of the Company. THIS AWARD IS SUBJECT TO ALL TERMS, CONDITIONS AND PROVISIONS OF THE PLAN AND THIS AWARD AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ARBITRATION AND CHOICE OF FORUM PROVISIONS SET FORTH IN PARAGRAPH 16.
- 3. <u>Vesting</u>. Except as provided in this Paragraph 3 and in Paragraph 6, you shall become vested in 100% of the DSUs on the first anniversary of the vesting date specified at the end of this Award Agreement (the "*Vesting Date*"). Except as provided in Paragraph 6, if your service on the Board terminates for any reason prior to the Vesting Date, your rights in respect of all of your unvested DSUs shall terminate, and no Shares shall be delivered in respect of such unvested DSUs.
- 4. <u>DSU Account</u>. A bookkeeping account will be established for you which shall be credited with all DSUs and any dividend equivalent rights that have been granted to you.
  - 5. Delivery of Shares/DSU Payments.
- (a) Except as provided in this Paragraph 5 and in Paragraphs 6, 8, 9 and 10, the Shares underlying the vested DSUs and any dividend equivalent rights corresponding to those vested DSUs shall be delivered as soon as practicable but in no case more than 10 days following the Delivery Date specified at the end of this Award Agreement. Notwithstanding the foregoing, if the Delivery Date occurs at a time when you are considered by the Company to be one of the Company's "specified employees" within the meaning of Section 409A(a)(2)(B) of the Code and applicable Treasury regulations and guidance issued from time to time thereunder (including, without limitation, any regulations and guidance setting forth the time period with

respect to which the determination whether you are a "specified employee" must be made), then the delivery of the Shares automatically shall be deferred until six months after you have separated from service, within the meaning of Section 409A of the Code, or, if earlier, the date of your death. Such deferral shall not affect the number of Shares to be delivered.

(b) Notwithstanding the foregoing, all DSUs and any dividend equivalent rights shall vest and shall become payable immediately upon a Change in Control, as defined in the Plan; *provided*, *however*, that in no event will a "Change in Control" be deemed to have occurred for purposes of this Award Agreement if such event would not constitute a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company for purposes of Section 409A of the Code and applicable Treasury regulations and guidance issued from time to time thereunder.

### 6. Disability and Death.

- (a) Notwithstanding any other provision of this Award Agreement, if your service with the Company is terminated by reason of disability (as defined in Section 409A(a)(2)(C) of the Code and as determined by the Committee), the condition set forth in Paragraph 3 shall be waived with respect to your then outstanding unvested DSUs (as a result of which any such then unvested outstanding DSUs shall vest). Shares corresponding to your outstanding DSUs and any dividend equivalent rights shall be delivered to you as soon as practicable after the date of your separation from service.
- (b) In the event of your death, the condition set forth in Paragraph 3 shall be waived with respect to your then outstanding unvested DSUs (as a result of which any such then unvested outstanding DSUs shall vest). Shares corresponding to your outstanding DSUs and any dividend equivalent rights shall be delivered to the representative of your estate as soon as practicable after the date of death and after such documentation as may be requested by the Committee is provided to the Committee.
- 7. Non-transferability. Except as otherwise may be provided by the Committee, the limitations set forth in Section 10.4 of the Plan shall apply. Any assignment in violation of the provisions of this Paragraph 7 shall be null and void.
  - 8. Withholding, Consents and Legends.
- (a) The delivery of Shares is conditioned on your satisfaction of any applicable withholding taxes, to the extent applicable (in accordance with Section 16.3 of the Plan).
- (b) Your rights in respect of your DSUs are conditioned on the receipt to the full satisfaction of the Committee of any required consents that the Committee may determine to be necessary or advisable.
- (c) The Company may affix to certificates representing Shares issued pursuant to this Award Agreement any legend that the Committee determines to be necessary or advisable (including to reflect any restrictions to which you may be subject under a separate agreement with the Company). The Company may advise the transfer agent to place a stop transfer order against any legended Shares.

- 9. <u>Right of Offset</u>. The Company shall have the right to offset against the obligation to deliver Shares under this Award Agreement any outstanding amounts (including, without limitation, travel and entertainment or advance account balances, loans, or amounts repayable to the Company pursuant to other director programs) you then owe to the Company and any amounts the Committee otherwise deems appropriate.
- 10. Award Subject to Clawback. The Award, Shares, other securities, other awards or other property delivered pursuant to the Award are subject to forfeiture, recovery by the Company or other action pursuant to any clawback or recoupment policy which the Company may adopt from time to time, including without limitation any such policy which the Company may be required to adopt under the Dodd-Frank Wall Street Reform and Consumer Protection Act and implementing rules and regulations thereunder, or as otherwise required by law.
- 11. No Rights to Continued Service. Nothing in this Award Agreement or the Plan shall be construed as giving you any right to continued service with the Company or affect any right that the Company may have to terminate your service with the Company or alter the terms and conditions of your service.
- 12. <u>Successors and Assigns of the Company</u>. The terms and conditions of this Award Agreement shall be binding upon, and shall inure to the benefit of, the Company and its successors and assigns.
- 13. <u>Committee Discretion</u>. The Committee shall have full discretion with respect to any actions to be taken or determinations to be made in connection with this Award Agreement, and its determinations shall be final, binding and conclusive.
- 14. <u>Amendment</u>. The Committee reserves the right at any time to amend the terms and conditions set forth in this Award Agreement; *provided, that* no such amendment shall materially adversely affect your rights and obligations under this Award Agreement without your consent, except that the Committee reserves the right to accelerate the delivery of the Shares and in its discretion provide that such Shares may not be transferable until the Delivery Date on which such Shares otherwise would have been delivered (and that in respect of such Shares you will remain obligated to return the Shares and any dividend equivalents to the Company in the circumstances under which the Shares would not have been delivered pursuant to Paragraphs 4, 5 or 10); *provided further, that*, such acceleration of delivery of Shares shall not occur if such acceleration would cause the holder of an Award to be subject to an excise tax under Section 409A of the Code. Any amendment of this Award Agreement shall be in writing signed by an authorized member of the Committee or a person or persons designated by the Committee.
- 15. <u>Adjustment</u>. The number of DSUs and the number and kind of Shares subject to this Award Agreement shall be adjusted in accordance with Section 12.1 of the Plan.
  - 16. Arbitration; Choice of Forum.
- (a) Any dispute, controversy or claim between the Company and you, arising out of or relating to or concerning the Plan or this Award Agreement, shall be finally settled by arbitration in San Jose, California before, and in accordance with the rules then in effect of, the American Arbitration Association (the "AAA") in accordance with the commercial arbitration rules of the AAA. Prior to arbitration, all claims maintained by you must first be submitted to

the Committee in accordance with claims procedures determined by the Committee. This Paragraph is subject to the provisions of Paragraphs 16(b) and (c) below.

- (b) THE COMPANY AND YOU HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE CITY OF SAN JOSE, CALIFORNIA OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO OR CONCERNING THE PLAN OR THIS AWARD AGREEMENT THAT IS NOT OTHERWISE ARBITRATED OR RESOLVED ACCORDING TO PARAGRAPH 16(a) OF THIS AWARD AGREEMENT. This includes any suit, action or proceeding to compel arbitration or to enforce an arbitration award. The Company and you acknowledge that the forum designated by this Paragraph 16(b) has a reasonable relation to the Plan, this Award Agreement, and to your relationship with the Company. Notwithstanding the foregoing, nothing herein shall preclude the Company from bringing any action or proceeding in any other court for the purpose of enforcing the provisions of this Paragraph 16.
- (c) The agreement by you and the Company as to forum is independent of the law that may be applied in the action, and you and the Company agree to such forum even if the forum may under applicable law choose to apply non-forum law. You and the Company hereby waive, to the fullest extent permitted by applicable law, any objection which you or the Company now or hereafter may have to personal jurisdiction or to the laying of venue of any such suit, action or proceeding in any court referred to in Paragraph 16(b). You and the Company undertake not to commence any action, suit or proceeding arising out of or relating to or concerning this Award Agreement in any forum other than a forum described in this Paragraph 16. You and (subject to the last sentence of Paragraph 16(b)) the Company agree that, to the fullest extent permitted by applicable law, a final and non-appealable judgment in any such suit, action or proceeding in any such court shall be conclusive and binding upon you and the Company.
- (d) You irrevocably appoint the Secretary of the Company as your agent for service of process in connection with any action, suit or proceeding arising out of or relating to or concerning this Award Agreement which is not arbitrated pursuant to the provisions of Paragraph 16(a), who shall promptly advise you of any such service of process.
- (e) You hereby agree to keep confidential the existence of, and any information concerning, a dispute described in this Paragraph 16, except that you may disclose information concerning such dispute to the arbitrator or court that is considering such dispute or to your legal counsel (provided that such counsel agrees not to disclose any such information other than as necessary to the prosecution or defense of the dispute).
- 17. Section 409A. This Award Agreement and the DSUs are intended to comply with Section 409A of the Code and the Treasury Regulations thereunder ("Section 409A") and shall be interpreted in a manner consistent with that intention, to the extent you are or become subject to U.S. federal income taxation. Notwithstanding any other provisions of this Award Agreement, the Company reserves the right, to the extent the Company deems necessary or advisable, if you are or become subject to U.S. federal income taxation, and without any obligation to do so or to indemnify you for any failure to do so, to unilaterally amend the Plan and/or this Award Agreement to ensure that all DSUs are awarded in a manner that qualifies for exemption from or complies with Section 409A, provided, however, that the Company makes no

representation that the DSUs will comply with or be exempt from Section 409A and makes no undertaking to preclude Section 409A from applying to the DSUs.

- 18. <u>Governing Law</u>. THIS AWARD SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.
- 19. <u>Headings</u>. The headings in this Award Agreement are for the purpose of convenience only and are not intended to define or limit the construction of the provisions hereof.

IN WITNESS WHEREOF, PayPal Holdings, Inc. has caused this Award Agreement to be duly executed and delivered as of the Date of Grant.

PayPal Holdings, I	ac.
By:	
Name: [ ] Title: [ ]	
Recipient:	
Number of DSUs:	
Date of Grant:	
Vesting Date:	
Delivery Date:	Termination of Service as a Director of the Company for any reason. Also, I understand that DSUs may be delivered to me at such other time as provided pursuant to the terms of the Plan and this Agreement.
I have read the Plan	n and this Award Agreement and I agree to these terms.
Participant Signatu	re

# PAYPAL HOLDINGS, INC. 2015 EQUITY INCENTIVE AWARD PLAN ELECTING DIRECTOR QUARTERLY AWARD AGREEMENT

This award agreement (this "Award Agreement") sets forth the terms and conditions of an award (this "Award") of deferred stock units ("DSUs") granted to you under the PayPal Holdings, Inc. 2015 Equity Incentive Award Plan, as amended from time to time (the "Plan"), and pursuant to your election to defer your annual retainer for your service on the Board.

- 1. <u>The Plan</u>. This Award is made pursuant to the Plan, the terms of which are incorporated in this Award Agreement. Capitalized terms used in this Award Agreement that are not defined in this Award Agreement have the meanings as used or defined in the Plan.
- 2. <u>Award</u>. The number of DSUs subject to this Award is set forth at the end of this Award Agreement. Each DSU constitutes an unfunded and unsecured promise of PayPal Holdings, Inc. (the "*Company*") to deliver (or cause to be delivered) to you, subject to the terms of this Award Agreement, one share of Stock (the "*Share*" or the "*Shares*" as the context requires) as soon as practicable but in no case more than 10 days following the Delivery Date as provided herein. You shall also be entitled to receive an amount in cash equal to the sum of any regular cash dividends declared on the Shares for which the record date occurred after the date of grant and prior to the issuance or delivery of the Shares upon or after the Delivery Date (the "dividend equivalent rights"). Except as otherwise provided herein, until the Shares are issued or transferred to you, you have only the rights of a general unsecured creditor, and no rights as a stockholder, of the Company. THIS AWARD IS SUBJECT TO ALL TERMS, CONDITIONS AND PROVISIONS OF THE PLAN AND THIS AWARD AGREEMENT, INCLUDING, WITHOUT LIMITATION, THE ARBITRATION AND CHOICE OF FORUM PROVISIONS SET FORTH IN PARAGRAPH 16.
  - 3. Vesting. You shall be vested in 100% of the DSUs on the Date of Grant specified at the end of this Award Agreement.
- 4. <u>DSU Account</u>. A bookkeeping account will be established for you which shall be credited with all DSUs and any dividend equivalent rights that have been granted to you.
  - 5. Delivery of Shares/DSU Payments.
- (a) Except as provided in this Paragraph 5 and in Paragraphs 6, 8, 9 and 10, the Shares underlying the DSUs and any dividend equivalent rights corresponding to the DSUs shall be delivered as soon as practicable but in no case more than 10 days following the Delivery Date specified at the end of this Award Agreement. Notwithstanding the foregoing, if the Delivery Date occurs at a time when you are considered by the Company to be one of the Company's "specified employees" within the meaning of Section 409A(a)(2)(B) of the Code and applicable Treasury regulations and guidance issued from time to time thereunder (including, without limitation, any regulations and guidance setting forth the time period with respect to which the determination whether you are a "specified employee" must be made), then the delivery of the Shares automatically shall be deferred until six months after you have separated from service, within the meaning of Section 409A of the Code, or, if earlier, the date of your death. Such deferral shall not affect the number of Shares to be delivered.

(b) Notwithstanding the foregoing, all DSUs and any dividend equivalent rights shall become payable immediately upon a Change in Control, as defined in the Plan; *provided*, *however*, that in no event will a "Change in Control" be deemed to have occurred for purposes of this Award Agreement if such event would not constitute a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the assets of the Company for purposes of Section 409A of the Code and applicable Treasury regulations and guidance issued from time to time thereunder.

# 6. Disability and Death.

- (a) Notwithstanding any other provision of this Award Agreement, if your service with the Company is terminated by reason of disability (as defined in Section 409A(a)(2)(C) of the Code and as determined by the Committee), Shares corresponding to your outstanding DSUs and any dividend equivalent rights shall be delivered to you as soon as practicable after the date of your separation from service.
- (b) In the event of your death, Shares corresponding to your outstanding DSUs and any dividend equivalent rights shall be delivered to the representative of your estate as soon as practicable after the date of death and after such documentation as may be requested by the Committee is provided to the Committee.
- 7. Non-transferability. Except as otherwise may be provided by the Committee, the limitations set forth in Section 10.4 of the Plan shall apply. Any assignment in violation of the provisions of this Paragraph 7 shall be null and void.
  - 8. Withholding, Consents and Legends.
- (a) The delivery of Shares is conditioned on your satisfaction of any applicable withholding taxes, to the extent applicable (in accordance with Section 16.3 of the Plan).
- (b) Your rights in respect of your DSUs are conditioned on the receipt to the full satisfaction of the Committee of any required consents that the Committee may determine to be necessary or advisable.
- (c) The Company may affix to certificates representing Shares issued pursuant to this Award Agreement any legend that the Committee determines to be necessary or advisable (including to reflect any restrictions to which you may be subject under a separate agreement with the Company). The Company may advise the transfer agent to place a stop transfer order against any legended Shares.
- 9. <u>Right of Offset</u>. The Company shall have the right to offset against the obligation to deliver Shares under this Award Agreement any outstanding amounts (including, without limitation, travel and entertainment or advance account balances, loans, or amounts repayable to the Company pursuant to other director programs) you then owe to the Company and any amounts the Committee otherwise deems appropriate.
- 10. <u>Award Subject to Clawback</u>. The Award, Shares, other securities, other awards or other property delivered pursuant to the Award are subject to forfeiture, recovery by

the Company or other action pursuant to any clawback or recoupment policy which the Company may adopt from time to time, including without limitation any such policy which the Company may be required to adopt under the Dodd-Frank Wall Street Reform and Consumer Protection Act and implementing rules and regulations thereunder, or as otherwise required by law.

- 11. No Rights to Continued Service. Nothing in this Award Agreement or the Plan shall be construed as giving you any right to continued service with the Company or affect any right that the Company may have to terminate your service with the Company or alter the terms and conditions of your service.
- 12. <u>Successors and Assigns of the Company</u>. The terms and conditions of this Award Agreement shall be binding upon, and shall inure to the benefit of, the Company and its successors and assigns.
- 13. <u>Committee Discretion</u>. The Committee shall have full discretion with respect to any actions to be taken or determinations to be made in connection with this Award Agreement, and its determinations shall be final, binding and conclusive.
- 14. Amendment. The Committee reserves the right at any time to amend the terms and conditions set forth in this Award Agreement; *provided*, *that* no such amendment shall materially adversely affect your rights and obligations under this Award Agreement without your consent, except that the Committee reserves the right to accelerate the delivery of the Shares and in its discretion provide that such Shares may not be transferable until the Delivery Date on which such Shares otherwise would have been delivered (and that in respect of such Shares you will remain obligated to return the Shares and any dividend equivalents to the Company in the circumstances under which the Shares would not have been delivered pursuant to Paragraphs 4, 5 or 10); *provided further*, *that*, such acceleration of delivery of Shares shall not occur if such acceleration would cause the holder of an Award to be subject to an excise tax under Section 409A of the Code. Any amendment of this Award Agreement shall be in writing signed by an authorized member of the Committee or a person or persons designated by the Committee.
- 15. <u>Adjustment</u>. The number of DSUs and the number and kind of Shares subject to this Award Agreement shall be adjusted in accordance with Section 12.1 of the Plan.
  - 16. Arbitration; Choice of Forum.
- (a) Any dispute, controversy or claim between the Company and you, arising out of or relating to or concerning the Plan or this Award Agreement, shall be finally settled by arbitration in San Jose, California before, and in accordance with the rules then in effect of, the American Arbitration Association (the "AAA") in accordance with the commercial arbitration rules of the AAA. Prior to arbitration, all claims maintained by you must first be submitted to the Committee in accordance with claims procedures determined by the Committee. This Paragraph is subject to the provisions of Paragraphs 16(b) and (c) below.
- (b) THE COMPANY AND YOU HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE CITY OF SAN JOSE, CALIFORNIA OVER ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO OR CONCERNING THE PLAN OR THIS AWARD AGREEMENT THAT IS NOT OTHERWISE ARBITRATED

OR RESOLVED ACCORDING TO PARAGRAPH 16(a) OF THIS AWARD AGREEMENT. This includes any suit, action or proceeding to compel arbitration or to enforce an arbitration award. The Company and you acknowledge that the forum designated by this Paragraph 16(b) has a reasonable relation to the Plan, this Award Agreement, and to your relationship with the Company. Notwithstanding the foregoing, nothing herein shall preclude the Company from bringing any action or proceeding in any other court for the purpose of enforcing the provisions of this Paragraph 16.

- (c) The agreement by you and the Company as to forum is independent of the law that may be applied in the action, and you and the Company agree to such forum even if the forum may under applicable law choose to apply non-forum law. You and the Company hereby waive, to the fullest extent permitted by applicable law, any objection which you or the Company now or hereafter may have to personal jurisdiction or to the laying of venue of any such suit, action or proceeding in any court referred to in Paragraph 16(b). You and the Company undertake not to commence any action, suit or proceeding arising out of or relating to or concerning this Award Agreement in any forum other than a forum described in this Paragraph 16. You and (subject to the last sentence of Paragraph 16(b)) the Company agree that, to the fullest extent permitted by applicable law, a final and non-appealable judgment in any such suit, action or proceeding in any such court shall be conclusive and binding upon you and the Company.
- (d) You irrevocably appoint the Secretary of the Company as your agent for service of process in connection with any action, suit or proceeding arising out of or relating to or concerning this Award Agreement which is not arbitrated pursuant to the provisions of Paragraph 16(a), who shall promptly advise you of any such service of process.
- (e) You hereby agree to keep confidential the existence of, and any information concerning, a dispute described in this Paragraph 16, except that you may disclose information concerning such dispute to the arbitrator or court that is considering such dispute or to your legal counsel (provided that such counsel agrees not to disclose any such information other than as necessary to the prosecution or defense of the dispute).
- 17. Section 409A. This Award Agreement and the DSUs are intended to comply with Section 409A of the Code and the Treasury Regulations thereunder ("Section 409A") and shall be interpreted in a manner consistent with that intention, to the extent you are or become subject to U.S. federal income taxation. Notwithstanding any other provisions of this Award Agreement, the Company reserves the right, to the extent the Company deems necessary or advisable, if you are or become subject to U.S. federal income taxation, and without any obligation to do so or to indemnify you for any failure to do so, to unilaterally amend the Plan and/or this Award Agreement to ensure that all DSUs are awarded in a manner that qualifies for exemption from or complies with Section 409A, provided, however, that the Company makes no representation that the DSUs will comply with or be exempt from Section 409A and makes no undertaking to preclude Section 409A from applying to the DSUs.
- 18. <u>Governing Law</u>. THIS AWARD SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

or limit the constru	action of the provisions hereof.
IN WITNES! Date of Grant.	S WHEREOF, PayPal Holdings, Inc. has caused this Award Agreement to be duly executed and delivered as of the
PayPal Holdings, I	nc.
By: Name: [ ] Title: [ ]	
Recipient:	
Number of DSUs:	
Date of Grant:	
Delivery Date:	Termination of Service as a Director of the Company for any reason.  Also, I understand that DSUs may be delivered to me at such other time as provided pursuant to the terms of the Plan and this Agreement.
I have read the Pla	n and this Award Agreement and I agree to these terms.
Participant Signatu	ure
	5

19. <u>Headings</u>. The headings in this Award Agreement are for the purpose of convenience only and are not intended to define

## PAYPAL HOLDINGS, INC. EMPLOYEE STOCK PURCHASE PLAN

1. Establishment of Plan. The board of directors (the "Board") of PayPal Holdings, Inc. (the "Company") hereby establishes this Employee Stock Purchase Plan (this "Plan") pursuant to which the Company proposes to grant options to purchase shares of the Company's common stock ("Common Stock") to Eligible Employees (as defined in Section 4 below). This Plan shall apply to (i) Offering Periods, as defined in Section 5, beginning on or after the date (the "Effective Date") on which shares of Common Stock are distributed to the stockholders of eBay Inc. ("eBay") in 2015 pursuant to the Separation and Distribution Agreement between the Company and eBay dated [ ], 2015 (the "Spin-Off") and (ii) offering periods (relating to options to purchase shares of eBay common stock on any subsequent purchase date in an existing purchase period) that commenced prior to the Effective Date under the eBay Inc. Employee Stock Purchase Plan (the "eBay ESPP") and are outstanding immediately prior to the effective time of the Spin-Off, to the extent the obligations with respect to such offering periods are assumed by the Company pursuant to Section 5(d) hereof in accordance with the terms of the Employee Matters Agreement between the Company and eBay Inc., entered into in connection with the Spin-Off (the "Employee Matters Agreement"), which offering periods under the eBay ESPP shall, effective as of the Spin-Off, be converted into Offering Periods hereunder covering the purchase of Shares of Common Stock, on such terms as are set forth in the Employee Matters Agreement and made a part of this Plan (the "Assumed eBay ESPP Offerings").

This Plan includes two components: (a) a component intended to qualify as an "employee stock purchase plan" under Section 423 of the U.S. Internal Revenue Code of 1986, as amended (the "Code") (the "423 Component"), the provisions of which shall be construed so as to extend and limit participation in a uniform and nondiscriminatory manner consistent with the requirements of Section 423 of the Code; and (b) a component that does not qualify as an "employee stock purchase plan" under Section 423 of the Code (the "Non-423 Component"), under which options shall be granted pursuant to rules, procedures or sub-plans adopted by the Administrator (as defined in Section 3 below) designed to achieve tax, securities laws or other objectives for Eligible Employees, the Company and its Participating Subsidiaries and Participating Affiliates (both, as hereinafter defined). Except as otherwise provided in this Plan, the Non-423 Component will operate and be administered in the same manner as the 423 Component.

For purposes of this Plan, "Subsidiary" means a "subsidiary corporation" of the Company, whether now or hereafter existing, as such term is defined in Section 424(f) of the Code. "Participating Subsidiary" means any Subsidiary that the Administrator designates from time to time as eligible to participate in the 423 Component. For purposes of this Plan, "Affiliate" means (a) any entity that, directly or indirectly, is controlled by, controls or is under common control with, the Company and (b) any entity in which the Company has a significant equity interest, in either case as determined by the Administrator, whether now or hereafter existing (which, for avoidance of doubt, shall include any Subsidiary). "Participating Affiliate" means any Affiliate designated by the Administrator as eligible to participate in the Non-423 Component.

A total of [ ] shares of Common Stock are initially reserved for issuance under this Plan. Such number shall be subject to adjustments effected in accordance with Section 14 of this Plan.

**2. Purpose.** The purpose of this Plan is to provide Eligible Employees with a convenient means of acquiring an equity interest in the Company through payroll deductions or other contributions, to enhance such employees' sense of participation in the affairs of the Company.

### 3. Administration.

(a) This Plan shall be administered by the Compensation Committee of the Board (the "Administrator"), provided, however, that the Board may determine to administer the Plan, in its sole discretion, and in such case any references to the Administrator in the Plan shall be taken to be references to the Board. Subject to the provisions of the Plan, the Administrator shall have exclusive authority, in its sole discretion, to determine all matters relating to options granted under the Plan, including, without limitation, the authority to: (i) construe, interpret, reconcile any inconsistency in, correct any default in, supply any omission in, and apply the terms of, the Plan and any subscription agreement or other instrument or agreement

relating to the Plan, (ii) adjudicate all disputed claims filed under the Plan (including making factual determinations), (iii) determine the terms and conditions of any Offering (as defined in Section 5 below) and any option under the Plan, (iv) establish, amend, suspend or waive such rules and regulations and appoint such agents as it shall deem appropriate for the proper administration of the Plan, and (v) make any other determination and take any other action that the Administrator deems necessary or desirable for the administration of the Plan.

- (b) The Administrator shall have exclusive authority, in its sole discretion, to (i) designate separate Offerings under the Plan, (ii) determine which entities shall be Participating Subsidiaries or Participating Affiliates, (iii) determine who is an Eligible Employee, (iii) change the length and duration of Offering Periods and Purchase Periods (as such terms are defined in Section 5 below), (iv) limit the frequency and/or number of changes in the amount deducted or contributed during an Offering Period or Purchase Period, (v) permit payroll deductions or other contributions in excess of the amount designated by a participant in the Plan in order to adjust for administrative errors in the Company's processing of properly submitted subscription agreements and/or changes in contribution amounts, (vi) establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Common Stock for each Plan participant properly correspond with payroll deductions or other contribution amounts, and (vii) establish such other limitations or procedures as the Administrator determines in its sole discretion advisable that are consistent with the Plan.
- (c) Further, the Administrator may adopt such rules, procedures and sub-plans as are necessary or appropriate to permit the participation in the Plan by Eligible Employees who are citizens or residents of a non-U.S. jurisdiction and/or employed outside the United States, the terms of which sub-plans may take precedence over other provisions of this Plan, with the exception of the provision in Section 1 above setting forth the number of shares of Common Stock reserved for issuance under the Plan, but unless otherwise superseded by the terms of such sub-plan, the provisions of this Plan shall govern the operation of such sub-plan. To the extent inconsistent with the requirements of Section 423, any such sub-plan shall be considered part of the Non-423 Component, and rights granted thereunder shall not be required by the terms of the Plan to comply with Section 423 of the Code. Without limiting the generality of the foregoing, the Administrator is specifically authorized to adopt rules and procedures regarding eligibility to participate, the application of the definition of Compensation (as defined in Section 9(b) below) to participants on payrolls outside of the United States, handling of payroll deductions and other contributions, taking of payroll deductions and making of other contributions to the Plan, establishment of bank or trust accounts to hold contributions, payment of interest, establishment of the exchange rate applicable to payroll deductions taken and other contributions made in a currency other than U.S. dollars, obligations to pay payroll tax, determination of beneficiary designation requirements, tax withholding procedures and handling of stock certificates that vary with applicable local requirements.
- (d) The Administrator's interpretation of the Plan and its rules and regulations, and all actions taken and determinations made by the Administrator pursuant to the Plan, shall be conclusive and binding on all parties involved or affected. The Administrator may delegate its duties and authority to such of the Company's officers or employees as it so determines.

## 4. Eligibility.

- (a) Unless otherwise provided in this Section 4 and subject to the requirements of Section 6, any Eligible Employee on a given Offering Date (as defined in Section 5 below) shall be eligible to participate in the Plan.
- (b) For purposes of this Plan, "Eligible Employee" means any individual who is treated as an employee in the records of the Company or any Participating Subsidiary or Participating Affiliate, in each case regardless of any subsequent reclassification by the Company or by any Participating Subsidiary or Participating Affiliate, any governmental agency, or any court, and subject to the qualifications set forth in this section.
- (c) For purposes of this Plan, the employment relationship shall be treated as continuing intact while the individual is on military or sick leave or other bona fide leave of absence approved by the Company or the applicable Participating Subsidiary or Participating Affiliate so long as the leave does not exceed three (3) months or, if longer than three (3) months, the individual's right to reemployment is provided by statute or has been agreed to by contract or in a written policy of the Company or the applicable Participating Subsidiary or Participating Affiliate which provides for a right of reemployment following the leave of absence.

- (d) Notwithstanding the foregoing, for all options to be granted on an Offering Date, the definition of Eligible Employee will not include an individual, if (i) the individual is not employed by the Company or a Participating Subsidiary or Participating Affiliate, as applicable, ten (10) business days before the beginning of such Offering Period and/or (ii) the employee, together with any other person whose stock would be attributed to such employee pursuant to Section 424(d) of the Code, owns stock or holds options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or any Subsidiary or who, as a result of being granted an option under this Plan with respect to such Offering Period, would own stock or hold options to purchase stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company or any Subsidiary.
- (e) The Administrator, in its sole discretion, from time to time may, prior to an Offering Date for all options to be granted on such Offering Date, determine (on a uniform and nondiscriminatory basis or as otherwise permitted by U.S. Treasury Regulation Section 1.423-2 for options granted under the 423 Component) that the definition of Eligible Employee will or will not include an individual if he or she: (i) customarily works twenty (20) hours or less per week (or such lesser period of time as may be determined by the Administrator in its sole discretion), or (ii) customarily works not more than five (5) months per calendar year (or such lesser period of time as may be determined by the Administrator in its sole discretion). Under the 423 Component, such exclusions shall be applied with respect to an Offering in a manner complying with U.S. Treasury Regulation Section 1.423-2(e)(2)(ii).
- (f) In the case of the 423 Component, Eligible Employees who are citizens or residents of a non-U.S. jurisdiction (without regard to whether they also are citizens or residents of the United States or resident aliens within the meaning of Section 7701(b)(1)(A) of the Code) may be excluded from participation in the Plan or an Offering if the participation of such Eligible Employees is prohibited under the laws of the applicable jurisdiction or if complying with the laws of the applicable jurisdiction would cause the Plan or an Offering to violate Section 423 of the Code (or to the extent such exclusion is permitted under Section 423 of the Code). In the case of the Non-423 Component, Eligible Employees may be excluded from participation in the Plan or an Offering if the Administrator has determined that participation of such Eligible Employees is not advisable or practicable.
- (g) A participant in the Plan shall cease to be an Eligible Employee upon termination of employment (as further described in Section 12 below), upon the entity employing such participant during an Offering Period ceasing to be an Affiliate, or upon the participant transferring to an Affiliate that is not a Participating Subsidiary or Participating Affiliate.

### 5. Offerings; Offering Periods; Purchase Periods.

- (a) For purposes of this Plan, "Offering" means an offer of an option under the Plan that may be exercised on one or more Purchase Dates (as hereinafter defined) during an Offering Period. Unless otherwise specified by the Administrator, each Offering to the Eligible Employees of the Company, a Participating Subsidiary or a Participating Affiliate shall be deemed a separate Offering (the terms of which Offering under the Non-423 Component need not be identical), even if the dates and other terms of the separate Offerings are identical and the provisions of the Plan shall separately apply to each Offering. To the extent permitted by U.S. Treasury Regulation Section 1.423-2(a)(1), the terms of each separate Offering under the 423 Component need not be identical, provided that the terms of the Plan and an Offering together satisfy U.S. Treasury Regulation Section 1.423-2(a)(2) and (a)(3).
- (b) Except as otherwise specified by the Administrator prior to the commencement of an Offering Period (as defined below): (i) the offering periods of this Plan (each, an "Offering Period") shall be twenty-four (24) month periods commencing on May 1 and November 1 of each year and ending on April 30 and October 31 of each year, and (ii) each Offering Period shall consist of four (4) six-month purchase periods (each, a "Purchase Period") during which payroll deductions or other contributions of the participants are accumulated under this Plan. The first business day of each Offering Period is referred to as the "Offering Date."

  The last business day of each Purchase Period is referred to as the "Purchase Date."
- (c) The Administrator shall have the power to change the duration of Offering Periods with respect to Offerings without stockholder approval if such change is announced at least fifteen (15) days prior to the

scheduled beginning of the first Offering Period to be affected. Notwithstanding the foregoing, in the event of a merger, recapitalization, restructuring or other corporate transaction affecting the Common Stock, the Administrator may, without stockholder approval and in accordance with applicable law, shorten the duration of Offering Periods (other than with respect to any Assumed eBay ESPP Offerings) or establish other Offering Periods in addition to those described above, which shall be subject to any specific terms and conditions that the Administrator approves, including requirements with respect to eligibility, participation, the establishment of Purchase Periods and Purchase Dates and other rights under any such offering. A participant may be enrolled in only one Offering Period at a time (for the avoidance of doubt, any participant who is a participant in an Assumed eBay ESPP Offering will continue to participate in such Assumed eBay ESPP Offering subject to the terms of the Plan, including but not limited to Sections 4, 11, and 12).

(d) As of the Effective Date, and upon the consummation of the Spin-Off, the offering periods and purchase periods that are pending at such time under any Assumed eBay ESPP Offerings shall be assumed by the Company pursuant to the terms of this Plan and be considered "Offering Periods" and "Purchase Periods" under the terms of this Plan as described in Section 5(b) above and the applicable commencement and ending dates of such periods shall correspond to the original dates of the original offering periods and purchase periods established under the eBay ESPP for each Assumed eBay ESPP Offering. The rights of participants with respect to such assumed Offering Periods and Purchase Periods thereafter shall, except as otherwise provided in this Plan, be subject to the terms of this Plan, provided that (i) such rights shall relate solely to shares of Common Stock and (ii) the Fair Market Value of a share of Common Stock on the applicable "Offering Date" and the maximum number of shares that may be purchased in any such Purchase Period, as determined under the terms of the original eBay ESPP, shall be as set forth in with Sections 8 and 10, respectively, of this Plan.

### 6. Participation in this Plan.

- (a) An Eligible Employee may become a participant in the Plan by completing, within five (5) business days prior to the applicable Offering Date (or such other time frame set forth by the Administrator), a subscription agreement (through the Company's online Plan enrollment process or in paper form if required by the Administrator) and/or any other forms and by following any other procedures for enrollment in the Plan as may be established by the Administrator.
- (b) Once an Eligible Employee becomes a participant in the Plan, the Eligible Employee will automatically participate in each succeeding Offering Period unless (i) he or she withdraws or is deemed to withdraw from this Plan or terminates further participation in the Offering Period as set forth in Section 11 below, or (ii) ceases to be an Eligible Employee. Any such participant is not required to complete any additional subscription agreement, form or procedure in order to continue participation in this Plan, unless requested by the Administrator for legal or administrative reasons.
- (c) If a participant in the Plan transfers employment between the Company and a Participating Subsidiary or between Participating Subsidiaries, his or her participation in the Plan shall continue unless and until otherwise terminated in accordance with the Plan. Similarly, if a participant in the Plan transfers employment between Participating Affiliates, his or her participation in the Plan shall continue unless and until otherwise terminated in accordance with the Plan. If a participant in the Plan transfers employment (i) from the Company or a Participating Subsidiary to a Participating Affiliate or (ii) from a Participating Affiliate to the Company or a Participating Subsidiary, he or she shall be deemed to withdraw from the Plan as of the transfer date and shall have his or her accumulated payroll deductions refunded to him or her (without interest, subject to Section 9(e) below) as soon as practicable following the transfer. Such former participant shall be entitled to re-enroll in the Plan as of the next Offering Period provided that he or she is an Eligible Employee at that time, completes a subscription agreement and follows the procedures set forth in Section 6(a) above. Notwithstanding the foregoing provisions of this Section 6(c), the Administrator may establish additional and/or different rules to govern transfers of employment among the Company and any Participating Subsidiary or Participating Affiliate, consistent with the applicable requirements of Code Section 423 and the terms of the Plan.
- (d) In connection with the Spin-Off and pursuant to the terms of the Employee Matters Agreement between the Company and eBay, entered into in connection with the Spin-Off (the "Employee Matters Agreement"), each employee of the Company or its Subsidiaries who was participating in the eBay ESPP as of the Effective Date shall become an Eligible Employee as of the Effective Date and participate in the

applicable Offering Period and Purchase Period assumed by the Company pursuant to Section 5(d) hereof in accordance with such employee's subscription agreement in effect as of the Effective Date under the eBay ESPP.

- 7. Grant of Option. On the Offering Date of each Offering Period, and subject in all cases to the provisions of the Plan, each participant in the Plan shall be granted an option to purchase on each Purchase Date during the Offering Period (at the purchase price described in Section 8 below) up to that number of shares of Common Stock determined by dividing (a) the amount accumulated in such participant's payroll deduction or other contribution account during such Purchase Period by (b) the lesser of (i) eighty-five percent (85%) of the Fair Market Value of a share of Common Stock on the Offering Date (but in no event less than the par value of a share of Common Stock), or (ii) eighty-five percent (85%) of the Fair Market Value of a share of Common Stock on the Purchase Date (but in no event less than the par value of a share of Common Stock), provided, however, that the number of shares of Common Stock subject to any option granted pursuant to this Plan shall not exceed the lesser of (x) the maximum number of shares which may be purchased pursuant to Section 10(a) with respect to the applicable Purchase Date, or (y) the maximum number of shares set by the Administrator pursuant to Section 10(b) below with respect to the applicable Purchase Date. The Fair Market Value of a share of Common Stock shall be determined as provided in Section 8 below.
- **8. Purchase Price.** The purchase price at which each share of Common Stock will be sold in any Offering Period shall be eighty-five percent (85%) of the lesser of:
  - (a) The Fair Market Value on the Offering Date; or
  - (b) The Fair Market Value on the Purchase Date.

For purposes of this Plan, the term "Fair Market Value" means, as of any date, the value of a share of Common Stock determined as follows:

- (i) if such Common Stock is then quoted on the Nasdaq Global Select Market, its closing price on the Nasdaq Global Select Market on the date of determination as reported in <a href="The Wall Street Journal">The Wall Street Journal</a>;
- (ii) if such Common Stock is publicly traded and is then listed on another national securities exchange, its closing price on the date of determination on the principal national securities exchange on which Common Stock is listed or admitted to trading as reported in <u>The Wall Street Journal</u>;
- (iii) if such Common Stock is publicly traded but is not quoted on the [Nasdaq Global Select Market] nor listed or admitted to trading on another national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in The Wall Street Journal; or
  - (iv) if none of the foregoing is applicable, by the Administrator in good faith.

With respect to each Assumed eBay ESPP Offering assumed by the Company in connection with the Spin-Off pursuant to Section 5(d) hereof and the Employee Matters Agreement, the Fair Market Value of a share of Common Stock on the applicable "Offering Date" shall be the fair market value of a share of common stock of eBay on such Offering Date, as determined under the terms of the eBay ESPP, adjusted by the Compensation Committee of eBay and the terms of the Employee Matters Agreement.

#### 9. Payment of Purchase Price; Changes in Payroll Deductions; Issuance of Shares.

(a) The purchase price of the shares of Common Stock shall be paid for by means of payroll deductions taken from the participant's Compensation (as hereinafter defined) during each Purchase Period. Except as set forth in this Section 9, the amount of payroll deductions to be taken from a participant's Compensation shall be determined by the Eligible Employee at the time of completing the subscription agreement and enrolling in the Plan as described in Section 6(a) above.

Notwithstanding the foregoing or any provisions to the contrary in the Plan, the Administrator may allow participants to make other contributions under the Plan via cash, check or other means instead of payroll deductions if payroll deductions are not permitted under applicable local law and, for any Offering under the 423 Component, the Administrator determines that such other contributions are permissible under Section 423 of the Code.

The payroll deductions or other contributions are made as a percentage of the participant's Compensation in one percent (1%) increments and shall not be less than two percent (2%), nor greater than ten

percent (10%) or such lower limit set by the Administrator. The Administrator shall determine whether the amount to be contributed is to be designated as a specific dollar amount, or as a percentage of the eligible Compensation being paid on such payday, or as either, and may also establish a minimum percentage or amount for such contributions.

Payroll deductions shall commence on the first payday of the Offering Period and shall continue to the end of the Offering Period unless sooner altered or terminated as provided in this Plan. Other contributions shall be made at the time and in the manner prescribed by the Administrator for the option and/or Offering under which other contributions are permitted pursuant to foregoing provisions of this section.

- (b) For purposes of this Plan, "Compensation" means the following forms of cash remuneration earned or payable to a participant by the Company, a Participating Subsidiary or a Participating Affiliate during the applicable Offering Period: base wages; salary; overtime (including pay in lieu of meal time); performance or merit bonuses; commissions; shift differentials; language differentials; payments for paid time off and holidays; sabbatical pay; payments in lieu of notice; travel pay; retroactive pay; on-call/standby pay; hazard pay; bereavement pay; jury/witness duty pay; pay during a period of suspension; military leave pay; compensation deferred pursuant to Section 401(k) or Section 125 of the Code; distributions under any nonqualified deferred compensation plan: retention bonuses; or any other compensation or remuneration approved as "compensation" by the Administrator in accordance with Section 423 of the Code. For purposes of this Plan, "Compensation" shall not include forms of compensation or remuneration that are not included or covered by the first sentence in this Section 9(b), including the following: moving allowances; automobile allowances; gross-up payments; compensation deferred under any nonqualified deferred compensation plan; payments pursuant to a severance plan, agreement or arrangement; payments during a garden leave or other notice period preceding termination of employment; equalization payments; termination pay (including the payout of accrued vacation time in connection with any such termination); relocation allowances; expense reimbursements; meal allowances; commuting allowances; geographical hardship pay; any payments (such as guaranteed bonuses in certain foreign jurisdictions) with respect to which salary reductions are not permitted by the laws of the applicable jurisdiction); sign-on bonuses; nonqualified executive compensation; any amounts directly or indirectly paid pursuant to this Plan or any other stock-based plan, including without limitation any stock option, stock purchase, restricted stock, restricted stock unit, deferred stock unit, or similar plan, of the Company or any Affiliate, or cash paid in lieu of any such awards; or any other compensation or remuneration determined not to be "compensation" by the Administrator in accordance with Section 423 of the Code. The Administrator, in its sole discretion, may, on a uniform and nondiscriminatory basis for each Offering, establish a different definition of Compensation for a subsequent Offering. Further, the Administrator shall have discretion to determine the application of this definition to participants on payrolls outside the United States.
- (c) A participant may increase or decrease the rate of payroll deductions or other contributions during an Offering Period by completing a new authorization for payroll deductions or other contributions (through the Company's online Plan process or in paper form if required by the Administrator) and/or any other forms and by following any other procedures as may be established by the Administrator, in which case the new rate shall become effective as soon as administratively practicable after the participant elects such change and shall continue for the remainder of the Offering Period unless changed as described below. Such change in the rate of payroll deductions or other contributions may be made at any time during an Offering Period, but not more than one (1) change may be made effective during any Purchase Period.

A participant may increase or decrease the rate of payroll deductions or contributions for any subsequent Offering Period by completing a new authorization for payroll deductions or other contributions (through the Company's online Plan process or in paper form if required by the Administrator) and/or any other forms and by following any other procedures as may be established by the Administrator, not later than fifteen (15) business days before the beginning of such Offering Period or within such other time frame set forth by the Administrator.

(d) A participant may reduce his or her payroll deductions or contributions percentage to zero during an Offering Period by submitting to the Company a request for cessation of payroll deductions or other contributions (through the Company's online Plan process or in paper form if required by the Administrator) and/or any other forms and by following any other procedures as may be established by the Administrator. Such reduction shall be effective as soon as administratively practicable after the Participant elects such reduction and no further payroll deductions or contributions will be made for the duration of the Offering

Period. Payroll deductions or contributions credited to the participant's account prior to the effective date of the request shall be used to purchase shares of Common Stock in accordance with Section 9(f) below. A participant may not resume making payroll deductions or other contributions during the Offering Period in which he or she reduced his or her payroll deductions or other contributions to zero.

- (e) A participant's payroll deductions or other contributions shall be credited to an account maintained on such participant's behalf under this Plan. All payroll deductions or other contributions shall be deposited with the general funds of the Company and may be used by the Company for any corporate purpose, and the Company shall not be obligated to segregate such payroll deductions or other contributions, unless otherwise required by the laws of the jurisdiction where the payroll deductions are taken or other contributions, unless otherwise required by the laws of the jurisdiction where the payroll deductions are taken or other contributions, unless otherwise required by the laws of the jurisdiction where the payroll deductions are taken or other contributions are made, as determined by the Administrator.
- (f) On each Purchase Date, so long as this Plan remains in effect and provided that the participant has not withdrawn from the Offering Period in accordance with the requirements of Section 11(a), the Company shall apply the funds then in the participant's account to the purchase of whole shares of Common Stock reserved under the option granted to such participant with respect to the Offering Period to the extent that such option is exercisable on the Purchase Date. The purchase price per share shall be as specified in Section 8 of this Plan. Any cash remaining in a participant's account after such purchase of shares shall be refunded to such participant in cash, without interest (subject to Section 9(e) above); provided, however, that any amount remaining in such participant's account on a Purchase Date which is less than the amount necessary to purchase a full share of Common Stock shall be carried forward, without interest (subject to Section 9(e) above), into the next Purchase Period or Offering Period and in the locations where the Administrator has determined that such rollover is available under the Plan, as the case may be. In the event that this Plan has been oversubscribed, all funds not used to purchase shares on the Purchase Date shall be returned to the participant, without interest (subject to Section 9(e) above). No Common Stock shall be purchased on a Purchase Date on behalf of any employee whose participation in this Plan has terminated prior to such Purchase Date.
- (g) Subject to Section 9(h) below, as promptly as practicable after the Purchase Date, the Company shall issue shares for the participant's benefit representing the shares purchased upon exercise of his or her option.
- (h) At the time the option is exercised or at the time some or all of the shares of Common Stock issued under the Plan are disposed of (or at any other time that a taxable event related to the Plan occurs), the Plan participant must make adequate provision for any withholding obligation of the Company or a Participating Subsidiary or a Participating Affiliate with respect to federal, state, local and foreign income tax, social insurance, payroll tax, fringe benefits tax, payment on account or other tax-related items related to participation in the Plan and legally applicable to participant (including any amount deemed by the Company, in its sole discretion, to be an appropriate charge to Participant even if legally applicable to the Company or the participant's employer). At any time, the Company or the participant even if legally applicable to the Company or the participant's wages or other cash compensation the amount necessary for the Company or the participant's employer to meet applicable withholding obligations, including any withholding required to make available to the Company or the participant is employer any tax deductions or benefits attributable to sale or early disposition of Common Stock by the participant. In addition, the Company or the participant's employer may, but shall not be obligated to, withhold from the proceeds of the sale of Common Stock or by any other method of withholding the Company or the participant's employer deems appropriate.
- (i) During a participant's lifetime, his or her option to purchase shares hereunder is exercisable only by him or her. The participant will have no interest or voting right in shares covered by his or her option until such option has been exercised and the purchased shares are issued or transferred to the participant.

#### 10. Limitations on Shares to be Purchased.

(a) No participant shall be entitled to purchase Common Stock under this Plan at a rate which, when aggregated with his or her rights to purchase stock under all other employee stock purchase plans of the Company or any Subsidiary (and, if such participant was participating in the eBay ESPP immediately prior to the Effective Date, the eBay ESPP), exceeds \$25,000 in Fair Market Value, determined as of the Offering Date (or such other limit as may be imposed by the Code) for each calendar year in which any option granted to the participant is outstanding at any time. The Company shall automatically suspend the payroll deductions

or other contributions of any participant as necessary to enforce such limit provided that when the Company automatically resumes making such payroll deductions or accepting contributions, the Company shall apply the rate in effect immediately prior to such suspension.

- (b) No participant shall be entitled to purchase more than the Maximum Share Amount (as defined below) on any single Purchase Date. Not less than thirty (30) days prior to the commencement of any Offering Period, the Administrator may, in its sole discretion, set a maximum number of shares which may be purchased by any employee at any single Purchase Date (hereinafter the "Maximum Share Amount"). Until otherwise determined by the Administrator, the Maximum Share Amount shall be [ ] shares (subject to any adjustment pursuant to Section 14); provided that the Maximum Share Amount with respect to Purchase Periods assumed by the Company pursuant to Section 5(d) shall be [ ] shares. If a new Maximum Share Amount is set, then all participants shall be notified of such Maximum Share Amount prior to the commencement of the next Offering Period. The Maximum Share Amount shall continue to apply with respect to all succeeding Purchase Dates and Offering Periods unless revised by the Administrator as set forth above.
- (c) If the number of shares to be purchased on a Purchase Date by all employees participating in this Plan exceeds the number of shares then available for issuance under this Plan, then the Company will make a pro rata allocation of the remaining shares in as uniform a manner as shall be reasonably practicable and as the Administrator shall determine to be equitable. In such event, the Company shall provide notice of such reduction of the number of shares to be purchased under a participant's option to each participant affected.
- (d) Any funds accumulated in a participant's account which are not used to purchase Common Stock due to the limitations in this Section 10 shall be returned to the participant as soon as practicable after the end of the applicable Purchase Period, without interest (subject to Section 9(e) above).

#### 11. Withdrawal.

- (a) Each participant may withdraw from a Purchase Period under this Plan by completing a notice of withdrawal (through the Company's online Plan process or in paper form if required by the Administrator) and/or any other forms and by following any other procedures for withdrawal from the Plan as may be established by the Administrator, at least fifteen (15) business days prior to the end of a Purchase Period or within such other time frame set forth by the Administrator.
- (b) Upon withdrawal from this Plan, the accumulated payroll deductions shall be returned to the withdrawn participant, without interest (subject to Section 9(e) above), and his or her interest in this Plan shall terminate. In the event a participant voluntarily elects to withdraw from this Plan, he or she may not resume his or her participation in this Plan during the same Offering Period, but he or she may participate in any Offering Period under this Plan which commences on a date subsequent to such withdrawal by completing a subscription agreement in the same manner as set forth in Section 6 above for initial participation in this Plan.
- (c) If the Fair Market Value of a share of Common Stock on the first day of the current Offering Period in which a participant is enrolled is higher than the Fair Market Value of a share of Common Stock on the first day of any subsequent Offering Period, the Company will automatically enroll such participant in the subsequent Offering Period. Any funds accumulated in a participant's account prior to the first day of such subsequent Offering Period will be applied to the purchase of shares on the Purchase Date immediately prior to the first day of such subsequent Offering Period. A participant does not need to file any forms with the Company to be automatically enrolled in the subsequent Offering Period.
- 12. Termination of Employment. Termination of a participant's employment for any reason, including retirement, death or the failure of a participant to remain an Eligible Employee immediately terminates his or her participation in this Plan. For purposes of this Plan, a participant's employment will be considered terminated as of the date that participant is no longer actively providing services as an employee and will not be extended by any notice period (*i.e.*, active service would not include any contractual notice period or any period of "garden leave" or similar period mandated under employment laws in the jurisdiction where participant is employed or the terms of participant's employment agreement, if any, but is not actively providing services); the Administrator shall have the exclusive discretion to determine when the participant is no longer actively providing services for purposes of participation in the Plan. In such event, the funds credited to the participant's account will be returned to him or her or, in the case of his or her death, to his or her legal representative, without interest (subject to Section 9(e) above).

13. Return of Payroll Deductions and Other Contributions. In the event a participant's interest in this Plan is terminated by withdrawal, termination of employment or otherwise, or in the event this Plan is terminated pursuant to Section 25, the Company shall deliver to the participant all payroll deductions or other contributions credited to such participant's account, without interest (subject to Section 9(e) above).

### 14. Capital Changes.

- (a) In the event that any dividend or other distribution, reorganization, merger, consolidation, combination, repurchase, or exchange of Common Stock or other securities of the Company, or other change in the corporate structure of the Company affecting Common Stock (other than an Equity Restructuring, as defined in Section 14(c) below) occurs such that an adjustment is determined by the Administrator (in its sole discretion) to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, then the Administrator shall, in such manner as it may deem equitable, adjust the number and class of Common Stock which have been authorized for issuance under this Plan but have not yet been placed under option (collectively, the "Reserves"), the Maximum Share Amount, the number and class of Common Stock covered by each outstanding option, and the purchase price per share of Common Stock covered by each option which has not yet been exercised.
- (b) In connection with the occurrence of any Equity Restructuring, and notwithstanding anything to the contrary in Section 14(a), the number and type of securities subject to each outstanding option and the price per share thereof, if applicable, will be equitably adjusted by the Administrator. The adjustments provided under this Section 14(b) shall be nondiscretionary and shall be final and binding on the affected participants and the Company.
- (c) "Equity Restructuring" means a non-reciprocal transaction (i.e., a transaction in which the Company does not receive consideration or other resources in respect of the transaction approximately equal to and in exchange for the consideration or resources the Company is relinquishing in such transaction) between the Company and its stockholders, such as a stock split, spin-off, rights offering, nonrecurring stock dividend or recapitalization through a large, nonrecurring cash dividend, that affects the shares of Common Stock (or other securities of the Company) or the share price of Common Stock (or other securities) and causes a change in the per share value of Common Stock underlying outstanding options.
- (d) In the event of the proposed dissolution or liquidation of the Company, the Offering Period will terminate immediately prior to the consummation of such proposed action, unless otherwise provided by the Administrator. The Administrator may, in the exercise of its sole discretion in such instances, declare that this Plan shall terminate as of a date fixed by the Administrator and give each participant the right to purchase shares under this Plan prior to such termination.
- (e) In the event of (i) a merger or consolidation in which the Company is not the surviving corporation (other than a merger or consolidation with a wholly-owned subsidiary, a reincorporation of the Company in a different jurisdiction, or other transaction in which there is no substantial change in the stockholders of the Company or their relative stock holdings and the options under this Plan are assumed, converted or replaced by the successor corporation, which assumption will be binding on all participants), (ii) a merger in which the Company is the surviving corporation but after which the stockholders of the Company immediately prior to such merger (other than any stockholder that merges, or which owns or controls another corporation that merges, with the Company in such merger) cease to own their shares or other equity interest in the Company, (iii) the sale of all or substantially all of the assets of the Company or (iv) the acquisition, sale, or transfer of more than 50% of the outstanding shares of the Company by tender offer or similar transaction, unless otherwise provided by the Administrator in its sole discretion, the Plan will continue with regard to Offering Periods that commenced prior to the closing of the proposed transaction and shares will be purchased based on the Fair Market Value of the surviving corporation's stock on each Purchase Date. The Administrator may, in the exercise of its sole discretion in such instances, declare that this Plan shall terminate as of a date fixed by the Administrator and give each participant the right to purchase shares under this Plan prior to such termination.
- **15. Nonassignability**. Neither payroll deductions or other contributions credited to a participant's account nor any rights with regard to the exercise of an option or to receive shares under this Plan may be assigned, transferred, pledged or otherwise disposed of in any way (other than by will, the laws of descent and distribution or as provided

in Section 19 below) by the participant. Any such attempt at assignment, transfer, pledge or other disposition shall be void and without effect.

- **16. Notice of Disposition.** If the shares purchased in any Offering Period are not in the participant's Company stock plan account, each participant shall notify the Company in writing if the participant disposes of any of the shares purchased in any Offering Period pursuant to this Plan if such disposition occurs within two (2) years from the Offering Date or within one (1) year from the Purchase Date on which such shares were purchased (the "Notice Period"). The Company may, at any time during the Notice Period, place a legend or legends on any certificate representing shares acquired pursuant to this Plan requesting the Company's transfer agent to notify the Company of any transfer of the shares. The obligation of the participant to provide such notice shall continue notwithstanding the placement of any such legend on the certificates.
- 17. No Rights to Continued Employment. Neither this Plan nor the grant of any option hereunder shall confer any right on any employee to remain in the employ of the Company or any Participating Subsidiary or Participating Affiliate, or restrict the right of the Company or any Participating Subsidiary or Participating Affiliate to terminate such employee's employment.
- **18. Notices.** All notices or other communications by a participant to the Company under or in connection with this Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.
- 19. Death of Participant. In the event of the death of a participant, the Company shall deliver the shares or cash, if any, credited to the participant's account to the executor or administrator of the estate of the participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its sole discretion, may deliver such shares or cash to the spouse or to any one or more dependents or relatives of the participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.
- 20. Conditions Upon Issuance of Shares; Limitation on Sale of Shares. Shares shall not be issued with respect to an option unless the exercise of such option and the issuance and delivery of such shares pursuant thereto shall comply with all applicable provisions of law, domestic or foreign, including, without limitation, the U.S. Securities Act of 1933, as amended, the U.S. Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, and the requirements of any stock exchange or automated quotation system upon which the shares may then be listed, and shall be further subject to the approval of counsel for the Company with respect to such compliance.
- 21. Section 409A. The 423 Component is exempt from the application of Section 409A of the Code ("Section 409A") and any ambiguities herein shall be interpreted to so be exempt from Section 409A. The Non-423 Component is intended to be exempt from the application of Section 409A under the short-term deferral exception and any ambiguities shall be construed and interpreted in accordance with such intent. In furtherance of the foregoing and notwithstanding any provision in the Plan to the contrary, if the Administrator determines that an option granted under the Plan may be subject to Section 409A or that any provision in the Plan would cause an option under the Plan to be subject to Section 409A, the Administrator may amend the terms of the Plan and/or of an outstanding option granted under the Plan, or take such other action the Administrator determines is necessary or appropriate, in each case, without the participant's consent, to exempt any outstanding option or future option that may be granted under the Plan from or to allow any such options to comply with Section 409A, but only to the extent any such amendments or action by the Administrator would not violate Section 409A. Notwithstanding the foregoing, the Company shall have no liability to a participant or any other party if the option under the Plan that is intended to be exempt from or compliant with Section 409A is not so exempt or compliant or for any action taken by the Administrator with respect thereto.
- **22.** Tax Qualification. Although the Company may endeavor to (a) qualify an option for favorable tax treatment under the laws of the United States or jurisdictions outside of the United States or (b) avoid adverse tax treatment (*e.g.*, under Section 409A), the Company makes no representation to that effect and expressly disavows any covenant to maintain favorable or avoid unfavorable tax treatment, notwithstanding anything to the contrary in this Plan, including Section 21. The Company shall be unconstrained in its corporate activities without regard to the potential negative tax impact on participants under the Plan.

- 23. Stockholder Approval. After this Plan is adopted by the Board, this Plan will become effective on the Effective Date. This Plan shall be subject to approval by the stockholders of the Company, in a manner permitted by applicable corporate law, within twelve (12) months before or after the date this Plan is adopted by the Board. No purchase of shares pursuant to this Plan shall occur prior to such stockholder approval. This Plan shall continue until the earlier to occur of (a) termination of this Plan by the Board (which termination may be effected by the Board at any time) or (b) issuance of all of the shares of Common Stock reserved for issuance under this Plan.
- **24. Governing Law.** The Plan shall be governed by the substantive laws (excluding the conflict of laws rules) of the State of Delaware.
- 25. Amendment or Termination of this Plan. The Administrator may at any time amend or terminate the Plan, except that any such termination cannot affect options previously granted under this Plan, nor may any amendment make any change in an option previously granted which would adversely affect the right of any participant, nor may any amendment be made without approval of the stockholders of the Company obtained in accordance with Section 23 above within twelve (12) months of the adoption of such amendment (or earlier if required by Section 23 above) if such amendment would:
  - (a) increase the number of shares that may be issued under this Plan; or
  - (b) change the designation of the corporations whose employees (or class of employees) are eligible for participation in this Plan.

For the avoidance of doubt, the authority to take action under this Section 25 may not be delegated to an officer or other employee. Notwithstanding the foregoing, the Administrator may make such amendments to the Plan as the Administrator determines to be advisable, if the continuation of the Plan or any Offering Period would result in financial accounting treatment for the Plan that is different from the financial accounting treatment in effect on the date this Plan is adopted by the Board.

# PAYPAL HOLDINGS, INC. DEFERRED COMPENSATION PLAN

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PayPal Holdings, Inc., a Delaware corporation ("<u>PayPal Holdings</u>"), and its direct and indirect subsidiaries hereby establish and maintain this PayPal Holdings, Inc. Deferred Compensation Plan (the "<u>Plan</u>") which is designed to provide certain benefits for a select group of management and highly compensated employees through deferrals of salary and incentive compensation. This Plan shall be effective as of the date on which shares of common stock of PayPal Holdings are distributed to the stockholders of eBay Inc. pursuant to the Separation and Distribution Agreement, dated [ ], 2015.

The Plan is intended to comply with the requirements of Sections 409A(a)(2), (3) and (4) of the Code and the Treasury Regulations and other guidance issued by the Secretary of the Treasury thereunder. To the extent permitted by such Treasury Regulations or other guidance, the Plan may be amended to conform to the requirements of Section 409A of the Code.

# ARTICLE I. TITLE AND DEFINITIONS

- 1.1 Title. This Plan shall be known as the PayPal Holdings, Inc. Deferred Compensation Plan.
- 1.2 Definitions.

Whenever the following words and phrases are used in this Plan, with the first letter capitalized, they shall have the meanings specified below.

- (a) "401(k) Plan" shall mean the PayPal 401(k) Savings Plan maintained by PayPal Holdings under Section 401(k) of the Code, as in effect from time to time, or as applicable for any Participant, a plan maintained by a direct or indirect subsidiary of PayPal Holdings under Section 401(k) of the Code.
  - (b) "Account" or "Accounts" shall mean a Participant's Deferral Account and/or Company Account.
- (c) "Administrator" shall mean the individuals designated by the Committee (who need not be a member of the Committee) to handle the day-to-day Plan administration. If the Committee does not make such a designation, the Administrator shall be the Vice-President, Compensation and Benefits of the Company, or any successor position.
  - (d) "Affiliate" has the meaning ascribed to such term in Rule 12b-2 promulgated under the Exchange Act.
- (e) "Base Salary" shall mean a Participant's annual base salary, excluding bonus, incentive and all other remuneration for services rendered to the Company, prior to reduction for any salary contributions to a plan established pursuant to Section 125 or 423 of the Code or intended to be qualified pursuant to Section 401(k) of the Code and prior to reduction for deferrals under this Plan.

- (f) "Beneficial Owner" has the meaning set forth in Rule 13d-3 under the Exchange Act.
- (g) "Beneficiary" or "Beneficiaries" shall mean the person or persons, including a trustee, personal representative or other fiduciary, last designated in writing by a Participant to receive the benefits specified hereunder in the event of the Participant's death in accordance with Section 9.5.
  - (h) "Board of Directors" or "Board" shall mean the Board of Directors of PayPal Holdings.
  - (i) "Bonus" shall mean an incentive award earned by a Participant under the Company's short-term incentive plan.
- (j) "Change in Control" shall be deemed to have occurred when any event or transaction described in paragraph (1), (2), (3) or (4) occurs, subject to paragraph (5):
- (1) Any Person is or becomes the Beneficial Owner, directly or indirectly, of securities of PayPal Holdings representing fifty percent (50%) or more of the combined voting power of PayPal Holdings' then outstanding securities; or
- (2) The following individuals cease for any reason to constitute a majority of the number of directors then serving: individuals who, on the Effective Date, constitute the Board and any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including, but not limited to, a consent solicitation, relating to the election of directors of PayPal Holdings) whose appointment or election by the Board or nomination for election by PayPal Holdings' stockholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the date hereof or whose appointment, election or nomination for election was previously so approved or recommended; or
- (3) There is consummated a merger or consolidation of PayPal Holdings or any direct or indirect subsidiary of PayPal Holdings with any other corporation, other than (A) a merger or consolidation which would result in the voting securities of PayPal Holdings outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof), in combination with the ownership of any trustee or other fiduciary holding securities under an employee benefit plan of PayPal Holdings or any subsidiary of PayPal Holdings, at least a majority of the combined voting power of the securities of PayPal Holdings or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, or (B) a merger or consolidation effected to implement a recapitalization of PayPal Holdings (or similar transaction) in which no Person is or becomes the Beneficial Owner, directly or indirectly, of securities of PayPal Holdings (not including in the securities beneficially owned by such Person any securities acquired directly from PayPal Holdings or its affiliates other than in connection with the acquisition by PayPal Holdings or its affiliates of a business)

representing fifty percent (50%) or more of the combined voting power of PayPal Holdings' then outstanding securities; or

- (4) The stockholders of PayPal Holdings approve a plan of complete liquidation or dissolution of PayPal Holdings or there is consummated an agreement for the sale or disposition by PayPal Holdings of all or substantially all of PayPal Holdings' assets, other than a sale or disposition by PayPal Holdings of all or substantially all of PayPal Holdings' assets to an entity, at least a majority of the combined voting power of the voting securities of which are owned by stockholders of PayPal Holdings in substantially the same proportions as their ownership of PayPal Holdings immediately prior to such sale.
- (5) An event or transaction described in paragraph (1), (2), (3), or (4) shall be a "Change in Control" only if such event or transaction is a "change in the ownership or effective control of the corporation, or in the ownership of a substantial portion of the assets of the corporation," within the meaning of Section 409A(a)(2)(A)(v) of the Code, to the extent provided by the Secretary of the Treasury.
  - (k) "Code" shall mean the Internal Revenue Code of 1986, as amended.
  - (1) "Committee" shall mean the Compensation Committee of the Board of Directors.
- (m) "Company" shall mean PayPal Holdings, Inc. and any successor corporations. "Company" shall also include each corporation which is a member of a controlled group of corporations (within the meaning of Section 414(b) of the Code) of which PayPal Holdings, Inc. is a component member (and any such member of which PayPal Holdings shall be a direct or indirect parent corporation, a "subsidiary") after the Spin-Off, for purposes of Section 9 of the Plan, before, on or after the Spin-Off.
- (n) "Company Account" shall mean the bookkeeping account maintained by the Company for each Participant that is credited with an amount equal to the Company Contribution, if any, debited by amounts equal to all distributions to and withdrawals made by the Participant and/or his Beneficiary and adjusted for investment earnings and losses pursuant to Article V.
- (o) "Company Contributions" shall mean any discretionary employer contribution, if any, made to the Plan on behalf of Eligible Individuals.
- (p) "Compensation" shall mean Base Salary and Bonus, and at the Committee's discretion, Restricted Stock Units that the Participant who is an employee is entitled to receive for services rendered to the Company.
- (q) "**Deferral Account**" shall mean the bookkeeping account maintained by the Company for each Participant that is credited with amounts equal to the portion of the Participant's Compensation that he elects to defer pursuant to Section 3.1, debited by amounts equal to all distributions to and withdrawals made by the Participant and/or his Beneficiary and adjusted for investment earnings and losses pursuant to Article V. The Deferral Account may be further subdivided into subaccounts as determined by the Committee.

- (r) "**Deferral Election Form**" shall mean the form designated by the Committee for purposes of making deferrals under Section 3.1.
  - (s) "Disability" or "Disabled" means, with respect to a Participant, that the Participant:
- (1) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, or
- (2) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three months under an accident or health plan covering employees of such Participant's Employer, as determined in accordance with Section 409A(a)(2)(C) of the Code and the Treasury Regulations thereunder.
- (t) "**Distributable Amount**" of a Participant's subaccounts with respect to a Plan Year shall mean the sum of the vested balance of the subaccount in a Participant's Deferral Account and Company Account with respect to such Plan Year.
  - (u) "eBay Plan" shall mean the eBay Inc. Deferred Compensation Plan as of the Effective Date.
- (v) "**Effective Date**" shall mean the date on which shares of common stock of PayPal Holdings are distributed to the stockholders of eBay Inc. pursuant to the Separation and Distribution Agreement, dated [ ], 2015.
- (w) "Election Period" with respect to a Plan Year shall mean the period designated by the Committee; provided, however, that such period shall be no less than ten business days. The Election Period with respect to a Plan Year shall end not later than the last day of the prior Plan Year; provided, however, that, in the case of an Eligible Individual who first becomes eligible to participate in the Plan during a Plan Year, the Election Period may be the thirty (30) day period commencing on the date such Eligible Individual first becomes eligible to participate in accordance with Section 409A(a)(4)(B)(ii) of the Code and the Treasury Regulations thereunder; and provided, further, in the case of an Eligible Individual's election to defer a Bonus (or portion thereof) for a Plan Year that is performance-based compensation based on services over a period of at least twelve (12) months, within the meaning of Section 409A(a)(4)(B)(iii) of the Code and the Treasury Regulations thereunder, the Election Period may be a period designated by the Committee during such Plan Year that satisfies the requirements of Section 409A(a)(4)(B)(iii) of the Code and the Treasury Regulations thereunder.

(x) "Eligible Individual" shall mean those Executives selected by the Committee. The Committee may, in its sole discretion, select such other individuals to participate in the Plan who do not otherwise meet the foregoing designation.

In connection with the Spin-Off and pursuant to the terms of the Employee Matters Agreement between PayPal Holdings and eBay Inc., dated [ ], 2015 (the "Employee Matters Agreement"), each employee of the Company or its subsidiaries as of immediately after the effective time of the Spin-Off who was participating in the eBay Plan as of the Effective Date shall automatically become a Participant as of the effective time of the Spin-Off (any such Participant, a "Transferred PayPal Participant").

- (y) "ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.
- (z) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended, and the applicable rules and regulations thereunder.
- (aa) "Executive" shall mean an executive of the Company who is on the U.S. payroll and who holds a position as Vice President or who holds a position with a more senior grade level than Vice President, or is otherwise designated by the Committee.
  - (bb) "Measurement Fund" shall mean one or more of the investment funds selected by the Committee pursuant to Section 4.1.
- (cc) "Participant" shall mean any Eligible Individual who becomes a Participant in accordance with Article II and who has not received a complete distribution of the amounts credited to his Accounts.
  - (dd) "PayPal Holdings" shall mean PayPal Holdings, Inc., a Delaware corporation.
  - (ee) "Payroll Date" shall mean, with respect to any Participant, the date on which he would otherwise be paid Compensation.
- (ff) "Payment Date" shall mean the time as soon as practicable after one of the following dates as designated by the Participant in his distribution form election with respect to a Plan Year:
- (1) the first business day of the seventh calendar month following the date of the Participant's Separation from Service or Disability, or
- (2) the earlier of: (i) the first business day of June of a calendar year specified by the Participant that is no earlier than the year after the year in which the Compensation would have been paid but for the Participant's election to defer such Compensation, or (ii) the first business day of the seventh calendar month following the date of the Participant's Separation from Service or Disability.

"Payment Date" shall also mean the Scheduled In-Service Withdrawal Date elected in accordance with the provisions of Section 7.1(b).

- (gg) "**Person**" means any person, entity or "group" within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, except that such term shall not include (1) PayPal Holdings or any of its Affiliates, (2) a trustee or other fiduciary holding securities under an employee benefit plan of PayPal Holdings or any of its Affiliates, (3) an underwriter temporarily holding securities pursuant to an offering of such securities, (4) a corporation owned, directly or indirectly, by the stockholders of PayPal Holdings in substantially the same proportions as their ownership of stock of PayPal Holdings, or (5) a person or group as used in Rule 13d-1(b) under the Exchange Act.
  - (hh) "Plan" shall mean the PayPal Holdings, Inc. Deferred Compensation Plan set forth herein, as amended from time to time.
- (ii) "**Plan Year**" shall mean the twelve (12) consecutive month period beginning on each January 1 and ending on each December 31, except for the short Plan Year beginning on the Effective Date and ending on the following December 31.
- (jj) "Restricted Stock Units" shall mean restricted stock units granted to Executives under the PayPal Holdings, Inc. 2015 Equity Incentive Award Plan or any other equity compensation plans approved by PayPal Holdings' stockholders, including restricted stock units assumed by PayPal Holdings in connection with the Spin-Off pursuant to the terms of the Employee Matters Agreement.
  - (kk) "Rule 16b-3" shall mean that certain Rule 16b-3 under the Exchange Act, as such Rule may be amended from time to time.
- (II) "Scheduled In-Service Withdrawal Date" shall mean the earlier of: (i) the first business day of June of a calendar year specified by the Participant that is no earlier than the year after the year in which the Compensation would have been paid but for the Participant's election to defer such Compensation, or (ii) the first business day of the seventh calendar month following the date of the Participant's Separation from Service or Disability.
- (mm) "**Separation from Service**" shall mean with respect to a Participant, such Participant's Termination, if such Termination is a "separation from service," within the meaning of Section 409A(a)(2)(A)(i) of the Code, as determined by the Secretary of the Treasury (or such Participant's other "separation from service," as so defined).
- (nn) "**Spin-Off**" shall mean the distribution of shares of common stock of PayPal Holdings to the stockholders of eBay Inc. pursuant to the Separation and Distribution Agreement, dated [ ], 2015.
- (oo) "Subaccount" or "Subaccounts" shall mean the subaccount or subaccounts maintained with respect to a Participant's Deferral Account or Company Account.

- (pp) "**Termination**" shall mean for any Participant who is an employee, ceasing to be an employee of the Company for reasons other than death or Disability. If a Participant is both an employee of the Company and a member of the Board of Directors, he shall not have a Termination until he terminates from both positions.
- (qq) "Valuation Date", with respect to the Measurement Funds that are available under the 401(k) Plan, shall have the same meaning as under the 401(k) Plan. For purposes of other Measurement Funds, "Valuation Date" shall be as determined by the Committee.

# ARTICLE II. PARTICIPATION

- (a) An Eligible Individual shall become a Participant in the Plan by (1) electing to make deferrals in accordance with Section 3.1 or receiving a Company Contribution and (2) filing with the Company such other forms as the Committee may reasonably require for participation hereunder.
- (b) An Eligible Individual who completes the requirements of the preceding subsection of this Article II shall commence participation in this Plan as of the first day of the Plan Year with respect to which Compensation is elected to be deferred.

# ARTICLE III. CONTRIBUTIONS

#### 3.1 Elections to Defer Compensation

(a) General Rule. Each Eligible Individual may defer Compensation for a Plan Year by filing with the Administrator a Deferral Election Form for such Plan Year that conforms to the requirements of this Section 3.1, no later than the last day of the applicable Election Period for such Plan Year. The Committee may permit an Eligible Individual who first becomes eligible to participate in the Plan during a Plan Year to have his first Election Period during such Plan Year. An election to defer Compensation for a Plan Year must be filed during the Election Period prior to the effective date of such election and shall be effective only for Compensation that constitutes compensation for services performed during periods during the Plan Year beginning after the effective date of such election. Notwithstanding the previous sentence, if an Eligible Individual's Bonus (or portion thereof) is performance-based compensation based on services performed over a period of at least twelve (12) months, within the meaning of Section 409A(a)(4)(B)(iii) and the Treasury Regulations thereunder, the Committee may permit such Eligible Individual to file an election to defer such Bonus (or such portion thereof), or change such Eligible Individual's prior election to defer such Bonus (or such portion thereof), no later than six months before the end of the period over which such services are to be performed, under the terms and conditions specified by the Committee, in accordance with Section 409A(a)(4)(B)(iii) of the Code and the Treasury Regulations

thereunder. A Participant shall make a separate election to defer Compensation for each Plan Year.

- (b) Special Rules. Notwithstanding the above, the following restrictions apply to deferrals of Restricted Stock Units.
- (1) Restricted Stock Units. A Participant may elect to defer Restricted Stock Units (or a portion thereof), to the extent permitted by the Committee. In order to defer Restricted Stock Units (or a portion thereof), an eligible Participant must file the appropriate Deferral Election Form no later than the election date required under Section 409A of the Code and the Treasury Regulations thereunder. A Participant's election to defer Restricted Stock Units shall be effective only for the Restricted Stock Units (or a portion thereof) that constitute compensation for services performed during periods during the Plan Year (or a subsequent Plan Year) after the effective date of the Participant's deferral election, or as otherwise permitted under Section 409A of the Code and the Treasury Regulations thereunder.
- (2) Limitation on Deferrals. A Participant may elect to defer Restricted Stock Units or any portion thereof, only to the extent such deferral satisfies the requirements of Section 409A of the Code and the Treasury Regulations thereunder.

#### (c) Deferral Amounts.

- (1) The amount of Compensation which a Participant may elect to defer for a Plan Year is such Compensation earned on or after the time at which the Participant elects to defer each Plan Year in accordance with Section 3.1(a), and which is earned during such Plan Year. The applicable limitations for any Participant shall be determined by the Committee, determined as of the first day of the Election Period for such Plan Year.
- (2) Each Participant shall be permitted to defer, in any whole percentage: (A) from 5% to 50% of Base Salary, (B) from 5% to 100% of his Bonus and (C) from 5% to 100% of his Restricted Stock Units, subject to Section 3.1(b), rounded down to the nearest whole share.
- (c) Notwithstanding the limitations established above, the total amount deferred by a Participant shall be limited in any calendar year, if necessary, to satisfy the Participant's income and employment tax withholding obligations (including Social Security, unemployment and Medicare), and the Participant's employee benefit plan contribution requirements, determined on the first day of the Election Period for such Plan Year, as determined by the Committee.
  - (d) Duration of Deferral Election.
    - (1) A Participant shall not modify or suspend his election to defer Compensation during a Plan Year.
- (2) A Participant must file a new deferral election for each subsequent Plan Year. In the event a Participant fails to file a timely deferral election for the next Plan Year, he shall be deemed to have elected not to defer any Compensation for such Plan Year.

(e) Elections. Subject to the limitations of subsection (b), any Eligible Individual who does not elect to defer Compensation during his Election Period for a Plan Year may subsequently become a Participant.

#### 3.2 Distribution Elections.

- (a) General Rule. Each Participant shall make a separate distribution election with respect to each Plan Year for which such Participant elects to defer Compensation in accordance with Section 3.1. A Participant's distribution election with respect to a Plan Year shall apply to: (1) the subaccount in his Deferral Account to which shall be credited the amount equal to the portion of his Compensation earned during such Plan Year that he elects to defer pursuant to Section 3.1; and (2) the subaccount in his Company Account to which shall be credited the amount equal to the Company Contribution for such Plan Year, if any. A Participant's distribution election with respect to a Plan Year shall elect the Payment Date and the form of distribution of his Distributable Amount with respect to such Plan Year for purposes of distributions under subsection 7.1(a) in the event of such Participant's Separation from Service or Disability. Such Payment Date and distribution form elections shall be made on such Participant's Deferral Election Form during the Election Period for which such Participant elects to defer Compensation under Section 3.1 for such Plan Year, and such Payment Date and distribution form elections with respect to such Plan Year shall be irrevocable, except as provided in subsection (b). A Participant may elect any Payment Date described in Section 1.2(ff), and may elect distribution in the normal form, as described in paragraph 7.1(a)(1), or an optional form described in paragraph 7.1(a)(2). In the event a Participant fails to elect a Payment Date for his Distributable Amount with respect to a Plan Year, his Payment Date for his Distributable Amount with respect to such Plan Year shall be the date described in Section 1.2(ff)(1). In the event a Participant fails to make a distribution form election for his Distributable Amount with respect to a Plan Year, his Distributable Amount with respect to such Plan Year shall be distributed in the normal form, as described in paragraph 7.1(a)(1) in the event of his Separation from Service or Disability, except as provided in subsection (b). Except as provided in subsection (b), a Participant's distribution for his Distributable Amount with respect to a Plan Year shall be made or commence as soon as administratively practicable after such Participant's Payment Date.
- (b) Changes to Distribution Form Election. Subject to subsection (e), a Participant may change his distribution form election for his Distributable Amount with respect to a Plan Year in accordance with this subsection (b) as follows:
- (1) Change from Lump Sum. If such Participant elected to receive the distribution of his Distributable Amount with respect to a Plan Year in the event of his Separation from Service or Disability in the normal form, as described in paragraph 7.1(a)(1) (i.e., a lump sum), such Participant may change such distribution form election by making a new distribution form election for his Distributable Amount with respect to such Plan Year providing for distribution in one of the following forms, with such distribution made or commencing on the fifth anniversary of his initially elected Payment Date:

- (A) a lump sum, or
- (B) annual installments (calculated as set forth at Section 7.1(a)(6)) over a period of from two (2) up to fifteen (15) years.
- (2) Change from Installments. If such Participant elected to receive the distribution of his Distributable Amount with respect to a Plan Year in the event of his Separation from Service or Disability in an optional form, as provided in subparagraph 7.1(a)(2) (i.e., annual installments over a period of years), such Participant may change such distribution form election by making a new distribution form election for his Distributable Amount with respect to such Plan Year providing for distribution in one of the following forms, with such distribution commencing on the fifth anniversary of his initially elected Payment Date:
  - (i) a lump sum, provided that no installments have commenced with respect to such Plan Year,
- (ii) annual installments (calculated as set forth at Section 7.1(a)(6)) over the period of years specified in such Participant's initial distribution form election, provided that no installments have commenced with respect to such Plan Year, or
- (iii) annual installments (calculated as set forth at Section 7.1(a)(6)) over a period of from two (2) up to fifteen (15) years, provided that such period exceeds the period of years specified in such Participant's initial distribution form election, and provided, further, that no installments have commenced with respect to such Plan Year.
- (3) A Participant may make only one change to his distribution form election with respect to a Plan Year under this subsection (b).
- (c) Election of Scheduled In-Service Withdrawal Date. A Participant may elect a Scheduled In-Service Withdrawal Date with respect to his deferrals of Compensation (including any investment earnings on such amounts) plus any Company Contributions to the extent vested, if any, (the "Withdrawal Amount") with respect to a Plan Year. Such election of a Scheduled In-Service Withdrawal Date for such Participant's Withdrawal Amount with respect to a Plan Year shall be made by such Participant during the Election Period for which such Participant elects to defer Compensation under Section 3.1 for such Plan Year, and such election of a Scheduled In-Service Withdrawal Date shall be irrevocable, except as provided in subsection (d). A Participant may make separate Scheduled In-Service Withdrawal Date elections for his deferrals of Compensation (including any investment earnings on such amounts) with respect to different Plan Years. A Participant's Withdrawal Amount with respect to a Plan Year shall be credited to subaccounts under such Participant's Accounts for such Plan Year. A Participant shall not be required to elect a Scheduled In-Service Withdrawal Date with respect to his deferrals of Compensation for a Plan Year and, if a Participant fails to make an election of a Scheduled In-Service Withdrawal Date for a Plan Year, no Scheduled In-Service Withdrawal Date shall apply with respect to his deferrals of Compensation for such Plan Year.

- (d) Change of Scheduled In-Service Withdrawal Date. Subject to subsection (e), if a Participant elected a Scheduled In-Service Withdrawal Date with respect to his deferrals of Compensation (including any investment earnings on such amounts) with respect to a Plan Year, such Participant may change such Scheduled In-Service Withdrawal Date for the Withdrawal Amount with respect to such Plan Year by electing a new Scheduled In-Service Withdrawal Date for the Withdrawal Amount with respect to such Plan Year that is not less than five years later than the Scheduled In-Service Withdrawal Date previously elected by such Participant for such Plan Year. A Participant who has not elected a Scheduled In-Service Withdrawal Date for his deferrals of Compensation (including any investment earnings on such amounts) for a Plan Year may not subsequently elect a Scheduled In-Service Withdrawal Date for his deferrals of Compensation (including any investment earnings on such amounts) for such Plan Year. A Participant may make only one change to the Scheduled In-Service Withdrawal Date with respect to each Plan Year under this subsection (d).
- (e) Limitation on Distribution Changes. A Participant's election to change his distribution form election with respect to a Plan Year under subsection (b), or change of a Scheduled In-Service Withdrawal Date with respect to a Plan Year under subsection (d), shall be subject to the following limitations:
- (1) The Participant's election to change his distribution election form with respect to a Plan Year, or change his Scheduled In-Service Withdrawal Date with respect to a Plan Year, shall not take effect until at least twelve (12) months after his election to change the distribution form election, or Scheduled In-Service Withdrawal Date, is made. If the distribution of such Participant's Distributable Amount with respect to a Plan Year (in the case of a change in his distribution election form), or the distribution of the Withdrawal Amount with respect to such Plan Year (in the case of a change in his Scheduled In-Service Withdrawal Date), is made or commenced before the election to change his distribution form election or Scheduled In-Service Withdrawal Date, as the case may be, becomes effective, the election to change his distribution form election or Scheduled In-Service Withdrawal Date shall not thereafter become effective, and distributions shall be made in accordance with the distribution form election, and Scheduled In-Service Withdrawal Date (if any), as applicable, in effect prior to the Participant's election to change.
- (2) The Participant's election to change his distribution election form with respect to a Plan Year, or change his Scheduled In-Service Withdrawal Date with respect to a Plan Year, shall provide that each payment with respect to such new distribution form election, or new Scheduled In-Service Withdrawal Date, shall be deferred for a period of not less than five years from the date such payment would otherwise have been made.
- (3) The Participant's election to change his Scheduled In-Service Withdrawal Date with respect to a Plan Year shall not be made less than twelve (12) months prior to the date of the first scheduled payment under the Participant's initial election of the Scheduled In-Service Withdrawal Date with respect to such Plan Year.

The limitations under this subsection (e) shall be applied in accordance with Section 409A(a)(4)(C) of the Code and the Treasury Regulations thereunder.

# 3.3 Spin-Off

- (a) Pursuant to the terms of the Employee Matters Agreement, as of the effective time of the Spin-Off, the Company and the Plan shall assume all liabilities and obligations of eBay Inc. and its subsidiaries under the eBay Plan with respect to any Transferred PayPal Participants, including for any benefits due under such plan to such Eligible Individuals, and such benefits shall be administered and paid under the terms of this Plan; provided, however, that all deferral, investment and distribution elections made by such Transferred PayPal Participants under the eBay Plan with respect to any Plan Year occurring prior to the Effective Date and the Plan Year in which the Effective Date occurs will continue to apply and shall be administered under this Plan.
- (b) As of the Effective Date, the Plan shall assume and honor the terms of all domestic relations orders in effect under the eBay Plan in respect of Transferred PayPal Participants.

### 3.4 Company Contributions

- (a) For any Plan Year, the Company may, but is under no obligation to, make contributions on behalf of a Participant in addition to the Participant's elective deferrals. Such contributions may be in any amount or form (for example, matching or profit sharing contributions) and subject to any conditions or terms as the Company, in its sole discretion, deems appropriate.
- (b) The Company Contribution for a Plan Year shall be credited to a Participant's Company Account in the manner determined by the Committee.

#### 3.5 FICA and Other Taxes.

- (a) Annual Deferral Amounts. For each Plan Year in which a Participant who is an employee makes a deferral under Section 3.1, the Company shall withhold from that portion of the Participant's Compensation that is not being deferred, in a manner determined by the Company, the Participant's share of FICA and other employment taxes on such amount. If necessary, the Committee may reduce the Participant's deferrals under Section 3.1 or make deductions from his Deferral Account in order to comply with this Section, to the extent permitted under Section 409A of the Code and the Treasury Regulations thereunder.
- (b) Company Amounts. For each Plan Year in which a Participant is credited with a contribution to his Company Account under Section 3.4, the Company shall withhold from the Participant's Compensation that is not deferred, in a manner determined by the Company, the Participant's share of FICA and other employment taxes. If necessary, the Committee may reduce the Participant's Company Account in order to comply with this Section, to the extent permitted under Section 409A of the Code and the Treasury Regulations thereunder.

# ARTICLE IV. INVESTMENTS

#### 4.1 Measurement Funds.

- (a) In the manner designated by the Committee, Participants may elect one or more Measurement Funds to be used to determine the additional amounts to be credited to their Accounts. Although the Participant may designate the Measurement Funds, the Committee shall not be bound by such designation. The Committee shall select from time to time, in its sole discretion, the Measurement Funds to be available under the Plan.
- (b) No Actual Investment. Notwithstanding any other provision of this Plan that may be interpreted to the contrary, the Measurement Funds are to be used for measurement purposes only, and a Participant's election of any such Measurement Fund, the allocation to his Accounts thereto, the calculation of additional amounts and the crediting or debiting of such amounts to a Participant's Accounts shall not be considered or construed in any manner as an actual investment of his Accounts in any such Measurement Fund. In the event that the Company, in its own discretion, decides to invest funds in any or all of the Measurement Funds, no Participant shall have any rights in or to such investments themselves. Without limiting the foregoing, a Participant's Accounts shall at all times be a bookkeeping entry only and shall not represent any investment made on his behalf by the Company. The Participant shall at all times remain an unsecured creditor of the Company.

#### 4.2 Investment Elections.

- (a) Deferral Accounts and Company Accounts. Except as provided in Section 4.3, Participants may designate how their Deferral Accounts and Company Accounts, if any, shall be deemed to be invested under the Plan.
- (1) Such Participants may make separate investment elections for (i) their future deferrals of Compensation, (ii) future Company Contributions and (iii) the existing balances of their Accounts.
- (2) Such Participants may make and change their investment elections by choosing from the Measurement Funds designated by the Committee in accordance with the procedures established by the Committee.
- (3) Except as otherwise designated by the Committee, the available Measurement Funds under this Section 4.2(a)(1) shall generally be the investment funds under the 401(k) Plan (excluding any brokerage account option).
- (4) If a Participant fails to elect a Measurement Fund under this Section, he shall be deemed to have elected the default Measurement Fund (as designated by the Committee) for all of his Accounts.

- (b) Continuing Investment Elections. Participants who have had a Termination but not yet commenced distributions under Article VII or Participants or Beneficiaries who are receiving installment payments may continue to make investment elections pursuant to subsection (a) above, as applicable, except as otherwise determined by the Committee.
- (c) Certain Deferral Subaccounts. A Participant may not direct the investment of the Restricted Stock Unit subaccounts of the Deferral Accounts.
- 4.3 Compliance with Section 16 of the Exchange Act.
- (a) Any Participant or Beneficiary who is subject to Section 16 of the Exchange Act shall have his Measurement Fund elections under the Plan subject to the requirements of the Exchange Act, as interpreted by the Committee.
- (b) Notwithstanding any other provision of the Plan or any rule, instruction, election form or other form, the Plan and any such rule, instruction or form shall be subject to any additional conditions or limitations set forth in any applicable exemptive rule under Section 16 of the Exchange Act (including any amendment to Rule 16b-3) that are requirements for the application of such exemptive rule. To the extent permitted by applicable law, such Plan provision, rule, instruction or form shall be deemed amended to the extent necessary to conform to such applicable exemptive rule.

### ARTICLE V. ACCOUNTS

#### 5.1 Accounts.

- (a) The Committee shall establish and maintain a Deferral Account, and a Company Account for each Participant under the Plan. Each Participant's Accounts shall be divided into separate subaccounts in accordance with Section 5.2. Each such subaccount shall be further divided into separate investment fund subaccounts, each of which corresponds to a Measurement Fund elected by the Participant pursuant to Section 4.2. In addition, Participants' Deferral Accounts may be further divided into subaccounts consisting of deferred Restricted Stock Units.
- (b) The performance of each elected Measurement Fund (either positive or negative) shall be determined by the Committee, in its reasonable discretion, based on the performance of the Measurement Funds themselves. A Participant's Accounts shall be credited or debited on each Valuation Date based on the performance of each Measurement Fund selected by the Participant, as determined by the Committee in its sole discretion, as though (i) a Participant's Accounts were invested in the Measurement Fund(s) selected by the Participant, in the percentages applicable to such period, as of the close of business on the first business day of such period, at the closing price on such date; (ii) the portion of the Participant's Compensation that was actually deferred pursuant to Section 3.1 during any period were invested in the Measurement Fund(s) selected by the Participant, in the percentages applicable to such period, no later than the close of business on the first business day after the day on which such amounts are actually deferred from the Participant's Compensation, at the closing price on such date; and

(iii) any withdrawal or distribution made to a Participant that decreases such Participant's Accounts ceased being invested in the Measurement Fund(s), in the percentages applicable to such period, no earlier than one business day prior to the distribution, at the closing price on such date. The Participant's Company Contributions, if any, shall be credited to his Company Account for purposes of this Section, in the manner determined by the Committee.

#### 5.2 Subaccounts.

- (a) The Committee shall establish and maintain, with respect to a Participant's Deferral Account, a subaccount with respect to each Plan Year, to which shall be credited the amount equal to the portion of the Participant's Compensation earned during such Plan Year that he elects to defer pursuant to Section 3.1, debited by amounts equal to distributions to and withdrawals made by the Participant and/or his Beneficiary and adjusted for investment earnings and losses pursuant to Article V.
- (b) The Committee shall establish and maintain, with respect to a Participant's Company Account, a subaccount with respect to each Plan Year, to which shall be credited the amount equal to the Company Contributions, if any, made pursuant to Section 3.4 on behalf of such Participant during such Plan Year, debited by amounts equal to distributions to and withdrawals made by the Participant and/or his Beneficiary and adjusted for investment earnings and losses pursuant to Article V.

# ARTICLE VI. VESTING

Each Participant shall be 100% vested in his Deferral Account at all times, *provided, however*, that any Restricted Stock Units a Participant elects to defer shall remain subject to the conditions for vesting specified in any applicable award notice or agreement. The Company will set conditions for the vesting of any Company Contributions on or before the date they are contributed to the Plan.

# ARTICLE VII. DISTRIBUTIONS

#### 7.1 Distribution of Accounts.

- (a) Distribution of Accounts.
- (1) Normal Form. Except as provided in paragraph (2), paragraph (3) or Section 7.3, a Participant's Distributable Amount with respect to each Plan Year shall be paid to the Participant in a single lump sum in cash on the Participant's Payment Date.
- (2) Optional Forms. Instead of receiving his Distributable Amount with respect to each Plan Year as described at Section 7.1(a)(1), the Participant may elect in accordance with Section 3.2 an optional form of payment (on the form provided by the Committee) at the time of his deferral election for such Plan Year to receive his Distributable Amount in equal annual installments in cash (calculated as set forth in Section 7.1(a)(6)) over a period of from two (2) up to fifteen (15) years beginning on the Participant's Payment Date.

- (3) Distribution Election Changes. In the event that a Participant changes his distribution form election with respect to a Plan Year in accordance with Section 3.2(b), and such new distribution form election becomes effective upon the Separation from Service or Disability of such Participant, the Distributable Amount with respect to such Plan Year shall be paid to the Participant in accordance with such new distribution form election.
- (4) Small Accounts. Notwithstanding any provision to the contrary, in the event the total of a Participant's Distributable Amounts with respect to all Plan Years is equal to or less than \$50,000 on the Participant's Payment Date, such Distributable Amounts shall be distributed to the Participant (or his Beneficiary, as applicable) in a lump sum.
- (5) Investment Adjustments. The Participant's Accounts shall continue to be adjusted for investment earnings and losses pursuant to Section 4.2 and Section 4.3 of the Plan until all amounts credited to his Accounts under the Plan have been distributed.
- (6) Calculating Installments. All installment payments made under the Plan shall be determined in accordance with the annual fractional payment method, calculated as follows: the balance of subaccounts in the Participant's Accounts with respect to a Plan Year shall be calculated as of the close of business on the last business day prior to the date on which the annual installment is scheduled to be paid. The annual installment shall be calculated by multiplying this balance by a fraction, the numerator of which is one, and the denominator of which is the remaining number of annual payments due the Participant. By way of example, if the Participant elects 10 year installments for the distribution of the subaccounts in his Accounts with respect to a Plan Year, the first payment shall be 1/10 of the balance of such subaccounts in his Accounts calculated as described in this definition. The following year, the payment shall be 1/9 of such subaccounts in the balance of the Participant's Accounts, calculated as described in this definition. Each annual installment shall be paid on or as soon as practicable after the applicable anniversary of the Participant's Payment Date.
  - (b) Distribution on a Scheduled In-Service Withdrawal Date.
- (1) In the case of a Participant who has elected a Scheduled In-Service Withdrawal Date for a distribution to be made while still in the employ of the Company, such Participant shall receive his Withdrawal Amount as shall have been elected by the Participant to be subject to the Scheduled In-Service Withdrawal Date. A Participant's Scheduled In-Service Withdrawal Date with respect to amounts of Compensation deferred in a given Plan Year must be at least one year from the last day of the Plan Year for which such deferrals are made.
- (2) The Participant may elect, in accordance with Section 3.2, to have the Withdrawal Amount paid in a lump sum in cash or in equal annual installments in cash (calculated as set forth in Section 7.1(a)(6)) over a period of from two (2) up to fifteen (15) years beginning on the Participant's Payment Date.

- (3) A Participant may elect to change the Scheduled In-Service Withdrawal Date for the Withdrawal Amount for any Plan Year in accordance with Section 3.2(d).
- (4) In the event of a Participant's Separation from Service or Disability prior to a Scheduled In-Service Withdrawal Date, the Participant's entire Withdrawal Amount shall be paid in accordance with the Participant's election with respect to such Plan Year under Section 7.1(a).
- (c) Distribution upon Death. In the event a Participant dies, any remaining balance in his Accounts shall be paid to his Beneficiary in a lump sum in cash on the first business day of the seventh calendar month following the date of the Participant's death.

# 7.2 Hardship Distribution.

A Participant shall be permitted to elect a Hardship Distribution of all or a portion of his Accounts under the Plan prior to the Payment Date, subject to the following restrictions:

- (a) The election to take a Hardship Distribution shall be made by filing the form provided by the Committee before the date established by the Committee.
- (b) The Committee shall have made a determination that the requested distribution constitutes a Hardship Distribution in accordance with subsection (d).
- (c) The amount determined by the Committee as a Hardship Distribution shall be paid in a single lump sum in cash as soon as practicable after the end of the calendar month in which the Hardship Distribution election is made and approved by the Committee. The Hardship Distribution shall be distributed proportionately from the subaccounts in the Participant's Accounts.
- (d) If a Participant receives a Hardship Distribution, the Participant shall be ineligible to contribute deferrals to the Plan for the following Plan Year. "Hardship Distribution" shall mean a severe financial hardship to the Participant resulting from (i) an illness or accident of the Participant, the Participant's spouse or of his dependent (as defined in Section 152(a) of the Code), (ii) loss of a Participant's property due to casualty, or (iii) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, as determined by the Committee in accordance with Section 409A(a)(2)(B)(ii)(I) of the Code and the Treasury Regulations thereunder. The amount of the Hardship Distribution with respect to a severe financial hardship shall not exceed the amounts necessary to satisfy such hardship, plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such hardship is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship), as determined by the Committee in accordance with Section 409A(a)(2)(B)(ii)(II) of the Code and the Treasury Regulations thereunder.

#### 7.3 Effect of a Change in Control.

- (a) In the event there is a Change in Control, the person who is the chief executive officer of PayPal Holdings (or, if not so identified, PayPal Holdings' highest ranking officer) shall name a third-party fiduciary as the sole member of the Committee immediately prior to such Change in Control. The appointed fiduciary shall oversee the administration of the Plan and provide for the distributions of the accounts under the Plan in accordance with the terms of the Plan and the elections of the Participants.
- (b) Upon and after the occurrence of a Change in Control, PayPal Holdings must (i) pay all reasonable administrative fees and expenses of the appointed fiduciary, (ii) indemnify the appointed fiduciary against any costs, expenses and liabilities including, without limitation, attorney's fees and expenses arising in connection with the appointed fiduciary's duties hereunder, other than with respect to matters resulting from the gross negligence of the appointed fiduciary or its agents or employees and (iii) timely provide the appointed fiduciary with all necessary information related to the Plan, the Participants and Beneficiaries.
- (c) Notwithstanding Section 9.4, in the event there is a Change in Control no amendment may be made to this Plan except as approved by the third-party fiduciary. Upon a Change in Control, the Company shall establish an irrevocable trust and contribute assets to such trust in an amount equal to the aggregate amount credited to the Participants' Accounts, as determined by the appointed fiduciary, plus any deferred payments as they are deferred by the Participants. Such trust shall conform to the model "rabbi trust" agreement provided by the Internal Revenue Service in Revenue Procedure 92-64, as revised from time to time, and shall be structured as an unfunded arrangement.

#### 7.4 Inability to Locate Participant.

In the event that the Committee is unable to locate a Participant or Beneficiary within two years following the required Payment Date, the amount allocated to the Participant's Accounts shall be forfeited. If, after such forfeiture, the Participant or Beneficiary later claims such benefit, such benefit shall be reinstated without interest or earnings from the date of forfeiture, subject to applicable escheat laws.

### 7.5 Prohibition on Acceleration of Distributions.

The time or schedule of payment of any withdrawal or distribution under the Plan shall not be subject to acceleration, except as provided under Treasury Regulations promulgated in accordance with Section 409A(a)(3) of the Code.

# ARTICLE VIII. ADMINISTRATION

8.1 Committee. The Committee shall administer the Plan in accordance with this Article.

#### 8.2 Administrator.

The Administrator, unless restricted by the Committee, shall exercise the powers under Sections 8.4 and 8.5, except when the exercise of such authority would materially affect the cost of the Plan to the Company or materially increase benefits to Participants.

#### 8.3 Committee Action.

The Committee shall act at meetings by affirmative vote of a majority of the members of the Committee. Any action permitted to be taken at a meeting may be taken without a meeting if, prior to such action, a written consent to the action is signed by all members of the Committee and such written consent is filed with the minutes of the proceedings of the Committee. A member of the Committee shall not vote or act upon any matter which relates solely to himself or herself as a Participant. The chairman or any other member or members of the Committee designated by the chairman may execute any certificate or other written direction on behalf of the Committee.

#### 8.4 Powers and Duties of the Committee.

- (a) The Committee, on behalf of the Participants and their Beneficiaries, shall enforce the Plan in accordance with its terms, shall be charged with the general administration of the Plan, and shall have all powers necessary to accomplish its purposes as set forth herein, including, but not by way of limitation, the following:
  - (1) To select the Measurement Funds in accordance with Section 4.1 hereof;
- (2) To construe and interpret the terms and provisions of the Plan and to remedy any inconsistencies or ambiguities hereunder;
  - (3) To select employees eligible to participate in the Plan;
  - (4) To compute and certify to the amount and kind of benefits payable to Participants and their Beneficiaries;
  - (5) To maintain all records that may be necessary for the administration of the Plan;
- (6) To provide for the disclosure of all information and the filing or provision of all reports and statements to Participants, Beneficiaries or governmental agencies as shall be required by law;

- (7) To make and publish such rules for the regulation of the Plan and procedures for the administration of the Plan as are not inconsistent with the terms hereof;
- (8) To appoint a plan administrator or any other agent, and to delegate to them such powers and duties in connection with the administration of the Plan as the Committee may from time to time prescribe; and
  - (9) To take all actions necessary for the administration of the Plan.

#### 8.5 Delegation of Authority

To the extent permitted by applicable law, the Committee may from time to time delegate to a committee of one or more members of the Board or one or more executives or employees of the Company its powers and duties under the Plan, including its power and authority under Section 9.4. Any delegation hereunder shall be subject to the restrictions and limits that the Committee specifies at the time of such delegation, and the Committee may at any time rescind the authority so delegated or appoint a new delegatee. At all times, the delegatee appointed under this Section 8.5 shall serve in such capacity at the pleasure of the Committee.

#### 8.6 Construction and Interpretation.

The Committee shall have full discretion to construe and interpret the terms and provisions of this Plan, which interpretations or construction shall be final and binding on all parties, including but not limited to the Company and any Participant or Beneficiary. The Committee shall administer such terms and provisions in a uniform and nondiscriminatory manner and in full accordance with any and all laws applicable to the Plan.

#### 8.7 Information.

To enable the Committee to perform its functions, the Company shall supply full and timely information to the Committee on all matters relating to the Compensation of all Participants, their death or other events which cause termination of their participation in this Plan, and such other pertinent facts as the Committee may require.

#### 8.8 Compensation, Expenses and Indemnity.

- (a) The members of the Committee shall serve without compensation for their services hereunder.
- (b) The Committee is authorized at the expense of the Company to employ such legal counsel and other advisors as it may deem advisable to assist in the performance of its duties hereunder. Expenses and fees in connection with the administration of the Plan shall be paid by the Company.
- (c) To the extent permitted by applicable state law, the Company shall indemnify and hold harmless the Committee and each member thereof, the Board of Directors and any delegate

of the Committee who is an employee of the Company against any and all expenses, liabilities and claims, including legal fees to defend against such liabilities and claims arising out of their discharge in good faith of responsibilities under or incident to the Plan, other than expenses and liabilities arising out of willful misconduct. This indemnity shall not preclude such further indemnities as may be available under insurance purchased by the Company or provided by the Company under any bylaw, agreement or otherwise, as such indemnities are permitted under state law.

### 8.9 Quarterly Statements.

Under procedures established by the Committee, a Participant shall receive a statement with respect to such Participant's Accounts on a quarterly basis as of each March 31, June 30, September 30 and December 31.

# 8.10 Disputes.

#### (a) Claim.

A person who believes that he is being denied a benefit to which he is entitled under this Plan (hereinafter referred to as "Claimant") may file a written request for such benefit with the Administrator, setting forth his claim. The request must be addressed to the Administrator at the Company at its then principal place of business.

# (b) Claim Decision.

Upon receipt of a claim, the Administrator shall advise the Claimant that a reply shall be forthcoming within 90 days and shall, in fact, deliver such reply within such period. The Administrator may, however, extend the reply period for an additional 90 days for special circumstances.

If the claim is denied in whole or in part, the Administrator shall inform the Claimant in writing, using language calculated to be understood by the Claimant, setting forth: (i) the specified reason or reasons for such denial; (ii) the specific reference to pertinent provisions of this Plan on which such denial is based; (iii) a description of any additional material or information necessary for the Claimant to perfect his claim and an explanation of why such material or such information is necessary; (iv) appropriate information as to the steps to be taken if the Claimant wishes to submit the claim for review; and (v) the time limits for requesting a review under subsection (c).

### (c) Request For Review.

Within 60 days after the receipt by the Claimant of the written decision described above, the Claimant may request in writing a review of the determination of the Administrator. Such review shall be completed by the Committee. Such request must be addressed to the Secretary of PayPal Holdings, at its then principal place of business. The Claimant or his duly authorized representative may, but need not, review the pertinent documents and submit issues

and comments in writing for consideration by the Committee. If the Claimant does not request a review within such 60-day period, he shall be barred and estopped from challenging the Administrator's determination.

### (d) Review of Decision.

Within 60 days after the receipt of a request for review by the Committee, as applicable, after considering all materials presented by the Claimant, the Committee shall inform the Claimant in writing, in a manner calculated to be understood by the Claimant, of its decision, setting forth the specific reasons for its decision and specific references to the pertinent provisions of this Plan on which the decision is based. If special circumstances require that the 60 day time period be extended, the Committee shall so notify the Claimant and shall render the decision as soon as possible, but no later than 120 days after receipt of the request for review.

### 8.11 Compliance with Section 409A of the Code.

The Plan shall be interpreted, construed and administered in a manner that satisfies the requirements of Sections 409A(a)(2), (3) and (4) of the Code and the Treasury Regulations thereunder.

# ARTICLE IX. MISCELLANEOUS

#### 9.1 Unsecured General Creditor.

Participants and their Beneficiaries, heirs, successors, and assigns shall have no legal or equitable rights, claims, or interest in any specific property or assets of the Company. No assets of the Company shall be held in any way as collateral security for the fulfilling of the obligations of the Company under this Plan. Any and all of the Company's assets shall be, and remain, the general unpledged, unrestricted assets of the Company. The Company's obligation under the Plan shall be merely that of an unfunded and unsecured promise of the Company to pay money in the future, and the rights of the Participants and Beneficiaries shall be no greater than those of unsecured general creditors. It is the intention of the Company that this Plan be unfunded for purposes of the Code and Title I of ERISA.

#### 9.2 Restriction Against Assignment.

(a) The Company shall pay all amounts payable hereunder only to the person or persons designated by the Plan and not to any other person or entity. No right, title or interest in the Plan or in any account may be sold, pledged, assigned or transferred in any manner other than by will or the laws of descent and distribution. No right, title or interest in the Plan or in any Account shall be subject to the debts, contracts or engagements of the Participant or his successors in interest or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be

null and void and of no effect, except to the extent that such disposition is permitted by the preceding sentence.

(b) Notwithstanding the provisions of subsection (a), a Participant's interest in his Account may be transferred by the Participant pursuant to a domestic relations order that constitutes a "qualified domestic relations order" as defined by the Code or Title I of ERISA.

# 9.3 Withholding.

There shall be deducted from each payment made under the Plan or any other Compensation payable to the Participant (or a Beneficiary) all taxes which are required to be withheld by the Company in respect to such payment or this Plan. The Company shall have the right to reduce any payment (or compensation) by an amount sufficient to provide the amount of said taxes.

- 9.4 Amendment, Modification, Suspension or Termination.
- (a) Subject to Section 7.3, the Committee may amend, modify, suspend or terminate the Plan in whole or in part, except that no amendment, modification, suspension or termination shall have any retroactive effect to reduce any vested amounts allocated to a Participant's Accounts. In the event of Plan termination, distributions shall continue to be made in accordance with the terms of the Plan.
- (b) Notwithstanding anything to the contrary in the Plan, if and to the extent the Company shall determine that the terms of the Plan may result in the failure of the Plan, or amounts deferred by or for any Participant under the Plan, to comply with the requirements of Section 409A of the Code, or any applicable regulations or guidance promulgated by the Secretary of the Treasury in connection therewith, the Company shall have authority to take such action to amend, modify, cancel or terminate the Plan or distribute any or all of the amounts deferred by or for a Participate, as it deems necessary or advisable, including without limitation:
- (1) Any amendment or modification of the Plan to conform the Plan to the requirements of Section 409A of the Code or any regulations or other guidance thereunder (including, without limitation, any amendment or modification of the terms of any applicable to any Participant's Accounts regarding the timing or form of payment).
- (2) Any cancellation or termination of any unvested interest in a Participant's Accounts without any payment to the Participant.
- (3) Any cancellation or termination of any vested interest in any Participant's Accounts, with immediate payment to the Participant of the amount otherwise payable to such Participant.

Any such amendment, modification, cancellation, or termination of the Plan may adversely affect the rights of a Participant without the Participant's consent.

#### 9.5 Designation of Beneficiary.

- (a) Each Participant shall have the right to designate, revoke and redesignate Beneficiaries hereunder and to direct payment of his Distributable Amount to such Beneficiaries upon his death.
- (b) Designation, revocation and redesignation of Beneficiaries must be made in writing in accordance with the procedures established by the Committee and shall be effective upon delivery to the Committee.
- (c) No designation of a Beneficiary other than the Participant's spouse shall be valid unless consented to in writing by such spouse. If there is no Beneficiary designation in effect, or the designated Beneficiary does not survive the Participant, then the Participant's spouse shall be the Beneficiary. If there is no surviving spouse, the duly appointed and currently acting personal representative of the Participant's estate (which shall include either the Participant's probate estate or living trust) shall be the Beneficiary.
- (d) After the Participant's death, any Beneficiary (other than the Participant's estate) who is to receive installment payments may designate a secondary beneficiary to receive amounts due under this Plan to the Beneficiary in the event of the Beneficiary's death prior to receiving full payment from the Plan. If no secondary beneficiary is designated, it shall be the Beneficiary's estate.

#### 9.6 Governing Law.

Subject to ERISA, this Plan shall be construed, governed and administered in accordance with the laws of the State of California.

#### 9.7 Compliance with Code Section 162(m).

It is the intent of the Company that any Compensation which is deferred under the Plan by a person who is, with respect to the year of distribution, deemed by the Committee to be a "covered employee" within the meaning of Code Section 162(m) and regulations thereunder, which Compensation constitutes either "qualified performance-based compensation" within the meaning of Code Section 162(m) and regulations thereunder or compensation not otherwise subject to the limitation on deductibility under Code Section 162(m) and regulations thereunder, shall not, as a result of deferral hereunder, become compensation with respect to which the Company in fact would not be entitled to a tax deduction under Code Section 162(m). If the Company determines in good faith prior to a Change in Control that there is a reasonable likelihood that any distribution under this Plan is payable to a Participant for a taxable year of the Company would not be deductible by the Company solely by reason of the limitation under Code Section 162(m), then to the extent deemed necessary by the Committee to ensure that the entire amount of any distribution to the Participant pursuant to this Plan prior to the Change in Control is deductible, the Company may defer all or any portion of a distribution under this Plan. Any amounts deferred pursuant to this limitation shall continue to be credited/debited with additional amounts in accordance with Article IV, even if such amount is being paid out in installments.

The amounts so deferred and amounts credited thereon shall be distributed to the Participant or his Beneficiary (in the event of the Participant's death) commencing as soon as reasonably practicable following the Plan Year in which such Participant's Separation from Service, Disability or death occurs, or if earlier, the effective date of a Change in Control. Notwithstanding anything to the contrary in this Plan, this Section shall not apply to any distributions made after a Change in Control.

#### 9.8 Payments on Behalf of Persons Under Incapacity.

In the event that any amount becomes payable under the Plan to a person who, in the sole judgment of the Committee, is considered by reason of physical or mental condition to be unable to give a valid receipt therefore, the Committee may direct that such payment be made to any person found by the Committee, in its sole judgment, to have assumed the care of such person. Any payment made pursuant to such judgment shall constitute a full release and discharge of the Committee and the Company.

# 9.9 Limitation of Rights.

Neither the establishment of the Plan nor any modification thereof, nor the creating of any fund or account, nor the payment of any benefits shall be construed as giving to any Participant or other person any legal or equitable right against the Company except as provided in the Plan. In no event shall the terms of employment of, or membership on the Board by, any Participant be modified or in any way be effected by the provisions of the Plan.

#### 9.10 Exempt ERISA Plan

The Plan is intended to be an unfunded plan maintained primarily to provide deferred compensation benefits for a select group of management or highly compensated employees within the meaning of Sections 201, 301 and 401 of ERISA and therefore to be exempt from Parts 2, 3 and 4 of Title I of ERISA.

# 9.11 Notice

Any notice or filing required or permitted to be given to the Committee under the Plan shall be sufficient if in writing and hand delivered, or sent by registered or certified mail, to the principal office of the Company, directed to the attention of the General Counsel and Secretary of PayPal Holdings. Such notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification.

### 9.12 Errors and Misstatements

In the event of any misstatement or omission of fact by a Participant to the Committee or any clerical error resulting in payment of benefits in an incorrect amount, the Committee shall promptly cause the amount of future payments to be corrected upon discovery of the facts and shall pay or, if applicable, cause the Plan to pay, the Participant or any other

person entitled to payment under the Plan any underpayment in a lump sum or to recoup any overpayment from future payments to the Participant or any other person entitled to payment under the Plan in such amounts as the Committee shall direct or to proceed against the Participant or any other person entitled to payment under the Plan for recovery of any such overpayment.

#### 9.13 Pronouns and Plurality

The masculine pronoun shall include the feminine pronoun, and the singular shall include the plural where the context so indicates.

# 9.14 Severability

In the event that any provision of the Plan shall be declared unenforceable or invalid for any reason, such unenforceability or invalidity shall not affect the remaining provisions of the Plan but shall be fully severable, and the Plan shall be construed and enforced as if such unenforceable or invalid provision had never been included herein.

#### 9.15 Status

The establishment and maintenance of, or allocations and credits to, the Accounts of any Participant shall not vest in any Participant any right, title or interest in and to any Plan assets or benefits except at the time or times and upon the terms and conditions and to the extent expressly set forth in the Plan.

#### 9.16 Headings.

Headings and subheadings in this Plan are inserted for convenience of reference only and are not to be considered in the construction of the provisions hereof.

September 29, 2014

Daniel Schulman c/o eBay Inc. 2065 Hamilton Avenue San Jose, California 95125

Dear Dan:

eBay Inc. (the "Company" or "eBay") is pleased to offer you, on the terms and conditions set forth in this offer letter (this "Letter"), the exempt position of President, PayPal, Inc., a wholly owned subsidiary of the Company ("PayPal, Inc."), reporting directly to the President and Chief Executive Officer of eBay. As President of PayPal, Inc. you will be responsible for managing the performance of the PayPal business unit, including financial performance, product development, and all operations of the business unit. In addition, the Company confirms that if the Company elects to spin-off PayPal, Inc. through the dividend of PayPal, Inc. shares to existing shareholders of the Company or through other means (a "Spin-Off"), then you will, effective on the date of the Spin-Off, become President and Chief Executive Officer of the publicly traded PayPal, Inc. entity (such entity, "PayPal", and such position, "PayPal CEO"). In the role of PayPal CEO, you shall report solely and directly to the Board of Directors of PayPal (the "PayPal Board"). The Company will also cause you to be appointed as a member of the PayPal Board, effective immediately prior to the effective date of the Spin-Off, with a term of office no less than that of the longest term of any other PayPal Board member. For so long as you remain PayPal CEO, you may be nominated to the PayPal Board and, if re-elected, you shall serve as a member of the PayPal Board without additional consideration. The terms and conditions of this Letter have been approved by the Compensation Committee of the Board of Directors of eBay (the "Compensation Committee").

#### Compensation as PayPal, Inc. President

Cash Compensation. As PayPal, Inc. President, you will be paid a bi-weekly salary of \$34,615.39, which is equivalent to an annualized rate of base salary (your "annual base salary") of \$900,000. You will also be eligible to participate in the eBay Incentive Plan (eIP) available to employees in positions comparable to yours. Payouts under the plan for Presidents are based on individual achievements as well as Company performance and are paid on an annual cycle. Your annual target bonus opportunity (your "target bonus opportunity") for the eIP is 175% of your base salary (i.e., \$1,575,000). To be eligible to receive any eIP bonus, you must be employed for a full calendar quarter in the applicable fiscal year and you must be actively employed on the date the bonus is paid, except as otherwise provided herein. The payment of any bonus is subject to the terms and conditions of the eIP. The Company reserves the right to amend, change or cancel the eIP at its sole discretion, provided that the Company does so for all similarly situated executives of eBay.

Equity Compensation. The grant of all eBay restricted stock units ("RSUs"), eBay performance-based restricted stock units ("PBRSUs"), and options to purchase shares of eBay's common stock ("Options") described in this Letter is subject to the grant by the Compensation Committee and subject to your continued employment with an eBay company on the applicable grant dates, except as otherwise provided herein. Awards are described in this Letter as a dollar value and the number of shares of eBay common stock subject to each award will be determined as follows: (i) for RSUs, by dividing the dollar value by the average of the closing prices of eBay common stock as reported on the NASDAQ Global Select Market for the period of 10 consecutive trading days ending on (and including) the last trading day prior to the grant date (the "Average eBay Closing Price"), and rounding down to the nearest whole number of shares of eBay common stock, (ii) for PBRSUs, by dividing the earned dollar amount, if any, by the Average eBay Closing Price, and rounding down to the nearest whole number of shares of eBay common stock and (iii) for Options, by dividing the dollar value by the Average eBay Closing Price, multiplying the resultant total by 3, and rounding down to the nearest whole number of shares of eBay common stock. The exercise price for all Options will be no less than the fair market value of eBay's common stock on the applicable date of grant, as determined by the Compensation Committee.

<u>Initial Awards</u>. Upon commencement of your employment with eBay, you will be granted a combination of RSUs (the "*Initial RSU Award*"), PBRSUs (the "*Initial PBRSU Award*"), and Options (the "*Initial Option Award*") and, together with the Initial RSU Award and the Initial PBRSU Award, the "*Initial Awards*", all to be granted under the Company's 2008 Equity Incentive Plan (the "*Plan*") pursuant to the terms described in the following paragraphs. Such Initial Awards will be granted on the 15th day of the month following the month in which you commence employment with the Company.

You will be granted the Initial RSU Award valued at \$4,500,000, subject to the terms and conditions of the Plan, as well as the terms and conditions of the RSU agreement (which will be provided to you as soon as practicable after the grant date). The Initial RSU Award will vest and become non-forfeitable (assuming your continued employment as provided below on each vesting date) over four years at the rate of 25% a year on each anniversary of the date of grant, subject to necessary withholding for applicable taxes.

You will be granted the Initial PBRSU Award with a target value of \$2,700,000, subject to the terms and conditions of the Plan, as well as the terms and conditions of the applicable PBRSU agreement (which will be provided to you as soon as practicable after the grant date). The Initial PBRSU Award will be earned based on performance over the period January 1, 2014 through December 31, 2015. The actual number of shares of eBay common stock that will be subject to the Initial PBRSU Award to be granted, if any, will be determined based on achievement during such period of Company performance goals determined by the Compensation Committee and will be subject to the terms and conditions of the performance plan approved by the Compensation Committee. The Initial PBRSU Award will be granted in early 2016 and will vest and become non-forfeitable (assuming your continued employment as provided below on each vesting date) as follows: 50% of the shares subject to the award on the grant date and the remaining 50% of the shares subject to the award on the first anniversary of the grant date, subject to necessary withholding for applicable taxes.

Finally, you will be granted the Initial Option Award valued at \$1,800,000, subject to the terms and conditions of the Plan, as well as the terms and conditions of the stock option agreement (which will be provided to you as soon as practicable after the grant date). Generally, the Initial Option Award will vest and become exercisable (assuming your continued employment as provided below on each vesting date) over four years at the rate of 25% of the shares subject to the Initial Option Award on the first anniversary of the grant date and, at the end of each month thereafter, with respect to an additional 1/48 of the shares subject to the Initial Option Award.

<u>Focal Awards</u>. You will be granted a combination of RSUs, PBRSUs and Options (collectively, "*Focal Awards*"), pursuant to the terms described in the following paragraphs, at the same time that annual 2015 equity awards are granted to senior executives of the Company, expected to be in April, 2015.

You will be granted an award of RSUs valued at \$2,700,000 (the "Focal RSU Award"), subject to the terms and conditions of the Plan, as well as the terms and conditions of the Focal RSU agreement (which will be provided to you as soon as practicable after the grant date). The Focal RSU Award will vest and become non-forfeitable (assuming your continued employment as provided below on each vesting date) over four years at the rate of 25% a year on each anniversary of the date of grant, subject to necessary withholding for applicable taxes.

You will be granted an award of PBRSUs with a target value of \$4,500,000 (the "PBRSU Focal Award"), subject to the terms and conditions of the Plans, as well as the terms and conditions of the applicable agreement (which will be provided to you as soon as practicable after the grant date). The PBRSU Focal Award will be earned based on performance over the period January 1, 2015 through December 31, 2016. The actual number of shares of eBay common stock that will be subject to the PBRSU Focal Award to be granted, if any, will be determined based on achievement during such period of Company performance goals determined by the Compensation Committee and will be subject to the terms and conditions of the performance plan approved by the Compensation Committee. The PBRSU Focal Award will be granted in early 2017 and will vest and become non-forfeitable (assuming your continued employment as provided below on the vesting date) as to 100% of the shares subject to the award on the first anniversary of the grant date, subject to necessary withholding for applicable taxes.

Finally, you will be granted an Option valued at \$1,800,000 (the "Focal Option Award"), subject to the terms and conditions of the Plan, as well as the terms and conditions of the Focal Option Award agreement (which will be provided to you as soon as practicable after the grant date). Generally, the Focal Option Award will vest and become exercisable (assuming your continued employment with an eBay company on each vesting date) over four years at the rate of 12.5% of the shares subject to the Focal Option Award at the end of the 6th calendar month following the grant date, and, at the end of each month thereafter, with respect to an additional 1/48 of the shares subject to the Focal Option Award.

<u>Equity Make-Good Award</u>. In recognition of the equity compensation you will forfeit when you leave your current employer, you will be granted the following awards of RSUs (the "*Make-good RSU Awards*"):

- (i) An award of RSUs valued at \$4,143,503, to be granted subject to the terms and conditions of the Plan, as well as the terms and conditions of the RSU agreement (which will be provided to you as soon as practicable after the grant date), which will vest and become non-forfeitable (assuming your continued employment as described below on the vesting date) on December 24, 2014, subject to necessary withholding for applicable taxes; and
- (ii) An award of RSUs valued at \$4,071,429, to be granted subject to the terms and conditions of the Plan, as well as the terms and conditions of the RSU agreement (which will be provided to you as soon as practicable after the grant date), which will vest and become

necessary withholding for applicable taxes.		

non-forfeitable (assuming your continued employment as described below on the vesting date) on January 28, 2016, subject to

In addition to the foregoing, your Make-good RSU Awards (and the shares of eBay common stock that you receive upon vesting of such awards) will not be subject to eBay's executive stock ownership guidelines and the limitations on sale thereunder.

Effects of Spin-Off. All awards on eBay common stock granted to you under the Plan ("eBay equity awards") and described above will vest as described above subject to your continued employment through each applicable vesting date with PayPal, Inc. until the Spin-Off. Upon the Spin-Off, all then outstanding eBay equity awards granted to you that are outstanding as of the effective date of the Spin-Off (including, for this purpose, any PBRSU awards for which the applicable performance period has not ended and Option grants (whether vested or unvested), and all other then outstanding unvested RSUs, will be converted into options, restricted stock units and performance restricted stock units, respectively, covering shares of PayPal stock using an equitable adjustment formula (with any performance criteria that may be applicable to the awards to also be appropriately adjusted), and thereafter will continue to vest as described above subject to your continued employment through each same applicable vesting date with PayPal and otherwise on terms and conditions, determined by the Company, but in all events with respect to the eBay equity awards granted pursuant to this Letter, such terms and conditions shall remain consistent with the terms and conditions of such eBay equity awards as provided in this Letter.

*Make-Good Cash Payments*. In recognition of certain compensation that you will not receive, or will forfeit, when you leave your current employer, you will be entitled to receive the following payments, subject to the following terms:

- (i) An equity clawback make-good payment (the "Equity Clawback Make-good Payment") to cover the actual amount you are required to repay your current employer, if any, to cover the pretax income you may have recognized on restricted stock units that became vested, and/or stock options that were exercised, in the 24 months prior to your termination of employment, up to a total amount of \$10,496,388. You agree to work with the Company's counsel to negotiate with your current employer to avoid the imposition of the clawback to the extent possible. The Equity Clawback Make-good Payment, less deductions and applicable taxes, will be paid to you within one pay period of when you provide the Company with written evidence from your current employer of the amount of the repayment to your current employer that you are required to repay (and in no event later than 2 ½ months following the end of the year in which you are required to repay your current employer);
- (ii) A bonus make-good payment (the "Bonus Make-good Payment") to cover the annual bonus that your current employer is not expected to pay you in respect of its' current fiscal year, in a lump sum equal to \$3,631,250. The Bonus Make-good Payment will be paid to you on December 24, 2014, subject to your continued employment on the payment date; provided, that if you are paid a bonus from your current employer for its current fiscal year performance (your "Prior Employer Bonus"), then you will not be entitled to receive the Bonus Make-good Payment, to the extent of the gross amount of your Prior Employer Bonus, and, if such Prior Employer Bonus is paid to you after you receive payment of the Bonus Make-good Payment, you shall return a corresponding amount back to eBay within thirty (30) days thereafter;
- (iii) A cash payment of \$2,600,000 (the "Portfolio Grant Make-good Payment"), which will vest and be paid 50% on December 24, 2014 and 50% on February 15, 2016, subject to your continued employment with an eBay company on each vesting date; provided, that if your current employer does not cause you to forfeit the cash-based incentive "portfolio" awards held by you as of your termination of employment, then you will not be entitled to receive the Portfolio Make-good Payment; and
- (iv) A lump sum cash payment of \$3,626,537 (the "Vested Option Make-good Payment", and together with the Equity Clawback Make-good Payment, the Bonus Make-good Payment and the Portfolio Grant Make-good payment, the "Make-good Payments") which shall be paid within two payroll periods of your commencement of employment with the Company; provided, that, if you are not required to forfeit all or a portion of the vested stock options that you hold on the stock of your current employer as of the date of your termination of employment with such employer (your "Prior Employer Options"), then you will only be entitled to receive that portion of the Vested Option Make-good Payment that corresponds to the value of the portion of your Prior Employer Options that you have been required to forfeit, with such value determined using the same assumptions and methodology as were used to calculate the entire amount of the Vested Option Make-good Payment.

*Employee Benefits*. You will be entitled to the employee welfare and retirement benefits that eBay customarily makes available to employees in positions comparable to yours, in accordance with the terms of the benefit plans as in effect from time to time.

Also, enclosed is the eBay Insider Trading Agreement, which outlines the procedures and guidelines governing securities trades by Company personnel. Please review this agreement carefully, execute the certification and return it to me.

Relocation. The Company will (1) provide a reasonable allowance to cover the cost to you of temporary housing for you in the Bay area through the earlier of nine months following your employment date or the date you purchase a residence and (2) reimburse you for the cost of transportation, including air travel (business class) and reasonable related travel expenses, for you or the equivalent cost for a family member, to and from the Bay area, for up to 26 round trips per calendar year (pro-rated from your start date with eBay through December 31 2014). All such reimbursements will be provided to you by no later than the end of the calendar year following the year in which the expenses to which they relate are incurred, in accordance with applicable tax rules.

eBay will also assist with expenses incurred for your relocation from New York to the Bay area under the terms of eBay's relocation assistance program for employees in positions comparable to yours.

#### Compensation as PayPal CEO

Cash Compensation. Effective immediately following the Spin-Off, your salary as PayPal CEO shall be at a bi-weekly rate of at least \$38,461.54, which is equivalent to an annual base salary of \$1,000,000. Also following the Spin-Off, as PayPal CEO you will be eligible to participate in the annual incentive payment plan established for PayPal senior executives immediately prior to the Spin-Off (the "Bonus Plan"). It is anticipated that payouts under the Bonus Plan will be based on individual achievements as well as PayPal performance and will be paid on an annual cycle. Following the Spin-Off, your annual target bonus opportunity under the Bonus Plan will be at least 200% of your base salary. To be eligible to receive any Bonus Plan bonus, you must be employed for a full calendar quarter in the applicable year and you must be actively employed on the date the bonus is paid. The payment of any Bonus Plan bonus will be subject to the terms and conditions of the Bonus Plan.

Equity Compensation. You will be granted eBay equity awards pursuant to an equity compensation subplan to be established in contemplation of the Spin-Off (the "PayPal Plan"), subject to, and effective immediately prior to, the Spin-Off (the "Spin-Off Awards"). The terms of the grant of the Spin-Off Awards will be subject to the approval of the Compensation Committee and the grant will be subject to your continued employment with eBay on the applicable grant date(s). The grants will be made immediately prior to the Spin-Off as eBay equity awards but will be converted into awards on PayPal common stock in the same method and manner as described above under "Effects of Spin-Off". It is currently contemplated that the Spin-Off Awards will be in the following forms and amounts, which may be altered by the Compensation Committee in its discretion, provided that the Spin-Off Awards shall have an aggregate grant date dollar value of \$2,000,000, and vesting schedules that end no later than the fourth anniversary of the effective date of the Spin-Off:

- (i) An award of RSUs valued at \$600,000, to be granted under the PayPal Plan ("PayPal RSUs"), as well as the terms and conditions of a PayPal RSU agreement (which will be provided to you as soon as practicable after the grant date). The award of PayPal RSUs will vest and become non-forfeitable (assuming your continued employment with a PayPal company on each vesting date) over four years at the rate of 25% a year on each anniversary of the date of grant, subject to necessary withholding for applicable taxes;
- (ii) An award of PBRSUs with a target value of \$1,000,000, to be granted under the PayPal Plan (the "PayPal PBRSU Award"), as well as the terms and conditions of a PayPal PBRSU agreement (which will be provided to you as soon as practicable after the grant date). The PayPal PBRSU Award will be earned based on performance over an established period ending December 31, 2016. The actual number of shares of PayPal common stock that will be subject to the PayPal PBRSU Award to be granted, if any, will be determined based on achievement during such period of PayPal performance goals determined by the PayPal Compensation Committee and will be subject to the terms and conditions of the performance plan approved by the PayPal Compensation Committee. The PayPal PBRSU Award will be granted in early 2017 and will vest and become non-forfeitable (assuming your continued employment with a PayPal company on the vesting dates) as follows: 100% of the shares on the first anniversary of the grant date, subject to necessary withholding for applicable taxes; and
- (iii) An Option award valued at \$400,000, to be granted under the PayPal Plan (the "PayPal Option"), as well as the terms and conditions of a PayPal Option agreement (which will be provided to you as soon as practicable after the grant date). Generally, the PayPal Option will vest and become exercisable (assuming your continued employment with a PayPal company on each vesting date) over four years at the rate of 12.5% of the shares subject to the PayPal Option at the end of the 6th calendar month following your start date as PayPal CEO, and, at the end of each month thereafter, with respect to an additional 1/48 of the shares subject to the PayPal Option.

<u>Employment Requirements</u>; <u>At-Will Employment</u>. Under federal immigration laws, the Company is required to verify each new employee's identity and legal authority to work in the United States. Accordingly, please be prepared to furnish appropriate documents satisfying those requirements; this offer of employment is conditioned on submission of satisfactory documentation. Enclosed is a list of the required documents.

Your employment with the Company is "at-will" and either you or the Company may terminate your employment at any time, with or without cause or advance notice. The at-will nature of the employment relationship can only be changed by written agreement signed by eBay's President and Chief Executive Officer.

#### Severance Protections.

Although your employment with the Company shall be "at-will" as set forth above, you may be entitled to severance protection in certain circumstances, as described below, subject in all instances to you executing and not revoking the Company's standard form of release (which shall also contain customary exceptions for your continued indemnification and coverage under D&O policies, exclusions for vested benefits under retirement and welfare benefit plans and equity incentive plans, and reasonable post-employment cooperation covenants (but for the avoidance of doubt no restrictive covenants or other covenants imposing limitations on your post-employment activities) (the "*Release*") within 60 days after the date of your termination of employment:

Prior to the Spin-Off: Termination Outside a Change in Control Period. If, prior to the Spin-Off and outside a Change in Control Period (as defined below), your employment is involuntarily terminated by the Company other than for Cause (as defined below) or if you voluntarily resign for Good Reason (as defined below), then the Company shall provide you with (a) the Accrued Benefits (as defined below) and (b) a lump sum severance payment, payable not later than 30 days after you execute the Release and any revocation period has expired (which, if such payment date could straddle two calendar years, must occur in the later calendar year), in an amount equal to the sum of:

- (i) two times the sum of (a) your Annual Base Salary (as defined below) and (b) your Bonus Amount (as defined below);
- (ii) any Make-good Cash Payments that are owed to you pursuant to the terms of this Letter and have not yet been paid as of the date of your termination of employment; and
- (iii) notwithstanding any election you may have made to defer any portion of any RSUs or PBRSUs, a cash amount equal to the value of the unvested Initial Awards and unvested Make-good RSU Awards outstanding as of the date of your termination of employment (with such value calculated based on the Valuation Assumptions (as defined below)).

In addition, if you are receiving the severance payments and benefits hereunder because of your voluntary resignation due to a Spin Failure Good Reason (as defined in the definition of "Good Reason" below), or because your employment was involuntarily terminated by the Company other than for Cause during the 30-day period ending on, or the 60-day period beginning on, the date that a Spin Failure Good Reason occurs, you will also receive a cash amount equal to the value of any other eBay equity awards that are outstanding and unvested as of the date of such resignation which, but for such resignation, otherwise would have become vested pursuant to their respective vesting schedules within 24 months following the date of such resignation (with such value calculated based on the Valuation Assumptions). This payment will be made at the same time (and subject to the same conditions) as the other payments provided for above.

Prior to a Spin-Off: Termination During a Change in Control Period. If, prior to the Spin-Off and during a Change in Control Period, your employment is involuntarily terminated by the Company other than for Cause or if you voluntarily resign for Good Reason, then the Company shall provide you with (a) the Accrued Benefits and (b) a lump sum severance payment, payable not later than 30 days after you execute the Release and any revocation period has expired (which, if such payment date could straddle two calendar years, must occur in the later calendar year), in an amount equal to the sum of:

- (i) two times the sum of (a) your Annual Base Salary and (b) your Bonus Amount;
- (ii) any Make-good Cash Payments that are owed to you pursuant to the terms of this Letter and have not yet been paid as of the date of your termination of employment; and
- (iii) notwithstanding any election you may have made to defer any portion of any RSUs or PBRSUs, a cash amount equal to the value of all eBay equity awards that are outstanding and unvested as of the date of your termination of employment (with such value calculated based on the Valuation Assumptions).

On and After the Spin-Off; Termination Outside a Change in Control Period. If, on or after the Spin-Off and outside a Change in Control Period, your employment as PayPal CEO is terminated by PayPal without Cause or if you voluntarily resign for Good Reason, then PayPal shall provide you with (a) the Accrued Benefits and (b) a lump sum severance payment, payable

not later than 30 days after you execute a release of claims against PayPal (in the same form as the Release but inuring to the benefit of PayPal, the "PayPal Release"), and any revocation period has expired (which, if such payment date could straddle two calendar years, must occur in the later calendar year), in an amount equal to the sum of:

- (i) two times the sum of (a) your Annual Base Salary and (b) your Bonus Amount;
- (ii) any Make-good Cash Payments that are owed to you pursuant to the terms of this Letter and have not yet been paid as of the date of your termination of employment; and
- (iii) notwithstanding any election you may have made to defer any portion of any RSUs or PBRSUs, a cash amount equal to the value of any outstanding and unvested Initial Awards and unvested Make-good RSU Awards (as converted into PayPal awards in connection with the Spin-Off as provided above under "Effects of Spin-Off") outstanding as of the date of your termination of employment (with such value calculated based on the Valuation Assumptions); and
- (iv) notwithstanding any election you may have made to defer any portion of any RSUs or PBRSUs, a cash amount equal to the value of any other eBay equity awards (as converted into PayPal awards in connection with the Spin-Off as provided above under "Effects of Spin-Off"), that are outstanding and unvested as of the date of your termination of employment which, but for such termination, otherwise would have become vested pursuant to their respective vesting schedules within 12 months following the date of such termination (with such value calculated based on the Valuation Assumptions).

On and After the Spin-Off; Termination During a Change in Control Period. If, on or after the Spin-Off and during a Change in Control Period, your employment as PayPal CEO is terminated by PayPal without Cause or if you voluntarily resign for Good Reason, then PayPal shall provide you with (a) the Accrued Benefits and (b) a lump sum severance payment, payable not later than 30 days after you execute the PayPal Release and any revocation period has expired (which, if such payment date could straddle two calendar years, must occur in the later calendar year), in an amount equal to the sum of:

- (i) two times the sum of (a) your Annual Base Salary and (b) your Bonus Amount;
- (ii) any Make-good Cash Payments that are owed to you pursuant to the terms of this Letter and have not yet been paid as of the date of your termination of employment; and
- (iii) notwithstanding any election you may have made to defer any portion of any RSUs or PBRSUs, a cash amount equal to the value of all then unvested PayPal equity awards that are outstanding and unvested as of the date of termination of employment, including all eBay equity awards that were converted into PayPal awards in connection with the Spin-Off as provided above under "Effects of Spin-Off" (with such value calculated based on the Valuation Assumptions).

#### Special Treatment of Equity Awards on Death/Permanent Disability

In the event that your employment with eBay or PayPal, as applicable, terminates due to your death or disability (within the meaning of the applicable employer's long-term disability plan), within thirty (30) days after the date of such termination of employment, you will receive a cash payment equal to the value of any eBay equity awards that were outstanding and unvested as of the date of such termination which, but for such termination, otherwise would have become vested pursuant to their respective vesting schedules within 24 months following the date of such termination (with such value calculated based on the Valuation Assumptions).

#### Definitions.

"Accrued Benefits" means (a) prompt payment of any accrued but unpaid annual base salary through the last day of employment, (b) prompt payment of any unreimbursed expenses incurred through the last day of employment subject to your prompt delivery of all required documentation of such expenses pursuant to applicable employer policies, (c) all other vested payments, benefits or fringe benefits to which you are entitled under the terms of any applicable compensation arrangement or benefit, equity or fringe benefit plan or program or grant (excluding any other severance plan, policy or program) or this Letter in accordance with the terms of such plan, program or grant, including any unpaid bonus for any prior fiscal year when it otherwise would have been paid, and (d) a prorated portion of the eIP bonus, if any, that you otherwise would have earned and been paid in respect of the fiscal year in which your employment terminates based on the actual performance of the company for the full year, with such prorated portion calculated based on the period of time during such fiscal year that you were employed, relative to the full fiscal year and only based on the company performance element of the bonus (such prorated eIP bonus amount, if any, the "Prorated Bonus"). You will receive your Prorated Bonus on the date that all other participants in the eIP receive their eIP bonuses in respect of such fiscal year.

"Annual Base Salary" will mean an amount equal to \$1,000,000 (or such greater amount as in effect immediately prior to your termination date).

"Bonus Amount" will mean an amount equal to 200% of your Annual Base Salary (or such greater amount as may be established as your target bonus payment immediately prior to your termination date).

"Cause" shall mean (a) your failure to attempt in good faith to substantially perform your assigned duties, other than failure resulting from your death or incapacity due to physical or mental illness or impairment, which is not remedied within 30 days after receipt of written notice from the Company (or, following the Spin-Off, PayPal) specifying such failure; (b) your indictment for, conviction of or plea of nolo contedere to any felony (or any other crime involving fraud, dishonesty or moral turpitude); or (c) your commission of an act of fraud, embezzlement, misappropriation, willful misconduct, or breach of fiduciary duty against the Company (or, following the Spin-Off, PayPal), except good faith expense account disputes.

"Change in Control" shall mean, for purposes of this Letter: (a) before a Spin-Off, any of the following: (x) a "Change in Control" as such term is defined in the Plan; or (y) a sale of PayPal, Inc. by the Company to any individual, entity or group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Securities Exchange Act of 1934, as amended) that is not affiliated with the Company; or (z) an announcement by the Company on a Form 8-k (or other similar filing under the Securities Exchange Act of 1934, as amended) that the Company has abandoned its plans to separate the business of PayPal, Inc. from the eBay companies, and (b) on and after the effective date of a Spin-Off, "Change in Control" as such term is defined in the PayPal Plan (but if no such definition is contained therein, then for purposes of this Letter, "Change in Control" shall be as defined in the Plan, but with all references therein to eBay replaced with PayPal).

"Change in Control Period" means the period that begins 90 days prior to, and ends 24 months following, a "Change in Control."

"Good Reason" means, without your written consent, any of the following events, whereafter you resign your employment within the periods provided below:

- (a) the effective date of the Spin-Off does not occur within two years following your commencement of employment with the Company, in which case you shall have sixty (60) days following the second anniversary of your commencement of employment with the Company within which to resign for "Good Reason" (the event described in this clause (a), a "Spin Failure Good Reason"); or
- (b) following the Spin-Off, PayPal experiences a Change in Control, after which you are no longer the Chief Executive Officer of the publicly traded company that is (or owns) PayPal, in which case you shall have thirty (30) days following such Change in Control within which to resign for "Good Reason": or
- (c) (i) a material reduction in your annual base salary in effect (x) prior to the Spin-Off, at eBay, but (y) on and after the Spin-Off, at PayPal; (ii) a material reduction in your annual target bonus opportunity (x) prior to the Spin-Off, under the eIP, but (y) on and after the Spin-Off, the Bonus Plan; (iii) (x) prior to the Spin-Off, a material reduction in your authority, duties or responsibilities as President, PayPal, Inc. (which would include your failure to report to the President and Chief Executive Officer of eBay), but (y) on and after the Spin-Off, a material reduction in your authority, duties or responsibilities as Paypal CEO (which would include your failure to report to the PayPal Board); or (iv) any other material breach by the Company (or, after the Spin-Off, PayPal) of this Letter. You will be deemed to have given consent to the condition(s) described in any of clauses (i) through (iv) of this paragraph (c) if you do not provide written notice to the Company (or PayPal, as applicable) of such Good Reason event(s) within 60 days from the first occurrence of such Good Reason event(s), following which the Company (or PayPal, as applicable) shall have 30 days to cure such event, and to the extent the Company (or PayPal, as applicable) has not cured such Good Reason event(s) during the 30-day cure period, you must terminate your employment for Good Reason no later than 60 days following the occurrence of such Good Reason event(s) by providing the Company (or PayPal, as applicable) 30 days' prior written notice of termination, which may run concurrently with the Company's (or PayPal' s, as applicable) cure period.

"Valuation Assumptions" means, collectively, the following assumptions: (x) each share of eBay (or, after the Spin-Off, PayPal) common stock underlying an award has a value equal to the average of the closing prices of eBay (or, after the Spin-Off, PayPal) common stock as reported on the NASDAQ Global Select Market for the period of 10 consecutive trading days ending on (and including) the last trading day prior to the date of your termination of employment, (y) if the date of your termination of employment occurs during the performance period with respect to an award of PBRSUs whose target value has been established prior to the date of your termination of employment, but whose e number of shares of applicable employer stock that would be subject to such award based on achievement of applicable performance targets has not yet been granted, then any such award shall be deemed to have been earned and granted assuming achievement of target performance in respect of the applicable performance period immediately prior to such date of termination and (z) any Options that you hold that are

outstanding immediately prior to the date of your termination of employment will be valued based on their spread (i.e., the positive difference, if any, of the value of each share of eBay (or, after the Spin-Off, PayPal) common stock underlying the Option, as determined pursuant to clause (x) above), less the per share exercise price of such Option).

#### Tax and Other Matters.

Section 409A. The Company (or PayPal, as applicable) may withhold from any amounts payable to you such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation. It is intended that the payments and benefits provided under this Letter shall comply with the provisions of Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A") and the regulations relating thereto, or an exemption to Section 409A, and this Letter shall be interpreted accordingly. Any payments or benefits that qualify for the "short-term deferral" exception or another exception under Section 409A shall be paid under the applicable exception. Each payment under this Letter will be treated as a separate payment for purposes of Section 409A. Notwithstanding anything to the contrary herein, a termination of employment shall not be deemed to have occurred for purposes of any provision of this Letter providing for the payment of amounts or benefits upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Section 409A and, for purposes of any such provision of this Letter, references to a "resignation," "termination," "termination of employment" or like terms shall mean separation from service. If you become entitled to a payment of nonqualified deferred compensation as a result of your termination of employment and at such time you are a "specified employee" (within the meaning of Section 409A and as determined in accordance with the methodology established by the Company (or PayPal, as applicable) as in effect on your date of termination), such payment will be postponed to the extent necessary to satisfy Section 409A, and any amounts so postponed will be paid in a lump sum on the first business day that is six months and one day after your separation from service (or any earlier date of your death). If the compensation and benefits provided under this Letter would subject you to taxes or penalties under Section 409A, the Company (or PayPal, as applicable) and you will cooperate diligently to amend the terms of this Letter to avoid such taxes and penalties, to the extent possible under applicable law.

Change in Control Golden Parachute Excise Taxes. In the event of a Change in Control, where an accounting firm designated by the Company (or PayPal, as applicable) determines that the aggregate amount of the payments and benefits that (but for the application of this paragraph) would be payable to you under this Letter agreement or any other plan, policy or arrangement of the Company (or PayPal, as applicable) and any of their affiliates, exceeds the greatest amount of payments and benefits that could be paid or provided to you without giving rise to any liability for any excise tax imposed by Section 4999 of the Code (the "Excise Tax"), then you may elect either to (1) pay the Excise Tax and receive all such payments and benefits as may be payable to you, or (2) only receive the aggregate amount of such payments and benefits payable or to be provided to you that would not exceed the amount that produces the greatest after-tax benefit to you after taking into account any Excise Tax and other taxes that would otherwise be payable by you (such reduced amount of payments and benefits, the "Reduced Benefit Amount"). In the event you elect to receive the Reduced Benefit Amount, however, the reduction in such payments or benefits pursuant to the immediately preceding sentence shall be made in the following order: (1) by reducing severance payments based on your Annual Base Salary and Bonus Amount, if any is then payable, and then (2) by reducing amounts in respect of any equity-based awards (first in the form of cash payments, if any are due hereunder, then in respect of any vesting of any such awards under any other plan or arrangement).

All of us at eBay are very excited about you joining our team and look forward to a beneficial and fruitful relationship. However, should any dispute arise with respect to your employment or the termination of that employment, we both agree that such dispute shall be conclusively resolved by final, binding and confidential arbitration rather than by a jury court or administrative agency. The Company (or PayPal, as applicable) will bear those expenses unique to arbitration. Please review the enclosed Mutual Arbitration Agreement carefully.

Required Employee Agreements. As a condition of your employment with eBay, you must complete both the Mutual Arbitration Agreement and the enclosed Employee Proprietary Information and Inventions Agreement prior to commencing employment. In part, the Employee Proprietary Information and Inventions Agreement requires that a departing employee refrain from unauthorized use or disclosure of the Company's confidential information (as defined in that Agreement). That Agreement does not prevent a former employee from using know-how and expertise in any new field or position. Notwithstanding anything in that Agreement to the contrary, following any termination of employment, (i) you will be permitted to retain any personal address book containing contact information (whether or not such address book is maintained on eBay's systems) and (ii) you may, upon request, provide a reference in respect of any current or former employee of eBay. If you should have any questions about the Employee Proprietary Information and Inventions Agreement, please call me. Otherwise, please sign and date this document and return it to me in the enclosed envelope.

This Letter, the Mutual Arbitration Agreement, and the Employee Proprietary Information and Inventions Agreement contain the entire agreement with respect to your employment. Should you have any questions with regard to any of the items indicated above, please call me. Kindly indicate your consent to this agreement by signing copies of this Letter, the Mutual Arbitration Agreement, and the Employee Proprietary Information and Inventions Agreement and returning them to me, along with the Insider Trading Agreement certification.

This Letter cannot be assigned without your prior written consent, except that eBay is permitted to assign this Letter and the obligations thereunder to PayPal upon consummation of the Spin-Off. This Letter can be modified or amended only by a written instrument executed by eBay (or, following consummation of the Spin-Off, PayPal) and you. By signing this Letter, you represent that you are not subject to any agreements that would prevent you from becoming employed with our companies. Upon your signature below, this will become our binding agreement with respect to your employment and its terms merging and superseding in their entirety all other or prior offers, agreements and communications, whether written or oral, by you and the Company as to the specific subjects of this Letter.

Dan, the Board and I are thrilled by the prospect of you joining us. PayPal has an extraordinary future and I am confident that you are the right leader for PayPal at this exciting time.

Very truly yours,

/s/ John Donahoe

John Donahoe

President and Chief Executive Officer
eBay Inc.

ACCEPTED:

/s/ Daniel Schulman

Daniel Schulman

Anticipated Start Date: September 30, 2014

September 29, 2014

December 31, 2014

Daniel Schulman c/o eBay Inc. 2065 Hamilton Avenue San Jose, California 95125

Dear Dan:

This letter will serve as an amendment to the employment offer letter between you and eBay Inc. (the "Company") dated September 29, 2014 (the "Letter"). Among other items, the Letter describes an equity clawback make-good payment (the "Equity Clawback Make-good Payment") to cover the pre-tax income you would be required to repay your current employer for amounts realized in the 24 months prior to your termination of employment, up to a total amount of \$10,496,388. You agreed to work with the Company's counsel to negotiate with your now former employer to avoid the imposition of the clawback to the extent possible, and have done so.

In the course of negotiations, your prior employer claimed that it was entitled to a greater amount in repayment, on the grounds that additional awards would be encompassed under the employer's clawback agreements. The Company and you have disputed that claim, and the parties have now come to a compromise to resolve any and all claims of your former employer. As a result, the amount of the Equity Clawback Make-good Payment will be in the amount of up to \$13,800,000.00.

Except as specifically set forth in this amendment, all other terms and conditions of the Letter will remain in full force and effect.

Very truly yours,

/s/ John Donahoe John Donahoe President and Chief Executive Officer eBay Inc.

ACCEPTED:

/s/ Daniel Schulman Daniel Schulman

December 31, 2014



 $[\bullet], 2015$ 

Dear eBay Inc. ("eBay") Stockholder:

In September 2014, we announced plans to separate our Payments business and our Marketplaces business. The separation will occur by means of a distribution of a newly formed corporation named PayPal Holdings, Inc. ("PayPal"), which will contain the businesses that make up our Payments segment. eBay, the existing publicly traded corporation, will continue to operate our Marketplaces business. As two distinct publicly traded corporations, eBay and PayPal will be better positioned to capitalize on significant growth opportunities and focus their resources on their respective businesses and strategic priorities.

eBay and PayPal are two great businesses with leading global positions in commerce and payments, respectively. For more than a decade, eBay and PayPal have mutually benefited from being part of one company, creating substantial stockholder value. As part of its strategic planning process, the board of directors has assessed whether eBay and PayPal should remain together. Until September 2014, the combination of the two businesses and the synergies and benefits they offered to each other were so valuable that the board determined that separation was not appropriate. But the commerce and payments landscape is rapidly changing, and each business faces different competitive opportunities and challenges. Consequently, in September 2014 the board decided to separate the businesses. As independent companies, we expect eBay and PayPal will be sharper and stronger, and more focused and competitive as leading, standalone companies in their respective markets. eBay and PayPal also will benefit from additional flexibility and agility to pursue new market and partnership opportunities.

The new eBay will be a global commerce leader and, we believe, the most inspiring and engaging place to discover great value and unique selection anytime, anywhere. We have an incredibly strong position, with 155 million active buyers globally as of the end of 2014. In 2014, eBay Marketplaces handled approximately \$83 billion of gross merchandise volume, growing 9% year over year. Additionally, eBay is one of the world's top 30 global brands. Offering consumers worldwide extraordinary value and selection, eBay had more than 800 million live listings at the end of 2014, and approximately 80% of sold items are new. And the company is well-positioned as a leader in the growth areas of mobile and cross-border commerce. With over 250 million eBay app downloads since inception, eBay generated \$28 billion in mobile volume in 2014. During the same time, cross-border commerce represented approximately 17% of eBay's gross merchandise volume, and 60% of Marketplaces' revenue was international. Looking ahead, eBay will continue to focus on enhancing its unique assets and capabilities and creating new commerce experiences to ensure long-term growth and on-going commerce leadership.

The separation will provide current eBay stockholders with equity ownership in both eBay and PayPal. We expect that the distribution of PayPal common stock will be tax-free, for U.S. federal income tax purposes, to eBay stockholders.

The separation will be effected by means of a pro rata distribution of 100% of the outstanding shares of PayPal common stock to holders of eBay common stock. Each eBay stockholder will receive one share of PayPal common stock for every [●] share of eBay common stock held as of the close of business on [●], 2015, the record date for the distribution. No vote of eBay stockholders is required for the distribution. You do not need to take any action to receive shares of PayPal common stock to which you are entitled as an eBay stockholder, and you do not need to pay any consideration or surrender or exchange your shares of eBay common stock.

We encourage you to read the attached information statement, which is being provided to all eBay stockholders who held shares of eBay common stock on the record date for the distribution. The information statement describes the separation in detail and contains important business and financial information about PayPal.

We believe the separation provides tremendous opportunities for our businesses and our stockholders, as we work to continue building long-term stockholder value. We appreciate your continuing support of eBay, and look forward to your future support of both companies.

Sincerely,

John J. Donahoe President and Chief Executive Officer

Pierre M. Omidyar Chairman of the Board



 $[\bullet], 2015$ 

Dear Future PayPal Stockholder:

It is my pleasure to welcome you as a future stockholder of our company, PayPal Holdings, Inc. Following the distribution of all of the outstanding shares of PayPal common stock by eBay Inc. to its stockholders, PayPal will be an independent, publicly traded company focused on making money work better for people and businesses around the world.

The access to and movement of money is an important market that affects the lives of almost everyone. Our mission is to increase our relevance for consumers, merchants, friends and family to access and move their money anywhere in the world, anytime, on any platform and through any device (e.g., mobile, tablets, personal computers or wearables).

We operate a proprietary global technology platform that connects merchants and consumers around the globe. In 2014, approximately 162 million active customer accounts processed payments on our platform. Total payment volume over the last 12 months increased by 26% to \$235 billion, as more consumers and merchants trusted PayPal to pay and get paid. We have significant global reach, processing transactions in more than 200 markets, allowing our customers to receive payments in more than 100 currencies, withdraw funds to their bank accounts in 57 currencies and hold balances in their PayPal accounts in 26 currencies. We are a leader in mobile payments and processed nearly 1 billion mobile transactions in 2014 for our customers.

Our stockholder value proposition is simple. We strive to provide superior returns to PayPal stockholders by maintaining our leadership position in the payments industry and investing in the growth of our newly standalone company.

We invite you to learn more about PayPal, our business and our strategic initiatives by reading the enclosed information statement. We urge you to read the information statement carefully and in its entirety. We are excited by the tremendous opportunity we have in front of us and look forward to your support as a holder of our common stock.

Sincerely,

Daniel H. Schulman President and CEO-Designee PayPal Holdings, Inc.

Information contained herein is subject to completion or amendment. A Registration Statement on Form 10 relating to these securities has been filed with the U.S. Securities and Exchange Commission under the U.S. Securities Exchange Act of 1934, as amended.

#### PRELIMINARY AND SUBJECT TO COMPLETION, DATED MAY 14, 2015

#### INFORMATION STATEMENT



# PayPal Holdings, Inc.

This information statement is being furnished in connection with the distribution by eBay Inc. ("eBay") to its stockholders of all of the outstanding shares of common stock of PayPal Holdings, Inc. ("PayPal"), a wholly owned subsidiary of eBay that will hold directly or indirectly the assets and liabilities associated with eBay's Payments business. To implement the distribution, eBay will distribute all of the shares of PayPal common stock on a pro rata basis to eBay stockholders in a transaction that is intended to qualify as tax-free for U.S. federal income tax purposes. Please refer to the "Presentation of Information" below for how we refer to "eBay Inc.," "eBay" and "PayPal" in this Information Statement.

You will receive one share of PayPal common stock for every [●] shares of eBay common stock held of record by you as of the close of business on [●], 2015, the record date for the distribution. You will receive cash in lieu of any fractional shares of PayPal common stock that you would have received after application of the above ratio. As discussed under "The Separation and Distribution—Trading Between the Record Date and Distribution Date," if you sell your eBay common stock in the "regular-way" market after the record date and before the distribution, you also will be selling your right to receive shares of PayPal common stock in connection with the separation. PayPal expects the shares of PayPal common stock to be distributed by eBay to you at 11:59 p.m., Eastern Time, on [●], 2015. We refer to the date of the distribution of the shares of PayPal common stock as the "distribution date."

No vote of eBay stockholders is required for the distribution. Therefore, you are not being asked for a proxy, and you are requested not to send eBay a proxy, in connection with the distribution. You do not need to pay any consideration, exchange or surrender your existing shares of eBay common stock or take any other action to receive your shares of PayPal common stock.

There is no current trading market for PayPal common stock, although PayPal expects that a limited market, commonly known as a "when-issued" trading market, will develop on or shortly before the record date for the distribution, and PayPal expects "regular-way" trading of PayPal common stock to begin on the first trading day following the completion of the distribution. PayPal intends to apply to have its common stock authorized for listing on The NASDAQ Stock Market under the symbol "PYPL." Following the spin-off, eBay common stock will continue to trade on The NASDAQ Stock Market under the symbol "EBAY."

In reviewing this information statement, you should carefully consider the matters described under the caption "Risk Factors" beginning on page 15.

Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved these securities or determined if this information statement is truthful or complete. Any representation to the contrary is a criminal offense.

This information statement does not constitute an offer to sell or the solicitation of an offer to buy any securities.

The date of this information statement is  $[\bullet]$ , 2015.

This information statement was first mailed to eBay stockholders on or about [•], 2015.

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#### **Presentation of Information**

On September 30, 2014, eBay Inc. ("eBay") announced its intent to separate its payments business into an independent, publicly-traded company. To accomplish this separation, in January 2015, eBay incorporated PayPal Holdings, Inc. ("PayPal Holdings"), which will ultimately become the parent of PayPal, Inc. and will hold directly or indirectly all of the assets and liabilities associated with PayPal, Inc. References to "we," "our," "us," "the Company" or "PayPal" refer to the combined entities of the payments business of eBay, including PayPal, Inc. and certain other assets and liabilities that have been historically held at the eBay corporate level, but are specifically identifiable and attributable to the payments business.

Except as otherwise indicated or unless the context otherwise requires, the information included in this information statement about PayPal assumes the completion of all of the transactions referred to in this information statement in connection with the separation and distribution. References in this information statement to "eBay" refer to eBay Inc., a Delaware corporation, and its consolidated subsidiaries, which prior to the separation and distribution, but not after such date, includes the business and operations of PayPal.

#### Trademarks, Trade Names and Service Marks

PayPal owns or has rights to use the trademarks, service marks and trade names that it uses in conjunction with the operation of its business. Some of the more important trademarks that PayPal owns or has rights to use that appear in this information statement include: PayPal®, Braintree and Venmo, which may be registered or trademarked in the United States and other jurisdictions. PayPal's rights to some of these trademarks may be limited to select markets. Each trademark, trade name or service mark of any other company appearing in this information statement is, to PayPal's knowledge, owned by such other company.

#### **OUESTIONS AND ANSWERS ABOUT THE SEPARATION AND DISTRIBUTION**

What is PayPal and why is eBay separating PayPal's business and distributing PayPal stock?

PayPal Holdings, Inc., which is currently a wholly owned subsidiary of eBay, was formed to own and operate eBay's Payments business. The separation of PayPal from eBay and the distribution of PayPal common stock are intended to provide you with equity ownership in two separate, publicly traded companies that will be able to focus exclusively on each of their respective businesses. eBay and PayPal expect that the separation will result in enhanced long-term performance of each business for the reasons discussed in the section entitled "The Separation and Distribution–Reasons for the Separation."

Why am I receiving this document?

eBay is delivering this document to you because you are a holder of eBay common stock as of the close of business on [●], 2015, the record date of the distribution. Each holder of eBay common stock as of the record date will be entitled to receive one share of PayPal common stock for every [●] shares of eBay common stock held at the close of business on such date. This document will help you understand how the separation and distribution will affect your post-separation ownership in eBay and PayPal, respectively.

How will the separation of PayPal from eBay work?

To accomplish the separation, eBay will distribute all of the outstanding shares of PayPal common stock to eBay stockholders on a pro rata basis in a distribution intended to be tax-free for U.S. federal income tax purposes.

Why is the separation of PayPal structured as a distribution?

eBay believes that a tax-free distribution, for U.S. federal income tax purposes, of shares of PayPal stock to eBay stockholders is an efficient way to separate its Payments business in a manner that will create long-term value for eBay, PayPal and their respective stockholders.

What is the record date for the distribution?

The record date for the distribution will be  $[\bullet]$ , 2015.

When will the distribution occur?

It is expected that all of the shares of PayPal common stock will be distributed by eBay at 11:59 p.m., Eastern Time, on [●], 2015 to holders of record of shares of eBay common stock at the close of business on [●], 2015, the record date for the distribution.

What do stockholders need to do to participate in the distribution?

Stockholders of eBay as of the record date for the distribution will not be required to take any action to receive PayPal common stock in the distribution, but you are urged to read this entire information statement carefully. No stockholder approval of the distribution is required. You are not being asked for a proxy. You do not need to pay any consideration, exchange or surrender your existing shares of eBay common stock or take any other action to receive your shares of PayPal common stock. Please do not send in your eBay stock certificates. The distribution will not affect the number of outstanding shares of eBay common stock or any of your rights as an eBay stockholder, although it will affect the market value of each outstanding share of eBay common stock.

How will shares of PayPal common stock be issued?

You will receive shares of PayPal common stock through the same channels that you currently use to hold or trade shares of eBay common stock, whether through a brokerage account, 401(k) plan or other channel. Receipt of PayPal shares will be documented for you in the same manner that you typically receive shareholder updates, such as monthly broker statements and 401(k) statements. If you own shares of eBay common stock, including shares owned in certificate form, as of the close of business on [•], 2015, the record date for the distribution, eBay, with the assistance of Computershare Trust Company, N.A., or Computershare, the distribution agent, will electronically distribute shares of PayPal common stock to you or to your brokerage firm on your behalf in book-entry form. Computershare will mail you a book-entry account statement that reflects your shares of PayPal common stock, or your bank or brokerage firm will credit your account for the shares

How many shares of PayPal common stock will I receive in the distribution?

eBay will distribute to you one share of PayPal common stock for every [●] shares of eBay common stock held by you as of the close of business on the record date for the distribution. Based on approximately [•] billion shares of eBay common stock outstanding as of [•], 2015, a total of approximately [•] billion shares of PayPal common stock will be distributed. For additional information on the distribution, see "The Separation and Distribution." PayPal shares are being issued on a pro rata basis, which means that every eBay stockholder will have the same ownership percentage in PayPal following the distribution as they held in eBay as of the record date.

stock in the distribution?

No. PayPal will not issue fractional shares of its common stock in the distribution. Fractional shares that eBay stockholders would otherwise have been entitled to receive will be aggregated and sold in the public market by the distribution agent. Will PayPal issue fractional shares of its common The aggregate net cash proceeds of these sales will be distributed pro rata (based on the fractional share such holder would otherwise be entitled to receive) to those stockholders who would otherwise have been entitled to receive fractional shares. Recipients of cash in lieu of fractional shares will not be entitled to any interest on the amounts of payment made in lieu of fractional shares.

What conditions must be satisfied to complete the distribution?

The distribution is subject to the satisfaction (or waiver by eBay in its sole discretion) of the following conditions:

the transfer of assets and liabilities from eBay to PayPal shall be completed in accordance with the separation and distribution agreement;

eBay shall have received an opinion from eBay's outside legal counsel regarding the qualification of the distribution, together with certain related transactions, as transactions that are generally tax free for U.S. federal income tax purposes under Sections 368(a)(1)(D) and 355 of the Internal Revenue Code (the "Code");

the U.S. Securities and Exchange Commission (the "SEC") shall have declared effective the registration statement of which this

information statement forms a part, and no stop order suspending the effectiveness of the registration statement shall be in effect and no proceedings for such purpose shall be pending before or threatened by the SEC;

this information statement shall have been made available to the eBay stockholders:

all actions or filings necessary or appropriate under applicable U.S. federal, U.S. state or other securities laws shall have been taken and, where applicable, have become effective or been accepted by the applicable governmental entity;

any approvals of any governmental entities required for the consummation of the separation and distribution have been obtained, including any required approvals of the Commission de Surveillance du Secteur Financier (the "CSSF") and the Bank Centrale du Luxembourg (the "BCL"):

the transaction agreements relating to the separation shall have been duly executed and delivered by the parties;

no order, injunction, or decree issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the separation, distribution or any of the related transactions shall be in effect;

the shares of PayPal common stock to be distributed shall have been accepted for listing on The NASDAQ Stock Market, subject to official notice of distribution;

eBay shall have transferred or caused the other members of the eBay Group to transfer an aggregate of \$[•] of cash to PayPal (including through one or more capital contributions); and

no other event or development shall exist or have occurred that, in the judgment of eBay's board of directors, in its sole discretion, would make it inadvisable to effect the separation or the distribution.

eBay and PayPal cannot assure you that any or all of these conditions will be met and may also waive any of the conditions to the distribution. In addition, eBay can decline at any time to go forward with the separation. For a complete discussion of all of the conditions to the distribution, see "The Separation and Distribution—Conditions to the Distribution."

What is the expected date of completion of the separation?

The completion and timing of the separation are dependent upon a number of conditions. It is expected that the shares of PayPal common stock will be distributed by eBay at 11:59 p.m., Eastern Time, on [●], 2015 to the holders of record of shares of eBay common stock at the close of business on [●], 2015, the record date for the distribution. However, no assurance can be provided as to the timing of the separation or that all conditions to the distribution will be met.

Can eBay decide to cancel the distribution of PayPal common stock even if of all the conditions have been met?

Yes. Until the distribution has occurred, eBay has the right to terminate the distribution, even if all of the conditions are satisfied.

What if I want to sell my shares of eBay common stock or my PayPal common stock?

You should consult with your financial advisors, such as your stockbroker, bank or tax advisor.

What is "regular-way" and "ex-distribution" trading of eBay common stock?

Beginning on or shortly before the record date for the distribution and continuing up to and through the distribution date, it is expected that there will be two markets in eBay common stock: a "regular-way" market and an "ex-distribution" market. Shares of eBay common stock that trade in the "regular-way" market will trade with an entitlement to shares of PayPal common stock distributed pursuant to the distribution. Shares that trade in the "ex-distribution" market will trade without an entitlement to shares of PayPal common stock distributed pursuant to the distribution. If you hold shares of eBay common stock on the record date and then decide to sell any shares of eBay common stock before the distribution date, you should make sure your stockbroker, bank or other nominee understands whether you want to sell your shares of eBay common stock with or without your entitlement to PayPal common stock pursuant to the distribution.

Where will I be able to trade shares of PayPal common stock?

PayPal intends to apply to list its common stock on The NASDAQ Stock Market under the symbol "PYPL." PayPal anticipates that trading in shares of its common stock will begin on a "when-issued" basis on or shortly before [●], 2015, the record date for the distribution, and will continue up to and through the distribution date and that "regular-way" trading in PayPal common stock will begin on the first trading day following the completion of the separation. If trading begins on a "when-issued" basis, you may purchase or sell PayPal common stock up to and through the distribution date, but your transaction will not settle until after the distribution date. PayPal cannot predict the trading prices for its common stock before, on or after the distribution date.

What will happen to the listing of eBay common stock?

eBay common stock will continue to trade on The NASDAQ Stock Market after the distribution under the symbol "EBAY."

Will the number of shares of eBay common stock that I own change as a result of the distribution?

No. The number of shares of eBay common stock that you own will not change as a result of the distribution.

Will the distribution affect the market price of my eBay common stock?

Yes. As a result of the distribution, eBay expects the trading price of shares of eBay common stock immediately following the distribution to be lower than the "regular-way" trading price of such shares immediately prior to the distribution because the trading price will no longer reflect the value of the Payments business. There can be no assurance that the aggregate market value of the eBay common stock and the PayPal common stock following the separation will be higher or lower than the market value of eBay common stock if the separation and distribution did not occur. This means, for example,

What are the material U.S. federal income tax consequences of the distribution?

What will PayPal's relationship be with eBay following the separation?

Who will manage PayPal after the separation?

that the combined trading prices of [•] share of eBay common stock and one share of PayPal common stock after the distribution may be equal to, greater than or less than the trading price of [•] share of eBay common stock before the distribution.

It is a condition to the completion of the distribution that eBay receive an opinion from eBay's outside legal counsel regarding the qualification of the distribution, together with certain related transactions, as transactions that are generally tax-free for U.S. federal income tax purposes under Sections 368(a)(1)(D) and 355 of the Code. Assuming that the distribution, together with certain related transactions, so qualifies, you will not recognize any gain or loss and no amount will be included in your income, upon your receipt of shares of PayPal common stock pursuant to the distribution for U.S. federal income tax purposes. You will, however, recognize gain or loss for U.S. federal income tax purposes with respect to cash received in lieu of a fractional share of PayPal common stock.

You should consult your own tax advisor as to the particular consequences of the distribution to you, including the applicability and effect of any U.S. federal, state and local tax laws, as well as foreign tax laws. For more information regarding the material U.S. federal income tax consequences of the distribution, see the section entitled "Material U.S. Federal Income Tax Consequences."

After the distribution, eBay and PayPal will be separate companies with separate management teams and separate boards of directors. PayPal will enter into a separation and distribution agreement with eBay to effect the separation and provide a framework for PayPal's relationship with eBay after the separation and will enter into certain other agreements, such as an operating agreement, a transition services agreement, a tax matters agreement, an employee matters agreement, an intellectual property matters agreement, colocation services agreements, a data sharing addendum and a product development agreement. These agreements will provide for the allocation between PayPal and eBay of eBay's assets, employees, liabilities and obligations (including its investments, property and employee benefits and taxrelated assets and liabilities) attributable to periods prior to, at and after PayPal's separation from eBay and will govern the relationships between PayPal and eBay subsequent to the completion of the separation. For additional information regarding the separation and distribution agreement and other transaction agreements, see the sections entitled "Risk Factors–Risks Related to the Separation" and "Certain Relationships and Related Party Transactions."

PayPal will benefit from a management team with an extensive background in the payments industry. Led by Daniel H. Schulman, who will be PayPal's Chief Executive Officer and President after the separation, PayPal's management team will possess deep knowledge of, and extensive experience in, its industry. For more information regarding PayPal's management, see "Management."

Are there risks associated with owning PayPal common stock?

Does PayPal plan to pay dividends?

Will PayPal incur any indebtedness prior to or at the time of the distribution?

Who will be the distribution agent, transfer agent and registrar for the PayPal common stock?

Where can I find more information about eBay and PayPal?

Yes. Ownership of PayPal common stock is subject to both general and specific risks relating to PayPal's business, the industry in which it operates, its ongoing contractual relationships with eBay and its status as a separate, publicly traded company. Ownership of PayPal common stock is also subject to risks relating to the separation. These risks are described in the "Risk Factors" section of this information statement beginning on page 15. You are encouraged to read that section carefully.

PayPal does not currently expect that it will pay a regular cash dividend. The declaration and payment of any dividends in the future by PayPal will be subject to the sole discretion of its board of directors and will depend upon many factors. See "Dividend Policy."

[•] See "Description of Material Indebtedness" and "Risk Factors–Risks Related to PayPal's Business."

The distribution agent, transfer agent and registrar for the PayPal common stock will be Computershare. For questions relating to the transfer or mechanics of the stock distribution, you should contact Computershare toll free at  $[\bullet]$  or non-toll free at  $[\bullet]$ .

Before the distribution, if you have any questions relating to eBay's business performance, you should contact:

eBay Inc. 2065 Hamilton Avenue San Jose, California 95125 Attention: Investor Relations (408) 376-7493

After the distribution, PayPal stockholders who have any questions relating to PayPal's business performance should contact PayPal at:

PayPal Holdings, Inc. 2211 North First Street San Jose, California 95131 Attention: Investor Relations ([•]) [•]-[•]

The PayPal investor relations website will be accessible prior to the distribution at <a href="http://investor.paypal-corp.com">http://investor.paypal-corp.com</a>.

#### INFORMATION STATEMENT SUMMARY

Except as otherwise indicated or unless the context otherwise requires, the information included in this information statement about PayPal assumes the completion of all of the transactions referred to in this information statement in connection with the separation and distribution. Unless the context otherwise requires, references in this information statement to "PayPal" refer to PayPal Holdings, Inc., a Delaware corporation, and its combined subsidiaries. References to PayPal's historical business and operations refer to the business and operations of eBay's Payments business that will be transferred to PayPal in connection with the separation and distribution. References in this information statement to "eBay" refer to eBay Inc., a Delaware corporation, and its consolidated subsidiaries, which prior to the distribution, but not after such date, includes the business and operations of PayPal.

#### **PayPal**

PayPal is a leading technology platform company that enables digital and mobile payments on behalf of consumers and merchants worldwide. We put our customers at the center of everything we do. We strive to increase our relevance for consumers, merchants, friends and family to access and move their money anywhere in the world, anytime, on any platform and through any device (e.g., mobile, tablets, personal computers or wearables). We provide safer and simpler ways for businesses of all sizes to accept payments from merchant websites, mobile devices and applications, and at offline retail locations through a wide range of payment solutions across our Payments Platform, including PayPal, PayPal Credit, Venmo and Braintree products.

We enable global commerce by providing payment solutions for our approximately 162 million active customer accounts in over 200 markets, while providing customers a choice of how they would like to pay or get paid. A market is a geographic area or political jurisdiction, such as a country, territory or protectorate, in which we offer our services. A country, territory or protectorate is identified by a distinct set of laws and regulations. An active customer account is a registered account that successfully sent or received at least one payment or payment reversal through our Payments Platform, excluding transactions processed through our gateway products, in the past 12 months. Our gateway products include our Payflow Payments and certain Braintree products. A payment gateway links a merchant's website to that merchant's processing network and merchant account.

We offer our customers the flexibility to use their account to both purchase and be paid for goods, as well as transfer and withdraw funds. A consumer can typically fund a purchase using a bank account, a PayPal account balance, a PayPal Credit account, a credit or debit card, or other stored value products such as coupons and gift cards. Our PayPal and Venmo products also make it safer and simpler for friends and family to transfer funds to each other using several of these funding sources. We offer merchants an end-to-end payments solution that provides authorization and settlement capabilities, as well as instant access to funds. We help merchants connect with their customers and manage risk. We measure the relevance of our products in the lives of our customers, and therefore the success of our business, through both payment volume and payment transactions. Payment volume is the value of payments, net of payment reversals, successfully completed through our Payments Platform, excluding transactions processed through our gateway products ("Total Payment Volume" or "TPV"). During 2014, our TPV was approximately \$235 billion, representing growth of 26% over 2013. "Payment transactions" is the total number of payments, net of payment reversals, successfully completed through our Payments Platform, excluding transactions processed through our gateway products. During 2014, payment transactions were approximately 4.0 billion, representing growth of 22% over 2013.



Our Payments Platform is built to make the existing global financial infrastructure work for people in the digital age. PayPal allows people to make seamless transactions between different markets and networks. Our Payments Platform connects with financial institutions around the world, and allows consumers to make purchases using a broad range of payment methods, regardless of where a merchant is located. Consumers who use our Payments Platform can engage in cross-border shopping by sending payments to each other in over 200 markets across the globe and in more than 100 currencies. This enables merchants to increase sales volume by allowing them to sell across borders to a much larger base of consumers.

We generate revenues by charging fees for providing transaction processing and other payment-related services, primarily based on the volume of activity, or TPV, processed through our Payments Platform. We also

earn revenue by providing value added services to consumers and merchants, such as PayPal Credit products. Our revenue growth is influenced by, among other things, consumer spending patterns, merchant adoption of payment methods other than traditional credit and debit cards and cash, the expansion of multi-channel retail, the growth of mobile devices and merchant applications on those devices, the growth of consumers with access to the internet globally, the pace of transition from paper-based forms of payment to digital forms of payment, our share of the digital payments market, and our ability to innovate new methods of payment that merchants and consumers find to be valuable. Our strategy is to drive revenue growth by:

Growing our core businesses globally through expanding our base of active customer accounts, increasing our customers' use of our products and services by better addressing our customers' everyday needs in managing and moving money and expanding the adoption of our solutions by new merchants and consumers;

Diversifying our existing business by seeking new areas of growth in markets around the world and focusing on innovation both in the digital and the physical world;

Providing software application developers with tools to quickly and easily integrate PayPal's smart payment solutions into merchant and next generation mobile applications; and

Leveraging the data we accumulate through processing transactions to build strong risk capabilities that enable the identification of illegal, high-risk, or fraudulent transactions with the highest level of accuracy, without impacting legitimate transactions and while incurring minimal losses.



PayPal is a popular form of payment for mobile commerce, and our business has grown with the increased adoption of mobile devices. In December 2013, we completed our acquisition of Braintree to strengthen our position in mobile payments and extend our coverage to a new class of retailers who offer their services primarily through mobile applications. As part of that acquisition, we also acquired Venmo, which offers a leading mobile application to move money between friends and family using their mobile device.

We operate globally and in a rapidly evolving regulatory environment characterized by a heightened regulatory focus on all aspects of the payments industry. Some of the laws and regulations to which we are subject were enacted recently and many such laws and regulations, including those enacted prior to the advent of digital and mobile payments, are continuing to evolve through legislative and regulatory action and judicial interpretation. Changes in or non-compliance with laws and regulations, changes in the interpretation of laws and regulations, and the enactment of new laws and regulations applicable to us could have a material adverse impact on our business. Therefore, we monitor these areas closely to ensure compliant solutions for our customers who depend on us.

#### **Summary of Risk Factors**

An investment in our common stock is subject to a number of risks, including risks relating to PayPal's business, results of operations and financial condition, risks related to the separation and risks related to our common stock. Set forth below are some, but not all, of these risks. Please read the information in the section captioned "Risk Factors" for a more thorough description of these and other risks.

#### Risks Related to PayPal's Business, Results of Operations and Financial Condition

Our operating and financial results come primarily from transactions involving payments made in a reporting period and are therefore subject to fluctuations that could adversely affect our business, financial condition, results of operations and cash flows, as well as the trading price of our common stock.

Global and regional economic conditions could harm our business.

Our success depends to a large degree on our ability to successfully address the rapidly evolving market for transactions on mobile devices.

If we cannot keep pace with rapid technological developments to provide new and innovative programs, products and services, the use of our products and our revenues could decline.

Changes in how consumers fund their PayPal transactions could harm our business.

Our business is subject to online security risks, including security breaches.

Systems failures and resulting interruptions in the availability of our websites, applications, products or services could harm our business.

Changes to payment card networks or bank fees, rules, or practices could harm our business.

Failure to deal effectively with fraud, fictitious transactions, bad transactions, and negative customer experiences would increase our loss rate and harm our business, and could severely diminish merchant and consumer confidence in and use of our services.

Any factors that reduce cross-border trade or make such trade more difficult could harm our business.

Our business is subject to extensive government regulation and oversight relating to the provision of financial services.

We are subject to consumer protection laws and regulations.

We are subject to anti-money laundering and counter-terrorist financing laws and regulations.

Regulation in the areas of privacy and protection of user data could harm our business.

PayPal is not a bank or licensed lender in the United States and relies upon third parties to make loans and provide the other products critical to our business.

Our credit products expose us to additional risks.

New and proposed laws and regulations could harm our business.

Substantial and increasingly intense competition worldwide in the global payments industry may harm our business.

#### Risks Related to the Separation

The combined post-separation value of eBay and PayPal common stock may not equal or exceed the pre-separation value of eBay common stock.

We may not achieve some or all of the expected benefits of the separation, and the separation could harm our business.

If the distribution, together with certain related transactions, does not qualify as a transaction that is generally tax-free for U.S. federal income tax purposes under Sections 368(a)(1)(D) and 355 of the Internal Revenue Code, or the "Code," eBay, PayPal and eBay stockholders could be subject to significant tax liabilities and, in certain circumstances, we could be required to indemnify eBay for material taxes pursuant to indemnification obligations under the tax matters agreement.

eBay will be a significant source of our revenues after the distribution.

#### Risks Related to our Common Stock

We cannot be certain that an active trading market for our common stock will develop or be sustained after the separation, and following the separation, and the price of our common stock may fluctuate significantly.

There may be substantial changes in our stockholder base.

#### The Separation and Distribution

On September 30, 2014, eBay announced its intent to separate its Payments business and its Marketplaces business into two independent, publicly traded companies—PayPal and eBay. The separation will occur by means of a pro rata distribution to the eBay stockholders of 100% of the shares of common stock of PayPal, which was formed to own and operate eBay's Payments business.

On [•], 2015, the eBay board of directors approved the distribution of all of PayPal's issued and outstanding shares of common stock on the basis of one share of PayPal common stock for every [•] shares of eBay common stock held as of the close of business on [•], 2015, the record date for the distribution.

#### PayPal's Post-Separation Relationship with eBay

After the distribution, eBay and PayPal will be separate companies with separate management teams and separate boards of directors. PayPal will have entered into a separation and distribution agreement with eBay, which is referred to in this information statement as the "separation agreement" or the "separation and distribution agreement." In connection with the separation, PayPal will also enter into various other agreements to effect the separation and provide a framework for its relationship with eBay after the separation, such as an operating agreement, a transition services agreement, a tax matters agreement, an employee matters agreement, an intellectual property matters agreement, colocation services agreements, a data sharing addendum and a product development agreement. These agreements will provide for the allocation between PayPal and eBay of eBay's assets, employees, liabilities and obligations (including its investments, property and employee benefits and tax-related assets and liabilities) attributable to periods prior to, at and after PayPal's separation from eBay and will govern key relationships between PayPal and eBay after the separation. For additional information regarding the separation agreement and other transaction agreements, see the sections entitled "Risk Factors-Risks Related to the Separation" and "Certain Relationships and Related Party Transactions."

#### Reasons for the Separation

In the past, the eBay Inc. board of directors has considered whether and when it would make sense to separate PayPal from eBay. Until September 2014, the combination of the two businesses and the synergies and benefits they offered to each other were so valuable that the board determined that separation was not appropriate. The eBay board of directors believes that the creation of two independent public companies, with the

new PayPal operating eBay's Payments business, and eBay operating the Marketplaces business is in the best interests of eBay and its stockholders for a number of reasons. The eBay board of directors believes that:

The separation will allow each business to more effectively pursue its own distinct operating priorities, strategies and opportunities for long-term growth and profitability in the global commerce and payments landscape.

The separation will speed up decision-making at each company and allow each to adapt more quickly to the rapidly changing market and customer dynamics in their respective markets.

The separation will provide each company with increased flexibility to pursue new partnership and strategic opportunities that may have previously been unavailable for strategic or other reasons.

The separation will permit each company to implement a capital structure appropriate to its strategy and business needs and to concentrate its financial resources solely on its own operations, providing greater flexibility to invest capital in its business in a time and manner appropriate for its distinct strategy and business needs. This will facilitate a more efficient allocation of capital.

The separation will facilitate incentive compensation arrangements for employees more directly tied to the performance of each company's business, and enhance employee hiring and retention by, among other things, improving the alignment of management and employee incentives with performance and growth objectives.

The separation will provide each company with direct access to capital markets and facilitate the ability for each to capitalize on its unique growth opportunities and effect future acquisitions utilizing its common stock.

The separation will allow investors to separately value eBay and PayPal based on their distinct investment identities, including the merits, performance, growth profile, and future prospects of their respective businesses. The separation will also provide investors with two distinct and targeted investment opportunities.

The eBay board of directors also considered a number of potentially negative factors in evaluating the creation of independent public companies, including, among others, risks relating to the loss of synergy benefits between eBay and PayPal, and increased operating costs and one-time separation costs relating to the creation of a new public company, but concluded that certain of the synergy benefits could be preserved, at least for some significant period of time, through the operating and other agreements and that the potential benefits from separation outweighed these factors. For more information, see the sections entitled "The Separation and Distribution–Reasons for the Separation" and "Risk Factors" included elsewhere in this information statement.

#### **Corporate Information**

PayPal Holdings, Inc. was incorporated in Delaware in January 2015 for the purpose of owning and operating eBay's Payments business in connection with the separation and distribution described herein. Prior to the contribution of this business to PayPal, which will occur prior to the distribution, PayPal will have no operations. The address of PayPal's principal executive offices is PayPal Holdings, Inc., 2211 North First Street, San Jose, California 95131. PayPal's telephone number after the distribution will be [●]. PayPal maintains an Internet site at www.paypal.com, and its investor relations site will be accessible prior to the distribution at http://investor.paypal-corp.com. PayPal's websites and the information contained therein or connected thereto shall not be deemed to be incorporated herein, and you should not rely on any such information in making an investment decision.

#### **Reason for Furnishing this Information Statement**

This information statement is being furnished solely to provide information to stockholders of eBay who will receive shares of PayPal common stock in the distribution. It is not and is not to be construed as an inducement or encouragement to buy or sell any of PayPal's securities. The information contained in this information statement is believed by PayPal to be accurate as of the date set forth on the cover of this information statement. Changes may occur after that date and neither eBay nor PayPal will update the information except in the normal course of their respective disclosure obligations and practices, or as required by applicable law.

#### Summary Historical and Unaudited Pro Forma Condensed Combined Financial Data

The following summary financial data reflects the combined operations of PayPal. PayPal derived the summary combined statement of income data for the years ended December 31, 2014, 2013 and 2012, and summary combined balance sheet data as of December 31, 2014 and 2013, as set forth below, from its audited combined financial statements, included elsewhere in this information statement. PayPal derived the summary combined statement of income data for the quarter ended March 31, 2015 and 2014 and summary combined balance sheet data as of March 31, 2015 and 2014, as set forth below, from its audited combined financial statements, included elsewhere in this information statement. PayPal derived the summary combined balance sheet data as of December 31, 2012 from PayPal's underlying financial records, which were derived from the financial records of eBay. The historical results do not necessarily indicate the results expected for any future period. To ensure a full understanding of this summary financial data, you should read the summary combined financial data presented below in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the combined financial statements and accompanying notes included elsewhere in this information statement.

The summary unaudited pro forma condensed combined balance sheet data as of March 31, 2015 has been prepared to reflect the separation as of March 31, 2015. The unaudited pro forma condensed combined statement of income data presented for the year ended December 31, 2014 and for the quarter ended March 31, 2015 assumes the spin-off occurred on January 1, 2014. The assumptions used and pro forma adjustments derived from such assumptions are based on currently available information and PayPal believes such assumptions are reasonable under the circumstances.

The unaudited pro forma condensed combined financial statements may not be indicative of PayPal's results of operations or financial condition had the distribution and its anticipated post-separation capital structure been completed on the dates assumed. Also, they may not reflect the results of operations or financial condition that would have resulted had PayPal been operating as an independent, publicly traded company during such periods. In addition, they are not necessarily indicative of its future results of operations or financial condition.

Historical basic and diluted earnings per share are not presented because PayPal's financial information has been prepared on a combined basis. These financial statements have not been prepared for a single legal entity that had share capital throughout the entire historical period and, accordingly, earnings per share for these periods has not been provided.

You should read this summary financial data together with "Unaudited Pro Forma Condensed Combined Financial Statements," "Capitalization," "Selected Historical Combined Financial Data of PayPal," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the combined financial statements and accompanying notes included in this information statement.

	3 Months Ended March 31,		rch 31,	Year Ended December 31,			
	Pro Forma			Pro Forma			
	2015	2015	2014	2014	2014	2013	2012
	(In millions)			(In millions)			
Combined statement of income data							
Net revenue	\$2,134	\$2,137	\$1,874	\$8,012	\$8,025	\$6,727	\$5,662
Operating income	313	322	318	1,233	1,268	1,091	880
Net income	247	255	(382)	388	419	955	778
Pro forma earnings per share							
Basic	[\$]			[\$]			
Diluted	[\$]			[\$]			

3 Months Ended March 31,			Year 1	Year Ended December 31,			
Pro Forma							
2015	2015	2014	2014	2013	2012		
	(In millions)			(In millions)			
\$4,365	\$2,365	\$2,198	\$2,201	\$1,604	\$1,414		
19,581	18,207	15,382	17,565	14,620	12,403		
4,412	4,372	4,451	4,352	4,540	3,780		
23,993	22,579	19,833	21,917	19,160	16,183		
12,797	13,549	12,252	13,283	11,261	9,574		
622	390	461	386	509	428		
13,419	13,939	12,713	13,669	11,770	10,002		
10,574	8,640	7,120	8,248	7,390	6,181		
	\$4,365 19,581 4,412 23,993 12,797 622 13,419	Pro Forma 2015         2015 (In millions)           \$4,365         \$2,365           19,581         18,207           4,412         4,372           23,993         22,579           12,797         13,549           622         390           13,419         13,939	Pro Forma 2015         2015         2014           (In millions)         \$2,365         \$2,198           19,581         18,207         15,382           4,412         4,372         4,451           23,993         22,579         19,833           12,797         13,549         12,252           622         390         461           13,419         13,939         12,713	Pro Forma 2015         2015 (In millions)         2014         2014           \$4,365         \$2,365         \$2,198         \$2,201           19,581         18,207         15,382         17,565           4,412         4,372         4,451         4,352           23,993         22,579         19,833         21,917           12,797         13,549         12,252         13,283           622         390         461         386           13,419         13,939         12,713         13,669	Pro Forma 2015         2015         2014         2014         2014         2013 (In millions)           \$4,365         \$2,365         \$2,198         \$2,201         \$1,604           19,581         18,207         15,382         17,565         14,620           4,412         4,372         4,451         4,352         4,540           23,993         22,579         19,833         21,917         19,160           12,797         13,549         12,252         13,283         11,261           622         390         461         386         509           13,419         13,939         12,713         13,669         11,770		

#### RISK FACTORS

The following discussion is divided into three sections. The first section, which begins immediately following this paragraph, discusses some of the risks that may affect our business, results of operations and financial condition. The second section, captioned 'Risk Related to the Separation," discusses some of the risks relating to our plan to separate PayPal into an independent publicly traded company. The third section, captioned 'Risks Related to Our Common Stock," discusses some of the risks relating to an investment in PayPal's Common Stock. You should carefully review all of these sections, as well as our combined financial statements and notes thereto and the other information appearing in this report, for important information regarding risks that affect us.

#### Risk Factors That May Affect Our Business, Results of Operations and Financial Condition

Our operating and financial results come primarily from transactions involving payments made in a reporting period and are therefore subject to fluctuations that could adversely affect our business, financial condition, results of operations and cash flows, as well as the trading price of our common stock.

Our operating and financial results have varied on a quarterly basis during our operating history and may continue to fluctuate significantly as a result of a variety of factors, including as a result of the risks set forth in this "Risk Factors" section. It is difficult for us to forecast the level or source of our revenues or earnings (loss) accurately. In view of the rapidly evolving nature of our business, period-to-period comparisons of our operating results may not be meaningful, and you should not rely upon them as an indication of future performance. We do not have backlog, and substantially all of our net revenues each quarter come primarily from transactions involving payments during that quarter. Due to the inherent difficulty in forecasting revenues, it is also difficult to forecast expenses as a percentage of net revenues. Quarterly and annual expenses as a percentage of net revenues reflected in our combined financial statements may be significantly different from historical or projected rates. Our operating results in one or more future quarters may fall below the expectations of securities analysts and investors. The trading price of our common stock could decline, perhaps substantially, as a result of the factors described in this paragraph.

Global and regional economic conditions could harm our business.

Our operations and performance depend significantly on global and regional economic conditions. Adverse economic conditions and events (including volatility or distress in the equity and/or debt or credit markets and fluctuations in foreign currency exchange rates) have in the past negatively impacted regional and global financial markets and will likely continue to do so from time to time in the future. These events and conditions could have a negative and adverse impact on the companies and customers with which we do business. In addition, financial turmoil affecting the banking system or financial markets could cause additional consolidation of the financial services industry, or significant financial service institution failures, new or incremental tightening in the credit markets, low liquidity, and extreme volatility in fixed income, credit, currency, and equity markets. Adverse impacts to the companies and customers with which we do business, the banking system, or financial markets could have a material adverse effect on our business, including a reduction in the volume and prices of transactions on our payments platforms.

Our success depends to a large degree on our ability to successfully address the rapidly evolving market for transactions on mobile devices.

Mobile devices are increasingly used for ecommerce transactions and payments. A significant and growing portion of our customers access our platforms through mobile devices. We may lose customers if we are not able to continue to meet our customers' mobile and multi-screen experience expectations. The variety of technical and other configurations across different mobile devices and platforms increases the challenges associated with this environment. In addition, a number of other companies with significant resources and a number of innovative startups have introduced products and services focusing on mobile markets.

Our ability to successfully address the challenges posed by the rapidly evolving market for mobile transactions is crucial to our continued success, and any failure to continuously increase the volume of mobile transactions effected through our platforms could harm our business.

If we cannot keep pace with rapid technological developments to provide new and innovative programs, products and services, the use of our products and our revenues could decline.

Rapid, significant technological changes continue to confront the industries in which we operate, including developments in smart cards, tokenization, ecommerce, mobile, and radio frequency and proximity payment devices, such as contactless payments. We cannot predict the effect of technological changes on our business. In addition to our own initiatives and innovations, we rely in part on third parties, including some of our competitors, for the development of and access to new technologies. We expect that new services and technologies applicable to the industries in which we operate will continue to emerge. These new services and technologies may be superior to, or render obsolete, the technologies we currently use in our products and services. Incorporating new technologies into our products and services may require substantial expenditures and take considerable time, and ultimately may not be successful. In addition, our ability to adopt new services and develop new technologies may be inhibited by industry-wide standards, payments networks, new laws and regulations, resistance to change from consumers or merchants, or third parties' intellectual property rights. Our success will depend on our ability to develop new technologies and adapt to technological changes and evolving industry standards.

Changes in how consumers fund their PayPal transactions could harm our business.

We pay significant transaction fees when consumers fund payment transactions using credit cards, lower fees when consumers fund payments with debit cards, nominal fees when consumers fund payment transactions by electronic transfer of funds from bank accounts, and no fees when consumers fund payment transactions from an existing PayPal account balance or through the PayPal Credit products. Our financial success is highly sensitive to changes in the rate at which our consumers fund payments using credit and debit cards, which can significantly increase our costs. Some of our consumers may prefer to use credit and debit cards if these cards offer functionality and benefits not associated with the use of their bank accounts. Some of our offerings, including the ability of consumers to make a limited number of "guest" payments without opening a PayPal account, have a higher rate of payment card funding than our basic product offering. An increase in the portion of our payment volume using credit and debit cards would materially and adversely affect our financial performance. Some of our plans to lower our funding costs, including both the PayPal Credit products and the ability for consumers to defer payment for a short period of time on some transactions, may increase the risk to us of nonpayment by consumers. An increase in fees associated with our funding mix or in losses associated with nonpayment by consumers could harm our business.

Our business is subject to online security risks, including security breaches.

Our business involves the storage and transmission of customers' personal financial information. In addition, a significant number of our customers authorize us to bill their payment card accounts directly for all transaction and other fees charged by us. We have built our reputation on the premise that our payments platform offers customers a secure way to make payments. An increasing number of websites, including those owned by several other large Internet and offline companies, have disclosed breaches of their security, some of which have involved sophisticated and highly targeted attacks on portions of their websites or infrastructure. In May 2014, eBay Inc. publicly announced that criminals were able to penetrate and steal certain data, including user names, encrypted user passwords and other non-financial user data from certain of its Marketplaces business unit databases, which led to Marketplaces requiring a password reset and fewer transactions using our PayPal services. A breach of security at PayPal could have negative consequences to our reputation, which could result in our customers using our services less often, and have significant out-of-pocket financial impact.

The techniques used to obtain unauthorized access, disable, or degrade service, or sabotage systems, change frequently, may be difficult to detect for a long time, and often are not recognized until launched against a target. Certain efforts may be state sponsored and supported by significant financial and technological resources and therefore may be even more difficult to detect. As a result, we may be unable to anticipate these techniques or to implement adequate preventative measures. Unauthorized parties may also attempt to gain access to our systems or facilities through various means, including hacking into our systems or facilities, fraud, trickery or other means of deceiving our employees, contractors and temporary staff. A party that is able to circumvent our security measures could misappropriate our or our customers' personal proprietary information, cause interruption in our operations and damage our computers or those of our customers. In addition, our customers have been and likely will continue to be targeted by parties using fraudulent "spoof" and "phishing" emails to misappropriate user names, passwords, payment card numbers, or other personal information or to introduce viruses or other malware through "trojan horse" programs to our customers' computers. Also, our information technology and infrastructure may be vulnerable to cyberattacks or security incidents and third parties may be able to access our customers' proprietary information and payment card data that are stored on or accessible through our systems. Any security breach at a company providing services to us or our customers could have similar effects. Because we promote to our customers that our payments platform offers a secure way to make payments, a security breach would have a significant impact on our reputation.

In addition, under payment card rules and our contracts with our card processors, if there is a breach of payment card information that we store, or that is stored by our direct payment card processing customers, we could be liable to the payment card issuing banks for their cost of issuing new cards and related expenses. If we were unable to accept payment cards, our business would be harmed. Additionally, financial services regulators in various jurisdictions, including the United States and the European Union, have implemented or are considering proposals to impose new authentication requirements on banks and payment processors intended to reduce online fraud, which could impose significant costs, require us to change our business practices, make it more difficult for new customers to join PayPal, and reduce the ease of use of our products, which could harm our business.

We may also need to expend significant additional resources to protect against security breaches or to redress problems caused by breaches. These issues are likely to become more difficult and costly as we expand the number of markets where we operate. Additionally, our insurance policies carry low coverage limits, which may not be adequate to reimburse us for losses caused by security breaches and we may not be able to fully collect, if at all, under these insurance policies.

Systems failures and resulting interruptions in the availability of our websites, applications, products or services could harm our business.

Our systems may experience service interruptions or degradation because of hardware and software defects or malfunctions, computer denial-of-service and other cyberattacks, human error, earthquakes, hurricanes, floods, fires, natural disasters, power losses, disruptions in telecommunications services, fraud, military or political conflicts, terrorist attacks, computer viruses, or other events. Our systems are also subject to break-ins, sabotage and intentional acts of vandalism. Some of our systems are not fully redundant and our disaster recovery planning is not sufficient for all eventualities. In addition, as a provider of payments solutions, we are subject to increased scrutiny by regulators that may require specific business continuity and disaster recovery plans and more rigorous testing of such plans. This increased scrutiny may be costly and time consuming and may divert our resources from other business priorities.

We have experienced and will likely continue to experience system failures, denial of service attacks and other events or conditions from time to time that interrupt the availability or reduce the speed or functionality of our websites and mobile applications. These events have resulted and likely will result in loss of revenue. A prolonged interruption in the availability or reduction in the speed or other functionality of our websites and mobile applications could materially harm our business. Frequent or persistent interruptions in our services could

cause current or potential customers to believe that our systems are unreliable, leading them to switch to our competitors or to avoid our sites, and could permanently harm our reputation and brands. Moreover, to the extent that any system failure or similar event results in damages to our customers or their businesses, these customers could seek significant compensation from us for their losses and those claims, even if unsuccessful, would likely be time-consuming and costly for us to address.

Our website has suffered significant intermittent unavailability, including for example, transaction failures which affected some customers in the United Kingdom for over 24 hours in August 2014 and mobile login failures which affected some customers for several hours in April 2014. Reliability is particularly critical for us because the full-time availability of our PayPal services is critical to our goal of gaining widespread acceptance among consumers and merchants for digital and mobile payments. We have undertaken certain system upgrades and re-platforming efforts designed to improve our reliability and speed. These efforts are costly and time consuming, involve significant technical risk and may divert our resources from new features and products, and there can be no guarantee that these efforts will succeed. Because we are a regulated financial institution, frequent or persistent site interruptions could lead to regulatory scrutiny, significant fines and penalties, or mandatory and costly changes to our business practices, and ultimately could cause us to lose existing licenses we need to operate or prevent us from obtaining additional licenses that we need to expand.

We also rely on facilities, components and services supplied by third parties and our business may be materially adversely affected to the extent these components or services do not meet our expectations or these third parties cease to provide the services or facilities. In particular, a decision by any of our third party hosting providers to close a facility that we use could cause system interruptions and delays, result in loss of critical data and cause lengthy interruptions in our services. We do not carry business interruption insurance sufficient to compensate us for losses that may result from interruptions in our service as a result of systems failures and similar events.

Changes to payment card networks or bank fees, rules, or practices could harm our business.

We do not directly access the payment card networks, such as Visa and MasterCard, that enable our acceptance of credit cards and debit cards (including some types of prepaid cards). As a result, we must rely on banks or other payment processors to process transactions, and must pay fees for the services. From time to time, payment card networks have increased, and may increase in the future, the interchange fees and assessments that they charge for each transaction which accesses their networks. Our payment card processors have the right to pass any increases in interchange fees and assessments on to us as well as increase their own fees for processing. Any changes in interchange fees and assessments could increase our operating costs and reduce our operating income.

In addition, in some jurisdictions, governments have required Visa and MasterCard to reduce interchange fees, or have opened investigations as to whether Visa's or MasterCard's interchange fees and practices violate antitrust law. In the United States, the Federal Reserve Board issued a final rule capping debit card interchange fees at significantly lower rates than Visa or MasterCard previously charged. In the European Union, the Multilateral Interchange Fee ("MIF") Regulation limits credit and debit interchange fees for payments to 0.3% and 0.2%, respectively. The MIF Regulation, which is expected to become effective in the second half of 2015, may significantly impact our pricing policy in the European Union. Any such material reduction in credit or debit card interchange rates in the United States or other markets could jeopardize our competitive position against traditional credit and debit card processors, although it would also lower our costs. Future changes to those regulations or to our business could potentially cause us to be treated as a payment card network, which could subject us to additional regulation and require us to change our business practices, which could reduce our revenue and adversely affect our business.

We are required by our processors to comply with payment card network operating rules, including special operating rules for payment service providers to merchants, and we have agreed to reimburse our processors for

any fines they are assessed by payment card networks as a result of any rule violations by us or our merchants. The payment card networks set and interpret the card operating rules. Payment card networks have from time to time alleged that various aspects of our business model violate these operating rules. If such allegations are not resolved, they could result in material fines and penalties or require changes in our business that may be costly. The payment card networks could adopt new operating rules or interpret or reinterpret existing rules that we or our processors might find difficult or even impossible to follow, or costly to implement. As a result, we could lose our ability to give consumers the option of using payment cards to fund their payments or the choice of currency in which they would like their card to be charged. If we were unable to accept payment cards or were meaningfully limited in our ability to do so, our business would be harmed.

We and our payment card processors have implemented specific business processes for merchants in order to comply with operating rules for providing services to merchants, but any failure to comply could result in fines. We also could be, and in the past have been, subject to fines from payment card networks if we fail to detect that merchants are engaging in activities that are illegal or that are considered "high risk," primarily the sale of certain types of digital content. For "high risk" merchants, we must either prevent such merchants from using our PayPal services or register such merchants with the payment card networks and conduct additional monitoring with respect to such merchants. Although the amount of these fines has not been material to date, any additional fines in the future could become material and could result in a termination of our ability to accept payment cards or require changes in our process for registering new customers. This would significantly damage our business. Our retail point-of-sale solution and PayPal Here product are also subject to payment card network operating rules, which may increase the costs of those products or otherwise negatively impact their deployment.

Failure to deal effectively with fraud, fictitious transactions, bad transactions, and negative customer experiences would increase our loss rate and harm our business, and could severely diminish merchant and consumer confidence in and use of our services.

We incur substantial losses due to claims from consumers that merchants have not performed or that their goods or services do not match the merchant's description. We seek to recover such losses from the merchant, but may not be able to recover in full if the merchant is unwilling or unable to pay. We also incur losses from claims that the consumer did not authorize the purchase, from consumer fraud, from erroneous transmissions and from customers who have closed bank accounts or have insufficient funds in them to satisfy payments. In addition, if losses incurred by us related to payment card transactions become excessive, they could potentially result in our losing the right to accept payment cards for payment. In the event that we were unable to accept payment cards, the number of transactions processed through our PayPal services would decrease substantially and our business could be harmed. We are similarly subject to the risk of fraudulent activity associated with merchants, consumers of PayPal Credit products and third parties handling our user information. We have taken measures to detect and reduce the risk of fraud, but these measures need to be continually improved and may not be effective against new and continually evolving forms of fraud or in connection with new product offerings. If these measures do not succeed, our business could be harmed.

Any factors that reduce cross-border trade or make such trade more difficult could harm our business.

Cross-border trade is an important source of both revenue and profits for us. For the year ended December 31, 2014, approximately 24% of total payment volume ("TPV") involved cross-border trade (i.e., transactions where the merchant and consumer were in different countries). Cross-border transactions generally provide higher revenues and operating income than similar transactions that take place within a single country or market. Cross-border trade also represents our primary (or in some cases, only) presence in certain important markets, such as China.

Cross-border trade is subject to, and may be impacted by, foreign exchange rate fluctuations. In addition, the potential interpretation and application of laws of multiple jurisdictions (e.g., the jurisdiction of the merchant and the consumer) are often extremely complicated in the context of cross-border trade. The interpretation and/or

application of such laws could impose restrictions on cross-border trade. Any factors that increase the costs of cross-border trade or restrict, delay, or make cross-border trade more difficult or impractical would lower our revenues and profits and could harm our business.

Our business is subject to extensive government regulation and oversight relating to the provision of financial services.

We are subject to various laws and regulations in the United States and other countries where we operate. Such laws and regulations include those governing banking, deposit taking, cross-border and domestic money transmission, foreign exchange, and payment services, such as payment processing and settlement services. The legal and regulatory requirements that apply to us vary in the markets where we operate and have increased over time as the geographical scope and complexity of our business and products have expanded. While we have a compliance program focused on compliance with applicable laws and regulations and have increased the resources allocated to that program in the last several years, we may still be subject to fines or other enforcement actions in one or more jurisdictions or be required to make changes to our business practices or compliance programs in the future. Non-compliance could also result in significant criminal and civil lawsuits, penalties, forfeiture of significant assets, or other enforcement actions. Costs associated with fines, enforcement actions, as well as reputational harm, changes in compliance requirements or limits on our ability to expand our product offerings could harm our business.

PayPal has obtained licenses to operate as a money transmitter (or its equivalent) in the United States, in the states where it is required, and the District of Columbia, the U.S. Virgin Islands and Puerto Rico. Our subsidiary, Venmo, is also licensed as a money transmitter in certain U.S. states. As licensed money transmitters, PayPal and Venmo are subject to restrictions with respect to their investment of customer funds, reporting requirements, bonding requirements and inspection by state regulatory agencies. Accordingly, we could be subject to liability and/or additional restrictions, forced to cease doing business with residents of certain states, forced to change our business practices or be required to obtain additional licenses or regulatory approvals that could impose substantial cost if we violate these laws or regulations.

While we currently allow our consumers with credit cards to send payments from approximately 200 markets, we allow customers in only approximately half of those markets (including the United States) to also receive payments, in some cases with significant restrictions on the manner in which customers can withdraw funds. These limitations may affect our ability to grow in these markets. Of the markets whose residents can use our PayPal services, approximately 30 markets are in member states of the European Union. We provide localized versions of our service to customers in the European Union through PayPal (Europe) S.à r.l. et Cie, SCA ("PayPal (Europe)"), our wholly-owned subsidiary that is licensed and subject to regulation as a bank in Luxembourg. Accordingly, PayPal (Europe) is subject to significant fines or other enforcement action if it violates the disclosure, reporting, anti-money-laundering, capitalization, funds management, corporate governance, privacy, information security, bank secrecy, taxation, sanctions, or other requirements imposed on Luxembourg banks. Any fines or other enforcement actions could adversely affect our business. In addition, European Union laws and regulations are typically subject to different and potentially inconsistent interpretations by the countries that are members of the European Union, which can make compliance more costly and operationally difficult to manage.

In many markets, such as China, much of Southeast Asia and South America, we serve our customers through PayPal Pte. Ltd., our wholly-owned subsidiary that is based in Singapore. PayPal Pte. Ltd. is supervised by the Monetary Authority of Singapore as a holder of a stored value facility and does not hold a remittance license. As a result, PayPal Pte. Ltd. is not able to offer remittance payments (including donations to charities) in Singapore, and can only offer payments for the purchase of goods and services. In many of the markets (other than Singapore) served by PayPal Pte. Ltd., it is not clear whether our Singapore-based service is subject only to Singapore law or, if it is subject to local laws, whether such local laws would require a payment processor like us to be licensed as a bank or financial institution or otherwise.

In Australia, we serve our customers through PayPal Australia Pty. Ltd., which is licensed by the Australian Securities and Investments Commission as a financial product and by the Australian Prudential Regulation Authority as a purchased payment facility provider, which is a type of authorized depository institution. Accordingly, PayPal Australia would be subject to significant fines or other enforcement action if it violates the disclosure, reporting, anti-money laundering, capitalization, privacy, corporate governance or other requirements imposed on Australian depository institutions.

We are also subject to regulation in other markets in which we do business and we have been and expect to continue to be required to apply for various licenses, certifications and regulatory approvals in a number of the countries where we have operations, such as Canada, Turkey, China, Mexico, Brazil and Hong Kong. There can be no assurance that PayPal will be able to obtain any such licenses. Even if PayPal were able to obtain such licenses, there are substantial costs and potential product changes involved in maintaining such licenses, and PayPal would be subject to fines or other enforcement action if it violates disclosure, reporting, anti-money laundering, capitalization, corporate governance or other requirements of such licenses. These factors could impose substantial additional costs and involve considerable delay to the development or provision of PayPal' s products in certain countries.

In many other countries it may not be clear whether we are required to be licensed as a bank, financial institution or otherwise. In such markets, we may rely on partnerships with local banks to process payments and conduct foreign exchange in local currency. Local regulators may use their power to slow or halt payments to local merchants conducted through our local banking partner. Such regulatory actions or the need to obtain licenses, certifications or other regulatory approvals could impose substantial costs and involve considerable delay to the provision or development of our PayPal services in a given market, or could require significant and costly operational changes or prevent us from providing any services in a given market.

We are subject to consumer protection laws and regulations.

We are subject to consumer protection laws and regulations in the United States and the other countries in which we operate. We are focused on compliance with these laws and regulations and have programs designed to comply with new and existing consumer protection requirements. However, any errors, failures, or delays in complying with such consumer protection laws and regulations could result in significant criminal and civil lawsuits, penalties, forfeiture of significant assets, or other enforcement actions, as well as reputational harm. Any new consumer protection laws and regulations (or changes to, or expansion of, the interpretation or application of existing laws and regulations) applicable to us could subject us to additional restrictions on our operations, additional compliance and licensure requirements, and increased regulatory scrutiny, which could force us to change our business practices or limit our ability to grow our business. Costs associated with fines or enforcement actions, changes in compliance requirements, or limitations on our ability to grow our business, could have an adverse effect on our financial results and harm our business.

Although there have been no definitive interpretations to date, we have taken actions as though our services are subject to the Electronic Fund Transfer Act and Regulation E issued by the Consumer Financial Protection Bureau ("CFPB"). Under such regulations, among other things, we are required to provide advance disclosure of changes to our services, to follow specified error resolution procedures and to reimburse consumers for losses from certain transactions not authorized by the consumer. Additionally, even technical violations of these laws can result in penalties of up to \$1,000 for each non-compliant transaction or up to \$500,000 per violation in any class action, and we could also be liable for plaintiffs' attorneys' fees. In the second quarter of 2010, two putative class-action lawsuits (Devinda Fernando and Vadim Tsigel v. PayPal, Inc. and Moises Zepeda v. PayPal, Inc.) were filed in the U.S. District Court for the Northern District of California. These lawsuits contain allegations related to violations of aspects of the Electronic Fund Transfer Act and Regulation E and violations of a previous settlement agreement related to Regulation E, and/or allege that we improperly held consumer funds or otherwise improperly limited consumer accounts. These lawsuits seek damages as well as changes to our business practices, among other remedies. A determination that there have been violations of the Electronic Fund Transfer

Act, Regulation E or violations of other laws relating to our business practices could expose us to significant liability. Any changes to our business practices resulting from these lawsuits could require us to incur significant costs and to expend substantial resources, which could delay other planned product launches or improvements and further harm our business.

The financial services sector has been increasingly subject to regulatory scrutiny. In January 2012, the CFPB finalized rules under Regulation E, mandated by the Dodd-Frank Act, which required us, beginning in October 2013, to provide additional disclosures, error resolution rights, and cancellation rights to U.S. consumers who make international remittance payments. In November 2014, the CFPB proposed a new prepaid account rule that would apply to prepaid cards and mobile wallets, including PayPal accounts. In December 2014, we became subject to CFPB supervision and examination pursuant to a new regulation that allows the CFPB to supervise all companies, including PayPal, that provide more than one million international money transfers per year. Under the regulation, CFPB examiners are now able to examine us for compliance with the remittance transfer rule and other laws and regulations. For other matters relating to regulation by the CFPB, please see the section of this information statement entitled "Business-Legal and Regulatory Proceedings."

PayPal (Europe) implements its localized services in European Union countries through a "passport" notification process through the Luxembourg regulator to regulators in other European Union member states pursuant to European Union Directives, and has completed the "passport" notification process in all European Union member countries other than Croatia. The regulators in these countries could notify PayPal (Europe) of local consumer protection laws that apply to its business, in addition to Luxembourg consumer protection law, and could also seek to persuade the Luxembourg regulator to order PayPal (Europe) to conduct its activities in the local country through a branch office. These or similar actions by these regulators could increase the cost of, or delay, our plans for expanding our business in European Union countries. In addition, the countries that are members of the European Union may each have different and potentially inconsistent interpretations of regulations implementing the European Union Payment Services Directive, which could make compliance more costly and operationally difficult to manage. The European Commission has proposed revisions to the Payments Services and Anti-Money Laundering Directives, which could further make compliance more costly and operationally difficult to manage. Finally, if the assets of PayPal (Europe) exceed certain thresholds, PayPal (Europe) could become regulated by the European Central Bank rather than Luxembourg, which would likely increase its costs.

We are subject to anti-money laundering and counter-terrorist financing laws and regulations.

We are subject to various anti-money laundering and counter-terrorist financing laws and regulations around the world that prohibit, among other things, our involvement in transferring the proceeds of criminal activities. We have programs designed to comply with new and existing legal and regulatory requirements. However, any errors, failures, or delays in complying with federal, state or foreign anti-money laundering or counter-terrorist financing laws and regulations could result in significant criminal and civil lawsuits, penalties, forfeiture of significant assets, or other enforcement actions, as well as reputational harm. For a discussion of our dealings with the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), please see the section of this information statement entitled "Business-Legal and Regulatory Proceedings."

U.S. regulators have increased their scrutiny of compliance with these obligations, which may require us to further revise or expand our compliance program, including the procedures we use to verify the identity of our customers and to monitor international and domestic transactions. Several countries in which we are regulated have also implemented new anti-money laundering and counter-terrorist financing laws and regulations, and we have had to make changes to our compliance program in response. Regulators regularly re-examine the transaction volume thresholds at which we must obtain and keep applicable records or verify identities of customers and any change in such thresholds could result in greater costs for compliance. Costs associated with fines or enforcement actions, changes in compliance requirements, or limitations on our ability to grow our business could harm our business and any new requirements or changes to existing requirements could impose significant costs, result in delays to planned product improvements, make it more difficult for new customers to join our network and reduce the attractiveness of our products and services.

Regulation in the areas of privacy and protection of user data could harm our business.

We are subject to laws relating to the collection, use, retention, security, and transfer of personally identifiable information about our customers around the world. Much of the personal information that we collect, especially financial information, is regulated by multiple laws. User data protection laws may be interpreted and applied inconsistently from country to country. In many cases, these laws apply not only to third-party transactions, but also to transfers of information between or among ourselves, our subsidiaries, and other parties with which we have commercial relations. These laws continue to develop in ways we cannot predict and that may harm our business.

Regulatory scrutiny of privacy, user data protection, use of data and data collection is increasing on a global basis. We are subject to a number of privacy and similar laws and regulations in the countries in which we operate and these laws and regulations will likely continue to evolve over time, both through regulatory and legislative action and judicial decisions. Some of these laws impose requirements that are inconsistent with one another, yet regulators may claim that both apply. Complying with these varying national requirements could cause us to incur substantial costs or require us to change our business practices in a manner adverse to our business and violations of privacy-related laws can result in significant penalties. In addition, compliance with these laws may restrict our ability to provide services to our customers that they may find to be valuable. A determination that there have been violations of laws relating to our practices under communications-based laws could expose us to significant damage awards, fines and other penalties that could, individually or in the aggregate, materially harm our business. In particular, because of the enormous number of texts, emails and other communications we send to our customers, communications laws that provide a specified monetary damage award or fine for each violation (such as those described below) could result in particularly large awards or fines.

For example, the Federal Communications Commission amended certain of its regulations under the Telephone Consumer Protection Act, or TCPA, in 2012 and 2013 in a manner that could increase our exposure to liability for certain types of telephonic communication with customers, including but not limited to text messages to mobile phones. Under the TCPA, plaintiffs may seek actual monetary loss or statutory damages of \$500 per violation, whichever is greater, and courts may treble the damage award for willful or knowing violations. We are regularly subject to class-action lawsuits, as well as individual lawsuits, containing allegations that our business violated the TCPA. We recently settled Murray v. Bill Me Later (filed in the U.S. District Court for the Northern District of Illinois in June 2012), which alleged that Bill Me Later made calls featuring artificial or prerecorded voices without prior consent. These lawsuits, and other private lawsuits not currently alleged as class actions, seek damages (including statutory damages) and injunctive relief, among other remedies. Given the enormous number of communications we send to our customers, a determination that there have been violations of the TCPA or other communications-based statutes could expose us to significant damage awards that could, individually or in the aggregate, materially harm our business.

We post on our websites our privacy policies and practices concerning the collection, use and disclosure of user data. Any failure, or perceived failure, by us to comply with our posted privacy policies or with any regulatory requirements or orders or other federal, state or international privacy or consumer protection-related laws and regulations could result in proceedings or actions against us by governmental entities or others (e.g., class action privacy litigation), subject us to significant penalties and negative publicity, require us to change our business practices, increase our costs and adversely affect our business. Data collection, privacy and security have become the subject of increasing public concern. If Internet and mobile customers were to reduce their use of our websites, mobile platforms, products, and services as a result of these concerns, our business could be harmed. As noted above, we are also subject to the possibility of security breaches, which themselves may result in a violation of these laws.

PayPal is not a bank or licensed lender in the United States and relies upon third parties to make loans and provide the other products critical to our business.

As PayPal is neither a chartered financial institution nor licensed to make loans in any state, we must rely on a bank or licensed lender to offer the PayPal Credit products in the United States. Currently, when a U.S. consumer makes a purchase using a PayPal Credit product, a chartered financial institution extends credit to the consumer, funds the extension of credit at the point of sale, and advances funds to the merchant. We subsequently purchase and retain most of the receivables related to the consumer loans made by the chartered financial institution and, as a result, bear most of the risk of loss in the event of loan defaults. Although the chartered financial institution continues to own each of the consumer accounts, we own most of the related consumer loan receivables, and we are also responsible for servicing functions related to the consumer account.

Comenity Capital Bank and WebBank, which are both industrial banks chartered by the State of Utah, currently issue PayPal Credit products in the United States, with Comenity Capital Bank originating the majority of new loans. As part of this arrangement, WebBank has agreed to take ownership of (and originate loans with respect to) all consumer accounts in the event of a termination or interruption in Comenity Capital Bank's ability to lend. Nevertheless, any termination or interruption of WebBank's or Comenity Capital Bank's ability to lend could result in the inability to originate any new PayPal Credit products, which would require us either to reach a similar arrangement with another chartered financial institution, which, if possible at all, may not be available on favorable terms, or to obtain our own bank charter, which would be a time-consuming and costly process and would subject us to a number of additional laws and regulations, compliance with which would be burdensome.

The PayPal Credit products also rely on third-party merchant processors and payment gateways to process transactions. For the year ended December 31, 2014, approximately 16% of all transaction volume by dollar amount through the PayPal Credit products was settled through the facilities of a single vendor. Any disruption to these third-party payment processing and gateway services would adversely affect the PayPal Credit products.

Our credit products expose us to additional risks.

Our PayPal Credit products are offered to a wide range of consumers, and the financial success of these products depends on our ability and the ability of the banks issuing the PayPal Credit products to manage the credit risk related to these products. The lenders extend credit at the point of sale using our proprietary segmentation and credit scoring algorithms and other analytical techniques designed to analyze the credit risk of specific consumers based on their past purchasing and payment history as well as their credit scores. These algorithms and techniques may not accurately predict the creditworthiness of a consumer due to inaccurate assumptions about a particular consumer or the economic environment, among other factors. The accuracy of the predictions and the ability of the lenders and our ability to manage credit risk related to the PayPal Credit products may also be affected by legal or regulatory changes (e.g., bankruptcy laws and minimum payment regulations), competitors' actions, changes in consumer behavior, and other factors. A lender may incorrectly interpret the data produced by these algorithms in setting its credit policies, which may impact the financial performance of the PayPal Credit products. In addition, economic and financial conditions may affect consumer confidence levels and reduce consumers' ability or willingness to use credit, including the credit extended by a lender to PayPal Credit account holders who use the PayPal Credit products, which could harm our business. As of December 31, 2014, approximately \$20.2 billion of unused credit was available to PayPal Credit account holders. While this amount represents the total unused credit available, we have not experienced, and do not anticipate, that all of our PayPal Credit account holders will access their entire available credit at any given point in time. In addition, the individual lines of credit that make up this unused credit are subject to periodic review and termination by the chartered financial institutions that are the issuers of PayPal Credit products based on, among other things, account usage and consumer creditworthiness.

Over the past several years, the volume of credit extended by the financial institutions issuing the PayPal Credit products has increased. In the United States, we purchase the receivables relating to these consumer loans

extended by the issuing banks, and therefore bear the risk of loss in the event of loan defaults. Like other businesses with significant exposure to losses from consumer credit, we face the risk that PayPal Credit account holders will default on their payment obligations, making the receivables uncollectible and creating the risk of potential charge-offs. The rate at which receivables were charged off as uncollectible, or the net charge-off rate, was approximately 5.67% for the year ended December 31, 2014. The non-payment rate among PayPal Credit account holders may increase due to, among other things, changes to underwriting standards by us and the financial institutions issuing the PayPal Credit products, worsening economic conditions, such as a recession or greater austerity in various countries, and high unemployment rates. Consumers who miss payments often fail to repay their loans, and consumers who file for protection under the bankruptcy laws generally do not repay their loans.

We have entered into an agreement with Synchrony (formerly GE Capital Retail Bank) pursuant to which we, one of our affiliates, or a third party partner of ours, will purchase, subject to certain conditions, a dual-branded retail credit card portfolio from Synchrony. We will ultimately own the related consumer loan receivables. This transaction is currently expected to close in the fourth quarter of 2016, although there can be no assurance that this transaction will close on terms currently contemplated, or at all. If this transaction is consummated, it will increase the risks relating to our ownership of consumer loan receivables.

In 2013, we began a program, working with WebBank, for WebBank to offer working capital financing to selected merchants in the United States, and for us to purchase the related receivables. Similar programs are also available in the United Kingdom and Australia. Loans to merchants present risks similar to those discussed above associated with the PayPal Credit products.

We purchase receivables related to PayPal Credit products and other credit accounts. If we are unable to fund our purchase of these receivables adequately or in a cost-effective manner, or if we are unable to efficiently manage the cash resources utilized to purchase these receivables, our business could be harmed.

New and proposed laws and regulations could harm our business.

We are subject to laws and regulations affecting our domestic and international operations in a number of other areas, including data privacy requirements, intellectual property ownership and infringement, tax, anti-competition, export requirements, anti-corruption, labor, advertising, billing, promotions, quality of services, environmental, and health and safety regulations. It is not always clear how these laws and regulations apply to our business. Many of these laws and regulations were adopted prior to the advent of the Internet, mobile, and related technologies and, as a result, do not contemplate or address the unique issues of the Internet, mobile and related technologies. Many of these laws, including some of those that do reference the Internet, mobile and related technologies are subject to interpretation by the courts on an ongoing basis and, as a result, their applicability and scope remain uncertain.

Compliance with these laws, regulations, and similar requirements may be onerous and expensive, and variances and inconsistencies from jurisdiction to jurisdiction may further increase the cost of compliance and doing business. For example, new or proposed laws in certain countries require us to maintain separate servers in those countries so that all personal data of citizens of that country are maintained locally. Any such costs, which may rise in the future as a result of changes in these laws and regulations or in their interpretation, could individually or in the aggregate make our products and services less attractive to our customers, delay the introduction of new products or services in one or more regions, or cause us to change or limit our business practices. We have implemented policies and procedures designed to ensure compliance with applicable laws and regulations, but there can be no assurance that our employees, contractors, or agents will not violate such laws and regulations or our policies and procedures.

Financial and political events have increased the level of regulatory scrutiny on large companies, and regulatory agencies may view matters or interpret laws and regulations differently than they have in the past and

in a manner adverse to our business. Our success and increased visibility have driven existing businesses that perceive us to be a threat to their businesses to raise concerns about our business models to policymakers and regulators. These businesses and their trade association groups employ significant resources in their efforts to shape the legal and regulatory regimes in countries where we have significant operations. They may employ these resources in an effort to change the legal and regulatory regimes in ways intended to reduce the effectiveness of our business and the ability of customers to use our products and services.

As we expand and localize our international activities, we are increasingly becoming obligated to comply with the laws of the countries or markets in which we operate. In addition, because our services are accessible worldwide and we facilitate sales of goods and provide services to customers worldwide, one or more jurisdictions may claim that we or our customers are required to comply with their laws. Laws regulating Internet, mobile and related technologies outside of the United States are generally less favorable to us than those in the United States. Compliance may be more costly or may require us to change our business practices or restrict our services, and the imposition of any regulations on us or our customers could harm our business. In addition, we may be subject to multiple overlapping legal or regulatory regimes that impose conflicting requirements on us (e.g., in cross-border trade). Our alleged failure to comply with foreign laws could subject us to penalties ranging from criminal prosecution to significant fines to bans on our services, in addition to the significant costs we may incur in defending against such actions.

Following the global financial crisis of 2008, U.S. federal lawmakers enacted the Dodd-Frank Act overhauling the federal government's oversight of consumer financial products and systemic risk in the U.S. financial system. The general effect of the financial reform law has been, and we expect will continue to be, to require us to make additional disclosures to our consumers and to impose new restrictions and requirements on certain of our activities, resulting in new compliance requirements and obligations that could increase our costs, may result in increased litigation and the need to make expensive product changes, and could otherwise harm our business.

Substantial and increasingly intense competition worldwide in the global payments industry may harm our business.

The global payments industry is highly competitive. We compete against businesses in varied industries, many of whom are larger than we are, have a dominant and secure position in other industries, and offer other goods and services to consumers and merchants which we do not offer. As online and offline commerce increasingly converge, the pace of change, innovation and disruption is increasing. The global payments industry is rapidly changing, highly innovative and increasingly subject to regulatory scrutiny, which may negatively affect the competitive landscape. We compete against all forms of payments, including:

paper-based transactions (principally cash and checks);

providers of traditional payment methods, particularly credit and debit cards, money orders, and Automated Clearing House transactions (these providers are primarily well-established banks);

providers of "digital wallets" which offer customers the ability to pay online and/or on mobile devices through a variety of payment methods, including with mobile applications, through contactless payments, and with a variety of payment methods;

providers of mobile payments solutions that use tokenized card data approaches and Near Field Communication ("NFC") functionality (including Host Based Card Emulation ("HCE") functionality to eliminate the need for a physical NFC chip in the device):

payment-card processors that offer their services to merchants;

providers of "person-to-person" payments that facilitate individuals sending money with an email address or mobile phone number;

providers of mobile payments; and

providers of card readers for mobile devices and of other new point of sale and multi-channel technologies.

We also face competition and potential competition from:

money remitters;

services that provide online merchants the ability to offer their customers the option of paying for purchases from their bank account or paying on credit in the United States and abroad;

issuers of stored value targeted at online payments;

other international online payment-services providers;

other providers of online account-based payments;

payment services targeting users of social networks and online gaming, often through billing to the consumer's mobile phone account;

mobile payment services between bank accounts;

payment services enabling banks to offer their online banking customers the ability to send and receive payments through their bank account;

online shopping services that provide special offers linked to a specific payment provider; and

services that help merchants accept and manage virtual currencies.

Some of these payment providers have greater customer bases, volume, scale, and market share than we do, which may provide significant competitive advantages. Some of these competitors may also be subject to less burdensome licensing, anti-money laundering, counter-terrorist financing, and other regulatory requirements. They may devote greater resources to the development, promotion, and sale of products and services, and they may offer lower prices or more effectively introduce their own innovative programs and services that adversely impact our growth. We also expect new entrants to offer competitive products and services. In addition, some merchants provide such services to themselves. Competing services tied to established banks and other financial institutions may offer greater liquidity and engender greater consumer confidence in the safety and efficacy of their services. In addition, in certain countries, such as Germany, Netherlands and Australia, electronic funds transfer is a leading method of payment for both online and offline transactions. As in the United States, established banks and other financial institutions that do not currently offer online payments could quickly and easily develop such a service.

We compete primarily on the basis of the following:

ability to attract, retain and engage both merchants and consumers with relatively low marketing expense;

ability to show that merchants will achieve incremental sales by offering our PayPal services;

security of transactions and the ability for consumers to use our PayPal services without sharing their financial information with the merchant;

simplicity of our fee structure;

ability to develop services across multiple commerce channels, including mobile payments and payments at the retail point of sale;

trust in our dispute resolution and buyer and seller protection programs;

customer service;

brand recognition;

website, mobile platform and application onboarding, ease-of-use and accessibility;

system reliability and data security;

ease and quality of integration into third-party mobile applications; and

quality of developer tools such as our application programming interfaces and software development kits.

If we are not able to differentiate our business from those of our competitors, drive value for our customers, and/or effectively align our resources with our goals and objectives, we may not be able to compete effectively against our competitors. Our failure to compete effectively against any of the foregoing competitive threats could materially and adversely harm our business.

We are exposed to fluctuations in foreign currency exchange rates.

We have significant operations internationally that are denominated in foreign currencies, primarily the Euro, British Pound, and Australian Dollar, subjecting us to foreign currency risk. The strengthening or weakening of the U.S. dollar versus the Euro, British Pound, and Australian Dollar impacts the translation of our net revenues generated in these foreign currencies into the U.S. dollar. In 2014, foreign currency movements relative to the U.S. dollar negatively impacted net revenues by approximately \$25 million (inclusive of a \$36 million negative impact from hedging activities). In 2013, foreign currency movements relative to the U.S. dollar negatively impacted net revenues by approximately \$8 million (inclusive of a \$4 million negative impact from hedging activities). Additionally, in connection with our services in multiple currencies, we set our foreign exchange rates twice per day, and may face financial exposure if we incorrectly set our foreign exchange rates or as a result of fluctuations in foreign exchange rates between the times that we set our foreign exchange rates. Given that we also hold some corporate and customer funds in non-U.S. currencies, our financial results are affected by the translation of these non-U.S. currencies into U.S. dollars. While we regularly enter into transactions to hedge portions of our foreign currency translation exposure, it is impossible to predict or eliminate the effects of this exposure. Fluctuations in foreign exchange rates could significantly impact our financial results.

We are exposed to fluctuations in interest rates.

We are exposed to interest rate risk from our investment portfolio and from interest-rate sensitive assets underlying the customer balances we hold on our combined balance sheet as customer accounts. As of December 31, 2014, approximately 97% of our total cash and investment portfolio was held in cash and cash equivalents. The assets underlying our customer balances we hold on our combined balance sheet as customer accounts are maintained in interest and non-interest bearing bank deposits, time deposits, and U.S. and foreign government and agency securities. We seek to preserve principal while holding eligible liquid assets, as defined by the regulatory requirements and commercial law in the jurisdictions in which we operate, equal to at least 100% of the aggregate amount of all customer balances. We do not pay interest on amounts due to customers. A 100 basis point adverse change in interest rates would not have a material impact on the Company's financial assets or liabilities at December 31, 2014 and 2013.

Also, fluctuations in interest rates may adversely impact our customers' spending levels and ability and willingness to pay outstanding amounts owed to us. Higher interest rates often lead to higher payment obligations by customers to us and other lenders under mortgage, credit card and other consumer loans, which may reduce our customers' ability to remain current on their obligations to us and therefore lead to increased delinquencies, charge-offs and allowance for loan and interest receivable which could have an adverse effect on our net earnings.

In addition, we may enter into a new revolving credit facility that could bear interest at a floating rate. As a result, we will be exposed to fluctuations in interest rates to the extent of our borrowings under the revolving credit facility.

Changes to our buyer and seller protection programs could increase our loss rate.

Our buyer and seller protection programs protect merchants and consumers from fraudulent transactions. In addition, consumers who pay through PayPal may have reimbursement rights from their payment card company or bank, which in turn will seek recovery from us. The risk of losses from our buyer and seller protection programs are specific to individual buyers, sellers and transactions, and may also be impacted by regional variations to these programs and modifications to these programs resulting from changes in regulatory requirements or changes that we decide to implement. For the periods presented in the combined financial statements, payments under these programs have ranged between 0.08% and 0.12% of TPV on an annual basis. Historical trends may not be an indication of future payments under these programs. Increases in our loss rate resulting from changes to our buyer and seller protection programs could harm our business.

Our international operations are subject to increased risks, which could harm our business.

Our international operations, especially in the United Kingdom, Germany (and the other countries of the European Union) and China, have generated a majority of our net revenues in recent years. In addition to uncertainty about our ability to generate revenues from our foreign operations and expand into international markets, there are risks inherent in doing business internationally, including:

expenses associated with localizing our products and services and customer data, including offering customers the ability to transact business in the local currency and adapting our products and services to local preferences (e.g., payment methods) with which we may have limited or no experience;

trade barriers and changes in trade regulations;

difficulties in developing, staffing, and simultaneously managing a large number of varying foreign operations as a result of distance, language, and cultural differences;

stringent local labor laws and regulations;

credit risk and higher levels of payment fraud;

profit repatriation restrictions, foreign currency exchange restrictions or extreme fluctuations in foreign currency exchange rates for a particular currency;

political or social unrest, economic instability, repression, or human rights issues;

geopolitical events, including natural disasters, public health issues, acts of war, and terrorism;

import or export regulations;

compliance with U.S. laws such as the Foreign Corrupt Practices Act, and foreign laws prohibiting corrupt payments to government officials, as well as U.S. and foreign laws designed to combat money laundering and the financing of terrorist activities;

antitrust and competition regulations;

potentially adverse tax developments and consequences;

economic uncertainties relating to sovereign and other debt;

different, uncertain, or more stringent user protection, data protection, privacy, and other laws;

risks related to other government regulation or required compliance with local laws;

national or regional differences in macroeconomic growth rates;

local licensing and reporting obligations; and

increased difficulties in collecting accounts receivable.

Violations of the complex foreign and U.S. laws and regulations that apply to our international operations may result in fines, criminal actions, or sanctions against us, our officers, or our employees; prohibitions on the

conduct of our business; and damage to our reputation. Although we have implemented policies and procedures designed to promote compliance with these laws, there can be no assurance that our employees, contractors, or agents will not violate our policies. These risks are inherent in our international operations and expansion and may increase our costs of doing business internationally and could harm our business.

*Use of our payments services for illegal purposes could harm our business.* 

Our payment system is susceptible to potentially illegal or improper uses, including terrorist financing, illegal online gambling, fraudulent sales of goods or services, illicit sales of prescription medications or controlled substances, piracy of software, movies, music, and other copyrighted or trademarked goods, money laundering, bank fraud, child pornography trafficking, prohibited sales of alcoholic beverages or tobacco products, online securities fraud. There has been an increased focus by intellectual property rights owners and government officials on the role that payments systems play in the sale of, and payment for, pirated digital goods on the Internet, primarily through file sharing services. Changes in law have increased the penalties for intermediaries providing payment services for certain illegal activities and additional payments-related proposals are under active consideration by government authorities. Intellectual property rights owners may seek to bring legal action against providers of payments solutions, such as PayPal, and other entities that are peripherally involved in the sale of infringing items. Rights owners have also increasingly gone into U.S. courts and obtained injunctions requiring us to cease handling transactions for named websites and third parties (in most cases located outside the United States) and to hold the funds of such parties pending judicial resolution of the rights owners' claims, which disrupts the relationship between such parties and us.

Any resulting claims could damage our reputation and any resulting liabilities, loss of transaction volume or increased costs could harm our business.

We are subject to risks associated with information disseminated through our services.

Online services companies may be subject to claims relating to information disseminated through their services, including claims alleging defamation, libel, breach of contract, invasion of privacy, negligence, copyright or trademark infringement, among other things. The laws relating to the liability of online services companies for information disseminated through their services are subject to frequent challenges both in the United States and foreign jurisdictions. Any liabilities incurred as a result of these matters could require us to incur additional costs and harm our reputation and our business.

Our potential liability to third parties for the customer-provided content on our sites, particularly in jurisdictions outside the United States where laws governing Internet transactions are unsettled, may increase. If we become liable for information provided by our customers and carried on our service in any jurisdiction in which we operate, we could be directly harmed and we may be forced to implement new measures to reduce our exposure to this liability, including expending substantial resources or discontinuing certain service offerings, which could harm our business.

Our failure to manage the assets underlying our customer funds properly could harm our business.

Our ability to manage and account accurately for the assets underlying our customer funds requires a high level of internal controls. As our business continues to grow and we expand our product offerings, we must continue to strengthen our internal controls accordingly. Our success requires significant public confidence in our ability to handle large and growing transaction volumes and amounts of customer funds. Any failure to maintain the necessary controls or to manage the assets underlying our customer funds accurately could severely diminish customer use of our products and/or result in penalties and fines, which could harm our business.

We are subject to regulatory activity and antitrust litigation under competition laws.

We are subject to scrutiny by various government agencies under U.S. and foreign laws and regulations, including competition laws. Some jurisdictions also provide private rights of action for competitors or consumers to assert claims of anti-competitive conduct. Other companies and government agencies have in the past and may in the future allege that our actions violate the antitrust or competition laws of the United States, individual states, the European Commission or other countries, or otherwise constitute unfair competition. An increasing number of governments are regulating competition law activities, including increased scrutiny in large markets such as China. Our business partnerships or agreements or arrangements with customers or other companies could give rise to regulatory action or antitrust litigation. Some regulators, particularly those outside of the United States, may perceive our business to be used so broadly that otherwise uncontroversial business practices could be deemed anticompetitive. Any claims or investigations, even if without foundation, may be very expensive to defend or respond to, involve negative publicity and substantial diversion of management time and effort and could result in significant judgments against us or require us to change our business practices.

We are subject to patent litigation.

We have repeatedly been sued for allegedly infringing other parties' patents. We are a defendant in a number of patent lawsuits and have been notified of several other potential patent disputes. We expect that we will increasingly be subject to patent infringement claims because, among other reasons:

our products and services continue to expand in scope and complexity;

we continue to expand into new business areas, including through acquisitions; and

the universe of patent owners who may claim that we, any of the companies that we have acquired, or our customers infringe their patents, and the aggregate number of patents controlled by such patent owners, continues to increase.

Such claims may be brought directly against us and/or against our customers whom we may indemnify either because we are contractually obligated to do so or we choose to do so as a business matter. We believe that an increasing number of these claims against us and other technology companies have been, and continue to be, initiated by third parties whose sole or primary business is to assert such claims. In addition, we have seen significant patent disputes between operating companies in some technology industries. Patent claims, whether meritorious or not, are time-consuming and costly to defend and resolve, and could require us to make expensive changes in our methods of doing business, enter into costly royalty or licensing agreements, make substantial payments to satisfy adverse judgments or settle claims or proceedings, or cease conducting certain operations, which would harm our business.

We may be unable to adequately protect or enforce our intellectual property rights, or third parties may allege that we are infringing their intellectual property rights.

We believe the protection of our intellectual property, including our trademarks, patents, copyrights, domain names, trade dress, and trade secrets, is critical to our success. We seek to protect our intellectual property rights by relying on applicable laws and regulations in the United States and internationally, as well as a variety of administrative procedures. We also rely on contractual restrictions to protect our proprietary rights when offering or procuring products and services, including confidentiality and invention assignment agreements entered into with our employees and contractors and confidentiality agreements with parties with whom we conduct business.

However, effective intellectual property protection may not be available in every country in which our products and services are made available, and contractual arrangements and other steps we have taken to protect our intellectual property may not prevent third parties from infringing or misappropriating our intellectual property or deter independent development of equivalent or superior intellectual property rights by others. Trademark, copyright, patent, domain name, trade dress and trade secret protection is very expensive to maintain

and may require litigation. We must protect our intellectual property rights and other proprietary rights in an increasing number of jurisdictions, a process that is expensive and time consuming and may not be successful in every jurisdiction. Also, we may not be able to discover or determine the extent of any unauthorized use of our proprietary rights. We have licensed in the past, and expect to license in the future, certain of our proprietary rights, such as trademarks or copyrighted material, to others. These licensees may take actions that diminish the value of our proprietary rights or harm our reputation. Any failure to adequately protect or enforce our intellectual property rights, or significant costs incurred in doing so, could materially harm our business.

As the number of products in the software industry increases and the functionality of these products further overlap, and as we acquire technology through acquisitions or licenses, we may become increasingly subject to infringement claims, including patent, copyright, and trademark infringement claims. Litigation may be necessary to determine the validity and scope of the patent and other intellectual property rights of others. The ultimate outcome of any allegation is uncertain and, regardless of the outcome, any such claim, with or without merit, may be time-consuming, result in costly litigation, divert management's time and attention from our business, require us to stop selling, delay shipping, or redesign our products, or require us to pay substantial amounts to satisfy judgments or settle claims or lawsuits or to pay substantial royalty or licensing fees, or to satisfy indemnification obligations that we have with some of our customers. Our failure to obtain necessary license or other rights, or litigation or claims arising out of intellectual property matters, may harm our business.

We are regularly subject to general litigation, regulatory disputes, and government inquiries.

We are regularly subject to claims, lawsuits (including class actions and individual lawsuits), government investigations, and other proceedings involving competition and antitrust, intellectual property, privacy, consumer protection, accessibility claims, securities, tax, labor and employment, commercial disputes, content generated by our customers, services and other matters. In particular, our business faces ongoing consumer protection and intellectual property litigation, as discussed above. The number and significance of these disputes and inquiries have increased as our company has grown larger, our business has expanded in scope and geographic reach, and our products and services have increased in complexity. In addition, some of the laws and regulations affecting Internet and mobile commerce and consumer credit are subject to ongoing interpretation by the courts and governmental authorities, and the resulting uncertainty in the scope and application of these laws and regulations increases the risk that we will be subject to private claims and governmental actions alleging violations of those laws and regulations.

The outcome and impact of such claims, lawsuits, government investigations, and proceedings cannot be predicted with certainty. Regardless of the outcome, such investigations and proceedings can have an adverse impact on us because of legal costs, diversion of management resources, and other factors. Determining reserves for our pending litigation is a complex, fact-intensive process that is subject to judgment calls. It is possible that a resolution of one or more such proceedings could require us to make substantial payments to satisfy judgments, fines or penalties or to settle claims or proceedings, any of which could materially adversely affect our business. These proceedings could also result in reputational harm, criminal sanctions, consent decrees, or orders preventing us from offering certain products, or services, or requiring a change in our business practices in costly ways, or requiring development of non-infringing or otherwise altered products or technologies. Any of these consequences could materially adversely affect our business.

We may have exposure to greater than anticipated tax liabilities.

The determination of our worldwide provision for income taxes and other tax liabilities requires estimation and significant judgment, and there are many transactions and calculations where the ultimate tax determination is uncertain. Like many other multinational corporations, we are subject to tax in multiple U.S. and foreign tax jurisdictions and have structured our operations to reduce our effective tax rate. Our determination of our tax liability is always subject to audit and review by applicable domestic and foreign tax authorities, and we are currently undergoing a number of investigations, audits and reviews by taxing authorities throughout the world,

including with respect to our tax structure. Any adverse outcome of any such audit or review could have a negative effect on our business and the ultimate tax outcome may differ from the amounts recorded in our financial statements and may materially affect our financial results in the period or periods for which such determination is made. While we have established reserves based on assumptions and estimates that we believe are reasonable to cover such eventualities, these reserves may prove to be insufficient.

In addition, our future income taxes could be adversely affected by earnings being lower than anticipated (or by the incurrence of losses) in jurisdictions that have lower statutory tax rates and higher than anticipated in jurisdictions that have higher statutory tax rates, by changes in the valuation of our deferred tax assets and liabilities, as a result of gains on our foreign exchange risk management program, or changes in tax laws, regulations, or accounting principles, as well as certain discrete items.

In light of continuing fiscal challenges in certain U.S. states and in many countries in Europe, various levels of government are increasingly focused on tax reform and other legislative action to increase tax revenue, including corporate income taxes. For example, the economic downturn reduced tax revenues for United States federal and state governments, and a number of proposals to increase taxes from corporate entities have been implemented or are being considered at various levels of government. These include a number of proposals to modify the U.S. federal income tax laws applicable to companies, like ours, operating in multiple U.S. and foreign jurisdictions which, if enacted, could materially increase our effective tax rate. A number of U.S. states have attempted to increase corporate tax revenues by taking an expansive view of corporate presence to attempt to impose corporate income taxes and other direct business taxes on companies that have no physical presence in their state, and taxing authorities in foreign jurisdictions may take similar actions. Many U.S. states are also altering their apportionment formulas to increase the amount of taxable income or loss attributable to their state from certain out-of-state businesses. Similarly, in Europe, and elsewhere in the world, there are various tax reform efforts underway designed to ensure that corporate entities are taxed on a larger percentage of their earnings. If more taxing authorities are successful in applying direct taxes to Internet companies that do not have a physical presence in their respective jurisdictions, this could increase our effective tax rate.

We and our merchants may be subject to sales reporting and record-keeping obligations.

One or more states or the federal government or foreign countries may seek to impose reporting or record-keeping obligations on companies that engage in or facilitate ecommerce. Such an obligation could be imposed by legislation intended to improve tax compliance (and legislation to such effect has been contemplated by several states and a number of foreign jurisdictions) or if one of our companies was ever deemed to be the legal agent of our merchants by a jurisdiction in which it operates. We are required to report to the Internal Revenue Service, ("IRS"), on customers subject to U.S. income tax who receive more than \$20,000 in payments and more than 200 payments in a calendar year. As a result, we are required to request tax identification numbers from certain payees, track payments by tax identification number and, under certain conditions, withhold a portion of payments and forward such withholding to the IRS. We have modified our software to meet these requirements and expect increased operational costs and changes to our customer experience in connection with complying with these reporting obligations. The IRS regulations also require us to collect a certification of non-U.S. taxpayer status from certain international merchants. The Foreign Account Tax Compliance Act, which took effect at the start of 2013, is likely to require an increase in the number of non-U.S. customers from whom we must obtain a similar certification, and to increase the compliance burdens on us. Any failure by us to meet these new requirements could result in substantial monetary penalties and other sanctions and could harm our business.

Acquisitions, joint ventures, and strategic investments could result in operating difficulties and could harm our business.

We have acquired a significant number of businesses of varying size and scope, technologies, services, and products. We also expect to continue to evaluate and consider a wide array of potential strategic transactions as part of our overall business strategy, including business combinations, acquisitions, and dispositions of businesses, technologies, services, products, and other assets, as well as strategic investments and joint ventures.

These transactions may involve significant challenges and risks, including:

the potential loss of key customers, vendors and other key business partners of the companies we acquire, or dispose of, following and continuing after announcement of our transaction plans;

declining employee morale and retention issues affecting employees of companies that we acquire or dispose of, which may result from changes in compensation, or changes in management, reporting relationships, future prospects or the direction of the acquired or disposed business;

difficulty making new and strategic hires of new employees;

diversion of management time and a shift of focus from operating the business to the transaction, and in the case of an acquisition, integration and administration;

the need to integrate the operations, systems (including accounting, management, information, human resource and other administrative systems), technologies, products and personnel of each acquired company, which is an inherently risky and potentially lengthy and costly process;

the inefficiencies and lack of control that may result if such integration is delayed or not implemented, and unforeseen difficulties and expenditures that may arise as a result;

the need to implement or improve controls, procedures and policies appropriate for a larger public company at companies that prior to acquisition may have lacked such controls, procedures and policies or whose controls, procedures and policies did not meet applicable legal and other standards;

risks associated with our expansion into new international markets;

derivative lawsuits resulting from the acquisition;

liability for activities of the acquired company before the acquisition, including intellectual property and other litigation claims or disputes, violations of laws, rules and regulations, commercial disputes, tax liabilities and other known and unknown liabilities;

the potential loss of key employees following the transaction;

the acquisition of new customer and employee personal information, which in and of itself may require regulatory approval and or additional controls, policies and procedures and subject us to additional exposure; and

our dependence on the acquired business' accounting, financial reporting, operating metrics and similar systems, controls and processes and the risk that errors or irregularities in those systems, controls and processes will lead to errors in our combined financial statements or make it more difficult to manage the acquired business.

At any given time we may be engaged in discussions or negotiations with respect to one or more of these types of transactions and any of these transactions could be material to our financial condition and results of operations. In addition, it may take us longer than expected to fully realize the anticipated benefits of these transactions, and those benefits may ultimately be smaller than anticipated or may not be realized at all, which could adversely affect our business and operating results. Any acquisitions or dispositions may also require us to issue additional equity securities, spend our cash, or incur debt (and increased interest expense), liabilities, and amortization expenses related to intangible assets or write-offs of goodwill, which could adversely affect our results of operations and dilute the economic and voting rights of our stockholders.

In addition, we may make certain investments, including through joint ventures, in which we have a minority equity interest and/or lack management and operational control. Under such circumstances, the controlling joint venture partner in a joint venture investment may have business interests, strategies or goals that are inconsistent with ours, and business decisions or other actions or omissions of the controlling investor, joint venture partner or joint venture company may result in harm to our reputation or adversely affect the value of our investment in the investment or joint venture.

Problems with or price increases by third parties who provide services to us or to our customers could harm our business.

A number of third parties provide services to us or to our customers. We are dependent on caching services that make our sites load faster, the processing companies and banks that link us to the payment card, and bank clearing networks to process transactions, among others. We are subject to, among other things, increases in interchange fees and assessments that payment card networks such as Visa and MasterCard charge for each transaction using one of their cards (which our payment card processors have the right to pass on to us), as well as changes in payment card network operating rules, including special operating rules for Internet payment services providers, such as PayPal. Similarly, we rely on unaffiliated lenders to make the consumer and other loans originated through the PayPal Credit products and also rely heavily on third parties to operate our services, including merchant processors and payment gateways to process transactions and third parties that provide loan receivable tracking and customer statements processing. Financial or regulatory issues, labor issues (e.g., strikes, lockouts, or work stoppages), or other problems that prevent these companies from providing services to us or our customers could harm our business.

Price increases by, or service terminations, disruptions or interruptions at, companies that provide services to us and our customers and clients could also make it more difficult for our merchants to complete transactions, thereby harming our business. Some third parties who provide services to us may have or gain market power and be able to increase their prices to us without competitive constraint.

We have outsourced certain functions to third-party providers, including some customer support and product development functions, which are critical to our operations. If our service providers do not perform satisfactorily, our operations could be disrupted, which could result in customer dissatisfaction and could harm our business.

There can be no assurance that third parties who provide services directly to us or our customers will continue to do so on acceptable terms, or at all. If any third parties were to stop providing services to us or our merchants on acceptable terms, including as a result of bankruptcy, we may be unable to procure alternatives from other third parties in a timely and efficient manner and on acceptable terms, or at all.

Our developer platforms, which are open to merchants and third-party developers, subject us to additional risks.

We provide third-party developers with access to application programming interfaces, software development kits and other tools designed to allow them to produce applications for use, with a particular focus on mobile applications. There can be no assurance that merchants or third-party developers will develop and maintain applications and services on our open platforms on a timely basis or at all, and a number of factors could cause such third-party developers to curtail or stop development for our platforms. In addition, our business is subject to many regulatory restrictions. It is possible that merchants and third-party developers who utilize our development platforms or tools could violate these regulatory restrictions and we may be held responsible for such violations, which could harm our business.

Our retail point of sale solutions expose us to additional risks.

We have announced several retail point of sale solutions, which enable merchants to accept payments using a payments card reader attached to, or otherwise communicating with, a mobile device or to scan payment cards and codes using the mobile device's embedded camera and which will enable consumers to use their mobile devices to pay hands-free. To the extent that we continue to expand our product and service offerings at the retail point of sale, we will face additional risks, including:

increased expectations from offline retailers regarding the reliability and availability of our systems and services and correspondingly lower amounts of downtime, which we may not be able to meet;

significant competition at the retail point of sale, particularly from established payment card providers such as Visa, MasterCard and American Express, many of which have substantially greater resources than we do;

increased targeting by fraudsters, and given that our fraud models are less developed in this area, we may experience increases in fraud and associated transaction losses as we adjust to fraudulent activity at the point of sale;

exposure to product liability claims to the extent that hardware devices that we produce for use at the retail point of sale malfunction or are not in compliance with laws, which could result in substantial liability and require product recalls or other actions;

exposure to new or additional laws and regulations;

increased reliance on third parties involved with processing in-store payments, including independent software providers, electronic point of sale providers, hardware providers (such as cash register and pin-pad providers), payment processors and banks that enable in-store transactions; and

lower operating income than our other payment solutions.

Unless we are able to successfully manage these risks, including driving adoption of, and significant volume through, our retail point of sale solutions over time, our business may be harmed.

Our success largely depends on key personnel. Because competition for our key employees is intense, we may not be able to attract, retain, and develop the highly skilled employees we need to support our business. The loss of senior management or other key personnel could harm our business.

Our future performance depends substantially on the continued services of our senior management and other key personnel, including key engineering and product development personnel, and our ability to attract, retain, and motivate key personnel. Competition for key personnel is intense, especially in the Silicon Valley where our corporate headquarters are located, and we may be unable to successfully attract, integrate, or retain sufficiently qualified key personnel. In making employment decisions, particularly in the Internet and high-technology industries, job candidates often consider the value of the equity awards they would receive in connection with their employment and fluctuations in our stock price may make it more difficult to attract, retain, and motivate employees. In addition, we do not have long-term employment agreements with any of our key personnel and do not maintain any "key person" life insurance policies. The loss of the services of any of our senior management or other key personnel, or our inability to attract highly qualified senior management and other key personnel, could harm our business.

## Risks Related to the Separation

The combined post-separation value of eBay and PayPal common stock may not equal or exceed the pre-separation value of eBay common stock.

As a result of the distribution, eBay expects the trading price of eBay common stock immediately following the distribution to be lower than the "regular-way" trading price of such common stock immediately prior to the distribution because the trading price will no longer reflect the value of the Payments business held by PayPal. The aggregate market value of the eBay common stock and the PayPal common stock following the separation may be higher or lower than the market value of eBay common stock immediately prior to the separation.

We may not achieve some or all of the expected benefits of the separation, and the separation could harm our business.

We may not be able to achieve the full strategic and financial benefits expected to result from the separation, or such benefits may be delayed or not occur at all. The separation and distribution is expected to

provide the following benefits, among others: enhanced strategic and management focus; better ability to form strategic partnerships and relationships; faster decision-making; more efficient allocation of capital; alignment of incentives with performance objectives; direct access to the capital markets; and a distinct investment identity. For more information regarding the reasons for the separation, please refer to "The Separation and Distribution."

We may not achieve these and other anticipated benefits for a variety of reasons, including, among others:

the separation will require significant amounts of management's time and effort, which may divert management's attention from operating and growing our business;

following the separation, we may be more susceptible to market fluctuations and other adverse events than if we were still a part of eBay;

following the separation, our business will be less diversified than eBay's business prior to the separation;

following the separation, regulatory requirements may inhibit or prevent certain of the activities the parties intend to continue to preserve operating synergies; and

the other actions required to separate the respective businesses could disrupt our operations.

If we fail to achieve some or all of the benefits expected to result from the separation, or if such benefits are delayed, our business could be harmed.

If the distribution, together with certain related transactions, does not qualify as a transaction that is generally tax-free for U.S. federal income tax purposes under Sections 368(a)(1)(D) and 355 of the Internal Revenue Code (the "Code"), eBay, PayPal and eBay stockholders could be subject to significant tax liabilities and, in certain circumstances, we could be required to indemnify eBay for material taxes pursuant to indemnification obligations under the tax matters agreement.

A condition to the distribution is the receipt by eBay of an opinion from eBay's outside legal counsel regarding the qualification of the distribution, together with certain related transactions, as a transaction that is generally tax-free for U.S. federal income tax purposes under Sections 368(a)(1)(D) and 355 of the Code. The opinion will be based on and rely on, among other things, certain facts and assumptions, as well as certain representations, statements and undertakings of eBay and PayPal, including those relating to the past and future conduct of eBay and PayPal. If any of these representations, statements or undertakings are, or become, inaccurate or incomplete, or if eBay or PayPal breach any of their respective covenants in the separation documents, the opinion of counsel may be invalid and the conclusions reached therein could be jeopardized.

Notwithstanding the opinion of counsel, the IRS could determine that the distribution, together with certain related transactions, should be treated as a taxable transaction if the IRS determines that any of these representations, assumptions, or undertakings upon which such opinion was based are incorrect or have been violated or if the IRS disagrees with the conclusions in the opinion of counsel. An opinion of counsel is not binding on the IRS or any court and there can be no assurance that the IRS will not challenge the conclusions reached in the opinion. The IRS will not provide any opinion in advance of the separation that our proposed transaction will be tax-free.

If the distribution, together with certain related transactions, failed to qualify as a transaction that is generally tax-free under Sections 368(a)(1)(D) and 355 of the Code, in general, eBay would recognize taxable gain as if it had sold the PayPal common stock in a taxable sale for its fair market value, eBay stockholders who receive PayPal common stock in the distribution would be subject to tax as if they had received a taxable distribution equal to the fair market value of such shares and we could incur significant liabilities. For more information, please refer to "Material U.S. Federal Income Tax Consequences."

We may not be able to engage in desirable strategic or capital-raising transactions following the separation. In addition, we could be liable for adverse tax consequences resulting from engaging in significant strategic or capital-raising transactions.

To preserve the tax-free treatment to eBay of the separation and the distribution, under the tax matters agreement that we will enter into with eBay, for a period of time following the distribution, we generally will be prohibited from taking certain actions that prevent the distribution and related transactions from qualifying as a transaction that is generally tax-free, for U.S. federal income tax purposes under Sections 368(a)(1)(D) and 355 of the Code.

These restrictions may limit our ability to pursue certain strategic transactions or other transactions that may maximize the value of our business. For more information, please refer to "Material U.S. Federal Income Tax Consequences" and "Certain Relationships and Related Person Transactions—The Tax Matters Agreement."

We have no history of operating as an independent company in our current form, and our historical and pro forma financial information is not necessarily representative of the results that we would have achieved as a separate, publicly traded company and may not be a reliable indicator of our future results.

Our historical information provided in this information statement refers to our business as operated by and integrated with eBay. Our historical and pro forma financial information included in this information statement is derived from the consolidated financial statements and accounting records of eBay. Accordingly, the historical and pro forma financial information included in this information statement does not necessarily reflect the financial condition, results of operations, or cash flows that we would have achieved as a separate, publicly traded company during the periods presented or those that we will achieve in the future primarily as a result of the factors described below:

Prior to the separation, our business has been operated by eBay as part of its broader corporate organization, rather than as an independent company. eBay or one of its affiliates performed various corporate functions for us, such as legal, finance, treasury, accounting, tax, auditing, human resources, and public affairs. Our historical and pro forma financial results reflect allocations of corporate expenses from eBay for such functions, which are likely to be less than the expenses we would have incurred had we operated as a separate publicly traded company.

Currently, our business is integrated with the other businesses of eBay. Historically, we have shared economies of scope and scale in costs, employees, vendor relationships and customer relationships. Although we will enter into transition agreements and an operating agreement with eBay, these arrangements may not retain or fully capture the benefits that we have enjoyed as a result of being integrated with eBay and may result in our paying higher charges than in the past for these services. This could have an adverse effect on our results of operations and financial condition following the completion of the separation.

We may lose certain synergies and benefits we enjoyed as a result of being a part of eBay. As a part of eBay, we benefited from, among other things, the acquisition of new customers from eBay, capital to fund acquisitions, investments, and credit, and data from eBay that helps us to manage risks and maintain a low loss rate. In addition, being a part of eBay enables us to leverage eBay's technology capabilities, data, commerce platforms and relationships with retailers, brands and large merchants worldwide. The loss of these synergies and benefits could have an adverse impact on our results of operations and financial condition following the completion of the separation.

Generally, our working capital requirements and capital for our general corporate purposes, including acquisitions and capital expenditures, have historically been satisfied as part of the corporate-wide cash management policies of eBay. Following the completion of the separation, we may need to obtain additional financing from banks, through public offerings or private placements of debt or equity securities, or through strategic relationships or other arrangements, which may or may not be available and may be more costly.

After the completion of the separation, the cost of capital for our business may be higher than eBay's cost of capital prior to the separation.

Other significant changes may occur in our cost structure, management, financing, and business operations as a result of operating as a company separate from eBay. For additional information about the past financial performance of our business and the basis of presentation of the historical combined financial statements and the unaudited pro forma condensed combined financial statements of our business, see "Unaudited Pro Forma Condensed Combined Financial Statements," "Selected Historical Combined Financial Data of PayPal," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the historical financial statements and accompanying notes included elsewhere in this information statement.

eBay will be a significant source of our revenues after the distribution.

After the distribution, we will derive a significant amount of revenues from eBay. If the operating agreement expires or if eBay terminates the operating agreement prior to its expiration or there is a significant change in our relationship with eBay, including if eBay becomes a merchant of record, eliminates or modifies any of its risk management or customer protection programs, directs transactions to a different provider of payment services or offers eBay customers more payment options, our business could be harmed.

Until the separation occurs, eBay has sole discretion to change the terms of the separation in ways which may be unfavorable to us.

Until the separation occurs, we will be a wholly owned subsidiary of eBay. Accordingly, eBay will effectively have the sole and absolute discretion to determine and change the terms of the separation, including the terms of any agreements between eBay and us. These changes could be unfavorable to us. In addition, eBay may decide at any time not to proceed with the separation and distribution.

eBay may fail to perform under various transaction agreements that will be executed as part of the separation or it may fail to have necessary systems and services in place when certain of the transaction agreements expire.

In connection with the separation, we will enter into a separation and distribution agreement with eBay and will also enter into various other agreements, including an operating agreement, colocation services agreements, a transition services agreement, a tax matters agreement, an employee matters agreement, an intellectual property matters agreement, a data sharing addendum, and a product development agreement. The separation agreement, the tax matters agreement, the employee matters agreement, and intellectual property matters agreement will determine the allocation of assets and liabilities (including by means of licensing) between the companies following the separation for those respective areas and will include any necessary indemnifications related to liabilities and obligations. The operating agreement, colocation services agreements and data sharing addendum will establish certain commercial relationships between eBay and us related to payment processing, credit, information technology infrastructure and data sharing. The transition services agreement will provide for the performance of certain services by each company for the benefit of the other for a limited period of time after the separation. We will rely on eBay to satisfy its performance and payment obligations under these agreements. If eBay is unable to satisfy its obligations under these agreements, including its indemnification obligations, we could incur operational difficulties or losses. If we do not have in place our own systems and services, or if we do not have agreements with other providers of these services once these transaction agreements expire or terminate, we may not be able to operate our business effectively and our profitability may decline.

Our accounting and other management systems and resources may not be adequately prepared to meet the financial reporting and other requirements to which we will be subject following the distribution.

Our financial results previously were included within the consolidated results of eBay, and its reporting and control systems were appropriate for subsidiaries of a public company. Prior to the distribution, we were not

directly subject to reporting and other requirements of the Securities Exchange Act of 1934, as amended, and Section 404 of the Sarbanes-Oxley Act of 2002. After the distribution, we expect to be subject to such reporting and other requirements in 2016, which will require, among other things, annual management assessments of the effectiveness of our internal controls over financial reporting and a report by our independent registered public accounting firm addressing these assessments. These and other obligations will place significant demands on our management, administrative, and operational resources, including accounting and information technology resources. To comply with these requirements, we anticipate that we will need to upgrade our systems, including duplicating computer hardware infrastructure, implement additional financial and management controls, reporting systems and procedures, and hire additional accounting, finance and information technology staff. If we are unable to do this in a timely and effective fashion, our ability to comply with our financial reporting requirements and other rules that apply to reporting companies could be impaired and our business could be harmed.

After the separation, certain of our directors may have actual or potential conflicts of interest because of their previous or continuing positions at eBay.

Because of their current or former positions with eBay, certain of our expected directors own eBay common stock and equity awards. Following the separation, even though our board of directors will consist of a majority of directors who are independent, some of our directors will continue to have a financial interest in eBay common stock and equity awards. In addition, it is expected that one of our directors will continue serving on the board of directors of eBay. Continuing ownership of eBay common stock and equity awards, or service as a director at both companies could create, or appear to create, potential conflicts of interest if PayPal and eBay have disagreements about the contracts between them that continue or face decisions that could have different implications for PayPal and eBay.

#### Risks Related to Our Common Stock

We cannot be certain that an active trading market for our common stock will develop or be sustained after the separation, and following the separation, and the price of our common stock may fluctuate significantly.

A public market for our common stock does not currently exist. We anticipate that on or prior to the record date for the distribution, trading of shares of our common stock will begin on a "when-issued" basis which will continue through the distribution date. However, we cannot guarantee that an active trading market will develop or be sustained for our common stock after the separation. Nor can we predict the prices at which shares of our common stock may trade after the separation. Similarly, we cannot predict the effect of the separation on the price of our common stock or whether the combined market value of our common stock and the eBay common stock will be less than, equal to or greater than the market value of eBay common stock prior to the separation.

The price of our common stock may fluctuate significantly due to a number of factors, some of which may be beyond our control, including:

actual or anticipated fluctuations in our operating results;

changes in earnings estimated by securities analysts or our ability to meet those estimates;

the change in our stockholder base due to the spin-off;

the operating and stock price performance of comparable companies;

changes to the regulatory and legal environment under which we operate; and

market conditions in the payments industry, the industries of merchants and the domestic and worldwide economy as a whole.

There may be substantial changes in our stockholder base.

Many investors holding eBay common stock may hold that stock because of a decision to invest in a company with eBay's profile. Following the distribution, the shares of our common stock held by those investors

will represent an investment in a payments company with a different profile. This may not be aligned with a holder's investment strategy and may cause the holder to sell the shares. As a result, our stock price may decline or experience volatility as our stockholder base changes.

PayPal's amended and restated certificate of incorporation will designate the state courts of the State of Delaware, or, if no state court located in the State of Delaware has jurisdiction, the federal court for the District of Delaware, as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by PayPal's stockholders, which could discourage lawsuits against PayPal and PayPal's directors and officers.

PayPal's amended and restated certificate of incorporation will provide that unless the corporation otherwise determines, the state courts of the State of Delaware, or, if no state court located in the state of Delaware has jurisdiction, the federal court for the District of Delaware, will be the sole and exclusive forum for any derivative action or proceeding brought on behalf of PayPal, any action asserting a claim of breach of a fiduciary duty owed by any director or officer of PayPal to PayPal or PayPal's stockholders, creditors or other constituents, any action asserting a claim against PayPal or any director or officer of PayPal arising pursuant to any provision of the Delaware General Corporation Law or PayPal's amended and restated certificate of incorporation or bylaws, or any action asserting a claim against PayPal or any director or officer of PayPal governed by the internal affairs doctrine. This exclusive forum provision may limit the ability of PayPal's stockholders to bring a claim in a judicial forum that such stockholders find favorable for disputes with PayPal or PayPal's directors or officers, which may discourage such lawsuits against PayPal and PayPal's directors and officers. Alternatively, if a court outside of Delaware were to find this exclusive forum provision inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings described above, PayPal may incur additional costs associated with resolving such matters in other jurisdictions, which could adversely affect PayPal's business, financial condition or results of operations.

Certain provisions in PayPal's amended and restated certificate of incorporation and bylaws may prevent or delay an acquisition of PayPal, which could decrease the trading price of PayPal common stock.

PayPal's amended and restated certificate of incorporation and amended and restated bylaws will contain certain provisions that may have the effect of deterring coercive takeover practices and inadequate takeover bids by making such practices or bids unacceptably expensive to the bidder and by encouraging prospective acquirers to negotiate with PayPal's board of directors rather than to attempt a hostile takeover. These provisions include, among others:

rules regarding how stockholders may present proposals or nominate directors for election at stockholder meetings;

the fact that directors may not be elected, removed or replaced at stockholder-requested special meetings unless a person, entity or group owns at least a majority of PayPal's outstanding common stock;

the right of PayPal's board to issue preferred stock without stockholder approval; and

the ability of PayPal's directors, and not stockholders, to fill vacancies on PayPal's board of directors in most circumstances.

PayPal has also elected not to be governed by Section 203 of the DGCL, which provides that, subject to limited exceptions, persons that acquire, or are affiliated with a person that acquires, more than 15% of the outstanding voting stock of a Delaware corporation shall not engage in any business combination with that corporation, including by merger, consolidation or acquisitions of additional shares, for a three-year period following the date on which that person or its affiliates becomes the holder of more than 15% of the corporation's outstanding voting stock. PayPal's amended and restated certificate of incorporation will, however, contain a provision that generally mirrors Section 203 of the DGCL, except that there will be a 20% threshold instead of the 15% provided for by the DGCL. These provisions could delay or prevent a change of control that PayPal's stockholders may favor.

Certain of the above provisions were added pursuant to the agreement between eBay Inc. and certain entities under the control of Carl C. lcahn. These provisions are not intended to make PayPal immune from takeovers. However, these provisions will apply even if the offer may be considered beneficial by some stockholders and could delay or prevent an acquisition that PayPal's board of directors determines is not in the best interests of PayPal and PayPal's stockholders. These provisions may also prevent or discourage attempts to remove and replace incumbent directors.

In addition, an acquisition or further issuance of PayPal's stock could trigger the application of Section 355(e) of the Code. For a discussion of Section 355(e), see "Material U.S. Federal Income Tax Consequences." Under the tax matters agreement, PayPal would be required to indemnify eBay for any resulting taxes, and this indemnity obligation might discourage, delay or prevent a change of control that PayPal's stockholders may consider favorable. Please refer to "Certain Relationships and Related Person Transactions" and "Description of PayPal's Capital Stock" for a more detailed description of these agreements and provisions.

#### CAUTIONARY STATEMENT CONCERNING FORWARD-LOOKING STATEMENTS

This information statement and other materials eBay and PayPal have filed or will file with the SEC contain, or will contain, certain forward-looking statements regarding business strategies, market potential, future financial performance and other matters. The words "believe," "expect," "anticipate," "project" and similar expressions, among others, generally identify "forward-looking statements," which speak only as of the date the statements were made. The matters discussed in these forward-looking statements are subject to risks, uncertainties and other factors that could cause actual results to differ materially from those projected, anticipated or implied in the forward-looking statements. In particular, information included under "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," "Business," and "The Separation and Distribution" contain forward-looking statements. Where, in any forward-looking statement, an expectation or belief as to future results or events is expressed, such expectation or belief is based on the current plans and expectations of PayPal management and expressed in good faith and believed to have a reasonable basis, but there can be no assurance that the expectation or belief will result or be achieved or accomplished. Except as may be required by law, PayPal undertakes no obligation to modify or revise any forward-looking statements to reflect events or circumstances occurring after the date of this information statement. Factors that could cause actual results or events to differ materially from those anticipated include the matters described under "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations."

#### THE SEPARATION AND DISTRIBUTION

#### Overview

On September 30, 2014, eBay Inc. ("eBay") announced its intent to separate its payments business into an independent, publicly-traded company. To accomplish this separation, in January 2015, eBay incorporated PayPal Holdings, Inc. ("PayPal Holdings") which will ultimately become the parent of PayPal, Inc. and will hold directly or indirectly all of the assets and liabilities associated with PayPal, Inc. eBay intends to effect this separation through a pro rata distribution of the common stock of PayPal Holdings to its stockholders. References to "we," "our," "us," "the Company" or "PayPal" refer to the combined entities of the payments business of eBay, including PayPal, Inc. and certain other assets and liabilities that have been historically held at the eBay corporate level, but are specifically identifiable and attributable to the payments business.

On  $[\bullet]$ , 2015, the eBay board of directors approved the distribution of the issued and outstanding shares of PayPal common stock on the basis of one share of PayPal common stock for every  $[\bullet]$  share of eBay common stock held as of the close of business on the record date of  $[\bullet]$ , 2015.

At 11:59 p.m., Eastern Time, on [•], 2015, the distribution date, each eBay stockholder will receive one share of PayPal common stock for every [•] share of eBay common stock held at the close of business on the record date for the distribution, as described below. eBay stockholders will receive cash in lieu of any fractional shares of PayPal common stock that they would have received after application of this ratio. You will not be required to make any payment, surrender or exchange your eBay common stock or take any other action to receive your shares of PayPal's common stock in the distribution. The distribution of PayPal's common stock as described in this information statement is subject to the satisfaction or waiver of certain conditions. For a more detailed description of these conditions, see "-Conditions to the Distribution."

## Reasons for the Separation

The eBay board of directors determined that the creation of two independent public companies, with PayPal operating the Payments business, and eBay operating the Marketplaces business is in the best interests of eBay and its stockholders and approved the plan of separation. A wide variety of factors were considered by the eBay board of directors in evaluating the creation of independent public companies. Among other things, the eBay board of directors considered the following expected benefits:

Enhanced strategic and management focus. The separation will allow each of PayPal and eBay to more effectively pursue its distinct operating priorities and strategies and opportunities for long-term growth and profitability in the global commerce and payments landscape. PayPal's management will be able to focus exclusively on its payments business, while eBay's management will be dedicated solely to growing its marketplaces business.

*Faster decision-making*. The separation will speed up decision-making at each company and allow each to adapt more quickly to the rapidly changing market and customer dynamics in their respective markets.

*Increased flexibility*. The separation will provide each company with increased flexibility to pursue new partnership and strategic opportunities that may have previously been unavailable for strategic or other reasons.

More efficient allocation of capital. The separation will permit each company to implement a capital structure appropriate to its strategy and business needs and to concentrate its financial resources solely on its own operations without having to compete with each other for investment capital. This will provide each company with greater flexibility to invest capital in its businesses in a time and manner appropriate for its distinct strategy and business needs and facilitate a more efficient allocation of capital.

Alignment of incentives with performance objectives. The separation will facilitate incentive compensation arrangements for employees more directly tied to the performance of the relevant company's business, and enhance employee hiring and retention by, among other things, improving the alignment of management and employee incentives with performance and growth objectives of the business they support.

*Direct access to capital markets*. The separation will provide each company with direct access to the capital markets and will facilitate PayPal's ability to effect future acquisitions utilizing PayPal's common stock. As a result, each company will have more flexibility to capitalize on its unique growth opportunities.

Distinct investment identity. The separation will allow investors to separately value eBay and PayPal based on their distinct investment identities. PayPal's payments business differs from eBay's marketplaces business in several respects, such as the nature of the business, growth profile, competitors, regulation and technology. The separation will enable investors to evaluate the merits, performance and future prospects of each company's respective business and to invest in each company separately based on these distinct characteristics, and may attract new investors to each business, who may not have properly assessed the value of the Payments and Marketplaces businesses as stand-alone entities relative to the value they are currently accorded.

Neither PayPal nor eBay can assure you that, following the separation, any of the benefits described above or otherwise will be realized to the extent anticipated or at all.

The eBay board of directors also considered a number of potentially negative factors in evaluating the creation of independent public companies, including the loss of synergies and joint purchasing power and increased costs resulting from operating as a separate public entity, one-time costs of the separation, and the risk of not realizing the anticipated benefits of the separation. The eBay board of directors concluded that the potential benefits outweighed these factors.

#### Formation of PayPal Holdings

PayPal Holdings was formed in January 2015 for the purpose of owning and operating eBay's payments business. As part of the plan to create two independent public companies, eBay plans to transfer the equity interests of certain entities that operate the payments business and the assets and liabilities of the payments business to PayPal Holdings prior to the distribution.

#### When and How You Will Receive the Distribution

With the assistance of Computershare Trust Company, N.A., or Computershare, eBay expects to distribute PayPal common stock at 11:59 p.m., Eastern Time, on [●], 2015, the distribution date, to all holders of outstanding eBay common stock as of the close of business on [●], 2015, the record date for the distribution. Computershare will serve as the settlement and distribution agent in connection with the distribution and the transfer agent and registrar for PayPal common stock.

If you own shares of eBay common stock as of the close of business on the record date for the distribution, PayPal's common stock that you are entitled to receive in the distribution will be issued electronically, as of the distribution date, to you in direct registration form or to your bank or brokerage firm on your behalf. If you are a registered holder, Computershare will then mail you a direct registration account statement that reflects your shares of PayPal common stock. If you hold your shares through a bank or brokerage firm, your bank or brokerage firm will credit your account for the shares. Direct registration form refers to a method of recording share ownership when no physical share certificates are issued to shareholders, as is the case in this distribution. If you sell eBay common stock in the "regular-way" market up to and including the distribution date, you will be selling your right to receive shares of PayPal common stock in the distribution.

Commencing on or shortly after the distribution date, if you hold physical stock certificates that represent your shares of eBay common stock and you are the registered holder of the shares represented by those certificates, the distribution agent will mail to you an account statement that indicates the number of shares of PayPal's common stock that have been registered in book-entry form in your name.

Most eBay stockholders hold their shares of common stock through a bank or brokerage firm. In such cases, the bank or brokerage firm would be said to hold the shares in "street name" and ownership would be recorded on the bank or brokerage firm's books. If you hold your shares of eBay common stock through a bank or brokerage firm, your bank or brokerage firm will credit your account for the PayPal common stock that you are entitled to receive in the distribution. If you have any questions concerning the mechanics of having shares held in "street name," please contact your bank or brokerage firm.

#### Transferability of Shares You Receive

Shares of PayPal common stock distributed to holders in connection with the distribution will be transferable without registration under the U.S. Securities Act of 1933, as amended (the "Securities Act"), except for shares received by persons who may be deemed to be PayPal affiliates. Persons who may be deemed to be PayPal affiliates after the distribution generally include individuals or entities that control, are controlled by or are under common control with PayPal, which may include certain PayPal executive officers, directors or principal stockholders. Securities held by PayPal affiliates will be subject to resale restrictions under the Securities Act. PayPal affiliates will be permitted to sell shares of PayPal common stock only pursuant to an effective registration statement or an exemption from the registration requirements of the Securities Act, such as the exemption afforded by Rule 144 under the Securities Act.

#### Number of Shares of PayPal Common Stock You Will Receive

For every [•] shares of eBay common stock that you own at the close of business on [•], 2015, the record date for the distribution, you will receive one share of PayPal common stock on the distribution date. eBay will not distribute any fractional shares of PayPal common stock to its shareholders. Instead, if you are a registered holder, Computershare (the distribution agent) will aggregate fractional shares into whole shares, sell the whole shares in the open market at prevailing market prices and distribute the aggregate cash proceeds (net of discounts and commissions) of the sales pro rata (based on the fractional share such holder would otherwise be entitled to receive) to each holder who otherwise would have been entitled to receive a fractional share in the distribution. The distribution agent, in its sole discretion, without any influence by eBay or PayPal, will determine when, how, and through which broker-dealer and at what price to sell the whole shares. Any broker-dealer used by the distribution agent will not be an affiliate of either eBay or PayPal. Computershare is not an affiliate of either eBay or PayPal. Neither PayPal nor eBay will be able to guarantee any minimum sale price in connection with the sale of these shares. Recipients of cash in lieu of fractional shares will not be entitled to any interest on the amounts of payment made in lieu of fractional shares.

The aggregate net cash proceeds of these sales of fractional shares will be taxable for U.S. federal income tax purposes. See "Material U.S. Federal Income Tax Consequences" for an explanation of the material U.S. federal income tax consequences of the distribution. If you hold physical certificates for shares of eBay common stock and are the registered holder, you will receive a check from the distribution agent in an amount equal to your pro rata share of the aggregate net cash proceeds of the sales. PayPal estimates that it will take approximately two weeks from the distribution date for the distribution agent to complete the distributions of the aggregate net cash proceeds. If you hold your shares of eBay common stock through a bank or brokerage firm, your bank or brokerage firm will receive, on your behalf, your pro rata share of the aggregate net cash proceeds of the sales and will electronically credit your account for your share of such proceeds.

### **Treatment of Equity Based Compensation**

Outstanding awards granted under eBay's equity compensation programs will be adjusted in accordance with the terms of such programs to reflect the impact of the separation on such awards, with such adjusted awards to relate to shares of eBay and/or PayPal common stock, as applicable, and with appropriate adjustments to the exercise prices (for options) and number of shares subject to such awards. For a more detailed discussion of the treatment of outstanding equity awards, see "Certain Relationships and Related Person Transactions–Employee Matters Agreement."

#### **Results of the Distribution**

After the distribution, PayPal will be an independent, publicly traded company. The actual number of shares to be distributed will be determined at the close of business on [●], 2015, the record date for the distribution, and will reflect any exercise of eBay options between the date the eBay board of directors declares the distribution and the record date for the distribution. The distribution will not affect the number of outstanding shares of eBay common stock or any rights of eBay shareholders. eBay will not distribute any fractional shares of PayPal common stock.

PayPal will enter into a separation agreement and other related agreements with eBay before the distribution to effect the separation and provide a framework for PayPal's relationship with eBay after the separation. These agreements will provide for the allocation between eBay and PayPal of eBay's assets, liabilities and obligations (including its investments, property and employee benefits and tax-related assets and liabilities) attributable to periods prior to PayPal's separation from eBay and will govern the relationship between eBay and PayPal after the separation. For a more detailed description of these agreements, see "Certain Relationships and Related Party Transactions."

#### Market for PayPal's Common Stock

There is currently no public trading market for PayPal's common stock. PayPal intends to apply to have its common stock authorized for listing on The NASDAQ Stock Market under the symbol "PYPL." PayPal has not and will not set the initial price of its common stock. The initial price will be established by the public markets.

PayPal cannot predict the price at which its common stock will trade after the distribution. The combined trading prices, after the separation, of the shares of PayPal common stock that each eBay shareholder will receive in the distribution and the shares of eBay common stock held at the record date for the distribution may not equal the "regular-way" trading price of a eBay share immediately prior to the separation. The price at which PayPal common stock trades may fluctuate significantly, particularly until an orderly public market develops. Trading prices for PayPal common stock will be determined in the public markets and may be influenced by many factors. See "Risk Factors–Risks Related to PayPal's Common Stock."

## Trading Between the Record Date and Distribution Date

Beginning on or shortly before the record date for the distribution and continuing up to and including through the distribution date, eBay expects that there will be two markets in eBay common stock: a "regular-way" market and an "ex-distribution" market. Shares of eBay common stock that trade on the "regular-way" market will trade with an entitlement to PayPal common stock distributed pursuant to the separation. Shares of eBay common stock that trade on the "ex-distribution" market will trade without an entitlement to PayPal common stock distributed pursuant to the distribution. Therefore, if you sell shares of eBay common stock in the "regular-way" market up to and including through the distribution date, you will be selling your right to receive PayPal common stock in the distribution. If you own shares of eBay common stock at the close of business on the record date and sell those shares on the "ex-distribution" market up to and including through the distribution date, you will receive the shares of PayPal common stock that you are entitled to receive pursuant to your ownership as of the record date of the shares of eBay common stock.

Furthermore, beginning on or shortly before the record date for the distribution and continuing up to and including the distribution date, PayPal expects that there will be a "when-issued" market in its common stock. "When-issued" trading refers to a sale or purchase made conditionally because the security has been authorized but not yet issued. The "when-issued" trading market will be a market for shares of PayPal common stock that will be distributed to holders of shares of eBay common stock on the distribution date. If you owned shares of eBay common stock at the close of business on the record date for the distribution, you would be entitled to shares of PayPal common stock distributed pursuant to the distribution. You may trade this entitlement to shares of PayPal common stock, without the shares of eBay common stock you own, on the "when-issued" market, but your transaction will not settle until after the distribution date. On the first trading day following the distribution date, "when-issued" trading with respect to PayPal common stock will end, and "regular-way" trading will begin.

#### **Conditions to the Distribution**

eBay has announced that the distribution will be effective at 11:59 p.m., Eastern Time, on [●], 2015, which is the distribution date; provided that the following conditions shall have been satisfied (or waived by eBay in its sole discretion):

the transfer of assets and liabilities from eBay to PayPal shall be completed in accordance with the separation and distribution agreement;

eBay shall have received an opinion from eBay's outside legal counsel regarding the qualification of the distribution, together with certain related transactions, as a transaction that is generally tax-free, for U.S. federal income tax purposes, under Sections 368(a)(1)(D) and Section 355 of the Code;

the SEC shall have declared effective the registration statement of which this information statement forms a part, and no stop order suspending the effectiveness of the registration statement shall be in effect and no proceedings for such purpose shall be pending before or threatened by the SEC;

this information statement shall have been made available to the eBay stockholders;

all actions or filings necessary or appropriate under applicable U.S. federal, U.S. state or other securities laws shall have been taken and, where applicable, have become effective or been accepted by the applicable governmental entity;

any approvals of any governmental entities required for the consummation of the separation and distribution have been obtained, including any required approvals of the Commission de Surveillance du Secteur Financier ("CSSF") and the Bank Centrale du Luxembourg ("BCL");

the transaction agreements relating to the separation shall have been duly executed and delivered by the parties;

no order, injunction, or decree issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the separation, distribution or any of the related transactions shall be in effect;

the shares of PayPal common stock to be distributed shall have been accepted for listing on The NASDAQ Stock Market, subject to official notice of distribution;

eBay shall have transferred or caused its subsidiaries to transfer an aggregate of \$[●] of cash to PayPal (including through one or more capital contributions); and

no other event or development shall exist or have occurred that, in the judgment of eBay's board of directors, in its sole discretion, would make it inadvisable to effect the separation or the distribution.

eBay and PayPal cannot assure you that any or all of these conditions will be met and may also waive any of the conditions to the distribution. In addition, eBay will have the sole and absolute discretion to determine (and change) the terms of, and whether to proceed with, the distribution and, to the extent it determines to so proceed,

to determine the record date for the distribution and the distribution date and the distribution ratio. eBay will also have sole discretion to waive any of the conditions to the distribution. eBay does not intend to notify its shareholders of any modifications to the terms of the separation that, in the judgment of its board of directors, are not material. For example, the eBay board of directors might consider material such matters as significant changes to the distribution ratio, the assets to be contributed or the liabilities to be assumed in the separation. To the extent that the eBay board of directors determines that any modifications by eBay materially change the material terms of the distribution, eBay will notify eBay shareholders in a manner reasonably calculated to inform them about such modifications as may be required by law, by, for example, publishing a press release, filing a current report on Form 8-K, or circulating a supplement to this information statement.

## DIVIDEND POLICY

PayPal does not expect to pay a regular cash dividend following the distribution. The timing, declaration, amount of and payment of any dividends following the separation by PayPal is within the discretion of its board of directors and will depend upon many factors, including PayPal's financial condition, earnings, capital requirements of its operating subsidiaries, debt service obligations, covenants associated with certain of PayPal's debt service obligations, legal requirements, regulatory constraints, industry practice, ability to gain access to capital markets, and other factors deemed relevant by its board of directors. Moreover, if PayPal determines to pay any dividend in the future, there can be no assurance that it will continue to pay such dividends or the amount of such dividends.

#### **CAPITALIZATION**

The following table sets forth PayPal's capitalization on a historical basis and on a pro forma basis to give effect to the pro forma adjustments included in PayPal's unaudited pro forma financial information as if the separation and distribution took place on March 31, 2015. The information below is not necessarily indicative of what PayPal's capitalization would have been had the separation, distribution and related financing transactions been completed as of March 31, 2015. In addition, it is not indicative of PayPal's future capitalization. This table should be read in conjunction with "Unaudited Pro Forma Condensed Combined Financial Statements," "Selected Historical Combined Financial Data of PayPal," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and PayPal's combined financial statements and notes included in the "Index to Financial Statements and Schedule" section of this information statement.

	As of March 31, 2015	
	Historical	Pro Forma
	(In millions)	
	(Unaudited)	
Cash and equivalents(1)	\$2,365	\$4,365
Indebtedness:		
Short-term debt		
Notes and payable to affiliates	\$868	\$116
Total Indebtedness(3)	868	116
Stockholders' equity:		
Common stock, par value \$0.0001 per share on a pro forma basis(2)	-	_
Additional paid-in capital(1)	-	10,432
Net parent investment(1), (2)	8,498	_
Accumulated other comprehensive income (loss)	142	142
Total stockholders' equity	8,640	10,574
Total Capitalization	\$9,508	\$10,690

<sup>(1)</sup> Reflects \$2 billion of the total cash contribution of [ ] to PayPal from eBay.

<sup>(2)</sup> Represents the effect of the expected pro forma distribution of approximately 1.2 billion shares of our common stock at par value \$0.0001 per share to holders of eBay common stock and the resulting elimination of eBay's net parent investment.

<sup>(3)</sup> Represents the settlement of certain intercompany arrangements between PayPal and eBay in connection with the distribution.

#### SELECTED HISTORICAL COMBINED FINANCIAL DATA OF PAYPAL

The following selected combined financial data reflects the combined operations of PayPal. PayPal derived the selected combined statement of income data for the years ended December 31, 2014, 2013 and 2012 and the selected combined balance sheet data as of December 31, 2014 and 2013, as set forth below, from its audited combined financial statements, which are included in the "Index to Financial Statements and Schedule" section of this information statement. PayPal derived the selected combined statement of income data for the years ended December 31, 2011 and 2010 and the selected combined balance sheet data as of December 31, 2012, 2011 and 2010 from PayPal's underlying financial records, which were derived from the financial records of eBay. The selected combined statement of income and the selected combined balance sheet data for the quarter ended March 31, 2015 and March 31, 2014 are derived from the unaudited combined financial statements included elsewhere in this information statement. The selected unaudited pro forma combined statement of income data for the quarter ended March 31, 2015 and the year ended December 31, 2014 and the selected pro forma balance sheet data as of March 31, 2015 are derived from the "Unaudited Pro Forma Condensed Combined Financial Statements" included elsewhere in this information statement. The selected unaudited pro forma combined statement of income data has been prepared to reflect certain pro forma transactions in the selected pro forma combined statement of income as if they had occurred or had become effective as of January 1, 2014. The selected unaudited pro forma condensed combined balance sheet has been prepared to give effect to certain pro forma transactions as though they had occurred on March 31, 2015. The assumptions used and pro forma adjustments derived from such assumptions are based on currently available information and we believe such assumptions are reasonable.

The historical and unaudited pro forma combined results do not necessarily indicate the results expected for any future period. To ensure a full understanding, you should read the selected combined financial data presented below in conjunction with "Unaudited Pro Forma Condensed Combined Financial Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the combined financial statements and accompanying notes included elsewhere in this information statement.

Historical basic and diluted earnings per share are not presented because PayPal's financial information has been prepared on a combined basis. These financial statements have not been prepared for a single legal entity that had share capital throughout the entire historical period and, accordingly, EPS for these periods has not been provided.

	3 Months Ended March 31,			Year Ended December 31,					
	Pro Forma 2015 (Una	2015 udited in milli	2014 ions)	Pro Forma 2014	2014	2013	2012 (In millions)	2011	2010
<b>Combined Statement of Income</b>									
Data:									
Net revenue	\$2,134	\$2,137	\$1,874	\$ 8,012	\$8,025	\$6,727	\$5,662	\$4,499	\$3,508
Operating income	313	322	318	1,233	1,268	1,091	880	556	390
Net income	247	255	(382)	388	419	955	778	460	350
Earnings Per Share									
Basic	[ ]	N/A	N/A	[\$]	N/A	N/A	N/A	N/A	N/A
Diluted	[ ]	N/A	N/A	[\$]	N/A	N/A	N/A	N/A	N/A
<b>Combined Balance Sheet Data:</b>									
Total assets	\$23,993	\$22,579	\$19,833		\$21,917	\$19,160	\$16,183	\$11,140	\$8,300
Total long term liabilities	622	390	461		386	509	428	306	188

#### UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL STATEMENTS

The unaudited pro forma condensed combined financial statements presented below have been derived from PayPal's historical combined financial statements for the year ended December 31, 2014 and as of and for the quarter ended March 31, 2015. The unaudited pro forma condensed combined financial statements should be read in conjunction with PayPal's historical combined financial statements and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in this information statement. The unaudited pro forma condensed combined statement of income has been prepared to give effect to the Pro Forma Transactions (as defined below) as if the Pro Forma Transactions had occurred or had become effective as of January 1, 2014. The unaudited pro forma condensed combined balance sheet has been prepared to give effect to the Pro Forma Transactions as though the Pro Forma Transactions had occurred on March 31, 2015.

Our unaudited pro forma condensed combined financial statements have been prepared based on available information, assumptions, and estimates that management believes are reasonable. The unaudited pro forma condensed combined financial statements are for illustrative and informational purposes only, and do not reflect what PayPal's financial position and results of operations would have been had the separation occurred on the dates indicated and are not necessarily indicative of its future financial position and future results of operations.

Our unaudited pro forma condensed combined financial statements have been prepared to reflect adjustments to our audited historical combined financial statements that are: (i) factually supportable, (ii) directly attributable to the distribution, and, for purposes of the combined statements of income, (iii) expected to have continuing impact on our results of operations. The unaudited pro forma condensed combined financial statements have been adjusted to give effect to the following (the "Pro Forma Transactions"):

The issuance of [•] shares of PayPal common stock;

The tax free distribution, for U.S. federal income tax purposes, of PayPal common stock to eBay shareholders and the resulting elimination of eBay's historical net parent investment in PayPal;

Our anticipated post distribution capital structure, including an anticipated \$[•] cash contribution to PayPal from eBay;

The transfers of certain assets and liabilities to PayPal from eBay; and

The impact of, and transactions contemplated by the separation and distribution agreement, operating agreement, transition services agreement, tax matters agreement, employee matters agreement, intellectual property matters agreement, colocation services agreements, a data sharing addendum and product development agreement.

Our historical combined statement of income includes allocations of certain expenses relating to support functions historically provided by eBay. These functions include, but are not limited to: finance, legal, human resources, information technology, employee benefits administration, treasury, investor relations, corporate development, risk management, shared services and other general and administrative costs. To operate as an independent public company, we expect to incur costs to replace those services previously provided by eBay in addition to incremental standalone costs. We expect these incremental costs to be \$100 million to \$150 million on an annual pre-tax basis. Due to the scope and complexity of these activities, the amount and timing of these incremental costs could vary and, consequently, are not included in the Pro Forma Transactions.

The unaudited pro forma condensed combined financial statements constitute forward-looking information and are subject to certain risks and uncertainties that could cause actual results to differ materially from those anticipated. See "Cautionary Statement Concerning Forward-Looking Statements" and "Risk Factors" included elsewhere in this information statement.

# PayPal Holdings, Inc.

# Unaudited Pro Forma Condensed Combined Statement of Income Three Months Ended March 31, 2015

	As Reported	Pro Forma Adjustments (In millions, except per share amounts)		Pro Forma
Net revenues	\$2,137	(3	)(a)	2,134
Operating expenses:				
Transaction expense	575	_		575
Transaction and loan losses	178	10	(b)	188
Customer support and operations	275	8	(b) (c)	283
Sales and marketing	236	(13	)(d)	223
Product development	224	_		224
General and administrative	138	1	(b)	139
Depreciation and amortization	141	_		141
Restructuring	48	_		48
Total operating expenses	1,815	6		1,821
Operating income	322	(9	)	313
Other income (expense), net	(1)			(1 )
Income before income taxes	321	(9	_)	312
Income tax expense	66	(1	)(e)	65
Net income attributable to PayPal	\$255	\$ (8	)	\$247
Net income Attributable to PayPal Per Share of Common Stock (dollars)				
Basic			(f)	0.20
Diluted			<u>(f)</u>	0.20
Average Common Shares Outstanding				
Basic			(f)	1,216
Diluted			(f)	1,229

# PayPal Holdings, Inc.

# Unaudited Pro Forma Condensed Combined Statement of Income Year Ended December 31, 2014

	As Reported	Pro For		Pro Forma
	(In millio	ons, except pe	r share amou	
Net revenues	\$ 8,025	(13	)(a)	\$8,012
Operating expenses:				
Transaction expense	2,170	_		2,170
Transaction and loan losses	646	43	(b)	689
Customer support and operations	1,055	33	(b)(c)	1,088
Sales and marketing	998	(60	)(d)	938
Product development	890	-		890
General and administrative	482	6	(b)	488
Depreciation and amortization	516	-		516
Restructuring		_		
Total operating expenses	6,757	22		6,779
Operating income	1,268	(35	)	1,233
Other income (expense), net	(7)	_		(7)
Income before income taxes	1,261	(35	)	1,226
Income tax expense	842	(4	)(e)	838
Net income attributable to PayPal	\$ 419	(31	)	\$388
Net Income Attributable to PayPal Per Share of Common Stock (dollars)				
Basic		(f	)	0.31
Diluted		(f	)	0.31
Average Common Shares Outstanding				
Basic		(f	)	1,251
Diluted		(f	)	1,262

# PayPal Holdings, Inc.

# Unaudited Pro Forma Condensed Combined Balance Sheet At March 31, 2015

	Pro Forma			
	As Reported	As Reported Adjustments (In millions, except per share amounts)		Pro Forma
ASSETS	(In n	nillions, except p	er share amounts)	
Current assets:				
Cash and cash equivalents	\$2,365	\$2,000	(g)	4,365
Short-term investments	10	-	(g)	10
Accounts receivable, net	53	_		53
Loans and interest receivable, net	3,566	_		3,566
Funds receivable and customer accounts	10,945	_		10,945
Notes and receivable from affiliates	788	(626	)(h)	162
Other current assets	480	-	)(11)	480
Total current assets	18,207	1,374	<u></u>	19,581
Long-term investments	31	_		31
Property and equipment, net	989	14	(i)(j)	1,003
Goodwill	3,184	_	(70)	3,184
Intangible assets, net	138	14	(k)	152
Other assets	30	12	(1)	42
Total assets	\$22,579	\$1,414		23,993
LIABILITIES AND EQUITY			_	
Current liabilities:				
Accounts payable	\$ 125	<b>\$</b> -		125
Funds payable and amounts due to customers	10,945	_		10,945
Notes and payable to affiliates	868	(752	)(h)	116
Accrued expenses and other current liabilities	1,565	_		1,565
Income taxes payable	46	_	<u>_</u>	46
Total current liabilities	13,549	(752	)	12,797
Long-term liabilities	390	232	(g)(j)(k)	622
Total liabilities	13,939	(520	)	13,419
Commitments and contingencies (Note 8)			_	
Equity:				
Common stock, \$0.0001 par value	-	-	(m)	_
Accumulated other comprehensive income (loss)	142	-		142
Net parent investment	8,498	(8,498	)(m)	_
Additional paid-in capital		10,432	_(m)	10,432
Total equity	8,640	1,934		10,574
Total liabilities and equity	\$ 22,579	\$1,414	=	23,993

#### Notes to Unaudited Pro Forma Condensed Combined Financial Statements

- (a) Reflects the impact of lower transaction revenues from payment services provided by PayPal to eBay as the result of the terms of certain commercial agreements negotiated between the parties that stipulate lower transaction fees than those historically charged to eBay.
- (b) Reflects the effect of the following costs that were historically reimbursed to PayPal by eBay for the administration of eBay's customer protection programs as follows:

\$ in millions	March 31, 2015	<b>December 31, 2014</b>
Protection program losses, historically		
reported as a reduction of transaction		
and loan losses	10	43
Protection program services, historically		
reported as a reduction of customer		
support and operations	4	16
Protection program services, historically		
reported as a reduction in general and		
administrative expenses	1	6

This program will no longer be administered by PayPal, and therefore these costs will not be reimbursed by eBay after the distribution.

- (c) Reflects the impact of an additional \$17 million and \$4 million for the year ended December 31, 2014 and the quarter ended March 31, 2015, respectively, representing costs for shared data centers and information technology facilities that will continue to be managed by eBay after the separation pursuant to the colocation services agreements.
- (d) Reflects the net reduction of costs charged to PayPal by eBay for referral services and user penetration. eBay charged PayPal a total of \$119 million and \$30 million for the year ended December 31, 2014 and the quarter ended March 31, 2015, respectively, for similar services. Pursuant to the terms of the operating agreement, these charges would have been \$59 million and \$17 million for the year ended December 31, 2014 and the quarter ended March 31, 2015, respectively, consisting of payments for customers acquired and incentives for the usage of PayPal products (including credit products) on certain eBay properties.
- (e) Reflects the tax effect of pro forma adjustments using the respective statutory tax rate for the year ended December 31, 2014 and for the quarter ended March 31, 2015.
- (f) The calculations of pro forma basic earnings per share and average shares outstanding for the period presented are based on the number of shares used to calculate eBay common stock outstanding for the year ended December 31, 2014 and the quarter ended March 31, 2015, adjusted for the expected distribution ratio of one share of our common stock for every share of eBay common stock outstanding.
  - The calculations of pro forma diluted earnings per share and weighted-average shares outstanding for the period presented are based on the number of shares used to calculate eBay diluted earnings per share for the year ended December 31, 2014 and the quarter ended March 31, 2015, adjusted for the same distribution ratio. This calculation may not be indicative of the dilutive effect that will actually result from PayPal stock-based awards issued in connection with the adjustment of outstanding eBay stock-based awards or the grant of new stock-based awards. The number of dilutive shares of our common stock underlying PayPal stock-based awards issued in connection with the adjustment of outstanding eBay stock-based awards will not be determined until after the distribution date.
  - We are unable to calculate historical basic and diluted EPS prior to the distribution because the financial information included in the filing has been prepared on a combined basis. These financial statements have not been prepared for a separate legal entity that had share capital throughout the historical periods presented and accordingly, EPS for these periods has not been provided.
- (g) Reflects \$2 billion of the total [●] cash contribution to PayPal from eBay, as well as the associated deferred tax impact of \$235 million attributable to the contribution.
- (h) Reflects the settlement of certain intercompany agreements between PayPal and eBay pursuant to the separation and distribution agreement. These amounts are comprised principally of intercompany

- financing payables and receivables stemming from eBay's and PayPal's shared cash management and treasury program. Following the separation, PayPal will perform its own cash management and treasury functions.
- (i) Reflects \$14 million in carrying value of certain information technology equipment that will be transferred from eBay to PayPal in connection with the colocation services agreements.
- (j) Reflects assets of [●] and liabilities of [●] related to the obligation to purchase certain data center facilities from eBay pursuant to the terms of the colocation services agreements.
- (k) Reflects \$14 million in carrying value of certain patents that will be transferred from eBay to PayPal in connection with the intellectual property matters agreement, as well as a corresponding reduction of deferred tax liabilities of \$3 million associated with the transfer.
- (l) Reflects the transfer of assets relating to certain eBay employee benefit plans pursuant to the terms of the employee matters agreement.
- (m) Represents the distribution of approximately [●] shares of our common stock at par value \$0.0001 per share to holders of eBay common stock and the resulting elimination of eBay's net parent investment.

#### **BUSINESS**

#### **Overview**

PayPal Holdings, Inc. ("we," "our," "us," "the Company" or "PayPal") is a leading technology platform company that enables digital and mobile payments on behalf of consumers and merchants worldwide. We put our customers at the center of everything we do. We strive to increase our relevance for consumers, merchants, friends and family to access and move their money anywhere in the world, anytime, on any platform and through any device (e.g., mobile, tablets, personal computers or wearables). We provide safer and simpler ways for businesses of all sizes to accept payments from merchant websites, mobile devices and applications, and at offline retail locations through a wide range of payment solutions across our Payments Platform, including PayPal, PayPal Credit, Venmo and Braintree products.

We enable global commerce by providing payment solutions for our approximately 162 million active customer accounts in over 200 markets, while providing customers a choice of how they would like to pay or get paid. A market is a geographic area or political jurisdiction, such as a country, territory, or protectorate, in which we offer our services. A country, territory or protectorate is identified by a distinct set of laws and regulations. An active customer account is a registered account that successfully sent or received at least one payment or payment reversal through our Payments Platform, excluding transactions processed through our gateway products, in the past 12 months. Our gateway products include our Payflow Payments and certain Braintree products. A payment gateway links a merchant's website to that merchant's processing network and merchant account.

We offer our customers the flexibility to use their account to both purchase and be paid for goods, as well as transfer and withdraw funds. A consumer can typically fund a purchase using a bank account, a PayPal account balance, a PayPal Credit account, a credit or debit card or other stored value products such as coupons and gift cards. Our PayPal and Venmo products also make it safer and simpler for friends and family to transfer funds to each other using several of these funding sources. We offer merchants an end-to-end payments solution that provides authorization and settlement capabilities, as well as instant access to funds. We help merchants connect with their customers and manage risk. We measure the relevance of our products in the lives of our customers, and therefore the success of our business, through both payment volume and payment transactions. Payment volume is the value of payments, net of payment reversals, successfully completed through our Payments Platform, excluding transactions processed through our gateway products ("Total Payment transactions" is the total number of payments, net of payment reversals, successfully completed through our Payments Platform, excluding transactions processed through our Payments Platform, excluding transactions processed through our payments Platform, excluding transactions processed through our gateway products. During 2014, payment transactions were approximately 4.0 billion, representing growth of 22% over 2013.



Our Payments Platform is built to make the existing global financial infrastructure work for people in the digital age. PayPal allows people to make seamless transactions between different markets and networks. Our Payments Platform connects with financial institutions around the world, and allows consumers to make purchases using a broad range of payment methods, regardless of where a merchant is located. Consumers who use our Payments Platform can engage in cross-border shopping by sending payments to each other in more than 200 markets across the globe and in more than 100 currencies. This enables merchants to increase sales volume by allowing them to sell across borders to a much larger base of consumers.

We generate revenues by charging fees for providing transaction processing and other payment-related services, primarily based on the volume of activity, or TPV, processed through our Payments Platform. We also earn revenue by providing value added services to consumers and merchants, such as PayPal's Credit products. Our revenue growth is influenced by, among other things, consumer spending patterns, merchant adoption of payment methods other than traditional credit cards and cash, the expansion of multi-channel retail, the growth of mobile devices and merchant applications on those devices, the growth of consumers with access to the internet globally, the pace of transition from paper-based forms of payment to digital forms of payment, our share of the digital payments market, and our ability to innovate new methods of payment that merchants and consumers find to be valuable. Our strategy is to drive revenue growth by:

Growing our core businesses globally through expanding our base of active customer accounts, increasing our customers' use of our products and services by better addressing our customers' everyday needs in managing and moving money and expanding the adoption of our solutions by new merchants and consumers;

Diversifying our existing business by seeking new areas of growth in markets around the world and focusing on innovation both in the digital and the physical world;

Providing software application developers with tools to quickly and easily integrate PayPal's smart payment solutions into merchant and next generation mobile applications; and

Leveraging the data we accumulate through processing transactions to build strong risk capabilities that enable the identification of illegal, high-risk, or fraudulent transactions with the highest level of accuracy, without impacting legitimate transactions and while incurring minimal losses.



PayPal is a popular form of payment for mobile commerce, and our business has grown with the increased adoption of mobile devices. In December 2013, we completed our acquisition of Braintree to strengthen our position in mobile payments and extend our coverage to a new class of retailers who offer their services primarily through mobile applications. As part of that acquisition, we also acquired Venmo, which offers a leading mobile application to move money between friends and family using their mobile device. Braintree's and Venmo's focus on mobile payments, their reach with a new class of retailers and the technology obtained through the acquisition have increased our payment capabilities, improved our current product offerings and expanded our footprint with earlier stage merchants and a diversified demographic of consumers.

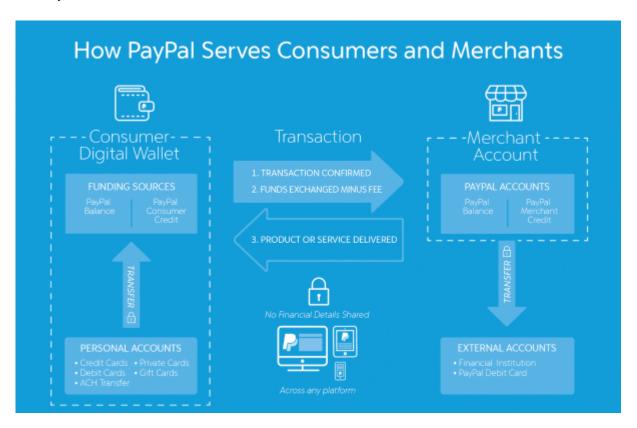
We operate globally and in a rapidly evolving regulatory environment characterized by a heightened regulatory focus on all aspects of the payments industry. Some of the laws and regulations to which we are subject were enacted recently and many such laws and regulations, including those enacted prior to the advent of digital and mobile payments, are continuing to evolve through legislative and regulatory action and judicial interpretation. Changes in or non-compliance with laws and regulations, changes in the interpretation of laws and regulations, and the enactment of new laws and regulations applicable to us could have a material adverse impact on our business, results of operations and financial condition. Therefore, we monitor these areas closely to ensure compliant solutions for our customers who depend on us.

### **Connecting Merchants and Consumers**

We operate a proprietary global technology platform that links merchants and consumers around the globe to facilitate the processing of payment transactions, allowing us to connect millions of merchants and consumers worldwide. Our Payments Platform facilitates an efficient and secure means for merchants to receive payments, and

a convenient, secure way for consumers to make payments. We process transactions through our Payments Platform in more than 200 markets, allowing customers to pay and get paid in more than 100 currencies, withdraw funds to their bank accounts in 57 currencies and hold balances in their PayPal accounts in 26 currencies.

A transaction on our Payments Platform can involve up to three participants in addition to us: a merchant, a consumer and the consumer's funding source provider. The following diagram illustrates a typical payment transaction between a consumer and a merchant on our Payments Platform:



#### Consumers

We enable consumers to more safely exchange funds with merchants using their PayPal digital wallet. Our digital wallet provides consumers with the ability to draw funds from a variety of their financial resources, which may include both "internal" sources of funds (i.e., a PayPal account balance or PayPal Credit account) and sources of funds that are "external" to PayPal (e.g., bank transfers, credit and debit cards or gift cards), within one application. We generally do not charge consumers to fund or draw from their accounts; however, we generate revenue from consumers on fees charged to exchange currencies and on interest and fees from consumer loans originated through our PayPal Credit products.

We value our relationship with our consumers and invest in this relationship; we strive to provide efficient customer service, account support, protection from loss, and create relevant products. Approximately 8,000 people in our customer service organization work around the clock to provide our consumers with answers and solutions when and where they need them, in over 20 languages. We have operations centers around the world, including in Chandler, Arizona; Hunt Valley, Maryland; Omaha, Nebraska; Berlin, Germany; Dundalk, Ireland; Dublin, Ireland; Kuala Lumpur, Malaysia; Sao Paulo, Brazil; and Shanghai, China that strive to provide high-quality service and support for our customers. We have also developed a number of trust and security programs, including PayPal's Buyer Protection Program, that provide additional protection to consumers for qualifying

purchases by reimbursing the consumer for the full amount of the purchase if a purchased item does not arrive or does not match the seller's description (see Protecting Merchants and Consumers discussion below).

Traditional financial institutions often charge fees for basic services provided to their customers, and existing alternatives to these financial institutions, including services to cash a check or pay a bill, are often inconvenient and expensive. We focus on providing low cost consumer products that democratize the access to and movement of money. We believe that managing and moving a consumer's hard earned money should be a right, not a privilege. Through our technology and products, we believe we can change the status quo and make digital payments more efficient and accessible. We expect person-to-person (or "P2P") transfers to contribute to this strategy. These P2P products are believed to have network effects, helping to establish relationships with potential PayPal users by allowing them to join the Payments Platform at the time of making or receiving payments, which encourages our natural, user-driven growth. PayPal offers P2P payment solutions through its website, its PayPal mobile application, and through Venmo, a mobile application that enables payment transactions between non-merchant account holders.

#### Merchants

As commerce continues to transition from the physical world to the digital world and from domestic commerce to global commerce, our proprietary Payments Platform provides opportunities for merchants to grow their businesses. We partner with merchants to help them grow and expand their businesses by improving sales conversion, providing global reach, offering alternative payment methods (such as easy integration credit products and mobile capabilities), reducing losses through proprietary protection programs and leveraging data analytics. We continue to grow merchant acceptance through business development activities and direct relationships with merchants. We enable merchants to more safely and simply receive payments from our active customer accounts, providing global reach while reducing some of the complexity and friction involved in enabling overseas and cross-border trade. For the year ended December 31, 2014, approximately 48% of PayPal's TPV involved a merchant outside of the U.S., and approximately 24% was cross-border (i.e., transactions where the merchant and consumer were in different countries).

A merchant can typically open a standard PayPal account and begin accepting payments through PayPal within a few minutes. Most online or mobile merchants can onboard quickly and are not required to invest in new or specialized hardware. Our Payments Platform supports growth with a variety of value added services designed to help businesses of all sizes manage their cash flow, invoice clients, pay bills, and reduce the need for merchants to receive and store sensitive customer financial information. For our standard service, we do not charge merchants setup or recurring fees. A merchant can also integrate with Braintree to begin accepting payments with credit or debit cards, PayPal, Venmo, digital currencies such as Bitcoin, or other payment solutions with a single integration.

Our payment and PayPal Credit products, are designed to help merchants increase the conversion rate of consumer purchases on their websites and mobile applications. For example, our One Touch product allows consumers to authenticate their account during their first One Touch purchase. This enables them to skip the login process for future payments and turn shopping into a one touch operation with near-instant authentication. We also provide the ability for merchants to offer (and consumers to fund) payments via a deferred payment option using our PayPal Credit products. When a consumer funds a purchase using PayPal Credit, our chartered financial institution in Luxembourg, or an independent chartered financial institution in the U.S. with whom we partner, extends credit to the consumer, funds the extension of credit at the point of sale ("POS") and advances funds to the merchant. In the U.S., we subsequently purchase the consumer receivables related to the consumer loans from the independent chartered financial institution with whom we partnered and as a result of that purchase, bear the risk of loss on the related consumer receivables, less the participation interest held by the independent chartered financial institution. We are responsible for all servicing functions related to the PayPal Credit customer account balances. In addition, we have a program in which we offer certain of our merchants a line of credit, which may be paid back to PayPal through a percentage of their sales generated through PayPal.

We value our relationship with merchants and invest in this relationship by providing customer service, account support, developer advocacy and support, and proprietary risk and security solutions. In addition to our consumer protection programs, we have also developed PayPal's Seller Protection Program. This program provides protection to merchants against claims that a transaction was not authorized by the buyer or claims that an item was not received by covering the seller for the full amount of the payment on eligible sales. By offering dual buyer and seller protection programs, both the consumer and merchant can transact with confidence.

Our Payments Platform and open application programming interfaces ("APIs") are designed to allow developers to innovate with ease and to offer cutting edge applications to a large ecosystem of merchants and consumers, while at the same time maintaining the security of our customers' financial information. We provide developers with easy to use, flexible and powerful tools that are designed to leverage our global reach and payment capabilities. Our software developer kits ("SDKs") are specifically focused on the mobile application market and are designed to remove friction by not requiring a redirect to PayPal.com or an additional log in. We are using a true "mobile first" approach to make payments simple and intuitive.

#### **Revenue Sources**

We earn revenues primarily by processing customer transactions on our Payments Platform and from other value added services. Our revenues are classified into the following two categories:

*Transaction revenues:* Net transaction fees charged to consumers and merchants based on the volume of activity processed through our Payments Platform, including PayPal, PayPal Credit, Venmo and Braintree products.

Other value added services: Net revenues derived principally from interest and fees earned on our PayPal Credit loans receivable portfolio, subscription fees, gateway fees, revenue share we earn through partnerships and other services that we provide to consumers and merchants.

Transaction revenues are generated from fees charged to merchants on the TPV that we enable. Growth in TPV is also directly impacted by the number of active customer accounts and the payment transactions that we enable on our payments platform. In 2014, transaction revenues generated from customers and merchants on eBay's marketplace who completed a transaction using our products constituted 29% of our net revenues, down from 32% in 2013. The decline in percentage of revenues generated from eBay buyers and eBay sellers reflects the growth in adoption of PayPal solutions on platforms other than eBay. No other source of revenue represented more than 10% of our revenues.

Our pricing varies among regions and can be modified for individual merchants through customer-specific agreements, which provide merchants with financial incentives and other benefits to issue, accept, route, prioritize and promote our branded products and other payment programs. These financial incentives may be based on TPV or other performance-based criteria, such as issuance of new payment products, increased acceptance of our products, launch of new programs or execution of marketing initiatives.

### **Protecting Merchants and Consumers**

Protecting merchants and consumers from loss is imperative to successfully competing in the payments industry. Trust and security are essential for our customers, and PayPal invests significantly in providing both merchants and consumers with comprehensive protection. The risk to merchants and consumers (and their payments partners) from fraudulent activities, such as account takeover, identity theft and counterparty mal-intent, is growing. Our ability to protect both consumers and merchants is based largely on our ability to leverage the data we collect on transactions and our analytical capabilities. We believe mobile devices will play an important part in the future of commerce, creating the opportunities to make our ecosystem safer. For example, PayPal is able to use accurate location data and growing protection for the mobile operating environment to reduce risk to merchants and consumers.

We enable consumers to make payments safely and simply without sharing sensitive financial information, such as credit card or debit card numbers, with merchants or other consumers. To make payments using PayPal, consumers need to disclose only their email address or mobile phone number to merchants. The account-based nature of our Payments Platform helps us to better detect and prevent fraud when funds enter, flow through and exit the Payments Platform because our transactions are tokenized and because payment authorization credentials are separated from account holder information. Our ongoing investment in systems and processes designed to enhance the safety and security of our products reflects our goal of having PayPal recognized as one of the world's most trusted payments brands.

We provide merchants and consumers with protection programs on substantially all transactions completed through our Payments Platform, except for transactions using our gateway products. These programs protect both merchants and consumers from loss primarily due to fraud and counterparty performance. Our risk management capabilities allow us to provide these protections, which are generally much broader than those protections provided by other participants in the payments industry. Most payments providers do not offer merchant protection in general, and those that do so generally do not provide protection of online or card not present transactions. As a result, merchants may incur losses for chargebacks and other claims on certain transactions when using other payments providers that they would not incur if they had used PayPal's payments services. PayPal also provides consumer protection against losses and accepts claims for 180 days post transaction in the markets that PayPal serves. This protection is consistent with, or better than, that offered by other payments providers. We believe that as a result of these programs, consumers can be confident that they will only be required to pay if they receive the product in the condition as described, and merchants can be confident that they will receive payment for the product that they are delivering to the customer.

Our Payments Platform utilizes a combination of proprietary technologies and services as well as technologies and services provided by third parties. We have developed intuitive user interfaces, customer tools and transaction processing, database and network applications that help enable our users to reliably and securely complete transactions on our sites and help our customers to utilize its suite of services. Our technology infrastructure simplifies the storage and processing of large amounts of data, eases the deployment and operation of large-scale global products and services and automates much of the administration of large-scale clusters of computers. Our technology infrastructure has been designed around industry-standard architectures to reduce downtime in the event of outages or catastrophic occurrences. We strive to continually improve our technology infrastructure to enhance the customer experience and to increase efficiency, scalability and security.

Our Payments Platform's architecture enables us to connect all parties regardless of whether the transaction is occurring at a traditional physical location, online or through a mobile device. The Payments Platform incorporates multiple layers of protection, both for continuity purposes and to help address cyber-security challenges. We engage in multiple efforts to protect the Payments Platform against these challenges, including regularly testing our systems to address potential vulnerabilities.

#### **Intellectual Property**

The protection of our intellectual property, including our trademarks (particularly those covering the PayPal name), patents, copyrights, domain names, trade dress and trade secrets is critical to our success. We aggressively protect our intellectual property rights by relying on federal, state and common law rights in the U.S. and internationally, as well as a variety of administrative procedures. We also rely on contractual restrictions to protect our proprietary rights in products and services. We have routinely entered into confidentiality and invention assignment agreements with our employees and contractors and nondisclosure agreements with parties with whom we conduct business to control access to and limit disclosure of our proprietary information.

We pursue the registration of our domain names, trademarks and service marks in the U.S. and internationally. Additionally, we have filed U.S. and international patent applications covering certain aspects of our proprietary

technology. Effective trademark, copyright, patent, domain name, trade dress and trade secret protection is very expensive to maintain and may require litigation. We must protect our intellectual property and other proprietary rights in an increasing number of jurisdictions, a process that is expensive and time consuming and may not be successful.

We have registered our core brands as trademarks and domain names in the U.S. and a large number of other jurisdictions and have in place an active program to continue to secure trademarks and domain names that correspond to our brands in markets of interest.

#### Competition

Consumers may choose to pay merchants through a variety of alternative means, including credit and debit cards, automated clearing house and bank transfers, other online payment services, offline payment methods such as cash, check or money order and by using mobile phones. PayPal's products compete with products from three-party networks (such as American Express and Discover), four-party networks (such as Visa and MasterCard) and other mobile payment solutions.

PayPal seeks to differentiate itself from industry participants on the safety of the transaction (our risk management capabilities as well as protection of consumer account details), the simplicity provided for digital transactions (use of an e-mail address, a mobile phone number or our One Touch product), and being both brand and technology agnostic. Further, unlike traditional four-party networks or other mobile payment solutions, PayPal has a direct financial relationship with both its consumers and merchants. As a result of our risk management capabilities, PayPal can provide its customers with protection from fraud and other losses incurred by participants to a transaction.

To compete effectively, we will need to continue to expend significant resources in technology and marketing. During 2014, PayPal incurred over \$1 billion on product innovation and development, and enhancing our infrastructure, to ensure our customers have the capabilities they need and want to complete transactions safely and simply. Further, in 2014, we incurred over \$270 million related to our efforts to promote our brands through advertising, promotions, and other strategic initiatives. Our marketing efforts play an important role in building brand visibility, usage and overall preference among consumers at checkout.

#### **Government Regulation**

Government regulation impacts key aspects of our business. We are subject to regulations that affect the payments industry in the countries we operate.

Payments Regulation. Various laws and regulations govern the payments industry in the U.S. and globally. In the U.S., several of our subsidiaries hold licenses to operate as a money transmitter (or its equivalent), which, among other things, subjects those subsidiaries to reporting requirements, bonding requirements, limitations on the investment of customer funds and inspection by state regulatory agencies. Outside the U.S., we provide localized versions of our service to customers through various foreign subsidiaries. The activities of those non-U.S. entities are, or may, be supervised by a financial regulatory authority in the jurisdictions in which they operate. Among other regulatory authorities, the Luxembourg Commission de Surveillance du Secteur Financier (the "CSSF"), the Australian Securities and Investments Commission, the Monetary Authority of Singapore, the Reserve Bank of India and the Central Bank of Russia have asserted jurisdiction over some or all of our activities in a particular country. This list is not exhaustive, as there are numerous other regulatory agencies that have or may assert jurisdiction. The laws and regulations applicable to the payments industry in any given jurisdiction are subject to interpretation and change.

*Banking Agency Supervision*. We serve our customers in the European Union through PayPal (Europe) S.a.r.l. et Cie, SCA, a whollyowned subsidiary that is licensed and subject to regulation as a bank in Luxembourg by the CSSF. Consequently, we must comply with rules and regulations of the banking industry related to capitalization,

funds management, corporate governance, anti-money laundering, disclosure, reporting and inspection. We also are, or may be, subject to banking-related regulations in other countries now or in the future related to our role in the financial industry. In addition, based on our relationships with our partner financial institutions in the U.S., we are subject to indirect regulation and examination by these financial institutions' regulators.

Consumer Financial Protection Bureau. The Consumer Financial Protection Bureau (the "CFPB") has significant authority to regulate consumer financial products in the United States, including consumer credit, deposit, payment, and similar products. The CFPB and other similar regulatory agencies in other jurisdictions may have broad consumer protection mandates that could result in the promulgation and interpretation of rules and regulations that may affect our business.

Anti-Money Laundering. PayPal is subject to anti-money laundering ("AML") laws and regulations in the U.S. and other jurisdictions outside of the U.S. We have implemented a comprehensive AML program designed to prevent our payment network from being used to facilitate money laundering, terrorist financing, and other illicit activity, or to do business in countries or with persons and entities included on designated country or person lists promulgated by the U.S. Department of the Treasury's Office of Foreign Assets Controls ("OFAC") and equivalent authorities in other countries. Our AML compliance program is comprised of policies, procedures and internal controls, including the designation of a compliance officer, and is designed to address these legal and regulatory requirements and assist in managing money laundering and terrorist financing risks.

Interchange Fees. Interchange fees associated with four-party payments systems are being reviewed or challenged in various jurisdictions. For example, in the European Union, the Multilateral Interchange Fee ("MIF") Regulation (which we expect to become effective in 2015) caps credit and debit interchange fees for cards payments and provides for business rules to be complied by any company dealing with card transactions, including PayPal. As a result, the fees that we collect in certain jurisdictions may become the subject of regulatory challenge.

Data Protection and Information Security. Aspects of our operations or business are subject to privacy and data protection regulation in the United States, the European Union and elsewhere. For example, in the United States, we are subject to information safeguarding requirements under the Gramm-Leach-Bliley Act that require the maintenance of a written, comprehensive information security program and in Europe, the operations of our Luxembourg bank are subject to information safeguarding requirements under the Luxembourg Banking Act, among other laws. Regulatory authorities around the world are considering numerous legislative and regulatory proposals concerning privacy and data protection. In addition, the interpretation and application of these privacy and data protection laws in the United States, Europe and elsewhere are often uncertain and in a state of flux.

Additional Regulatory Developments. Various regulatory agencies also continue to examine a wide variety of issues, including virtual currencies, identity theft, account management guidelines, privacy, disclosure rules, security and marketing that would impact PayPal.

For an additional discussion on governmental regulation affecting our business, please see the risk factors related to regulation of our payments business and regulation in the areas of consumer privacy, data use and/or security in "Risk Factors –Risk Factors That May Affect Our Business, Results of Operations and Financial Condition" included elsewhere in this Information Statement.

# **Legal and Regulatory Proceedings**

We are involved in legal and regulatory proceedings on an ongoing basis. Many of these proceedings are in early stages, and may seek an indeterminate amount of damages. If we believe that a loss arising from such matters is probable and can be reasonably estimated, we accrue the estimated liability in our financial statements. If only a range of estimated losses can be determined, we accrue an amount within the range that, in our judgment, reflects the most likely outcome; if none of the estimates within that range is a better estimate than any other amount, we

accrue the low end of the range. For those proceedings in which an unfavorable outcome is reasonably possible but not probable, we have disclosed an estimate of the reasonably possible loss or range of losses or we have concluded that an estimate of the reasonably possible loss or range arising directly from the proceeding (i.e., monetary damages or amounts paid in judgment or settlement) are not material. If we cannot estimate the probable or reasonably possible loss or range of losses arising from a legal proceeding, we have disclosed that fact. In assessing the materiality of a legal proceeding, we evaluate, among other factors, the amount of monetary damages claimed, as well as the potential impact of non-monetary remedies sought by plaintiffs (e.g., injunctive relief) that may require us to change our business practices in a manner that could have a material adverse impact on our business. With respect to the matters disclosed below, we are unable to estimate the possible loss or range of losses that could potentially result from the application of such non-monetary remedies.

Amounts accrued for legal and regulatory proceedings for which we believe a loss is probable were not material for the year ended December 31, 2014. Except as otherwise noted for the proceedings described below, we have concluded, based on currently available information, that reasonably possible losses arising directly from the proceedings (i.e., monetary damages or amounts paid in judgment or settlement) in excess of our recorded accruals are also not material to PayPal. However, legal and regulatory proceedings are inherently unpredictable and subject to significant uncertainties. If one or more matters were resolved against us in a reporting period for amounts in excess of management's expectations, the impact on our operating results or financial condition for that reporting period could be material.

#### Regulatory Proceedings

We routinely report to the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") on payments we have rejected or blocked pursuant to OFAC sanctions regulations and on any possible violations of those regulations. We have cooperated with OFAC in recent years regarding our review process over transaction monitoring and have self-reported a large number of small dollar amount transactions that could possibly be in violation of OFAC sanctions regulations. In March 2015, we reached a settlement with OFAC regarding the possible violations arising from our practices between 2009 and 2013, before our implementation of real-time monitoring processes. In addition, we continue to cooperate with OFAC regarding more recent self-reported transactions that could also possibly be in violation of OFAC sanctions regulations. Such self-reported transactions could result in claims or actions against us including litigation, injunctions, damage awards or require us to change our business practices that could result in a material loss, require significant management time, result in the diversion of significant operational resources or otherwise harm our business.

On August 7, 2013 and January 13, 2014, eBay, PayPal and certain wholly owned subsidiaries of PayPal received Civil Investigative Demands ("CIDs") from the CFPB requesting that we provide testimony, produce documents and provide information relating primarily to the acquisition, management, and operation of our PayPal Credit products, including online credit products and services, advertising, loan origination, customer acquisition, servicing, debt collection, and complaints handling practices. The CIDs could lead to an enforcement action and/or one or more significant consent orders, which may result in substantial costs, including legal fees, fines, penalties and remediation expenses. We are cooperating with the CFPB in connection with the CIDs and are engaging in settlement discussions. The CFPB has provided us with a Notice and Opportunity to Respond and Advise and indicated that a lawsuit could be filed against us as early as the second quarter of 2015. Resolution of these inquiries could require us to make monetary payments to certain customers, pay fines and/or change the manner in which we operate the PayPal Credit products, which could adversely affect our business.

#### General Matters

Other third parties have from time to time claimed, and others may claim in the future, that we have infringed their intellectual property rights. We are subject to patent disputes, and expect that we will increasingly be subject to additional patent infringement claims involving various aspects of our business as our products and services continue to expand in scope and complexity. Such claims may be brought directly or indirectly against

our companies and/or against our customers (who may be entitled to contractual indemnification under their contracts with us), and we are subject to increased exposure to such claims as a result of our recent acquisitions, particularly in cases where we are entering into new lines of business in connection with such acquisitions. We have in the past been forced to litigate such claims, and we believe that additional lawsuits alleging such claims will be filed against us. Intellectual property claims, whether meritorious or not, are time consuming and costly to defend and resolve, could require expensive changes in our methods of doing business or could require us to enter into costly royalty or licensing agreements on unfavorable terms.

From time to time, we are involved in other disputes or regulatory inquiries that arise in the ordinary course of business, including suits by our customers (individually or as class actions) alleging, among other things, improper disclosure of our prices, rules or policies, that our practices, prices, rules, policies or customer/user agreements violate applicable law or that we have acted unfairly and/or not acted in conformity with such prices, rules, policies or agreements. In addition to these types of disputes and regulatory inquiries, our operations are also subject to regulatory and/or legal review and/or challenges that tend to reflect the increasing global regulatory focus to which the payments industry is subject and, when taken as a whole with other regulatory and legislative action, such actions could result in the imposition of costly new compliance burdens on our business and customers and may lead to increased costs and decreased transaction volume and revenue. Further, the number and significance of these disputes and inquiries are increasing as our company has grown larger, our business has expanded in scope (both in terms of the range of products and services that we offer and our geographical operations) and our products and services have increased in complexity. Any claims or regulatory actions against us, whether meritorious or not, could be time consuming, result in costly litigation, damage awards (including statutory damages for certain causes of action in certain jurisdictions), injunctive relief or increased costs of doing business through adverse judgment or settlement, require us to change our business practices in expensive ways, require significant amounts of management time, result in the diversion of significant operational resources or otherwise harm our business.

#### **Properties**

We own and lease various properties in the U.S. and other countries around the world. We use the properties for executive and administrative offices, data centers, product development offices, fulfillment centers and customer service offices. As of December 31, 2014, our owned and leased properties provided us with aggregate square footage as follows:

	<b>United States</b>	Other Countries	Total
		(In millions)	
Owned facilities	1.0	-	1.0
Leased facilities	0.9	1.2	2.1
Total facilities	1.9	1.2	3.1

Our corporate headquarters are located in San Jose, California and occupy approximately 0.7 million of owned square feet.

#### Seasonality

The Company does not experience meaningful seasonality. No individual quarter in 2014, 2013 or 2012 accounted for more than 30% of net revenue.

#### **Financial Information About Segments**

See "Note 9-Segment and Geographical Information" to the combined financial statements included in this information statement for certain financial information about segments.

## **Employees**

As of December 31, 2014, we employed approximately 15,800 people globally, of whom approximately 9,100 of our employees were located in the U.S. We consider our relationship with employees to be good.

### **Corporate Information**

PayPal was incorporated in Delaware in January 2015 for the purpose of owning and operating eBay's Payments business in connection with the separation and distribution described herein. Prior to the contribution of this business to PayPal, which will occur prior to the distribution, PayPal will have no operations.

The address of PayPal's principal executive offices is PayPal Holdings, Inc., 2211 North First Street, San Jose, California 95131. PayPal's telephone number after the distribution will be [●]. PayPal maintains an Internet site at www.paypal.com, and its investor relations site will be accessible prior to the distribution at http://investor.paypal-corp.com. PayPal's website and the information contained therein or connected thereto shall not be deemed to be incorporated herein, and you should not rely on any such information in making an investment decision.

#### MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Please read the following discussion in conjunction with the audited combined financial statements, which are comprised of the payments business of eBay Inc., including PayPal, Inc. and certain other assets and liabilities that have historically been held at the eBay Inc. corporate level, but are specifically identifiable and attributable to the payments business, and corresponding notes, and the unaudited pro forma condensed combined financial statements and corresponding notes included elsewhere in this information statement. This Management's Discussion and Analysis of Financial Condition and Results of Operations contains forward-looking statements. The matters discussed in these forward-looking statements are subject to risk, uncertainties, and other factors that could cause actual results to differ materially from those projected or implied in the forward-looking statements. Please see "Risk Factors" and "Cautionary Statement Concerning Forward-Looking Statements" for a discussion of the uncertainties, risks and assumptions associated with these statements.

#### Overview

On September 30, 2014, eBay Inc. ("eBay") announced its intent to separate its payments business into an independent, publicly traded company. To accomplish this separation, in January 2015, eBay incorporated PayPal Holdings, Inc. ("PayPal Holdings") which will ultimately become the parent of PayPal, Inc. and will hold, directly or indirectly, all of the assets and liabilities associated with PayPal, Inc. References to "we," "our," "us," "the Company" or "PayPal" refer to the combined entities of the payments business of eBay, including PayPal, Inc. and certain other assets and liabilities that have been historically held at the eBay corporate level, but are specifically identifiable and attributable to the payments business.

Years ended December 31, 2014, 2013 and 2012

We recorded net income of \$419 million in 2014, \$955 million in 2013 and \$778 million in 2012. The decrease in net income in 2014 was primarily attributable to an increase in income tax expense of \$713 million primarily resulting from the recognition of deferred tax liabilities relating to undistributed foreign earnings of certain foreign subsidiaries for 2013 and prior years. We recorded non-GAAP net income of \$1.3 billion in 2014, \$1.2 billion in 2013 and \$1.0 billion in 2012. The increase in non-GAAP net income in 2014 and 2013 was attributable to an increase in operating income in each of these periods.

Net revenues increased 19% in 2014 and 2013. The increase was primarily driven by growth in total payment volume ("TPV") of 26% in 2014 and 24% in 2013. Operating expenses increased \$1.1 billion and \$854 million, or 20% and 18% in 2014 and 2013, respectively. The increase was primarily due to an increase in transaction expense, transaction and loan losses, and additional investments in sales and marketing programs and product development initiatives.

Operating income increased \$177 million, or 16% in 2014 compared to 2013, and \$211 million, or 24% in 2013 compared to 2012. Non-GAAP operating income increased \$237 million, or 17%, in 2014 compared to 2013 and \$244 million, or 21%, in 2013 compared to 2012. Our non-GAAP operating margin was 21% in 2014, 21% in 2013 and 21% in 2012. Operating income and non-GAAP operating income increased in 2014 and 2013 as a result of the increase in net revenues.

We generated net cash flows from operations of \$2.2 billion for the year ended December 31, 2014, compared to \$2.0 billion and \$1.6 billion for the years ended December 31, 2013 and 2012, respectively. We generated free cash flow of \$1.7 billion, \$1.6 billion and \$1.1 billion in 2014, 2013 and 2012, respectively.

The following table provides a summary of our combined operating results for the years ended December 31, 2014, 2013 and 2012:

	Year Ended December 31,				Percent Increase/(Decre			
	2014	2013	2012	2014		2013	_	
		(In n	nillions, except perce	entages)				
Net Revenues	\$8,025	\$6,727	\$5,662	19	%	19	%	
Operating Expenses	6,757	5,636	4,782	20	%	18	%	
Operating Income	1,268	1,091	880	16	%	24	%	
Income Tax Expense	842	129	113	553	%	14	%	
Effective Income Tax Rate	67 %	12 %	13 %		**		**	
Net Income	\$419	\$955	\$778	(56	)%	23	%	

<sup>\*\*</sup> Not Meaningful

The following table provides a summary of our combined non-GAAP financial measures for the years ended December 31, 2014, 2013 and 2012:

	Year Ended December 31,			Percent	Increase/(Decrease)
	2014	2013	2012	2014	2013
		(In n	nillions, except perc	centages)	
Non-GAAP operating income	\$1,648	\$1,411	\$1,167	17 %	21 %
Non-GAAP operating margin	21 %	21 %	21 %	**	* **
Non-GAAP net income	\$1,343	\$1,186	\$961	13 %	23 %

### \*\* Not Meaningful

Please refer to "Non-GAAP Measures" below for discussion of the items excluded from non-GAAP operating income, non-GAAP operating margin and non-GAAP net income.

### Three months ended March 31, 2015 and 2014

We recorded net income of \$255 million and a net loss of \$382 million in the three months ended March 31, 2015 and 2014, respectively. The increase in net income in 2015 was primarily attributable to a decrease in income tax expense of \$628 million, primarily resulting from the recognition of deferred tax liabilities in the three months ended March 31, 2014 relating to undistributed foreign earnings of certain foreign subsidiaries for 2013 and prior years. We recorded non-GAAP net income of \$360 million and \$337 million in the three months ended March 31, 2015 and 2014, respectively.

Net revenues increased 14% in the three months ended March 31, 2015 compared to the same period of the prior year. The increase was primarily driven by growth in TPV of 17%. Operating expenses increased \$259 million, or 17%, in the three months ended March 31, 2015 compared to the same period of the prior year. The increase was primarily due to an increase in transaction expense, transaction and loan losses, general and administrative expenses and additional investments in product development initiatives. Operating expenses in the three months ended March 31, 2015 also included \$48 million in restructuring expense representing approximately 3% of the growth in total operating expenses compared to the same period in the prior year.

Operating income increased \$4 million, or 1% in the three months ended March 31, 2015 compared to the same period of the prior year. Non-GAAP operating income increased \$61 million, or 15%, in the three months ended March 31, 2015 compared to the same period of the prior year. Our non-GAAP operating margin was 22% in the three months ended March 31, 2015 and 2014. Operating income and non-GAAP operating income increased as a result of the increase in net revenues.

We generated net cash flows from operations of \$544 million for the three months ended March 31, 2015, compared to \$425 million for the three months ended March 31, 2014. We generated free cash flow of \$350 million and \$325 million in the three months ended March 31, 2015 and 2014, respectively.

The following table provides a summary of our combined operating results for the three months ended March 31, 2015 and 2014:

	Three Mont March		Percent Increase	
	2015	2014	(Decreas	<u>e)</u>
	(In mill	ions, except percei	ntages)	
Net Revenues	\$2,137	\$1,874	14	%
Operating Expenses	1,815	1,556	17	%
Operating Income	322	318	1	%
Income Tax Expense	66	694	(90	)%
Effective Income Tax Rate	21 %	222 %	*	*
Net Income/(Loss)	\$255	\$(382)	(167	)%

<sup>\*\*</sup> Not Meaningful

The following table provides a summary of our combined non-GAAP financial measures for the three months ended March 31, 2015 and 2014:

	Three Mor		Percent Increase/	
	2015	2014	(Decrease)	
		nillions, except percenta	ges)	
Non-GAAP operating income	\$ 473	\$412	15	%
Non-GAAP operating margin	22 %	22 %	*	*
Non-GAAP net income	\$ 360	\$ 337	7	%

<sup>\*\*</sup> Not Meaningful

Please refer to "Non-GAAP Measures" below for discussion of the items excluded from non-GAAP operating income, non-GAAP operating margin and non-GAAP net income.

#### **Business Environment**

We are a leading technology platform company that enables digital and mobile payments on behalf of consumers and merchants worldwide. We put our customers at the center of everything we do. We strive to increase our relevance for consumers, merchants, friends and family to manage and move their money anywhere in the world, anytime, on any platform and through any device (e.g., mobile, tablets, personal computers or wearables). We provide safer and simpler ways for businesses of all sizes to accept payments from merchant websites, mobile devices and applications, and at offline retail locations through a wide range of payment solutions across our Payments Platform, including PayPal, PayPal Credit, Braintree and Venmo products.

We provide merchants and consumers with protection programs on substantially all transactions completed through our Payments Platform, except for transactions using our gateway products. Our gateway products include our Payflow Payments and certain Braintree products. A payment gateway links a merchant's website to their processing network and merchant account. Our protection programs protect both merchants and consumers from loss primarily due to fraud and counterparty performance. Our ability to protect both consumers and merchants is based largely on our risk management capabilities, which in turn depend on our ability to leverage the data we collect on transactions and our analytical capabilities. The protections we provide are generally much

broader than those protections provided by other participants in the payments industry. We believe that as a result of these programs, consumers can be confident that they will only be required to pay if they receive the product in the condition as described, and that merchants can be confident that they will receive payment for the product that they are delivering to the customer.

Our Payments Platform and open application programming interfaces ("APIs") are designed to allow developers to innovate with ease and to offer cutting edge applications to a large ecosystem of merchants and consumers, while at the same time maintaining the security of our customers' financial information. We provide developers with easy to use, flexible and powerful tools that are designed to leverage our global reach and payment capabilities. Our software developer kits ("SDKs") are specifically focused on the mobile application market and are designed to remove friction by not requiring a redirect to PayPal.com or an additional login. We are using a true "mobile first" approach to make payments simple and intuitive.

We generated approximately 52% of our 2014 net revenues, 52% of our 2013 net revenues and 51% of our 2012 net revenues from merchants or consumers domiciled outside of the United States. Other than the United States, the United Kingdom was the only country where we generated more than 10% of total net revenues in 2014, 2013 and 2012. During each of these periods, we have also generated more than 10% of total net revenues in the euro zone. Because we have generated substantial net revenues internationally in recent periods, including the years ended December 31, 2014, 2013 and 2012, we are subject to the risks of doing business in foreign countries as discussed under "Risk Factors–Risk Factors That May Affect Our Business, Results of Operations and Financial Condition." In that regard, fluctuations in foreign currency exchange rates impact our results of operations. We have a foreign currency risk management program that is designed to reduce our exposure to fluctuations in foreign currencies; however, the effectiveness of this program in mitigating the impact of foreign currency fluctuations on our results of operations varies from period to period, and in any given period, operating results are usually affected, sometimes significantly, by changes in foreign currency exchange rates. We calculate the year-over-year impact of foreign currency movements on our business using prior period foreign currency exchange rates applied to current year transactional currency amounts.

The markets for our products are intensely competitive and are subject to rapid technological change, including but not limited to our products' ability to complete transactions accurately, safely and quickly on merchant websites, within their mobile applications, or in a physical location. Since a large number of merchants accept forms of payment other than PayPal, the use of our product is ultimately a consumer choice. We compete for consumer preference by offering safer and simpler ways to access and move money through any mobile device or personal computer. We face competition from existing online, mobile and offline payment methods.

Our business is subject to regulation in the countries in which we operate, including regulations such as Anti-Money Laundering ("AML") and Know Your Customer ("KYC") policies. Information security risks for global payments and technology companies have significantly increased in recent years. Although we have not experienced any material impacts relating to cyber-attacks or other information security breaches on our Payments Platform, there can be no assurance that we are immune to these risks and will not suffer such losses in the future. See our risk factor in "Risk Factors–Risk Factors That May Affect Our Business, Results of Operations and Financial Condition" related to a failure or breach of our security systems or infrastructure as a result of cyber-attacks.

### **Impact of Foreign Currency Rates**

We have significant operations internationally that are denominated in foreign currencies, primarily the Euro, British Pound, and Australian Dollar, subjecting us to foreign currency risk which may adversely impact our financial results. The strengthening or weakening of the U.S. dollar versus the Euro, British Pound and Australian Dollar impacts the translation of our net revenues generated in these foreign currencies into the U.S. dollar. In 2014, foreign currency movements relative to the U.S. dollar negatively impacted net revenues by approximately \$58 million (inclusive of a \$36 million negative impact from hedging activities). In 2013, foreign

currency movements relative to the U.S. dollar negatively impacted net revenues by approximately \$20 million (inclusive of a \$4 million negative impact from hedging activities). In 2014 and 2013, foreign currency movements relative to the U.S. dollar did not have a significant impact on net income. Additionally, in connection with our services in multiple currencies, we set our foreign exchange rates twice per day, and may face financial exposure if we incorrectly set our foreign exchange rates or as a result of fluctuations in foreign exchange rates between the times that we set our foreign exchange rates. Given that we also hold some corporate and customer funds in non-U.S. currencies, our financial results are affected by the translation of these non-U.S. currencies into U.S. dollars. While from time to time we enter into transactions to hedge portions of our foreign currency translation exposure, it is impossible to predict or eliminate the effects of this exposure. Fluctuations in foreign exchange rates could significantly impact our financial results.

Three months ended March 31, 2015 and 2014

In the three months ended March 2015 and 2014, we generated approximately 52% of net revenues from customers domiciled outside of the United States. Other than the United States, the United Kingdom was the only country where we generated more than 10% of total net revenues in these periods.

In the three months ended March 31, 2015, foreign currency movements relative to the U.S.dollar negatively impacted net revenues by approximately \$80 million (inclusive of a \$50 million favorable impact from hedging activities). In the three months ended March 31, 2014, foreign currency movements relative to the U.S. dollar negatively impacted net revenues by approximately \$8 million (inclusive of a \$17 million negative impact from hedging activities). In the three months ended March 31, 2015, foreign currency movements relative to the U.S. dollar did not have a significant impact on net income.

#### Financial Results - Fiscal Years 2014, 2013 and 2012

#### Net Revenues

#### Revenue Description

We earn revenue from the following types of transactions:

*Transaction revenues:* Net transaction fees charged to consumers and merchants based on the volume of activity processed through our Payments Platform, including PayPal, PayPal Credit, Venmo and Braintree products.

Other value added services: Net revenues derived principally from interest and fees earned on our PayPal Credit loans receivable portfolio, subscription fees, gateway fees, revenue share we earn through partnerships and other services that we provide to consumers and merchants.

Transaction revenues are generated from fees charged to merchants on the volume of activity we enable ("Total Payments Volume" or "TPV"). We define TPV as the value of payments, net of payment reversals, successfully completed through our Payments Platform, excluding transactions processed through our gateway products. Our Payments Platform includes PayPal, PayPal Credit, Venmo and Braintree products. Growth in TPV is also directly impacted by the payment transactions that we enable on our payments platform. Payment transactions is the total number of payments, net of payment reversals, successfully completed through our Payments Platform, excluding transactions processed through our gateway products. We earn additional fees on transactions settled in foreign currencies when we enable cross-border transactions. We also earn interest and related fees on receivables from consumers and merchants that use our PayPal Credit products.

Our revenues can be significantly impacted by the following:

The mix between merchant types;

Mix between domestic and cross-border transactions;

Geographic region or country in which a transaction occurs; and

The amount of PayPal Credit loans receivable outstanding with consumers and merchants.

#### Net revenues analysis

The significant components of our net revenue for the years ended December 31, 2014, 2013 and 2012 were as follows:

	Y	Year Ended December 31,			Percent Inc (Decrea		
	2014	2013	2012	2014		2013	
		<u></u> (I	n millions, except perce	entages)			
Transaction revenues	\$ 7,107	\$ 5,992	\$ 5,028	19	%	19	%
Other value added services	918	735	634	25	%	16	%
Net revenues	\$ 8,025	\$ 6,727	\$ 5,662	19	%	19	%

The increase in transaction revenues in 2014 and 2013 was primarily based on the growth in TPV and the total number of payment transactions on our Payments Platform.

The following table provides a summary of our active customer accounts, number of payment transactions and TPV:

	Year Ended December 31,					Percent In (Decrea				
	2014		2013		2012		2014		2013	_
				(In m	illions, exce	pt percenta	ges)			
Active customer accounts	162		143		123		13	%	16	%
Number of payment transactions	3,964		3,261		2,663		22	%	22	%
Total TPV	\$234,63	35	\$185,6	06	\$150,0	66	26	%	24	%
Percent of cross-border TPV	24	%	24	%	24	%		**		**
Percent of TPV from large merchants	42	%	39	%	36	%		**		**

<sup>\*\*</sup> Not Meaningful

The growth in TPV was driven largely by the increase in the number of payment transactions and active customer accounts in 2014 and 2013. The growth in transaction revenues was lower than the growth in TPV and growth in payment transactions due to a higher portion of TPV generated by large merchants who generally pay lower rates on higher transaction volume. We define large merchants as merchants who have generated TPV greater than \$1.2 million in the last 12 months. The impact of increases or decreases in prices charged to our customers did not significantly impact revenue growth in 2014 or 2013.

Net revenues from other value added services increased by 25% and 16% in 2014 and 2013, respectively. The increases were primarily due to interest and fee income earned on loans receivable outstanding from consumers that used our PayPal Credit products as a funding source. The total loans receivable balance as of December 31, 2014 and 2013 was \$3.6 billion and \$2.8 billion, respectively, reflecting a year over year increase of 29%. In 2013, the increase in interest and fee income was offset by a decrease in revenue share we earn through partnerships and a decrease in net revenues from other services that we provide to consumers and merchants.

### **Operating Expenses**

The following table summarizes our operating expenses and related metrics we use to assess the trend in each:

	**	Z E LIB I	21		Percent In		
		ear Ended December	- /		(Decrea		
	2014	2013	2012	2014		2013	
		(In	ı millions, except percei	ntages)			
Transaction expense	\$ 2,170	\$ 1,835	\$ 1,518	18	%	21	%
Transaction and loan losses	646	502	365	29	%	38	%
Customer support and operations	1,055	950	814	11	%	17	%
Sales and marketing	998	791	662	26	%	19	%
Product development	890	727	677	22	%	7	%
General and administrative	482	378	345	28	%	10	%
Depreciation and amortization	516	453	382	14	%	19	%
Restructuring	_	_	19		**		**
Total operating expenses	\$ 6,757	\$ 5,636	\$ 4,782	20	%	18	%
Transaction expense rate <sup>1</sup>	0.92 %	0.99 %	1.01 %				
Transaction and loan loss rate <sup>2</sup>	0.28 %	0.27 %	0.24 %				

- 1 Transaction expense rate is calculated by dividing transaction expense by TPV
- 2 Transaction and loan loss rate is calculated by dividing transaction and loan losses by TPV
- \*\* Not Meaningful

### Transaction expense

Transaction expense is primarily comprised of the costs we incur to accept a customer's funding source of payment. These costs include fees paid to payment processors and other financial institutions in order to draw funds from a customer's credit or debit card, bank account or other funding source they have stored in their digital wallet. Transaction expense also includes interest expense on borrowings incurred to finance our portfolio of loans receivable arising from our PayPal Credit funding option. We refer to the allocation of funding sources used by our consumers as our "funding mix." The cost of funding a transaction with a credit card is generally more costly than the cost of funding a transaction from a bank or through internal sources such as a PayPal account balance or PayPal Credit. As we expand the availability of alternative funding sources to our customers, a change in funding mix can increase or decrease our transaction expense rate. For the years ended December 31, 2014, 2013 and 2012, approximately 2% of TPV was funded with PayPal Credit.

The increase of \$335 million or 18% in transaction expense in 2014 compared to 2013, and the increase of \$317 million or 21% in 2013 compared to 2012 is predominantly attributable to an increase in TPV. Our transaction expense rates in 2014 compared to 2013, and in 2013 compared to 2012 have improved due to a favorable funding mix and a larger share of TPV in countries where we pay lower rates for transactions funded with credit cards than in the U.S. In addition, as our technology platform has continued to expand, we are more cost efficient in enabling global payments. For the years ended December 31, 2014, 2013 and 2012, approximately 48%, 48% and 46% of TPV was outside of the U.S. From time to time, payment card networks have increased, and may increase in the future, the interchange fees and assessments that they charge for each transaction which accesses their networks. Our payment card processors have the right to pass any increases in interchange fees and assessments on to us as well as increase their own fees for processing. Such changes in interchange fees and assessments could increase our transaction expense. Interest expense on borrowings incurred to finance our portfolio of loans receivable, included in Transaction expense, was \$7 million, \$14 million and \$12 million for the years ended December 31, 2014, 2013 and 2012, respectively.

#### Transaction and loan losses

Transaction losses include the expense associated with our customer protection programs, fraud, and chargebacks. Loan losses include the losses associated with our loans receivable balances. We expect our transaction and loan losses to fluctuate depending on many factors, including TPV, macroeconomic conditions, the extent of our customer protection programs, the impact of regulatory changes, and the credit quality of loans receivable arising from transactions funded with our PayPal Credit products. Additionally, we recover certain amounts from eBay related to customer protection programs offered on eligible eBay purchases made with PayPal. These amounts include the transaction losses associated with customer claims and are included as a reduction of transaction and loan losses in the combined statement of income. Our transaction losses will be impacted by the cancellation to this arrangement with eBay following our separation.

The increase of \$144 million or 29% in transaction and loan losses in 2014 compared to 2013, and the increase of \$137 million or 38% in 2013 compared to 2012 are predominantly attributable to higher TPV and loan losses. Loan losses relating to our loans receivable portfolio were \$239 million in 2014, \$194 million in 2013 and \$134 million in 2012, reflecting an increase of 23% in 2014 compared to 2013, and an increase of 45% in 2013 compared to 2012. The increase in loan losses is due to growth in the portfolio of loans receivable outstanding arising from consumers who chose PayPal Credit as a funding option. The total loans receivable balance as of December 31, 2014 and 2013 was \$3.6 billion and \$2.8 billion, respectively, reflecting a year over year increase of 29% in each year. The following table provides information regarding the credit quality of a pool of consumer loans and interest receivable balance:

	Decemb	er 31,
	2014	2013
Percentage of Loans Receivable with FICO scores > 680	54 %	55 %
Percentage of Loans Receivable with FICO scores < 599	9 %	9 %
Percent of Loans Receivable current	90 %	90 %
Percent of Loans Receivable > 90 days outstanding	4 %	4 %

Our transaction and loan loss rates did not fluctuate significantly between 2014 and 2013. Our transaction and loan loss rates increased between 2013 and 2012 primarily due to the increase in losses relating to our loans receivable portfolio. Modifications to our PayPal Credit products acceptable risk parameters during those periods did not have a material impact on our loan losses.

Recoveries associated with transaction losses incurred on eligible eBay purchases during the years ended December 31, 2014, 2013 and 2012 were \$43 million, \$48 million and \$36 million, respectively.

#### Customer support and operations

Customer support and operations expenses include costs incurred to provide 24-hour call support to our customers, our site operations and other infrastructure costs incurred to support our Payments Platform, costs to support our trust and security programs protecting our merchants and consumers and other costs incurred in our operations centers. Customer support and operations costs increased by \$105 million, or 11%, in 2014 compared to 2013 and by \$136 million, or 17%, in 2013 compared to 2012. The increase was predominantly related to an increase in headcount to service our growing number of active customer accounts and the growth in the number of payment transactions occurring on our Payments Platform.

#### Sales and marketing

Sales and marketing expenses consist primarily of customer acquisition, business development, advertising, marketing programs, and employee compensation and contractor costs to support these programs. Sales and marketing expenses increased by \$207 million, or 26%, in 2014 compared to 2013. Sales and marketing expenses

increased by \$129 million, or 19%, in 2013 compared to 2012. The increase in sales and marketing expenses in 2014 and 2013 was due primarily to higher spend to support our strategic initiatives. In 2014, we redesigned our PayPal logo and made significant investments in campaigns designed to enhance our global brand recognition and drive consumer engagement.

### Product development

Product development expenses consist primarily of employee compensation and contractor costs that are incurred in connection with the development of our Payments Platform, new products and the improvement of our existing products. Product development expenses exclude software and website development costs that are capitalized. The amortization of developed technology is included in depreciation and amortization expenses.

Product development expenses increased by \$163 million, or 22%, in 2014 compared to 2013 and by \$50 million, or 7%, in 2013 compared to 2012. The increase was due primarily to investments in our Payments Platform, creating new mobile experiences for our customers and supporting our strategic initiatives. The acquisition of Braintree also impacted the growth in product development expenses in 2014 compared to 2013.

#### General and Administrative

General and administrative expenses consist primarily of costs incurred to provide support to our business, including legal, human resources, finance, executive and other support operations. Our legal expenses, including those related to various ongoing legal proceedings, may fluctuate substantially from period to period.

These combined financial statements include expenses associated with workplace resources and information technology that were previously allocated to the Payments segment of eBay, and, additional expenses related to certain corporate functions, including senior management, legal, human resources and finance. These expenses also include allocations related to share based compensation. The expenses that were incurred by eBay have been allocated to us based on direct usage or benefits where identifiable, with the remainder allocated on a pro rata basis of revenue, headcount, or other systematic measure. The corporate costs and allocation of expenses from eBay may not be indicative of the expenses that may have been incurred had we been a separate stand-alone entity during the periods presented, nor are the results stated herein indicative of the expenses we may incur in the future. Such expenses could be higher or lower. In the periods presented, a significant portion of expenses associated with these functions and allocated to us in our combined financial statements are included in general and administrative expenses.

General and administrative expenses increased \$104 million, or 28%, in 2014 compared to 2013 and \$33 million, or 10%, in 2013 compared to 2012. In 2014, \$207 million of corporate costs and expenses allocated to us were included in general and administrative expenses representing an increase of \$24 million, or 13% compared to 2013. In 2013, \$183 million of corporate costs and expenses allocated to us were included in general and administrative expenses representing an increase of \$15 million, or 9% compared to 2012. In 2014 and 2013, the remaining increase in general and administrative expenses related primarily to higher employee-related costs, including those related to the separation.

### Depreciation and Amortization

The primary components of our depreciation and amortization expenses include the depreciation of software, including our technology platform, equipment used to deliver our services and the amortization of acquired intangible assets. Depreciation and amortization expenses increased \$63 million, or 14%, in 2014 compared to 2013 and \$71 million, or 19%, in 2013 compared to 2012. The increases in 2014 and 2013 were predominantly due to additional depreciation expenses associated with investments in our technology platform. Amortization expenses for intangible assets were \$84 million, \$70 million and \$67 million for the years ended December 31, 2014, 2013 and 2012 respectively. The increase in amortization expenses for intangible assets in 2014 were due primarily to our acquisition of Braintree in the fourth quarter of 2013.

Income Tax Expense

Our effective tax rate was 67% in 2014 compared to 12% in 2013. The increase in our effective tax rate during 2014 compared to 2013 was due primarily to the recognition during the year of a U.S. deferred tax liability of approximately \$650 million on \$1.9 billion of undistributed foreign earnings of certain of our foreign subsidiaries for 2013 and prior years. See "Note 13–Income Taxes" to the combined financial statements included in this report for more information on our effective tax rate.

Our effective tax rate was 12% in 2013 compared to 13% in 2012. The decrease in our effective tax rate during 2013 was due primarily to re-enactment of the federal research and development credit retroactive to January 1, 2012 during the first quarter of 2013.

#### Financial Results-Three Months Ended March 31, 2015 and 2014

#### Net revenues

#### Net revenues analysis

The significant components of our net revenue for the three months ended March 31, 2015 and 2014:

		Three Months Ended March 31,		t e/				
	2015	2014	(Decreas	se)				
	(In mi	(In millions, except percentages)						
Transaction revenues	\$1,914	\$1,674	14	%				
Other value added services	223	\$200	12	%				
Net revenues	<u>\$2,137</u>	\$1,874	14	%				

The increase in transaction revenues in the three months ended March 31, 2015 compared to the same period of the prior year was primarily based on the growth in TPV and the total number of payment transactions on our Payments Platform.

The following table provides a summary of our active customer accounts, number of payment transactions and TPV:

Three Mon	ths Ended	Percent Increase/	
Marc	h 31,		
2015	2014	(Decrea	se)
(In mi	llions, except percen	tages)	
165	148	11	%
1,123	918	22	%
\$63,021	\$53,676	17	%
23 %	24 %		**
42 %	40 %		**
	Marc 2015 (In mi 165 1,123 \$63,021 23 %	(In millions, except percent 165 148 1,123 918 \$63,021 \$53,676 23 % 24 %	March 31,   Increase   2015   2014   (Decrease   165   148   11   1,123   918   22   \$63,021   \$53,676   17   23 % 24 %

<sup>\*\*</sup> Not Meaningful

The growth in TPV was driven largely by the increase in the number of payment transactions in the three months ended March 31, 2015 compared to the same period of the prior year. The growth in transaction revenues was lower than the growth in TPV and growth in payment transactions due to a higher portion of TPV generated by large merchants who generally pay lower rates on higher transaction volume. The impact of increases or decreases in prices charged to our customers did not significantly impact revenue growth in the three months ended March 31, 2015.

Net revenues from other value added services increased by 12% in the three months ended March 31, 2015 compared to the same period of the prior year. The increase was primarily due to interest and fee income earned on loans receivable outstanding from consumers that used our PayPal Credit products as a funding source. The total consumer loans receivable balance as of March 31, 2015 was \$3.6 billion, reflecting a year over year increase of 27%. Net revenues from other value added services that we provide did not change significantly in the three months ended March 31, 2015 compared to the same period of the prior year.

#### **Operating Expenses**

The following table summarizes our operating expenses and related metrics we use to assess the trend in each:

	Three Months Ended March 31,		Percen Increase	
	2015	2014	(Decrease	
	(In mi	llions, except perce	ntages)	
Transaction expense	\$575	\$514	12	%
Transaction and loan losses	178	129	38	%
Customer support and operations	275	255	8	%
Sales and marketing	236	215	10	%
Product development	224	198	13	%
General and administrative	138	115	20	%
Depreciation and amortization	141	130	8	%
Restructuring	48			**
Total operating expenses	\$1,815	\$1,556	17	%
Transaction expense rate <sup>1</sup>	0.91 %	0.96 %		**
Transaction and loan loss rate <sup>2</sup>	0.28 %	0.24 %		**

<sup>1</sup> Transaction expense rate is calculated by dividing transaction expense by TPV.

#### Transaction expense

The increase of \$61 million, or 12%, in transaction expense in the three months ended March 31, 2015 compared to the same period of the prior year was predominantly attributable to an increase in TPV, which was offset by favorable foreign currency fluctuations due to the strengthening of the U.S. dollar. Our transaction expense rates in the three months ended March 31, 2015 improved compared to the same period of the prior year due to a favorable funding mix. For the three months ended March 31, 2015 and 2014, approximately 2% of TPV was funded with PayPal Credit. In addition, as our technology platform has continued to expand, we have become more cost efficient in enabling global payments. For the three months ended March 31, 2015 and 2014, approximately 46% and 48% of TPV, respectively, was generated outside of the U.S. Interest expense on borrowings incurred to finance our portfolio of loans receivable, included in transaction expense, was \$3 million and \$1 million for the three months ended March 31, 2015 and 2014, respectively.

### Transaction and loan losses

The increase of \$49 million, or 38%, in transaction and loan losses in the three months ended March 31, 2015 compared to the same period of the prior year was predominantly attributable to higher TPV and an increase in loan losses. Loan losses relating to our loans receivable portfolio were \$71 million and \$49 million in the three months ended March 31, 2015 and 2014, respectively, reflecting an increase of 45%. The increase in loan losses was due to growth in the portfolio of loans receivable outstanding arising from consumers who chose PayPal Credit as a funding option, which increased by 27% year over year, and an increase in losses incurred on working

<sup>2</sup> Transaction and loan loss rate is calculated by dividing transaction and loan losses by TPV.

<sup>\*\*</sup> Not Meaningful

capital advances to selected merchant sellers. The total consumer loans receivable balance as of March 31, 2015 and December 31, 2014 was \$3.6 billion. The following table provides information regarding the credit quality of our pool of consumer loans and interest receivable balance:

	March 31,	2015	December 31, 2	014
Percentage of Loans Receivable with FICO scores > 680	52	%	54	%
Percentage of Loans Receivable with FICO scores < 599	11	%	9	%
Percent of Loans Receivable current	91	%	90	%
Percent of Loans Receivable > 90 days outstanding	4	%	4	%

Modifications to our PayPal Credit products acceptable risk parameters during those periods did not have a material impact on our loan losses.

Recoveries associated with transaction losses incurred on eligible eBay purchases during the three months ended March 31, 2015 and 2014 were \$10 million and \$12 million, respectively.

### Customer support and operations

Customer support and operations costs increased by \$20 million, or 8%, in the three months ended March 31, 2015 compared to the same period of the prior year. The increase was predominantly related to an increase in headcount to service the growth in our active customer accounts and the number of payment transactions occurring on our Payments Platform, which was offset in part by favorable foreign currency fluctuations due to the strengthening of the U.S. dollar.

### Sales and marketing

Sales and marketing expenses increased by \$21 million, or 10%, in the three months ended March 31, 2015 compared to the same period of the prior year. The increase in sales and marketing expenses was due primarily to an increase in expenses relating to marketing programs to promote our products and higher employee-related costs, which was offset in part by favorable foreign currency fluctuations due to the strengthening of the U.S. dollar.

#### Product development

Product development expenses increased by \$26 million, or 13%, in the three months ended March 31, 2015 compared to the same period of the prior year. The increase was due primarily to investments in our Payments Platform, creating new mobile experiences for our customers and supporting our strategic initiatives.

#### General and Administrative

General and administrative expenses increased \$23 million, or 20%, in the three months ended March 31, 2015 compared to the same period of the prior year. In the three months ended March 31, 2015, \$61 million of corporate costs and expenses allocated to us were included in general and administrative expenses representing an increase of \$1 million, or 2%, compared to the same period of the prior year. The increase in general and administrative expenses related primarily to an increase in expenses associated with regulatory matters and higher employee-related costs, including those related to our separation.

# Depreciation and Amortization

Depreciation and amortization expenses increased \$11 million, or 8%, in the three months ended March 31, 2015 compared to the same period of the prior year. The increases were predominantly due to additional depreciation expenses associated with investments in our technology platforms. Amortization expenses for intangible assets were \$19 million and \$24 million during the three months ended March 31, 2015 and 2014, respectively.

Restructuring

In January 2015, at a regular meeting of eBay's Board of Directors ("eBay's Board"), eBay's Board approved a plan to implement a strategic reduction of its existing global workforce. The reduction is expected to be substantially completed in the first half of 2015 and generate annual savings of more than \$130 million across the Company. The savings are expected to be reinvested back into other areas of the business to drive additional growth. Restructuring expenses were \$48 million in the three months ended March 31, 2015. No restructuring expenses were recognized in the three months ended March 31, 2014.

## Income Tax Expense

Our effective income tax rate was 21% and 222% for the three months ended March 31, 2015 and 2014, respectively. The decrease in our effective income tax rate for the three months ended March 31, 2015 compared to the same period of the prior year was due primarily to the prior year accrual of U.S. income and applicable foreign taxes on \$1.9 billion of undistributed foreign earnings for 2013 and prior years which were no longer considered indefinitely reinvested. Without this accrual, our effective tax rate for the three months ended March 31, 2014 would have been 14%. The additional 7% increase in our effective tax rate over the same period of the prior year was due primarily to discrete items.

#### Non-GAAP Financial Information

Non-GAAP financial information is defined as a numerical measure of a company's performance that excludes or includes amounts so as to be different than the most comparable measure calculated and presented in accordance with accounting principles generally accepted in the United States ("GAAP"). Pursuant to the requirements of Regulation S-K, portions of this "Management's Discussion and Analysis of Financial Condition and Results of Operations" include a reconciliation of certain non-GAAP financial measures to the most directly comparable GAAP financial measures. The presentation of non-GAAP financial measures should not be considered in isolation or as a substitute for the Company's related financial results prepared in accordance with GAAP.

We present non-GAAP financial measures to enhance an investor's evaluation of our ongoing operating results and to facilitate meaningful comparison of our results between periods. Management uses these non-GAAP financial measures to, among other things, evaluate our ongoing operations, for internal planning and forecasting purposes and in the calculation of performance-based compensation.

We exclude the following items from non-GAAP net income, non-GAAP earnings per diluted share, non-GAAP operating income, non-GAAP operating margin and non-GAAP effective tax rate:

Stock-based compensation expense and related employer payroll taxes. This expense consists of expenses for stock options, restricted stock units, and employee stock purchases issued to our employees by eBay under eBay's equity incentive plans. We exclude stock-based compensation expense from our non-GAAP measures primarily because they are non-cash expenses that management does not believe are reflective of ongoing operating results. The related employer payroll taxes are dependent on eBay's stock price and the timing and size of exercises by our employees of their stock options and the vesting of their restricted stock units, over which management has limited to no control, and as such management does not believe it correlates directly to our operation of the business.

Amortization or impairment of acquired intangible assets, impairment of goodwill, significant gains or losses and transaction expenses from the acquisition or disposal of a business and certain gains or losses on investments. We incur amortization or impairment of acquired intangible assets and goodwill in connection with acquisitions and may incur significant gains or losses from the acquisition or disposal of a business and therefore exclude these amounts from our non-GAAP measures. We also exclude certain gains and losses on investments. We exclude these items because management does not believe they correlate directly to the ongoing operating results of our business.

*Restructuring.* These charges consist of expenses for employee severance and other exit and disposal costs. We exclude restructuring charges primarily because management does not believe they are reflective of ongoing operating results.

*Certain gains and losses on investments*. These consist of significant, one-time gains or losses as determined in accordance with GAAP that are not a recurring part of our business operations.

Other certain significant gains, losses, or charges that are not indicative of our core operating results. These are significant gains, losses, or charges during a period that are the result of isolated events or transactions which have not occurred frequently in the past and are not expected to occur regularly or be repeated in the future. We exclude these amounts from our results primarily because management does not believe they are indicative of our current or ongoing operating results. For the quarter ended March 31, 2014, this includes the recognition of a U.S. deferred tax liability of approximately \$650 million.

Separation. These are significant expenses that are related to the planned separation of our business from eBay and into a separate publicly traded company. These consist primarily of third-party consulting fees, legal fees, employee retention payments and other expenses incurred to complete the separation. We exclude these items because management does not believe they correlate directly to the ongoing operating results of our business.

Tax effect of non-GAAP adjustments. This amount is used to present stock-based compensation and the other amounts described above on an after-tax basis consistent with the presentation of non-GAAP net income.

Years ended December 31, 2014, 2013 and 2012

	Year	Year Ended December 31,		
	2014	2013	2012	
		(In millions)		
GAAP operating income	\$1,268	\$1,091	\$880	
Stock-based compensation expense and related employer payroll taxes	309	269	210	
Amortization of acquired intangible assets	70	55	58	
Restructuring	1	_(4)	19	
Total non-GAAP operating income adjustments	380	320	287	
Non-GAAP operating income	\$1,648	\$1,411	\$1,167	
Non-GAAP operating margin	21 %	21 %	21 %	

	Year E	Year Ended December 31,		
	2014	2013	2012	
		(In millions)		
GAAP income before income taxes	\$1,261	\$1,084	\$891	
GAAP provision for income taxes	842	129	113	
GAAP net income	419	955	778	
Non-GAAP adjustments to net income:				
Non-GAAP operating income adjustments (see table above)	380	320	287	
Amortization of intangibles of investments	4	7	-	
Other certain gains and losses on investments	(4)	_	-	
Other certain significant gains, losses, or charges	650	_	_	
Tax effect of non-GAAP adjustments	(106)	(96)	(104)	
Non-GAAP net income	\$1,343	\$1,186	\$961	
GAAP effective tax rate	67 %	12 %	13 %	
Tax effect of non-GAAP adjustments to net income	(49 )%	4 %	5 %	
Non-GAAP effective tax rate	18 %	16 %	18 %	

In addition to the non-GAAP measures discussed above, the company also uses free cash flow to assess our operating performance. Free cash flow represents operating cash flows less purchases of property and equipment. The company considers free cash flow to be a liquidity measure that provides useful information to management and investors about the amount of cash generated by the business after the purchases of property, buildings, equipment and including investments in our Payments Platform, which can then be used to, among other things, invest in the company's business, make strategic acquisitions, and repurchase stock. A limitation of the utility of free cash flow as a measure of financial performance is that it does not represent the total increase or decrease in the company's cash balance for the period.

	Year	Year Ended December 31,		
	2014	2013	2012	
	<u> </u>	(In millions)		
Net cash provided by operating activities	\$2,220	\$1,993	\$1,565	
Less: Purchases of property and equipment	(492)	(391)	(511)	
Free cash flow	\$1,728	\$1,602	\$1,054	

Three months ended March 31, 2015 and 2014

	Three Months Ended March 31,		
	2015	2014	
	(In mil	lions)	
GAAP operating income	\$ 322	\$ 318	
Stock-based compensation expense and related employer payroll taxes	82	73	
Amortization of acquired intangible assets	16	21	
Separation	5	_	
Restructuring	48	_	
Total non-GAAP operating income adjustments	151	94	
Non-GAAP operating income	\$ 473	\$ 412	
Non-GAAP operating margin	22 %	22 %	

	Three	Three Months Ended March 31,		
	2015		2014	
		(In millions)		
GAAP income before income taxes	\$ 321		\$ 312	
GAAP provision for income taxes	66		694	_
GAAP net income	255		(382	)
Non-GAAP adjustments to net income:				
Non-GAAP operating income adjustments (see table above)	151		94	
Amortization of intangibles of investments	_		2	
Other certain significant gains, losses, or charges	_		650	
Tax effect of non-GAAP adjustments	(46)		(27	)
Non-GAAP net income	\$ 360		\$ 337	
GAAP effective tax rate	21 %	o	222	%
Tax effect of non-GAAP adjustments to net income	3 %	o	(205	)%
Non-GAAP effective tax rate	24 %	o ·	17	%

	Three Months Ende	ed March 31,
	2015	2014
	(In million	ns)
Net cash provided by operating activities	\$ 544	\$ 425
Less: Purchases of property and equipment	(194 )	(100 )
Free cash flow	\$ 350	\$ 325

### **Liquidity and Capital Resources**

We require liquidity and access to capital to fund our global operations, customer protection programs, provide credit to customers that fund transactions using our PayPal Credit product, capital expenditures, investments in our business, potential acquisitions and current and future obligations. The following table summarizes the cash, cash equivalents and available-for-sale investment balances available as of December 31, 2014:

	Decem	ıber 31,
	2014	2013
	(In m	illions)
Cash, cash equivalents and available-for-sale investment securities <sup>1</sup>	\$2,230	\$1,975

Excludes assets related to customer accounts of \$10.6 billion and \$9.3 billion at December 31, 2014 and 2013, respectively.

Cash, cash equivalents and available-for-sale investments held by our foreign subsidiaries (i.e., any entities where earnings would be subject to United States tax upon repatriation) were \$2.0 billion and \$1.8 billion at December 31, 2014 and 2013, respectively, or 90% and 91% of our total cash, cash equivalents and available-for-sale investments as of such dates. During the first quarter of 2014, eBay changed its capital allocation strategy to reflect its objective of increasing its available U.S. cash, preserving its credit rating, and providing greater liquidity to meet its other cash needs in the U.S., which included, among other things and subject to market conditions and other uncertainties, merger and acquisition activity and potentially funding opportunistic share repurchases on an accelerated basis. As a result of the change in eBay's capital allocation strategy, we provided for U.S. income and applicable foreign withholding taxes on \$1.9 billion of undistributed foreign earnings of certain of our non-U.S. subsidiaries for 2013 and prior years. We have recorded a deferred tax liability of approximately \$650 million based on the estimated tax consequences of repatriating these earnings. We have not provided for U.S. federal income and foreign withholding taxes on \$2.3 billion of our non-U.S. subsidiaries' undistributed earnings as of December 31, 2014. Since we do not know the time or manner in which we would repatriate those funds, we cannot determine the impact of local taxes, withholding taxes and foreign tax credits associated with the future repatriation of such earnings and therefore cannot quantify the tax liability. We expect to receive a contribution of approximately \$[•] billion of cash from eBay prior to the separation. This cash will be used for general corporate purposes in both our international and domestic operations.

We strive to protect consumers and merchants from fraudulent transactions. The risk of losses from these protection programs are specific to individual customers, merchants and transactions, and may also be impacted by regional variations to these programs and modifications to the program resulting from changes to regulatory requirements. For the periods presented in the combined financial statements, payments under these protections have ranged between 0.08% and 0.12% of TPV. Historical trends may not be an indication of the future. In addition, we recovered certain amounts from eBay related to our customer protection programs offered on eligible eBay purchases made with PayPal. These costs include the transaction losses associated with customer claims and are included as a reduction of transaction and loan losses. Changes in our arrangement with eBay could impact our transaction and loan losses.

We currently fund the expansion of the PayPal Credit loans receivables with international and domestic cash resources and borrowings from eBay. To the extent that our PayPal Credit products become more widely available, and as we further promote PayPal Credit, customer adoption and usage of such products may expand. Any resulting growth in the portfolio of loan receivables would increase our liquidity needs and any failure to meet those liquidity needs could adversely affect our business. In April 2015, we concluded an arrangement with certain investors under which we sold a participation interest of approximately \$700 million in a portion of our purchased consumer receivables arising from loans made by our partner chartered financial institution of individual consumers to purchase goods and services using our PayPal Credit products. We expect to continue to evaluate third party sources of funding of our credit portfolio, including, but not limited to, commercial banks, securitization markets, private equity firms and sovereign wealth funds. Through these arrangements we are able to continue to expand the availability of our credit products without requiring the use of internal capital. We believe these third party sources, together with cash expected to be generated from operations, will be sufficient to fund the PayPal Credit portfolio for the foreseeable future.

Our liquidity and access to capital could be impacted by our credit rating, financial performance, and global credit market conditions. We are working with credit rating agencies to obtain separate credit ratings and believe that immediately following separation we will be rated investment grade. In addition, our liquidity and access to capital could also be negatively impacted by the outcome of any of the legal or regulatory proceedings to which we are a party. See "Risk Factors–Risk Factors That May Affect Our Business, Results of Operations and Financial Condition" and "Note 10–Commitments and Contingencies" to the combined financial statements for additional discussion of these and other risks facing our business.

In June 2014, we agreed, subject to certain conditions, that we, one of our affiliates or a third party partner will purchase a portfolio of consumer loan receivables relating to the customer accounts arising out of our current credit program agreement with Synchrony (formerly GE Capital Retail Bank) for a price based on the book value

of the consumer loan receivables portfolio at the time of the purchase (expected to be the fourth quarter of 2016), subject to certain adjustments and exclusions. As of December 31, 2014, Synchrony had a net receivables portfolio under the credit program agreement of approximately \$1.5 billion.

We believe that our existing cash, cash equivalents, available-for-sale investments, cash expected to be generated from operations, the anticipated cash contribution to PayPal from eBay, our expected access to capital markets, together with funding through third party sources, such as commercial banks, private equity firms, and sovereign wealth funds, will be sufficient to fund our operating activities, anticipated capital expenditures, and PayPal Credit portfolio for the foreseeable future.

Three months ended March 31, 2015 and 2014

We held cash, cash equivalents and available-for-sale investment balances of \$2.4 billion as of March 31, 2015. Cash, cash equivalents and available-for-sale investments held by our foreign subsidiaries (i.e., any entities where earnings would be subject to United States tax upon repatriation) were \$2.3 billion as of March 31, 2015, or 96% of our total cash, cash equivalents and available-for-sale investments.

#### **Cash Flows**

Years ended December 31, 2014, 2013 and 2012

	Year	Year Ended December 31,		
	2014	2013	2012	
		(In millions)		
Net cash provided by (used in):				
Operating activities	\$2,220	\$1,993	\$1,565	
Investing activities	(1,546)	(1,721)	(1,526)	
Financing activities	(51)	(85)	(210)	
Effect of exchange rates on cash and cash equivalents	(26)	3	(1 )	
Net increase/(decrease) in cash and cash equivalents	<u>\$597</u>	\$190	\$(172)	

#### **Operating Activities**

We generated cash from operating activities of \$2.2 billion, \$2.0 billion and \$1.6 billion in 2014, 2013 and 2012, due primarily to operating income of \$1.3 billion, \$1.1 billion, and \$880 million, respectively. We also recorded non-cash charges in operating income related to transaction and loan losses, depreciation and amortization, and stock-based compensation that contributed to net cash provided by operating activities.

Cash paid for income taxes in 2014, 2013 and 2012 was \$47 million, \$28 million and \$38 million, respectively.

# **Investing Activities**

The net cash used in investing activities of \$1.5 billion in 2014 was due primarily to increases in our loan receivable portfolio (net of collections) originated through our PayPal Credit products of \$1.0 billion and purchases of property and equipment of \$492 million.

The net cash used in investing activities of \$1.7 billion in 2013 was due primarily to increases in our loan receivable portfolio (net of collections) originated through our PayPal Credit products of \$793 million, cash paid for acquisitions (net of cash acquired) of \$731 million, and net cash paid for purchases and sales of investments of \$290 million.

The net cash used in investing activities of \$1.5 billion in 2012 was due primarily to increases in our loan receivable portfolio (net of collections and charge-offs) originated through our PayPal Credit products of \$740 million, purchases of property and equipment, of \$511 million and net cash outflows relating to receivables from eBay of \$168 million.

### **Financing Activities**

The net cash used in financing activities of \$51 million in 2014, \$85 million in 2013 and \$210 million in 2012 was due primarily to net cash outflows relating to repayments of borrowings from eBay.

#### Free Cash Flow

Management uses a free cash flow measure to evaluate the company's operating results, evaluate strategic investments and assess the company's ability and need to incur and service debt. Free cash flow is not a defined term under GAAP and it should not be inferred that the entire free cash flow amount is available for discretionary expenditures. The company defines free cash flow as net cash provided by operating activities less purchases of property and equipment, including the investment in software. Free cash flow was \$1.7 billion in 2014, an increase of \$126 million from 2013. The increase was primarily due to an increase in deferred income taxes of \$628 million, partially offset by a decrease in net income. Free cash flow was \$1.6 billion in 2013, an increase of \$548 million from 2012. The increase in 2013 was due primarily to an increase in net income of \$177 million, an increase in the accrual for transaction and loan losses of \$137 million and a decrease of \$120 million in purchases of property and equipment. The increase in free cash flow in 2014 was used to fund our increase in loans to consumers and merchants. The increase in free cash flow in 2013 was used towards the acquisition of Braintree in December of 2013.

#### Effect of Exchange Rates on Cash

The negative effect of currency exchange rates on cash and cash equivalents during 2014 of \$26 million was due to the strengthening of the U.S. dollar against certain foreign currencies, primarily the Euro. There was minimal impact of currency exchange rates on cash and cash equivalents during 2013 and 2012.

Three months ended March 31, 2015 and 2014

	Three M	Three Months Ended March 31,		
	2015	2014		
		(In millions)		
Net cash provided by (used in):				
Operating activities	\$ 544	\$ 425		
Investing activities	(254	) 176		
Financing activities	(94	) (6 )		
Effect of exchange rates on cash and cash equivalents	(32	) (1 )		
Net increase/(decrease) in cash and cash equivalents	\$ 164	\$ 594		

### **Operating Activities**

We generated cash from operating activities of \$544 million in the three months ended March 31, 2015 due primarily to operating income of \$322 million. Adjustments for non-cash charges in operating income increased during the period ended March 31, 2015 compared to the same period of the prior year and included \$178 million related to transaction and loan losses, \$141 million related to depreciation and amortization and \$79 million related to stock-based compensation. These adjustments were offset by an increase in working capital of \$150 million.

We generated cash from operating activities of \$425 million in the three months ended March 31, 2014 due primarily to operating income of \$318 million, adjusted for non-cash charges in operating income related to \$129 million in transaction and loan losses, \$130 million in depreciation and amortization, and \$68 million in stock-based compensation, offset by an increase in working capital of \$160 million.

Cash paid for income taxes in the three months ended March 31, 2015 and 2014 was \$5 million and \$11 million, respectively.

#### **Investing Activities**

The net cash used in investing activities of \$254 million in the three months ended March 31, 2015 was due primarily to purchases of property and equipment of \$194 million and net cash outflows relating to receivables from eBay of \$56 million. Purchases of property and equipment increased in the current period due in part to the anticipated separation from eBay.

The net cash provided by investing activities of \$176 million in the three months ended March 31, 2014 was due primarily to maturities and sales of investments of \$367 million, offset by purchases of property and equipment of \$100 million and net cash outflows relating to receivables from eBay of \$64 million.

### **Financing Activities**

The net cash used in financing activities of \$94 million and \$6 million in the three months ended March 31, 2015 and 2014, respectively, was due primarily to net cash outflows relating to repayments of borrowings from eBay.

#### Free Cash Flow

Free cash flow was \$350 million in the three months ended March 31, 2015, an increase of \$25 million from the same period of the prior year. The increase was primarily due to an increase in cash generated from operating activities offset by an increase in purchases of property and equipment. Free cash flow generated during the three months ended March 31, 2015 was used for general business purposes and towards our acquisitions announced in March 2015.

#### Effect of Exchange Rates on Cash

The negative effect of currency exchange rates on cash and cash equivalents during the three months ended March 31, 2015 and 2014 of \$32 million and \$1 million, respectively, was due to the strengthening of the U.S. dollar against certain foreign currencies, primarily the Euro.

#### **Off-Balance Sheet Arrangements**

PayPal has no off-balance sheet debt, other than lease arrangements and other commitments as presented in the Future Obligations table that follows.

eBay Inc. has a cash pooling arrangement with a financial institution for cash management purposes. We participate in this arrangement, which allows for cash withdrawals from this financial institution based upon eBay's aggregate operating cash balances within the same financial institution ("Aggregate Cash Deposits"). This arrangement also allows eBay to withdraw amounts exceeding the Aggregate Cash Deposits up to an agreed-upon limit. The net balance of the withdrawals and the Aggregate Cash Deposits are used by the financial institution as a basis for calculating eBay's net interest expense or income. As of December 31, 2014, PayPal had \$1.6 billion relating to cash subject to this pooling arrangement.

### **Future Liquidity and Obligations**

Following the separation, our capital structure and sources of liquidity will differ from our historical capital structure. Please refer to the "Unaudited Pro Forma Condensed Combined Financial Statements" included elsewhere in this information statement for discussion of the anticipated post-distribution capital structuring, including an anticipated cash contribution to PayPal from eBay. Post separation, we will no longer participate in cash management and intercompany funding arrangements with eBay. Our ability to fund our capital needs will depend on our ability to access our cash and investment portfolio, generate cash from operations, and access capital markets. The following table summarizes our obligations as of December 31, 2014 that are expected to impact liquidity and cash flow in future periods. We believe we will be able to fund these obligations through our existing cash and investment portfolio and cash expected to be generated from operations.

	Payments Due During the Year Ending December 31,	<b>Purchase Obligations</b>	<b>Operating Leases</b>	Total
			(In millions)	
2015		\$ 144	\$ 33	\$177
2016		42	31	73
2017		1	28	29
2018		-	26	26
2019		_	17	17
Thereafte	er	-	24	24
		\$ 187	\$ 159	\$346

The significant assumptions used in our determination of amounts presented in the above table are as follows:

Lease amounts include minimum rental payments under our non-cancelable operating leases for office facilities, fulfillment centers, as well as computer and office equipment that we utilize under lease arrangements. The amounts presented are consistent with contractual terms and are not expected to differ significantly from actual results under our existing leases, unless a substantial change in our headcount needs requires us to expand our occupied space or exit an office facility early.

Purchase obligation amounts include minimum purchase commitments for advertising, capital expenditures (computer equipment, software applications, engineering development services, construction contracts) and other goods and services entered into in the ordinary course of business.

In addition, in June 2014, we agreed, subject to certain conditions, that we, one of our affiliates or a third party partner will purchase a portfolio of consumer loan receivables relating to the customer accounts arising out of our current credit program agreement with Synchrony (formerly GE Capital Retail Bank) for a price based on the book value of the consumer loan receivables portfolio at the time of the purchase (expected to be the fourth quarter of 2016), subject to certain adjustments and exclusions. As of December 31, 2014, Synchrony had a net receivables portfolio under the credit program agreement of approximately \$1.5 billion.

As we are unable to reasonably predict the timing of settlement of liabilities related to unrecognized tax benefits, net, the table does not include \$187 million of such non-current liabilities included in deferred and other tax liabilities recorded on our combined balance sheet as of December 31, 2014.

### Seasonality

The Company does not experience meaningful seasonality. No individual quarter in 2014, 2013 or 2012 accounted for more than 30% of net revenue.

### **Critical Accounting Policies and Estimates**

The application of U.S. GAAP requires us to make estimates and assumptions about certain items and future events that directly affect our reported financial condition. We have established detailed policies and control procedures to

provide reasonable assurance that the methods used to make estimates and assumptions are well controlled and are applied consistently from period to period. The accounting estimates and assumptions discussed in this section are those that we consider to be the most critical to our financial statements. An accounting estimate is considered critical if both (a) the nature of the estimate or assumption is material due to the levels of subjectivity and judgment involved, and (b) the impact within a reasonable range of outcomes of the estimate and assumption is material to our financial condition. Senior management has discussed the development, selection and disclosure of these estimates with the Audit Committee of eBay Inc.'s board of directors. Our significant accounting policies, including recent accounting pronouncements, are described in "Note 1–Overview and Summary of Significant Accounting Policies" to the combined annual financial statements.

A quantitative sensitivity analysis is provided where that information is reasonably available, can be reliably estimated and provides material information to investors. The amounts used to assess sensitivity are included to allow users of this information statement to understand a general direction cause and effect of changes in the estimates and do not represent management's predictions of variability. For all of these estimates, it should be noted that future events rarely develop exactly as forecasted, and estimates require regular review and adjustment.

#### Transaction and loan losses

Transaction and loan losses include the expense associated with our customer protection programs, fraud, chargebacks, and credit losses associated with our loans receivable balances. We expect our transaction and loan losses to fluctuate depending on many factors, including, the total TPV, macroeconomic conditions, the extent of our customer protection programs, the impact of regulatory changes, and the credit quality of loans receivable arising from transactions funded with our PayPal Credit products.

We establish allowances for estimated transaction losses arising from processing customer transactions, such as chargebacks for unauthorized credit card use and merchant-related chargebacks due to non-delivery of goods or services, ACH returns, buyer protection program claims, account take overs, and debit card overdrafts. Additions to the allowance, in the form of provisions, are reflected in transaction and loan losses in our combined statements of income. The allowances, which involve the use of actuarial techniques, are monitored monthly and are updated based on actual claims data reported by our claims processors and other actual data received. The allowances are based on known facts and circumstances, internal factors including experience with similar cases, historical trends involving loss payment patterns, and the mix of transaction and loss types.

We also establish an allowance for loans receivable which represents our estimate of probable loan losses inherent in our PayPal Credit loans receivable portfolio and is reflected in transaction and loan losses in our combined statements of income. This evaluation process is subject to numerous estimates and judgments, and is primarily based on forecasted principal balance delinquency rates ("roll rates"). Roll rates are the percentage of balances which we estimate will migrate from one stage of delinquency to the next based on our historical experience, as well as external factors such as estimated bankruptcies and levels of unemployment. Roll rates are applied to principal balances for each stage of delinquency, from current to 180 days past due, in order to estimate the principal loans which are probable to be charged off. The allowance for loss against interest receivable is primarily determined by applying historical average customer account roll rates to the interest receivable balance in each stage of delinquency to project how much will not be collectible.

We charge off loans receivable balances in the month in which the customer balance becomes 180 days past due. Bankrupt accounts are charged off within 60 days of receiving notification from the bankruptcy courts. Past due loans receivable continue to accrue interest until such time as they are charged off, with the portion of the reserve related to interest receivable balance classified as a reduction of revenue.

Determining appropriate allowances for these losses is an inherently uncertain process and is subject to numerous estimates and judgments, and ultimate losses may vary from the current estimates. We regularly update our

allowance estimates as new facts become known and events occur that may impact the settlement or recovery of losses. The allowances are maintained at a level we deem appropriate to adequately provide for losses incurred at the balance sheet date. An aggregate ten percentage point increase in our transaction and loan loss rate would negatively impact transaction and loan losses by approximately \$65 million.

#### Accounting for Income Taxes

Our annual tax rate is based on our income, statutory tax rates and tax planning opportunities available to us in the various jurisdictions in which we operate. Tax laws are complex and subject to different interpretations by the taxpayer and respective government taxing authorities. Significant judgment is required in determining our tax expense and in evaluating our tax positions, including evaluating uncertainties. We review our tax positions quarterly and adjust the balances as new information becomes available. Our income tax rate is significantly affected by the tax rates that apply to our foreign earnings. In addition to local country tax laws and regulations, our income tax rate depends on the extent that our earnings are indefinitely reinvested outside the U.S. Indefinite reinvestment is determined by management's judgment about and intentions concerning our future operations. To the extent we do not intend to repatriate these earnings to fund U.S. operations, we do not provide for U.S. federal income and foreign withholding tax on these earnings.

Deferred tax assets represent amounts available to reduce income taxes payable on taxable income in future years. Such assets arise because of temporary differences between the financial reporting and tax bases of assets and liabilities, as well as from net operating loss and tax credit carryforwards. We evaluate the recoverability of these future tax deductions and credits by assessing the adequacy of future expected taxable income from all sources, including reversal of taxable temporary differences, forecasted operating earnings and available tax planning strategies. These sources of income rely heavily on estimates that are based on a number of factors, including our historical experience and short range and long-range business forecasts. To the extent deferred tax assets are not expected to be realized, we record a valuation allowance.

We recognize and measure uncertain tax positions in accordance with GAAP, pursuant to which we only recognize the tax benefit from an uncertain tax position if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such positions are then measured based on the largest benefit that has a greater than 50 percent likelihood of being realized upon ultimate settlement. We report a liability for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. GAAP further requires that a change in judgment related to the expected ultimate resolution of uncertain tax positions be recognized in earnings in the quarter in which such change occurs. We recognize interest and penalties, if any, related to unrecognized tax benefits in income tax expense.

We file annual income tax returns in multiple taxing jurisdictions around the world. A number of years may elapse before an uncertain tax position is audited by the relevant tax authorities and finally resolved. While it is often difficult to predict the final outcome or the timing of resolution of any particular uncertain tax position, we believe that our reserves for income taxes are adequate such that we reflect the benefits more likely than not to be sustained in an examination. We adjust these reserves, as well as the related interest, where appropriate in light of changing facts and circumstances. Settlement of any particular position could require the use of cash.

Based on our results for the year ended December 31, 2014, a one-percentage point change in our provision for income taxes as a percentage of income before taxes would have resulted in an increase or decrease in the provision of approximately \$13 million.

#### Loss Contingencies

We are currently involved in various claims, legal proceedings and investigations of potential operating violations by regulatory oversight authorities. We regularly review the status of each significant matter and

assess our potential financial exposure. If the potential loss from any claim, legal proceeding or potential regulatory violation is considered probable and the amount can be reasonably estimated, we accrue a liability for the estimated loss. Significant judgment is required in both the determination of probability and the determination of whether an exposure is reasonably estimable. Our judgments are subjective based on the status of the legal or regulatory proceedings, the merits of our defenses and consultation with in-house and outside legal counsel. Because of uncertainties related to these matters, accruals are based only on the best information available at the time. As additional information becomes available, we reassess the potential liability related to pending claims, litigation or other violation and may revise our estimates. Due to the inherent uncertainties of the legal and regulatory process in the multiple jurisdictions in which we operate, our judgments may be materially different than the actual outcomes.

#### Revenue Recognition

Application of the various accounting principles in U.S. GAAP related to the measurement and recognition of revenue requires us to make judgments and estimates. Complex arrangements with nonstandard terms and conditions may require significant contract interpretation to determine the appropriate accounting. Specifically, the determination of whether we are a principal to a transaction (gross revenue) or an agent (net revenue) can require considerable judgment. Further, we provide incentive payments to consumers and merchants, which require judgment to determine whether the payments should be recorded as a reduction to gross revenue. Changes in judgments with respect to these assumptions and estimates could impact the amount of revenue recognized.

### Valuation of Goodwill and Intangibles

The valuation of assets acquired in a business combination and asset impairment reviews require the use of significant estimates and assumptions. The acquisition method of accounting for business combinations requires us to estimate the fair value of assets acquired, liabilities assumed, and any non-controlling interest in the acquiree to properly allocate purchase price consideration between assets that are depreciated and amortized from goodwill. Impairment testing for assets, other than goodwill and indefinite-lived intangible assets, requires the allocation of cash flows to those assets or group of assets and if required, an estimate of fair value for the assets or group of assets. Our estimates are based upon assumptions believed to be reasonable, but which are inherently uncertain and unpredictable. These valuations require the use of management's assumptions, which would not reflect unanticipated events and circumstances that may occur.

We evaluate goodwill and intangible assets for impairment on an annual basis or sooner if indicators of impairment exist. In the fourth quarter of 2012, the Company early adopted the Financial Accounting Standards Board ("FASB") guidance that simplifies how an entity tests indefinite-lived intangible assets for impairment, allowing a qualitative assessment to be performed, which is similar to the FASB guidance for evaluating goodwill for impairment. In performing these qualitative assessments, we consider relevant events and conditions, including but not limited to, macroeconomic trends, industry and market conditions, overall financial performance, cost factors, company-specific events, legal and regulatory factors and our market capitalization (previously assessed under eBay). If the qualitative assessments indicate that it is more likely than not that the fair value of the reporting unit or indefinite-lived intangible assets are less than their carrying amounts, we must perform a quantitative impairment test.

Under the quantitative impairment test, if the carrying amount of the reporting unit goodwill exceeds the implied fair value of that goodwill, an impairment loss is recorded in the Combined Statements of Income. Measurement of the fair value of a reporting unit is based on one or more of the following fair value measures: amounts at which the unit as a whole could be bought or sold in a current transaction between willing parties, using present value techniques of estimated future cash flows, or using valuation techniques based on multiples of earnings or revenue, or a similar performance measure.

## Quantitative and Qualitative Disclosures about Market Risk

Market risk is the potential for economic losses to be incurred on market risk sensitive instruments arising from adverse changes in market factors such as interest rates, foreign currency exchange rates and equity price risk. Management establishes and oversees the implementation of policies governing our investing, funding, and foreign currency derivative activities in order to mitigate market risks. We monitor risk exposures on an ongoing basis.

#### Interest Rate Risk

We are exposed to interest rate risk from our investment portfolio and from interest-rate sensitive assets underlying the customer balances we hold on our combined balance sheet as customer accounts.

As of December 31, 2014, approximately 97% of our total cash and investment portfolio was held in cash and cash equivalents, and we held no direct investments in auction rate securities, collateralized debt obligations, structured investment vehicles or mortgage-backed securities. For additional details related to our investment activities, please see "Note 4–Investments" to the combined financial statements included in this report.

The assets underlying the customer balances we hold on our combined balance sheet as customer accounts are maintained in interest and non-interest bearing bank deposits, time deposits, and U.S. and foreign government and agency securities. We classify the assets underlying the customer balances as current based on their purpose and availability to fulfill our direct obligation under amounts due to customers. We seek to preserve principal while holding eligible liquid assets, as defined by the regulatory requirements and commercial law in the jurisdictions where PayPal operates, equal to at least 100% of the aggregate amount of all customer balances. We do not pay interest on amounts due to customers.

We expect to enter into a new revolving credit facility that will bear interest at a floating rate. As a result, we will be exposed to fluctuations in interest rates to the extent of our borrowings under the revolving credit facility.

Interest rates may also adversely impact our customers' spending levels and ability and willingness to pay outstanding amounts owed to us. Higher interest rates often lead to higher payment obligations by customers to us and other lenders under mortgage, credit card and other consumer loans, which may reduce our customers' ability to remain current on their obligations to us and therefore lead to increased delinquencies, charge-offs and allowance for loan and interest receivable which could have an adverse effect on our net earnings.

A 100 basis point adverse change in interest rates would not have a material impact on the Company's financial assets or liabilities at December 31, 2014 and 2013.

### Foreign Currency Risk

We have significant operations internationally that are denominated in foreign currencies, primarily the Euro, British Pound, and Australian Dollar, subjecting us to foreign currency risk which may adversely impact our financial results. We transact business in various foreign currencies and have significant international revenues as well as costs. In addition, we charge our international subsidiaries for their use of intellectual property and technology and for certain corporate services. Our cash flow, results of operations and certain of our intercompany balances that are exposed to foreign exchange rate fluctuations may differ materially from expectations and we may record significant gains or losses due to foreign currency fluctuations and related hedging activities. We are generally a net receiver of foreign currencies and therefore benefit from a weakening of the U.S. dollar and are adversely affected by a strengthening of the U.S. dollar relative to foreign currencies.

We have a foreign exchange exposure management program designed to identify material foreign currency exposures, manage these exposures and reduce the potential effects of currency fluctuations on our reported combined cash flows and results of operations through the execution of foreign currency exchange contracts.

These foreign currency exchange contracts are accounted for as derivative instruments; for additional details related to our foreign currency exchange contracts, please see "Note 6-Derivative Instruments" to the combined financial statements included in this report.

We use foreign exchange forward contracts to protect our forecasted U.S. dollar-equivalent earnings from adverse changes in foreign currency exchange rates. These hedging contracts reduce, but do not entirely eliminate, the impact of adverse currency exchange rate movements. We designate these contracts as cash flow hedges for accounting purposes. The effective portion of the derivative's gain or loss is initially reported as a component of accumulated other comprehensive income (AOCI) and subsequently reclassified into revenue in the same period the forecasted transaction affects earnings. The ineffective portion of the unrealized gains and losses on these contracts, if any, is recorded immediately in earnings.

We considered the historical trends in currency exchange rates and determined that it was reasonably possible that changes in exchange rates of 20% for all currencies could be experienced in the near term. If the U.S. dollar weakened by 20% at March 31, 2015 and December 31, 2014, the amount recorded in AOCI related to our foreign exchange forward contracts before tax effect would have been approximately \$269 million and \$294 million lower, respectively. If the U.S. dollar strengthened by 20% at March 31, 2015 and December 31, 2014, the amount recorded in AOCI related to our foreign exchange forward contracts before tax effect would have been approximately \$269 million and \$294 million higher, respectively.

In addition, we use foreign exchange contracts to offset the foreign exchange risk on our assets and liabilities denominated in currencies other than the functional currency of our subsidiaries. These contracts reduce, but do not entirely eliminate, the impact of currency exchange rate movements on our assets and liabilities. The foreign currency gains and losses on the assets and liabilities are recorded in "Other income (expense), net," which are offset by the gains and losses on the foreign exchange contracts.

We considered the historical trends in currency exchange rates and determined that it was reasonably possible that adverse changes in exchange rates of 20% for all currencies could be experienced in the near term. These changes would have resulted in an adverse impact on income before income taxes of approximately \$20 million and \$32 million at March 31, 2015 and December 31, 2014, respectively, without considering the offsetting effect of hedging. Foreign exchange contracts in place as of March 31, 2015 would have resulted in an offsetting effect of approximately \$26 million, resulting in a net positive impact of approximately \$6 million. Foreign exchange contracts in place as of December 31, 2014 would have resulted in an offsetting effect of approximately \$34 million, resulting in a net positive impact of approximately \$2 million. These reasonably possible adverse changes in exchange rates of 20% were applied to total monetary assets and liabilities denominated in currencies other than the functional currencies of our subsidiaries at the balance sheet dates to compute the adverse impact these changes would have had on our income before income taxes in the near term.

### **Equity Price Risk**

As of December 31, 2014, our cost and equity method investments totaled \$31 million, which represented approximately 1% of our total cash and investment portfolio and were primarily related to equity method investments in privately held companies. We did not hold any marketable equity instruments. We review our investments for impairment when events and circumstances indicate a decline in fair value of such assets below carrying value is other-than-temporary. Our analysis includes a review of recent operating results and trends, recent sales/acquisitions of the securities in which we have invested and other publicly available data.

# European Debt Exposures

We actively monitor our exposure to the European markets, including the impact of sovereign debt issues associated with Cyprus, Greece, Ireland, Italy, Portugal and Spain. As of December 31, 2014, we did not have any direct investments in the sovereign debt of these countries or in debt securities issued by corporations or financial institutions organized in these countries.

#### MANAGEMENT

### **Executive Officers Following the Distribution**

The following table sets forth information as of May 14, 2015 regarding the individuals who are expected to serve as executive officers of PayPal following the distribution. While some of PayPal's executive officers are currently officers and employees of eBay, after the distribution, none of these individuals will be employees or executive officers of eBay.

Name	Age	Position
Daniel H. Schulman	57	President and Chief Executive Officer
Jonathan Auerbach	52	Senior Vice President, Chief Strategy and Growth Officer
Tomer Barel	42	Senior Vice President, Chief Risk Officer
James J. Barrese	46	Chief Technology Officer and Senior Vice President, Payment Services
Patrick L. A. Dupuis	52	Senior Vice President, Interim Chief Financial Officer
Hill Ferguson	43	Senior Vice President, Consumer
Gary Marino	58	Senior Vice President, Global Credit and the Americas
Louise Pentland	43	Senior Vice President, General Counsel
William J. Ready	35	Senior Vice President, Merchant and Next Generation Commerce

Daniel H. Schulman is expected to serve as the President and Chief Executive Officer of PayPal. He has served as the President and CEO-Designee of PayPal since September 2014. From August 2010 to August 2014, Mr. Schulman served as Group President, Enterprise Group of American Express. Mr. Schulman was President, Prepaid Group of Sprint Nextel Corporation, a cellular phone service provider, from November 2009 until August 2010, when Sprint Nextel acquired Virgin Mobile, USA, a cellular phone service provider.

Jonathan Auerbach is expected to serve as Senior Vice President, Chief Strategy and Growth Officer of PayPal. Mr. Auerbach was previously the CEO of Group Digital Life at Singapore Telecommunications Limited (Singtel) from September 2014 to May 2015, where he led the company's global portfolio of digital businesses as well as its venture fund. From 1987 through 2014, Mr. Auerbach was a management consultant with McKinsey & Company. At McKinsey, he held a variety of executive roles in Asia and North America during his tenure with the Firm, including leading the Asian Telecommunications, Media and Technology Practice; the Singapore Office and the Southeast Asia Region; and the North American High Tech Practice.

Tomer Barel is expected to serve as the Senior Vice President, Chief Risk Officer of PayPal. He has served as the Chief Risk Officer of PayPal since November 2013. From April 2012 to November 2013, Mr. Barel was Vice President, Risk Management for PayPal. Mr. Barel previously served as the General Manager for PayPal Israel from June 2009 through February 2013, and as Senior Director, Advanced Risk Sciences, from June 2009 to March 2012.

James J. Barrese is expected to serve as the Chief Technology Officer and Senior Vice President, Payment Services of PayPal. Prior to the separation, Mr. Barrese was the Senior Vice President and Chief Technology Officer at PayPal from October 2013. Mr. Barrese was PayPal's Chief Technology Officer from February 2012 through October 2013, and was the Vice President of Global Product Development for PayPal from August 2011 through February 2012. Prior to that time, Mr. Barrese served in various leadership roles in the technology organization at eBay, Inc. since he began employment with the company in 2001.

Patrick L. A. Dupuis is expected to serve as the Senior Vice President, Interim Chief Financial Officer of PayPal. Mr. Dupuis joined PayPal in November 2010 as its Chief Financial Officer. Mr. Dupuis was previously the Global Chief Financial Officer of Sitel Worldwide Corporation from January 2008 to November 2010.

Hill Ferguson is expected to serve as the Senior Vice President, Consumer of PayPal. Prior to the separation, Mr. Ferguson was the Senior Vice President, Global Product, for PayPal from August 2013. From August 2011

through August 2013, Mr. Ferguson was the Vice President, Global Product for PayPal. Mr. Ferguson was the Vice President of Product and Marketing at Zong, a mobile payments provider, from September 2008 through August 2011, when eBay acquired Zong.

Gary Marino is expected to serve as Senior Vice President, Global Credit and the Americas of PayPal. Mr. Marino co-founded Bill Me Later in 2001 and served as its CEO from 2001 through November 2009, when PayPal acquired Bill Me Later.

Louise Pentland is expected to serve as the Senior Vice President, General Counsel of PayPal. Ms. Pentland was previously the Executive Vice President and Chief Legal Officer at Nokia Corporation from July 2008 to July 2014. Ms. Pentland also served on the board of the Nokia Siemens Networks, a joint venture between Nokia and Siemens. Ms. Pentland was recently nominated to the board of directors of Hitachi, pending formal appointment at Hitachi's upcoming annual shareholders meeting.

William J. Ready is expected to serve as the Senior Vice President, Merchant and Next Generation Commerce of PayPal. Prior to the separation, Mr. Ready was the head of PayPal's Braintree operations from the time of its acquisition in December 2013. Mr. Ready was the CEO of Braintree, an online payments provider, from October 2011 until its acquisition by eBay in December 2013. From July 2011 through October 2011, Mr. Ready was an executive in residence at Accel Partners, a leading Silicon Valley venture capital and growth equity firm. Mr. Ready was the president of iPay Technologies, Inc., a payments services provider, from 2008 through 2011. Mr. Ready managed iPay through its successful sale to Jack Henry and Associates in 2010.

#### **DIRECTORS**

### **Board of Directors Following the Distribution**

The following table sets forth information as of May 14, 2015 regarding those persons who are expected to serve on PayPal's board of directors following the distribution. After the distribution, none of these individuals will be employees of eBay and, other than Mr. Omidyar, none of them will be directors of eBay.

Name	Age		Position
Daniel H. Schulman	57	President and Chief Executive Officer	
John J. Donahoe	55	Chairman	
Jonathan Christodoro	39	Director	
Scott D. Cook	62	Director	
David W. Dorman	61	Director	
Gail J. McGovern	63	Director	
David M. Moffett	63	Director	
Pierre M. Omidyar	47	Director	
Frank D. Yeary	51	Director	

Daniel H. Schulman's extensive industry experience and knowledge of PayPal's day-to-day operations, as well as his previous managerial experience in the payments and technology industries will enable Mr. Schulman to provide valuable perspectives on many issues facing PayPal, particularly with respect to business management and strategy. Mr. Schulman's service on the board of directors will create an important link between management and the board and will provide PayPal with decisive and effective leadership.

John J. Donahoe has served as eBay's President and Chief Executive Officer since March 2008, and as a director of eBay since January 2008. He is expected to continue in this role until the separation. From January 2012 until April 2012, Mr. Donahoe served as Interim President of PayPal. From January 2008 to March 2008, Mr. Donahoe served as CEO-designate of eBay. From March 2005 to January 2008, Mr. Donahoe served as President, eBay Marketplaces. From January 2000 to February 2005, Mr. Donahoe served as the Worldwide Managing Director of Bain & Company. Mr. Donahoe serves on the board of directors of Intel Corporation (where he currently serves as a member of the Compensation Committee and as a member of the Corporate Governance and Nominating Committee) and of Nike, Inc. (where he currently serves as a member of the Nominating and Corporate Governance Committee). Mr. Donahoe will bring extensive industry experience and deep knowledge of PayPal's day-to-day operations based on his current role as eBay's President and Chief Executive Officer and previous managerial experience as Interim President of PayPal.

Jonathan Christodoro has served as a director of eBay since 2015. Mr. Christodoro has over 15 years of extensive financial, strategic and investment experience advising and investing in public companies, including at the board level. Mr. Christodoro has served as Managing Director of Icahn Capital LP since July 2012. Mr. Christodoro is responsible for identifying, analyzing and monitoring investment opportunities and portfolio companies for Icahn Capital. Prior to joining Icahn Capital, from 2007 to 2012, Mr. Christodoro served in various investment and research roles at P2 Capital Partners, LLC, Prentice Capital Management, LP and S.A.C. Capital Advisors, LP. Mr. Christodoro currently serves on the board of directors of Enzon Pharmaceuticals, Inc. (where he currently serves as Chairman of the Board, as a member of the Governance and Nominating Committee, as a member of the Finance and Audit Committee, and as a member of the Compensation Committee), Herbalife Ltd (where he currently serves as a member of the Nominating and Governance Committee and as a member of the Compensation Committee), Hologic, Inc. (where he currently serves as a member of the Nominating and Corporate Governance Committee and as a member of the Corporate Development Committee), and Talisman Energy, Inc. (where he currently serves as a member of the Reserves Committee). Mr. Christodoro's leadership and investment experience as a Managing Director of Icahn Capital LP will add to the strong expertise of the board of directors.

Scott D. Cook has served as a director of eBay since 1998. Mr. Cook has been a leader in the technology industry for the past 32 years. As co-founder of Intuit Inc., a global consumer-facing technology company, Mr. Cook has driven innovation and significant growth. Mr. Cook has served Intuit in various capacities since its founding, previously serving as CEO and Chairman, and has been the Chairman of the Executive Committee of the board of directors of Intuit since August 1998. Mr. Cook also serves on the board of directors of The Procter & Gamble Company (where he is Chair of the Innovation and Technology Committee and a member of the Compensation & Leadership Development Committee), and The Intuit Scholarship Foundation and Valhalla Foundation. Mr. Cook will bring strong technology leadership expertise, as well as extensive experience in product development and marketing, to the board of directors.

David W. Dorman has served as a director of eBay since 2014. Mr. Dorman has extensive experience in global telecommunications-related businesses as the former Chief Executive Officer of AT&T, as well as expertise in finance, strategic planning and public company executive compensation. Mr. Dorman has been the Non-Executive Chairman of the Board of CVS Health Corporation, a pharmacy healthcare provider since May 2011. He is also a Founding Partner of Centerview Capital, a private investment firm, since July 2013. Mr. Dorman also serves on the board of directors of Yum! Brands, Inc. and Motorola Solutions, Inc. and as a Trustee for Georgia Tech Foundation, Inc. Mr. Dorman's leadership as former Chairman and CEO of AT&T will add to the strong leadership expertise of the board of directors.

Gail J. McGovern has served as a director of eBay since 2015. Ms. McGovern is currently the President and Chief Executive Officer of the American Red Cross and has served in that position since June 2008. Ms. McGovern is also a trustee of Johns Hopkins University and Johns Hopkins Medicine, and a director of DTE Energy Company and The Weather Company. Ms. McGovern's leadership experience as President and Chief Executive Officer of the American Red Cross will add to the strong leadership expertise of the board of directors and will bring a strong perspective from the academic and nonprofit worlds. Ms. McGovern will also bring extensive executive experience in marketing and sales, customer relations, corporate finance, strategic planning and government relations and knowledge of regulatory matters.

David M. Moffett has served as a director of eBay since 2007. Mr. Moffett has more than 30 years of strategic finance, risk management, and operational experience in banking and payment processing. Mr. Moffett currently serves on the board of directors of CIT Group Inc. (where he currently serves as a member of the Compensation Committee) and of Genworth Financial, Inc. (where he currently serves as a member of the Nominating and Corporate Governance Committee and as a member of the Legal and Public Affairs Committee). He also currently serves as a Trustee for Columbia Atlantic Mutual Funds and University of Oklahoma Foundation and as a consultant to various financial services companies. Mr. Moffett will bring extensive global financial management and regulatory expertise and leadership experience as a former Chief Executive Officer and Chief Financial Officer of financial services companies. He will also bring extensive experience in the payments business as a result of his involvement with the development of U.S. Bancorp's global expansion of its merchant processing business, which is particularly relevant to our business. His deep experience in leading successful acquisitions will also be very relevant to our board of directors.

Pierre M. Omidyar has served as a director and Chairman of eBay's board of directors since eBay's incorporation in May 1996. Mr. Omidyar has extensive experience as a technologist and innovator. His industry knowledge and long history of driving innovation will provide important expertise to PayPal that is technology driven and focused on innovation. As the founder of eBay, Mr. Omidyar will bring to the board of directors a deep understanding of the business and a long-standing history as a leader within the technology industry. In addition to eBay, Mr. Omidyar has also been a founder of several other innovative businesses, including the Omidyar Network and First Look. His extensive experiences as an entrepreneur are particularly relevant to our nimble, fast-changing business.

Frank D. Yeary has served as a director of eBay since 2015. Mr. Yeary has been Executive Chairman of CamberView Partners, LLC, a corporate advisory firm, since 2012. Mr. Yeary was Vice Chancellor of the

University California, Berkeley from 2008 to 2012, where he led and implemented major strategic and financial changes to the university's financial and operating strategy; from 2010 to 2011, he served as interim Chief Administrative Officer, managing a portfolio of financial and operational responsibilities and departments. Prior to 2008, Mr. Yeary spent 25 years in the finance industry, most recently as Managing Director, Global Head of Mergers and Acquisitions and a member of the Management Committee at Citigroup Investment Banking, a financial services company. Mr. Yeary currently serves on the board of directors of Intel Corporation (where he currently serves as the Chair of the Audit Committee). Mr. Yeary's extensive career in investment banking and finance will bring to the board of directors financial strategy and M&A expertise, including expertise in financial reporting and experience in assessing the efficacy of mergers and acquisitions. In addition, Mr. Yeary's experience as the former Vice Chancellor and Chief Administrative Officer of a large public research university, will add to the board's strategic and financial expertise.

At the time of the distribution, we expect that our board of directors will consist of the directors set forth above. Each of our directors will have terms expiring at the first annual meeting of stockholders following the distribution, which PayPal expects to hold within 12 months from the distribution. Commencing with this first annual meeting of stockholders, each of our directors will be elected by our stockholders to serve until the next annual meeting of our stockholders and until his or her successor is duly elected and qualifies. Holders of shares of common stock will have no right to cumulative voting in the election of directors.

### **Director Independence**

Under the rules of The NASDAQ Stock Market, or NASDAQ, PayPal must have a board of directors with at least a majority of independent directors. These rules have both objective tests and a subjective test for determining who is an "independent director." The objective tests state, among other items, that a director is not considered independent if he or she is an employee of the company, or is a partner in, or a controlling stockholder or executive officer of, an entity to which the company made, or from which the company received, payments in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenue for that year. The subjective test requires our board to affirmatively determine that a director does not have a relationship that would interfere with the director's exercise of independent judgment in carrying out his or her responsibilities. On an annual basis, each member of our board will be required to complete a questionnaire designed to provide information to assist the board in determining whether the director is independent under the listing standards of The NASDAQ Stock Market and PayPal's Corporate Governance Guidelines to be adopted by the board (and for members of our Audit Committee and Compensation Committee, whether the director satisfies additional SEC and The NASDAQ Stock Market independence requirements). It is expected that PayPal's board will adopt guidelines setting forth certain categories of transactions, relationships, and arrangements that it has deemed immaterial for purposes of making its determination regarding a director's independence, and does not consider any such transactions, relationships, and arrangements in making its subjective determination.

It is expected that a majority of PayPal's board of directors will be comprised of directors who are "independent" as defined by the rules of The NASDAQ Stock Market and the Corporate Governance Guidelines to be adopted by the board. PayPal will seek to have its non-management directors qualify as "independent" under these standards.

The board will limit membership on the Audit Committee, the Compensation Committee, and the Corporate Governance and Nominating Committee to independent directors. PayPal's Corporate Governance Guidelines to be adopted by the board will require any director who has previously been determined to be independent to inform the Lead Independent Director and PayPal's Corporate Secretary of any change in his or her principal occupation or status as a member of the board of any other public company, or any change in circumstance that may cause his or her status as an independent director to change.

#### **Committees of the Board of Directors**

Effective upon the completion of the distribution, PayPal's board of directors expects to have the following standing committees: an Audit Committee, a Compensation Committee, and a Corporate Governance and Nominating Committee. The board of directors may determine that additional formal or informal committees may be appropriate.

Audit Committee. PayPal's board of directors will have a separately-designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The Audit Committee is expected to consist of David M. Moffett, Frank D. Yeary and an additional director who will be identified in an amendment to this information statement. Mr. Moffett is expected to be the Audit Committee Chairman. It is expected that each of the members of the Audit Committee will be independent in accordance with the rules and regulations of The NASDAQ Stock Market and the SEC. The primary responsibilities of the Audit Committee will be set forth in the charter of the Audit Committee and are expected to consist of meeting with PayPal's independent auditors to review the results of the annual audit and to discuss PayPal's financial statements, including the independent auditors' judgment about the quality of accounting principles, the reasonableness of significant judgments, the clarity of the disclosures in our financial statements, our internal control over financial reporting, and management's report with respect to internal control over financial reporting. Additionally, the Audit Committee is expected to meet with the independent auditors to review the interim financial statements prior to the filing of Quarterly Reports on Form 10-Q, recommend to the board of directors the independent auditors to be retained by PayPal, oversee the independence of the independent auditors, evaluate the independent auditors' performance, review and approve the fees of the independent auditors, and receive and consider the independent auditors' comments as to controls, adequacy of staff, and management performance and procedures in connection with audit and financial controls, including PayPal's system to monitor and manage business risks and legal and ethical compliance programs. The Audit Committee is expected to approve the appointment, compensation, and performance of PayPal's Vice President, Chief Audit Executive, who is expected to report directly to the committee and meet with the committee regularly without other members of management present.

The Audit Committee is also expected to prepare the Audit Committee Report for inclusion in PayPal's proxy statement, approve audit and non-audit services provided to PayPal by its independent auditors, consider conflicts of interest and review all transactions with related persons involving executive officers or board members that are reasonably expected to exceed specified thresholds, and meet with internal legal counsel to discuss our major risk exposures, including financial, operational, privacy, security, competition, and legal and regulatory risks, and will review significant legal, compliance, and regulatory matters that could have a material impact on PayPal's financial statements or business, including material notices to or inquiries received from governmental agencies. It is expected that Mr. Moffett will be determined to be an "audit committee financial expert" as defined by the SEC.

Compensation Committee. The Compensation Committee is expected to consist of David W. Dorman and one or more additional directors who will be identified in an amendment to this information statement. Mr. Dorman is expected to be the Compensation Committee Chairman. It is expected that each of the members of the Compensation Committee will be independent in accordance with the rules and regulations of The NASDAQ Stock Market and the SEC. The Compensation Committee will assist the board of directors in carrying out the board's responsibilities relating to the compensation of PayPal's executive officers and directors. The

primary responsibilities of the Compensation Committee will be set forth in the charter of the Compensation Committee and are expected to include:

At least annually, reviewing and approving all compensation programs applicable to directors and executive officers, the overall strategy for employee compensation, and the compensation of our CEO and our other executive officers;

Overseeing and monitoring compliance with PayPal's stock ownership guidelines applicable to directors and executive officers;

Reviewing the Compensation Discussion and Analysis contained in PayPal's proxy statement and prepare the Compensation Committee Report for inclusion in our proxy statement; and

Reviewing and considering the results of any advisory stockholder votes on executive compensation.

Additionally, the Compensation Committee is expected to assess on an annual basis the independence of its compensation consultants, outside legal counsel, and other compensation advisers.

Corporate Governance and Nominating Committee. The Corporate Governance and Nominating Committee is expected to consist of Gail J. McGovern and one or more additional directors who will be identified in an amendment to this information statement. Ms. McGovern is expected to be the Corporate Governance and Nominating Committee Chair. It expected that each of the members of the board's Compensation Committee will be independent in accordance with the rules and regulations of The NASDAQ Stock Market and the SEC.

The primary responsibilities of the Corporate Governance and Nominating Committee will be set forth in the charter of the Corporate Governance and Nominating Committee and are expected to include:

Making recommendations to the board as to the appropriate size of the board or any board committee;

Reviewing the qualifications of candidates for the board;

Making recommendations to the board on potential board and board committee members (consistent with the criteria approved by PayPal's board of directors), whether as a result of vacancies, including any vacancy created by an increase in the size of the board, or as part of the annual election cycle; and

Leading the board in its annual review of the board of directors' and senior management's performance.

The committee will consider nominee recommendations from a variety of sources, including nominees recommended by stockholders. The committee might, from time to time, retain an executive search firm to help facilitate the screening and interview process of director nominees. The committee expects that qualified candidates will have high-level managerial experience in a relatively complex organization or be accustomed to dealing with complex problems, and will be able to represent the interests of the stockholders as a whole rather than special interest groups or constituencies.

Among other factors, the Corporate Governance and Nominating Committee is expected to consider each candidate relative to the following attributes:

character;
integrity;
judgment;
skills;
background;
experience with complex organizations that may have a multinational reach
experience of particular relevance to PayPal;

ability to work with others to solve complex problems; and

time available to devote to board activities.

It is expected that the Corporate Governance and Nominating Committee will also consider the interplay of a candidate's background and expertise with that of other board members, and the extent to which a candidate may be a desirable addition to any committee of the board of directors. The committee also expects that it will value diversity as a factor in selecting nominees to serve on the board of directors. PayPal's Corporate Governance Guidelines are expected to provide that the committee should consider diversity (including gender and race), age, international background, and expertise in evaluating potential board members. It is expected that when searching for new directors, the Corporate Governance and Nominating Committee will actively seek out qualified women and individuals from minority groups to include in the pool from which board nominees are chosen.

In addition to recommending director candidates, it is expected that the Corporate Governance and Nominating Committee will establish procedures for the oversight and evaluation of the board and management, will review correspondence received from stockholders, and will review on an annual basis PayPal's Corporate Governance Guidelines to be adopted by the board.

## **Compensation Committee Interlocks and Insider Participation**

During PayPal's year ended December 31, 2014, PayPal was not an independent company, and did not have a compensation committee or any other committee serving a similar function. Decisions as to the compensation of those who currently serve as PayPal's executive officers were made by eBay, as described in the section of this information statement captioned "Compensation Discussion and Analysis."

### **Corporate Governance**

## Stockholder Recommendations for Director Nominees

PayPal's bylaws will contain provisions that address the process by which a stockholder may nominate an individual to stand for election to the board of directors. PayPal will evaluate stockholder recommendations of board candidates based on the principles outlined in the section of this information statement captioned "Directors-Committees of the Board of Directors-Corporate Governance and Nominating Committee."

### Leadership Structure and Lead Independent Director

PayPal's bylaws will provide that PayPal's board will elect the Chairman and the Chief Executive Officer ("CEO"). PayPal's Corporate Governance Guidelines to be adopted by the board are expected to require that the roles of Chairman and CEO be held by separate individuals. Mr. Donahoe is expected to serve as our Chairman. The separation of the offices of the Chairman and CEO is appropriate as it aids in the board's oversight of management and it allows our CEO to focus primarily on his management responsibilities.

PayPal's independent directors are also expected to designate a Lead Independent Director. Mr. Moffett is expected to be designated as the Lead Independent Director. In addition to the duties of all board members, the position of the Lead Independent Director is expected to come with significant responsibilities pursuant to PayPal's Corporate Governance Guidelines to be adopted by the board, including to:

provide the Chairman with input as to an appropriate schedule of board meetings;

provide the Chairman with input as to the preparation of agendas for board meetings;

provide the Chairman with input as to the quality, quantity, and timeliness of the flow of information from PayPal's management that is necessary for the independent directors to effectively and responsibly perform their duties;

make recommendations to the Chairman regarding the retention of consultants who report directly to the board (other than consultants who are selected by the various committees of the board);

preside over executive sessions of the board; and

act as a liaison between the independent directors and the Chairman and the Chief Executive Officer on sensitive issues.

# Committee Responsibilities

Each committee expects to meet regularly and will have a written charter to be adopted by the board. These charters will be posted on PayPal's website in connection with the separation. In addition, at each regularly scheduled board meeting, a member of each committee will report on any significant matters addressed by the committee since the last board meeting. It is expected that each committee will perform an annual self-assessment to evaluate its effectiveness in fulfilling its obligations.

### Role in Risk Oversight

Risk is inherent with every business, and how well a business manages risk can ultimately determine its success. PayPal will face a number of risks, including economic, financial, legal and regulatory, operational, and other risks, such as the impact of competition. See the section entitled "Risk Factors." Management is expected to be responsible for the day-to-day management of the risks that PayPal will face, while the board, as a whole and through its committees, will have the responsibility for the oversight of risk management. In its risk oversight role, the board will be responsible for satisfying itself that the risk management framework and supporting processes as implemented by management are adequate and functioning as designed. Prior to the distribution, PayPal will develop more detailed policies and responsibilities relating to risk oversight.

### Corporate Hotline

PayPal will establish a corporate hotline (operated by a third party) to allow any employee to confidentially and anonymously (where legally permissible) lodge a complaint about any accounting, internal control, auditing, or other matters of concern.

# Stockholder Communication

PayPal will encourage regular engagement with stockholders to seek their feedback.

The board is expected to adopt a policy permitting stockholders to communicate with the board or individual directors care of the Corporate Secretary, c/o PayPal Holdings, Inc., 2211 North First Street, San Jose, California 95131. It is expected that the primary responsibility for initial review of stockholder communications will be delegated to PayPal's Corporate Secretary to assist the board in reviewing and responding to stockholder communications in an appropriate manner. The policy adopted by the board is expected to instruct PayPal's Corporate Secretary to review correspondence directed to the board of directors and its principal committees and, at his or her discretion, not to forward items solely related to complaints by users with respect to ordinary course of business customer service and satisfaction issues, or that he or she deems to be of a commercial or frivolous nature or otherwise inappropriate for the board's or its committees' consideration.

#### Attendance at Annual Meetings

Absent exigent circumstances, all directors will be expected to attend PayPal's annual meeting of stockholders in person or by telephone or video call.

# Formal Closed Sessions of Outside Directors

As part of each regularly scheduled board meeting, the outside directors will have the opportunity to meet without our management or the other directors. The executive sessions will include discussions and recommendations regarding guidance to be provided to the Chief Executive Officer and such topics as the independent directors determine. The Lead Independent Director will lead such discussions.

### **Board Compensation**

It is expected that board compensation will be determined by a designated committee, and it is expected to consist of a mixture of equity compensation and cash compensation. Board compensation will be reviewed annually by a designated committee. Board compensation for the period prior to any change recommended by the designated committee and approved by the board will be identical to that currently paid by eBay.

# Stock Ownership Guidelines

It is expected that the board will adopt stock ownership guidelines to better align the interests of our directors and executive officers with the interests of stockholders and further promote commitment to sound corporate governance. Under these guidelines, PayPal's executive officers and non-employee directors will each be required to achieve a specified guideline level of ownership of PayPal common stock.

#### Clawbacks

We expect that the PayPal Incentive Plan and PayPal's equity incentive plans will provide that awards made under those plans are subject to a clawback provision. The terms of the clawback will be adopted by the Compensation Committee, subject to amendment to comply with the SEC rules to be issued in accordance with the Dodd-Frank Act and any other applicable law, regulation or rule.

#### **Outside** Advisors

The board and each of its principal committees may retain outside advisors of their choosing at PayPal's expense. The board need not obtain management's consent to retain outside advisors. In addition, the principal committees need not obtain either the board's or management's consent to retain outside advisors.

#### **Conflicts of Interest**

We expect that PayPal's directors, executive officers, and other employees will conduct themselves with the highest degree of integrity, ethics, and honesty. PayPal's credibility and reputation will depend upon the good judgment, ethical standards, and personal integrity of each director, executive officer, and other employee. It is expected that PayPal's Corporate Governance Guidelines to be adopted by the board will prohibit directors from serving on the board of another company (other than eBay), or in a senior executive role of another company that would create a significant conflict of interest. It is expected that our Code of Business Conduct will require that directors, executive officers, and other employees disclose actual or potential conflicts of interest and recuse themselves from related decisions. In order to better protect PayPal and its stockholders, the board expects to regularly review its Code of Business Conduct and related policies to ensure that they provide clear guidance to our directors, executive officers, and other employees.

### Board Effectiveness; Director Assessment; Board Education

It is important that the board and its committees perform effectively and in the best interest of PayPal and its stockholders. The Corporate Governance and Nominating Committee is expected to lead the board in performing an annual self-assessment to evaluate the board's effectiveness in fulfilling its obligations. As part of this annual self-assessment, directors will be able to provide feedback on the performance of other directors.

#### COMPENSATION DISCUSSION AND ANALYSIS

#### INTRODUCTION

As discussed above, PayPal is currently part of eBay and not an independent company, and its compensation committee is not expected to begin meeting until after the spin-off of the PayPal business (the "Spin-Off"). Decisions as to the compensation of those individuals who will be appointed as executive officers of PayPal have historically been made by the Compensation Committee of the board of directors of eBay (the "eBay Compensation Committee") and/or the CEO of eBay. This Compensation Discussion and Analysis describes the compensation practices of eBay as they relate to certain individuals who are expected to be appointed as executive officers of PayPal. It also discusses certain aspects of PayPal's anticipated compensation structure for these executive officers following the separation. After separation, PayPal's executive compensation program, policies, and practices for its executive officers will be subject to the review and approval of the Compensation Committee of the PayPal board of directors (the "PayPal Compensation Committee").

For purposes of the following Compensation Discussion and Analysis and the tabular executive compensation disclosures that follow, the individuals listed below are referred to collectively as PayPal's "named executive officers" or "NEOs." They are PayPal's chief executive officer, interim chief financial officer, and, of the individuals who are expected to be designated as executive officers, the three most highly compensated based on 2014 reported compensation from eBay (other than the chief executive officer and interim chief financial officer).

<u>Name</u> <u>Position</u>

Daniel H. Schulman President and Chief Executive Officer

James J. Barrese Chief Technology Officer and Senior Vice President, Payment Services

Patrick L. A. Dupuis Senior Vice President, Interim Chief Financial Officer

Hill Ferguson Senior Vice President, Consumer

William J. Ready Senior Vice President, Merchant and Next Generation Commerce

Additional information regarding the other members of PayPal's management who will be designated as executive officers is set forth in the section of the information statement captioned "Management–Executive Officers Following the Distribution."

As described below, it is expected that upon separation, PayPal's executive compensation program, policies, and practices will be largely the same as those employed at eBay. PayPal's Compensation Committee will review the executive compensation program, policies and practices and will make adjustments as appropriate over time in order to meet the company's particular business needs and goals.

The following sections of this Compensation Discussion and Analysis describe eBay's general compensation philosophy, policies and practices as they applied to PayPal's NEOs during 2014. We have noted where certain elements of eBay's executive compensation program did not apply to one or more of the four NEOs employed by PayPal in 2014. We will include updated information in subsequent amendments to this information statement concerning any additional compensation arrangements of PayPal's NEOs, including any severance or change-in-control arrangements if applicable.

### **OVERVIEW**

This Compensation Discussion and Analysis is presented as follows:

**Elements of the Executive Compensation Program** provides a description of eBay's historical and PayPal's anticipated executive compensation program, policies, and practices.

**Compensation Decisions for 2014** explains executive compensation decisions made by eBay in 2014 pertaining to the PayPal NEOs.

2014 Business Results highlights eBay business results that affected compensation of the PayPal NEOs.

Severance and Change-in-Control Arrangements with Executive Officers, and Clawbacks covers the eBay Compensation Committee's considerations and actions associated with the appointment of Mr. Schulman as President and CEO-designee of PayPal, severance and change-in-control arrangements, and clawbacks.

**Further Considerations for Setting Executive Compensation** covers the role of eBay's compensation consultants and peer group considerations.

#### ELEMENTS OF THE EXECUTIVE COMPENSATION PROGRAM

## Historically

The eBay Compensation Committee believes that attracting and retaining superior talent–supported by a competitive compensation program that is highly performance-based–is key to delivering long-term stockholder returns. eBay's executive compensation program was designed to:

align compensation with its business objectives and performance;

motivate its executive officers to enhance long-term stockholder value;

position eBay competitively among the companies against which eBay recruits and competes for talent; and

enable eBay to attract, retain, and reward executive officers and other key employees who contribute to its long-term success.

To achieve these objectives, eBay has structured its executive compensation program around three principal components: long-term equity compensation, an annual cash incentive, and base salary. The eBay Compensation Committee sought to ensure that total compensation for eBay's senior executives was heavily weighted to variable, performance-based compensation by delivering a majority of compensation in the form of performance-based restricted stock units ("PBRSUs"), stock options, and annual cash incentives.

The eBay Compensation Committee chose a mix of equity and cash compensation vehicles—some dependent purely on financial targets that the Committee believed correlated with operating performance and long-term eBay stock performance and others directly related to eBay's stock price and the returns received by investors—to compensate senior management based on both long-term value drivers and returns received by eBay's stockholders. eBay also maintained broad-based retirement and benefit programs in which the PayPal NEOs participated and provided limited perquisites to certain of the PayPal NEOs.

The following table provides a snapshot of the key elements of eBay's 2014 executive compensation program and describes the rationale for each element and the relevant equity-based awards of the PayPal NEOs. Additional information about these key elements is included in the sections following the table.

Total Direct Compensation Opportunity  Equity Awards	Rationale Aligned executive incentives with the long-term interests of eBay's stockholders
Performance Based Restricted Stock Units (PBRSUs) (1)	Positioned award guidelines at target level with the median of the market levels paid to eBay's peer group executives
Time-based Restricted Stock Units (RSUs) (2)	Recognized individual eBay executives' recent performance and potential future contributions
Stock options (3)	Retained executives for the long term
	Provided a total compensation opportunity with payouts varying based on eBay's operating and stock price performance
Annual Cash Incentive Awards	Aligned executive compensation with eBay's annual performance
	Enabled eBay to attract, retain, and reward talented individuals who contributed to the company's success
	Motivated eBay executives to enhance the value of the company
Base Salary	Rewarded individuals' current contributions to eBay
	Reflected the scope of their roles and responsibilities
	Compensated for expected day-to-day performance

<sup>(1)</sup> PBRSUs represented the right to receive shares of eBay common stock if performance requirements are met, subject to additional time-based vesting. In 2014, PBRSUs were awarded to Mr. Schulman, Mr. Dupuis, Mr. Barrese, and Mr. Ferguson for the 2014-2015 performance cycle. Mr. Ready did not receive PBRSU awards in 2014. See "Compensation Decisions for 2014–Treatment of eBay Inc. Equity Awards" below for a description of how PBRSUs will be treated in connection with the Spin-Off.

<sup>(2)</sup> RSUs represented the right to receive shares of eBay common stock, subject to time based vesting. All of the PayPal NEOs employed in 2014 received awards of RSUs. See "Compensation Decisions for 2014–Treatment of eBay Inc. Equity Awards" below for a description of how RSUs will be treated in connection with the Spin-Off.

<sup>(3)</sup> Stock options represented the right to purchase a specific number of shares of eBay common stock at a predetermined price, subject to vesting. In 2014, stock options were awarded to Mr. Schulman, Mr. Dupuis, Mr. Barrese, and Mr. Ferguson. Mr. Ready did not receive stock option awards in 2014. See "Compensation Decisions for 2014–Treatment of eBay Inc. Equity Awards" below for a description of how stock options will be treated in connection with the Spin-Off.

In making decisions regarding the amount and form of each element of compensation for senior executives, the eBay Compensation Committee took into account the size and complexity of the executive officer's job and business unit or function, including the following:

Performance against financial performance measures for the executive's business unit or function

Defining business unit or function strategy and roadmaps and executing against them

Organizational development, including hiring, development, and retention of the team of each organization

Leadership

Improving and supporting innovation and execution for the business unit or function

Negotiating, closing, and integrating acquisitions, dispositions, and/or strategic partnerships

Achievement of strategic and operational objectives, and executing against budgets

The eBay Compensation Committee gave no specific weighting to these goals and it and/or the CEO of eBay evaluated individual performance in a holistic manner.

In addition, the PayPal NEOs were eligible to participate in eBay's health and welfare benefit plans, employee stock purchase plan, retirement savings plan, and deferred compensation plan, which are generally available to all of eBay's employees, and to receive certain other limited perquisites. It is anticipated that, following the separation, the PayPal NEOs will participate in comparable programs offered by PayPal.

### **Equity Incentive Awards**

eBay has used three primary forms of equity compensation as part of its regular compensation program in 2014 for its senior executives employed in the level of senior vice president or above: PBRSUs, RSUs, and stock options.

#### Annual Equity Awards: Value

The value of annual equity awards was determined within guidelines that the eBay Compensation Committee annually established for each position. These guidelines were based on eBay's desired pay positioning relative to companies with which it competes for talent. The midpoint of the guidelines, or the median target award, reflects the 50th percentile of the competitive market. Individual awards were based on individual performance, potential, and the total value of unvested equity previously granted to each individual. The individual awards could be higher or lower than the median target award by an amount ranging from zero to three times the median target award.

In 2014, the eBay Compensation Committee set equity award guidelines by position based on: (a) equity compensation practices of technology companies in eBay's peer group, as disclosed in their public filings, and (b) equity compensation practices for comparable technology companies that are included in proprietary third-party surveys.

Once the value of the annual equity incentive awards had been set for each executive officer, a formula was used to allocate the annual equity awards as follows:

50% PBRSUs

30% time-based RSUs, and

20% stock options.

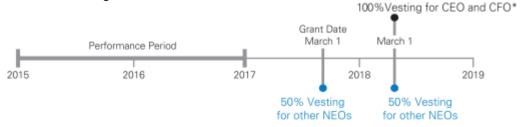
The eBay Compensation Committee may make special equity-related compensation decisions for performance, retention, acquisitions, and/or recruitment purposes (including payments for equity or other

compensation awards from a former employer that an executive officer may be required to forfeit or forgo by accepting employment with the company) that cause individual equity compensation in a particular year to differ from the Committee's regular stated compensation strategy and guidelines. As discussed in more detail below, 2014 was an extraordinary year for eBay in light of the departure of PayPal's former President in June and our announcement of the planned Spin-Off in September. As a result, the Committee determined that it was necessary to make compensation decisions to help us attract and retain key executive officers deemed instrumental to the thoughtful and orderly execution of the Spin-Off and the positioning of PayPal for success as an independent, publicly-traded company. In this section we have described the general equity program design. See "Compensation Decisions for 2014" below for decisions that were made specifically in relation to an acquisition, as a retention device following the departure of PayPal's former President, and the Spin-Off.

## PBRSU Program

Design and Performance Periods. The PayPal NEOs other than Mr. Ready were eligible to receive awards of PBRSUs, which were designed to result in grants of RSUs with additional time-based vesting requirements if eBay exceeds specified financial performance criteria set by the eBay Compensation Committee. The amount and value of the award depend on eBay's performance relative to the performance goals approved by the eBay Compensation Committee at the beginning of the performance period, subject to the adjustments relating to the Spin-Off described under "Compensation Decisions for 2014–Treatment of eBay Inc. Equity Awards." The 2014-2015 PBRSU cycle has a two-year performance period.

Under the PBRSU program, assuming above-minimum threshold performance, PBRSU recipients would receive time-based RSUs. For the 2014-2015 performance period, for all eligible PayPal NEOs, one-half of the RSUs will vest in March following the end of the performance period and the other half of the award will vest in March of the following year, more than one full year following the completion of the performance period. Beginning with the 2015-2016 performance period, 100% of any PBRSU awards granted to PayPal's CEO and CFO are expected to vest, if at all, one year after the grant of time-based RSUs is made following the end of the two-year performance period, subject to the PayPal Compensation Committee's review and approval. This vesting schedule subjects 100% of PayPal's CEO and CFO PBRSU awards to a full three years of stock price volatility before the shares vest. The eBay Compensation Committee believed that the post-performance period vesting feature of the PBRSUs provides an important mechanism that helped to retain and align their interests with long-term stockholder value.



\* For the 2014-2015 PBRSU cycle, Mr. Schulman's and Mr. Dupuis' awards will vest 50% on the date of grant and 50% on the one year anniversary of the date of grant, which was the same vesting schedule for other NEOs of eBay Inc. other than its CEO and CFO.

Setting a Target Value of PBRSU Shares. As discussed above, the eBay Compensation Committee establishes a target level of total annual equity compensation for each employee at the level of senior vice president or above and awards a portion of his or her annual equity compensation in PBRSUs. If eBay's performance meets the target performance goals, the target number of PBRSUs will be granted. If eBay's performance exceeds or falls short of the target performance goals, the number of PBRSUs granted will be increased or decreased formulaically. As discussed in "Changes to PBRSU Program and Annual Cash Incentive

for 2015" below, the financial measures for the 2014-2015 performance period have been adjusted for the PayPal NEOs to focus on the performance of PayPal for 2015.

*Performance Measures and Rationales*. The following table outlines the performance measures for the 2014-2015 performance period and the eBay Compensation Committee's rationale for their selection:

#### Performance Measures for 2014-15 Performance Period

FX-neutral revenue (1)

Non-GAAP operating margin dollars (2)

Return on invested capital (modifier)

### eBay Compensation Committee Rationale

The eBay Compensation Committee believes these measures are key drivers of eBay's long-term success and stockholder value, and directly affected by the decisions of eBay's management.

Both FX-neutral revenue and non-GAAP operating margin dollars measures are used to help ensure that leaders are accountable for driving profitable growth, and making appropriate tradeoffs between investments that increase operating expense and future growth in revenue.

The return on invested capital modifier is used to hold leaders accountable for the efficient use of capital.

- (1) Calculated on a fixed foreign exchange basis (referred to as FX-neutral).
- (2) Non-GAAP operating margin dollars excludes certain items, primarily stock-based compensation expense and related employer payroll taxes, amortization of acquired intangible assets, impairment of goodwill, separation expenses, and certain one-time gains, losses and/or expenses.

PBRSU Mechanics and Targets. The two year targets are generally set at a level consistent with the one-year income target for the annual cash incentive plan and the three year targets provided to the investment community at eBay's analyst events. To receive a PBRSU grant, at least one of the FX-neutral revenue or non-GAAP operating margin dollars minimum performance thresholds must be met. Each of the minimum performance threshold for FX-neutral revenue and non-GAAP operating margin dollars is independent and, if either minimum threshold is met, the award is funded with respect to that performance measure in accordance with the percentages outlined in the table below. If the minimum performance level for either FX-neutral revenue or non-GAAP operating margin dollars is not met, then there is no funding attributable to that performance measure. For example, if the minimum FX-neutral revenue threshold is not met and performance of non-GAAP operating margin dollars is at target, the funding level is 50% of the total payout that would have been earned had the performance levels for both criteria been exactly at target, subject to the return on invested capital modifier.

The following chart shows the minimum, target, and maximum funding levels for FX-neutral revenue and non-GAAP operating margin dollars:

	Minimu	ım	Target	Maximum
FX-neutral revenue	25	%	50 %	100 %
Non-GAAP operating margin dollars	25	%	50 %	100 %

The number of shares awarded is determined by comparing actual performance for FX-neutral revenue and non-GAAP operating margin dollars over the performance period against the minimum, target, and maximum performance levels and converting the result into a funding percentage. The FX-neutral revenue and non-GAAP operating margin dollars measures are then added together and this total is multiplied by the third measure, return on invested capital, with the modification multiplier determined in accordance with the table below:

	Minimum			Maximum	
Return on invested capital (modifier)	80	%	100 %	120 %	

The target award is multiplied by the percentage resulting from this calculation to determine the actual number of PBRSUs awarded, subject to variation approved by the eBay Compensation Committee due to material events not contemplated at the time the targets were set (such as major acquisitions) and to the eBay Compensation Committee's negative discretion. Accordingly, PBRSU awards range from 0% to 240% of the target award, based on FX-neutral revenue, non-GAAP operating margin dollars, and return on invested capital for the two-year performance period.

#### **Annual Cash Incentive Awards**

Design and Performance Period. eBay's cash incentive plan, known as the eBay Incentive Plan, or eIP, is a short-term incentive plan. The eBay Compensation Committee determined the length of the performance period for the cash incentive plan, which had historically been annual (including for 2014). The eBay Compensation Committee believed that incentive payouts should be tightly linked to eBay's performance, with individual compensation differentiated based on individual performance. When defining eBay's company performance, the eBay Compensation Committee focused primarily on financial performance metrics (FX-neutral revenue and non-GAAP net income).

To support a tight link between eBay company performance and any incentive payouts, the annual cash incentives payable for 2014 had both a minimum FX-neutral revenue threshold and a minimum non-GAAP net income threshold. Unless both of these thresholds were met, there was no incentive payout. If both thresholds were met, eBay used total non-GAAP net income as the primary determinant of the payout for the annual cash incentive plan. The amount at which the plan was funded was determined based on eBay's actual performance as measured against the targets set by the eBay Compensation Committee, with 75% of the award for the PayPal NEOs based on eBay's non-GAAP net income financial performance.

To facilitate differentiation based on individual performance, 25% of the award for the PayPal NEOs was based on individual performance. In circumstances where eBay's financial performance is above its threshold goal but below target, a modifier is applied to the individual performance component to reduce it proportionately based on eBay's financial performance component. For example, if eBay exceeded the FX-neutral revenue threshold but total non-GAAP net income was 90% of target, then the individual performance component would be calculated as follows: Target incentive amount x 25% x individual performance score x 90%.

In 2014, the annual cash incentive program also included a customer satisfaction Net Promoter Score (NPS) and employee engagement Net Promoter Score (eNPS) incentive for eBay employees at director-level and above. Each of these was tied to the achievement of a statistically significant improvement over a multi-year period, and would result in an additional payout of 5% of the incentive target if the respective performance measure was achieved. These secondary measures were included to focus employees on improving NPS and eNPS.

*Performance Measures and Rationale*. The following table provides more information on the primary and individual performance measures set in 2014 for the PayPal NEOs and the rationale for their selection:

### Performance Measures (1)

Primary eBay financial performance measure Non-GAAP net income (2), subject to a Minimum FX-neutral revenue threshold (3)

#### Rationale

The eBay Compensation Committee believed non-GAAP net income was the key measure of short- and intermediate-term results for eBay given that it could be directly affected by the decisions of eBay's management and provided the most widely followed measure of financial performance. The eBay Compensation Committee also believed that this primary non-GAAP net income measure should be subject to a minimum revenue threshold and should result in no cash incentive being paid when future income would be negatively impacted by insufficient revenue growth.

Individual measure Individual performance

The eBay Compensation Committee believed that a portion of the compensation payable under this plan should be differentiated based on individual performance for which a review was conducted at the end of the year.

- (1) Both minimum FX-neutral revenue and minimum non-GAAP net income thresholds must have been met in order for there to be any incentive payout based on eBay company performance or individual performance, with the funding level for eBay company performance based on the amount of non-GAAP net income. The incentive payouts for NPS and eNPS were independent from the payout tied to eBay's financial performance (but would only be paid in a year when eBay's minimum financial performance metrics were met).
- (2) Non-GAAP net income excluded certain items, primarily stock-based compensation expense and related employer payroll taxes, amortization of acquired intangible assets, impairment of goodwill, separation expenses, certain one-time gains, losses and/or expenses, and income taxes related to these items. Non-GAAP net income was calculated quarterly, was publicly disclosed as part of eBay's quarterly earnings releases, and was a basis of third-party analysts' estimates of eBay's results.
- (3) Calculated on a FX-neutral basis.

Annual Cash Incentive Plan Mechanics, Assessment, and Target Positioning Strategy. Each year, the eBay Compensation Committee established (1) eBay company performance measures based on business criteria and target levels of performance and (2) a formula for calculating a participant's award based on actual eBay company performance compared to the pre-established performance measures. Performance measures were based on a wide variety of business metrics. The eBay Compensation Committee chose to use non-GAAP net income as its primary measure of performance for a number of years because it was the key measure of short- and intermediate-term results for eBay given that it could be directly affected by the decisions of eBay's management and provided the most widely followed measure of financial performance. Targets were set in the first quarter of the year based primarily on eBay's board-approved budget for the year.

After the end of each year, eBay's actual performance was compared to the performance measures to determine the funding level of that portion of the annual cash incentive plan, subject to variation approved by the eBay Compensation Committee due to material events not contemplated at the time the targets were set (such as major acquisitions) and to the Committee's negative discretion. eBay's CEO presented the eBay Compensation Committee with his assessment of the individual performance of the eBay executive officers who were his direct

reports, including Mr. Schulman. The eBay Compensation Committee reviewed his assessments and made a subjective determination of the level of individual performance for each of those executive officers. In making its determination of the individual performance of each executive officer, the eBay Compensation Committee did not give any specific weighting to individual goals. The President of PayPal presented to eBay's CEO his assessment of the individual performance of each of the PayPal NEOs that were not direct reports to eBay's CEO in 2014. eBay's CEO considered his own assessment of individual performance, including for the time he served as interim President of PayPal, and made a subjective determination of the level of individual performance for each of those PayPal NEOs.

### **Base Salary**

Assessment and Target Positioning Strategy. At the beginning of each year, the eBay Compensation Committee meets to review market data and to review and approve each executive officer's base salary for the year. At these meetings, the eBay Compensation Committee assesses competitive market data on base salaries from public filings of eBay's peer group companies and general industry data for comparable technology companies that are included in proprietary third-party surveys. When considering the competitive market data, the eBay Compensation Committee also considers the fact that the data is historical and does not necessarily reflect those companies' current pay practices. The eBay Compensation Committee assesses each executive officer's base salary against the 50th percentile of the salaries paid to comparable executives at eBay peer group companies. The Committee also considers individual performance, levels of responsibility, breadth of knowledge, and prior experience in its evaluation of base salary adjustments.

### **Perquisites**

eBay provides certain executive officers with perquisites and other personal benefits not available to all eBay employees that the eBay Compensation Committee believes are reasonable and consistent with its overall compensation program and philosophy. These benefits are provided to enable eBay to attract and retain these executive officers. The eBay Compensation Committee periodically reviews the levels of these benefits provided to its executive officers. See "Compensation Decisions for 2014–Hiring Dan Schulman as President of PayPal and its CEO Following the Spin-Off" below for a description of the perquisites that were offered to Mr. Schulman in connection with his offer to join eBay.

### Going Forward

PayPal expects that the executive compensation program that it initially adopts will be similar to the program in place at eBay immediately prior to the separation. Following the separation, PayPal's Compensation Committee will continue to consider and develop PayPal's compensation practices in order to meet and advance the company's business needs and goals.

### **COMPENSATION DECISIONS FOR 2014**

When making compensation decisions, the eBay Compensation Committee evaluated the executives who will become the PayPal NEOs based on their leadership, competencies, innovation, and both past and expected future contributions toward PayPal's financial, strategic and other priorities, including the value of acquisitions to PayPal. In addition, the eBay Compensation Committee considered the impact of succession planning (including in connection with the announcement of the Spin-Off), individual holding power, and retention concerns, including in connection with the departure of the former President of PayPal, the announcement of the Spin-Off, and onboarding a new CEO-designee of PayPal. The eBay Compensation Committee also reviewed the total value of each NEO's unvested equity awards. Based on its assessment, the eBay Compensation Committee determined individual awards based on the factors and guidelines described above. The following sections describe the compensation decisions made by the eBay Compensation Committee for the PayPal NEOs.

# 2014 Compensation Review and Supplemental Equity Awards Following Departure of PayPal's Former President

Each year, the eBay Compensation Committee reviews the total target equity awards, target annual cash incentive award, and salary for each employee at the level of senior vice president and above. In 2014, PBRSUs, RSUs, and stock options were the only types of equity incentive awards granted to the PayPal NEOs. Of the PayPal NEOs employed as of the time of eBay's regular 2014 annual compensation review, only Mr. Dupuis, Mr. Barrese, and Mr. Ferguson received awards of PBRSUs. For Messrs. Dupuis, Barrese, and Ferguson, PBRSU awards for the 2014-2015 performance cycle constituted 50% of the value of their target annual equity award. As described below, Mr. Ready was not eligible to participate in the Company's annual focal program in 2014, and Mr. Schulman had not yet joined PayPal.

The following chart shows the compensation arrangements for Mr. Dupuis, Mr. Barrese, and Mr. Hill, effective April 1, 2014 (i.e., the Focal Date):

	Target Percentage of Annual Salary for							
NAME	Target Annual Equity Award	Annual Cash In Award	Base Salary					
Patrick L. A. Dupuis	\$1.0 million	60	%	\$525,000				
James J. Barrese	\$1.7 million	60	%	\$550,000				
Hill Ferguson	\$1.7 million	60	%	\$465,000				

In addition, following the resignation of PayPal's former president in June 2014, the eBay Compensation Committee determined it was critical to ensure eBay retained key members of PayPal's senior executive team during the search for and transition to a new President of PayPal and to successfully execute PayPal's business priorities during the transition period. Recognizing that members of PayPal's senior executive team are actively recruited for senior leadership positions at other organizations from time to time, the eBay Compensation Committee approved supplemental awards of RSUs with a target grant date value of \$5 million to each of Mr. Barrese and Mr. Ferguson and a target grant date value of \$2 million to Mr. Dupuis to help ensure the continuity of PayPal's senior executive team. Because the supplemental awards were designed to ensure continued service beyond the transition to a new President of PayPal, the RSU awards vest based on continued service with PayPal over a three-year period.

In connection with Mr. Dupuis' hiring in 2010, he was eligible to receive a supplemental cash bonus of up to \$200,000, which was paid in four equal annual installments of \$50,000 from 2011 to 2014. In 2014, when the eBay Compensation Committee approved the supplemental award of RSUs to Mr. Dupuis described above, it also approved two additional payments of \$50,000, to be paid in 2015 and 2016.

#### Hiring Bill Ready in Connection with the Acquisition of Braintree

In December 2013, PayPal acquired Braintree, Inc. ("Braintree"), where Mr. Ready served as chief executive officer, for total consideration of \$713 million. In connection with the acquisition, Mr. Ready received awards of RSUs from eBay in January 2014 with a target grant date value of \$30,320,000, subject to a four-year vesting schedule. At the time Mr. Ready joined PayPal in 2013 and during 2014, there were no changes to his salary or target annual cash incentive award, which were \$300,000 and 66.67%, respectively. In addition, Mr. Ready was not eligible to participate in eBay's regular annual compensation review in 2014 and therefore did not receive any additional equity awards or adjustments to his salary or target annual cash incentive award for 2014.

### Hiring Dan Schulman as President of PayPal and its CEO Following the Spin-Off

In connection with hiring Mr. Schulman to become the future CEO of PayPal, the eBay Compensation Committee conducted a comprehensive review of pay structures for CEOs at comparable public companies as well as internal pay at eBay. The eBay Compensation Committee concluded that it was important to provide a

target total compensation opportunity competitive with the compensation of leaders at other major internet and technology companies, with an annual compensation structure consistent with eBay's current pay for performance philosophy and weighted heavily in favor of performance-based compensation, excluding the one-time make-good awards and payments. In considering the compensation package for Mr. Schulman, the eBay Compensation Committee was mindful of the competition for talented executives in the technology and payments sectors, Mr. Schulman's existing compensation arrangements with his then-current employer—including equity and incentive compensation that would be forfeited in connection with his departure, as well as clawback provisions that would require him to repay gains made on certain equity awards and annual incentive payments—and the demands on and responsibilities of the leader of a global organization with PayPal's scope and stature. Overall, the eBay Compensation Committee concluded that the complexity of the PayPal business, the demands on that business as an independent publicly traded company and the competitive market data should result in a compensation arrangement substantially similar to that of Mr. Donahoe's compensation as CEO of eBay. Accordingly, the eBay Compensation Committee approved the following compensation arrangements for Mr. Schulman in connection with his appointment as President of PayPal and its CEO following the Spin-Off:

## New Hire Compensation:

Annual Salary: \$900,000 (\$1 million effective immediately following the Spin-Off)

Target Cash Incentive Award: 175% of annual salary (200% following the Spin-Off)

Initial Equity Awards: Target Grant Value of \$9 million

Allocation: 30% PBRSUs, 50% RSUs, and 20% stock options

The PBRSU/RSU weighting was adjusted from the standard allocation of 50% PBRSUs, 30% RSUs, and 20% options in recognition of the fact that Mr. Schulman joined eBay in September after the 2014-2015 PBRSU performance cycle was approximately one-third completed; while the eBay Compensation Committee expected that future awards would have the standard allocation and made Mr. Schulman's 2015 award consistent with that allocation, subsequent future awards will be subject to review and approval by the PayPal Compensation Committee

### Make-Good Awards and Payments:

In connection with his prior employment, Mr. Schulman was subject to a "clawback agreement" that would require Mr. Schulman to repay his former employer for gains made on equity and incentive awards, as well as forfeited equity awards, in the event he accepted employment with a company viewed to be a strategic competitor. By accepting employment with PayPal, which was designated as a strategic competitor, Mr. Schulman was required to make repayments and forfeit vested equity with a total value in excess of \$17 million. In recognition of the clawback repayments and forfeited vested equity plus the fact that Mr. Schulman would be foregoing performance-based compensation that he had substantially earned prior to joining eBay, Mr. Schulman was granted a number of "makegood" awards, as follows:

Payment Made for Clawback

Make-Good Equity and Annual Incentive Award Clawback Payment: A total payment of \$13,620,415

In recognition that the pre-tax income Mr. Schulman received from equity and annual incentive compensation awards that vested or were exercised during the 24 months prior to his termination of employment was required to be repaid to Mr. Schulman's former employer (a portion of which was paid directly by eBay) pursuant to a clawback arrangement. This clawback was triggered because Mr. Schulman accepted employment with PayPal, which his former employer viewed as a strategic competitor

Payment Made for Terminated Options

Vested Option Make-Good Payment: \$3,626,537

In recognition that Mr. Schulman's vested options with his former employer were terminated as of the date he accepted employment with PayPal because his former employer viewed PayPal as a strategic competitor

Paid within two payroll periods of start date

Equity Awards and Cash Payments for Substantially Earned Awards

Make-Good RSU Awards: Target Grant Value of \$8,214,932

Designed to make Mr. Schulman whole on equity awards granted by former employer that would have vested within approximately 16 months from date of hire and that were forfeited when he accepted employment with PayPal

RSUs: \$4,143,503 grant value, vesting 100% on December 24, 2014

RSUs: \$4,071,429 grant value, vesting 100% on January 28, 2016

### Make-Good Cash Payments:

Make-Good Bonus Payment: \$3,631,250

In recognition that Mr. Schulman forfeited his 2014 bonus from his former employer when he accepted employment with PayPal

Paid on December 24, 2014, subject to full or partial repayment if bonus received from his former employer

Make-Good Portfolio Grant Payment: \$2,600,000

In recognition that Mr. Schulman forfeited cash-based incentive "portfolio" awards from his former employer when he accepted employment with PayPal

50% on Dec. 24, 2014, and 50% to be paid on Feb. 15, 2016

## Commitment to Future Equity Awards:

eBay also agreed to the size of Mr. Schulman's annual equity award for 2015 as well as an equity award upon the completion of the Spin-Off as follows:

2015 Focal (Annual) Awards: Target Grant Value of \$9 million

Grant date - April 1, 2015

Allocation: 50% PBRSUs, 30% RSUs, and 20% options

PBRSU vesting will apply the CEO vesting schedule (2015-2016 PBRSU award granted in early 2017; if performance targets are met and RSUs are granted, the RSUs will vest 100% in 2018 on the first anniversary of the date of grant)

Spin-Off Awards: Target Grant Value of \$2 million

Grant date-subject to and effective immediately prior to the Spin-Off

Allocation: 50% PBRSUs, 30% RSUs, and 20% options

Vesting subject to discretion of PayPal's Compensation Committee, but full vesting is expected to be over four years from the date of grant for RSUs and stock options and the CEO vesting schedule described above for PBRSUs

### Relocation:

In addition, eBay assisted Mr. Schulman with certain expenses he incurred in connection with his relocation to the San Francisco Bay Area. Mr. Schulman's relocation assistance included assistance with selected costs and expenses related to moving from New York to the San Francisco Bay Area (including temporary housing and transportation) and related tax reimbursements, consistent with eBay's existing relocation policies.

## Changes to PBRSU Program and Annual Cash Incentive for 2015

For the executives who will become PayPal NEOs, the eBay Compensation Committee determined that it would make the following adjustments as a result of the Spin-Off:

## Modification of existing awards for Messrs. Schulman, Dupuis, Barrese, and Ferguson:

2014-2015 PBRSU performance cycle: Payout will be based on aggregate eBay Inc. performance for 2014 and PayPal-specific performance measures for 2015

#### 2015-2016 PBRSU Awards for all PayPal NEOs:

2015-2016 PBRSU performance cycle: Payout will be based on performance measures and results for PayPal over the two-year performance period

#### 2015 Cash Incentive Award:

An annual performance period will apply and performance will be based on PayPal-specific performance measures rather than aggregate eBay Inc. performance

#### Treatment of eBay Inc. Equity Awards

As discussed in more detail in "Certain Relationships and Related Party Transactions-Employee Matters Agreement-Equity Compensation Awards," below, subject to certain exceptions, eBay equity-based compensation awards will either continue as adjusted eBay awards or be converted into PayPal awards upon the separation, depending on which entity employs the person who holds the award. eBay equity awards held by PayPal employees will be converted into awards that relate to shares of PayPal common stock, and equity awards held by employees who will remain employed by eBay after the separation will be adjusted to reflect the separation and continue to relate to shares of eBay common stock. Specifically, outstanding equity awards held by PayPal employees, including the PayPal NEOs, are expected to be treated as shown in the table below:

Award Type Treatment

Target PBRSU Awards

Each eBay target PBRSU award with a fiscal year 2014-2015 performance period or a fiscal year 2015-2016 performance period held by a PayPal employee (including awards granted for accounting purposes) will be converted into a PayPal target PBRSU award. The target number of PayPal shares subject to the PayPal award will be adjusted in order to preserve the aggregate intrinsic value of the original eBay target PBRSU award, as measured immediately before and immediately after the distribution date, subject to rounding.

RSUs

Each unvested award of eBay RSUs held by a PayPal employee will be converted into a PayPal RSU award that will continue to vest over the same period as the unvested award of eBay RSUs to which such award corresponds. The number of shares of PayPal common stock subject to the award will be adjusted in order to preserve the aggregate intrinsic value of the original eBay RSU award, as measured immediately before and immediately after the distribution date, subject to rounding.

Stock Options

Each outstanding eBay stock option (whether vested or unvested) held by a PayPal employee will be converted into an option to purchase shares of PayPal common stock that will continue to vest over the same period as the unvested eBay stock option to which such PayPal option corresponds. The exercise price and number of shares subject to each such PayPal stock option will be adjusted in order to preserve the aggregate intrinsic value of the original eBay stock option, as measured immediately before and immediately after the distribution date, subject to rounding.

#### **2014 BUSINESS RESULTS**

eBay's compensation programs were designed to align compensation with its business objectives and performance. The following is a summary of the business results that directly affected 2014 compensation, including performance-based equity awards and annual cash incentives.

#### **PBRSUs**

eBay's 2014 performance will impact the value of the 2014-2015 PBRSU awards to Messrs. Schulman, Dupuis, Barrese, and Ferguson. As described above, these awards have been modified for these individuals such that payouts will be based on aggregate eBay performance for 2014 and PayPal-specific performance for 2015.

#### **Annual Cash Incentive**

#### 2014 Annual Cash Incentive Goals and Plan Performance

The following shows the goals and 2014 performance under the financial and non-financial performance components of the annual cash incentive plan:

#### FX-neutral revenue:

eBay's FX-neutral revenue of \$17.95 billion exceeded the minimum threshold of \$17.21 billion

## Non-GAAP net income:

eBay's Non-GAAP net income of \$3.80 billion exceeded the minimum threshold of \$3.64 billion but failed to exceed the target threshold of \$3.83 billion

# Net Promoter Score (NPS) and employee Net Promoter Score (eNPS):

In 2014, eBay did not meet its NPS or eNPS targets, accordingly, there was no NPS or eNPS-related payout

Because eBay expects to separate into two companies before the end of 2015, the eBay Compensation Committee eliminated the NPS and eNPS performance metrics for 2015

The funding level under the plan could range from 50% at the minimum non-GAAP net income level up to 200% at the maximum non-GAAP net income level (assuming the minimum FX-neutral revenue threshold was also met). As part of its review of eBay's performance against its targets, the eBay Compensation Committee considered whether any significant corporate events, not contemplated at the time the targets were set, should lead to an adjustment of revenue or non-GAAP net income results. The eBay Compensation Committee concluded that eBay's non-GAAP net income results should be adjusted to exclude the impact of (i) an increased tax rate driven by eBay having elected to subject more of its foreign earnings to U.S. taxation, and (ii) the interest

expense associated with eBay's \$3.5 billion debt issuance in July 2014. Both of these actions resulted in an increase in eBay's available U.S. cash and enhanced its financial flexibility.

Because minimum thresholds for both eBay's company-wide FX-neutral revenue and non-GAAP net income were met in 2014, the individual performance component of the annual cash incentive plan was paid. However, eBay's non-GAAP net income for 2014 was below target, and therefore the individual performance component was modified and funded at 94% in accordance with the terms of the plan and its application to all eligible employees of eBay.

Taking into account both eBay's company and individual performance, total annual cash incentive amounts under the 2014 annual cash incentive for the PayPal NEOs were paid as follows:

<u>Name</u>	Annual Cash Incentive Target as Percentage of Base Salary	Payment as a Percentage of Target*	Size of annual cash incentive award for 2014
Daniel H. Schulman	175	94	\$335,959.58
Patrick L. A. Dupuis	60	105.8	\$ 330,513.59
William J. Ready**	66.67	110.5	\$222,610.59
James J. Barrese	60	94	\$302,499.14
Hill Ferguson	60	94	\$259,949.86

<sup>\*</sup> eBay's company performance component (75%) was paid at 94% of target. The individual performance component (25%) was based on each NEO's individual performance score, which was calculated as a percentage of target and modified down to 94% of that amount in accordance with the terms of the plan.

# SEVERANCE AND CHANGE-IN-CONTROL ARRANGEMENTS WITH EXECUTIVE OFFICERS, AND CLAWBACKS

When approving or establishing the severance and change-in-control arrangements described below, the eBay Compensation Committee attempted to provide severance benefits with sufficient protections and retention incentives for the executive officer and which were aligned with the interests of eBay and its stockholders. The eBay Compensation Committee believes that these protections help eBay to attract and retain highly talented employees, including the PayPal NEOs.

## Severance and Change in Control Arrangements for Mr. Schulman

In connection with becoming President of PayPal and its CEO-designee, Mr. Schulman received an offer letter that included severance arrangements. Under these arrangements, Mr. Schulman is entitled to receive the following if he is terminated without cause or resigns for good reason (each as defined in the letter) and he signs and does not revoke a waiver and release of claims:

a cash payment equal to two times the sum of (a) the greater of Mr. Schulman's annual base salary or \$1 million and (b) his bonus amount (where the bonus amount equals the greater of two times Mr. Schulman's annual base salary or the target cash incentive award for the year);

a prorated cash incentive award based on company performance for the fiscal year in which employment is terminated (if performance targets are met);

any make-good cash payments that have not yet been paid; and

a cash payment equal to the value of:

the unvested Initial Equity Awards and Make-Good RSU Awards if his termination occurs outside a Change in Control period, provided that, if the termination occurs following the Spin-Off and outside the Change in Control period, then the cash payment shall also include the cash value of

<sup>\*\*</sup> At the time Mr. Ready joined PayPal in 2013, there was no change to his target annual cash incentive award.

any other unvested equity awards that would otherwise have vested within 12 months of the termination date; or all unvested equity awards if his termination occurs during a Change in Control Period.

In the event the Spin-Off does not occur within two years from Mr. Schulman's start date and he is terminated without cause or resigns for good reason, in addition to the cash payment equal to the value of the unvested Initial Equity Awards and Make-Good RSU awards described above, he will also be eligible to receive the cash value of any unvested equity awards not covered above that would otherwise have vested within 24 months of his termination date.

The "Change in Control Period" begins 90 days before a Change in Control (as defined in eBay's 2008 Equity Incentive Award Plan, as amended and restated) and ends 24 months after a Change in Control.

In the event Mr. Schulman's employment terminates due to his death or permanent disability, he or his estate will receive, within 30 days of his termination date, a cash payment equal to the value of any equity awards that would have become vested within the following 24 months.

## Severance Arrangements for an Involuntary Termination for Mr. Ready

In connection with PayPal's acquisition of Braintree in December 2013, Braintree granted RSU awards to Mr. Ready prior to closing in recognition of his significant contributions to Braintree. Upon the completion of the acquisition, eBay (as PayPal, Inc.'s parent) assumed the RSU awards granted by Braintree to Mr. Ready. Under the terms of those awards, Mr. Ready would be entitled to full acceleration of any then-unvested RSUs if his employment was terminated by Braintree without "cause" or he resigned with "good reason" (as defined in his Braintree RSU agreements).

# **Change in Control**

PayPal has not entered into any arrangements with any of its executive officers to provide "single trigger" severance payments upon a change in control. As described above, eBay has put change-in-control protections in place for Mr. Schulman.

eBay's equity incentive plans generally provide for the acceleration of vesting of awards granted under the plans upon a change in control (as defined in the applicable plan) only if the acquiring entity does not agree to assume or continue the awards. These provisions generally apply to all holders of awards under the equity incentive plans. See "Potential Payments upon Termination or Change in Control" below for information regarding the impact to PayPal's NEOs in the event of termination or a change in control, assuming that their employment was terminated or a change-in-control occurred on December 31, 2014.

#### Clawbacks

The eBay Compensation Committee has adopted a clawback policy that covers each officer employed as a vice president or in a more senior position, and applies to incentive compensation, which includes any cash incentive award, equity award, or equity-based award paid or awarded to any covered employee during the period in which he or she was designated as a covered employee. For all covered employees, the occurrence of either of the following events is covered: (a) an action or omission by the covered employee that constituted a material violation of eBay's code of business conduct; or (b) an action or omission by the covered employee that resulted in material financial or reputational harm to eBay. In addition, for covered employees that were employed as a senior vice president or in a more senior position, or a vice president who was a member of the finance function, the following event is also covered: a material restatement of all or a portion of eBay's financial statements that was the result of a supervisory or other failure by the covered employee.

Under the clawback policy, the eBay Compensation Committee has the authority and discretion to determine whether an event covered by the policy had occurred and, depending on the facts and circumstances, could (but need not) require the full or partial forfeiture and/or repayment of any incentive compensation covered by the policy that was paid or awarded to a covered employee. The forfeiture and/or repayment could include all or any portion of the following:

Any incentive compensation that is greater than the amount that would have been paid to the covered employee had the covered event been known;

Any outstanding or unpaid incentive compensation, whether vested or unvested, that was awarded to the covered employee; and

Any incentive compensation that was paid to or received by the covered employee (including gains realized through the exercise of stock options) during the twelve (12)-month period preceding the date on which eBay had actual knowledge of the covered event or the full impact of the covered event was known, or such longer period of time as may be required by any applicable statute or government regulation.

# Going Forward

PayPal expects that it will initially establish plans, agreements and policies regarding separation benefits, change-in-control benefits and clawbacks for its NEOs that will be similar to those plans, agreements and policies in place at eBay for its named executive officers in conformance with all legal and regulatory requirements.

#### FURTHER CONSIDERATIONS FOR SETTING EXECUTIVE COMPENSATION

## Historically

### Role of Consultants in Compensation Decisions

Pay Governance LLC served as the independent compensation consultant to the eBay Compensation Committee. It provided the eBay Compensation Committee with advice and resources to help the eBay Compensation Committee assess the effectiveness of eBay's executive compensation strategy and programs. Pay Governance reported directly to the eBay Compensation Committee, and the eBay Compensation Committee had the sole power to terminate or replace Pay Governance at any time.

As part of its engagement, the eBay Compensation Committee had directed Pay Governance to work with eBay's Senior Vice President of Human Resources and other members of management to obtain information necessary for Pay Governance to form recommendations and evaluate eBay's management's recommendations to the eBay Compensation Committee. Pay Governance also met with the eBay Compensation Committee during its regular meetings, in executive session (where no members of management are present), and with the eBay Compensation Committee chair and other members of the Committee outside of the Committee's regular meetings. As part of its engagement in 2014, Pay Governance provided an environmental scan of executive compensation, evaluated eBay's peer group composition, evaluated compensation levels at the peer group companies, assessed and proposed equity and cash compensation guidelines for various executive job levels, assessed compensation for eBay's executive officers, assessed retention for PayPal's NEOs, advised on the framework for eBay's long-term incentive awards, evaluated performance-based retention strategies, evaluated clawback policies, and assessed eBay's board compensation.

In connection with the Spin-Off, Pay Governance was retained by the eBay Compensation Committee for a special assignment to form recommendations as to the compensation structures for Mr. Schulman as the CEO-designee of PayPal and other senior executives of PayPal. In connection with this special assignment, Pay Governance also formed recommendations and evaluated management's recommendations regarding the

compensation arrangements for those individuals expected to serve as PayPal's executive officers following the Spin-Off, and the handling of compensation transition for eBay's plans given an expected Spin-Off date before the end of 2015. Pay Governance's fees for consulting advice to the eBay Compensation Committee for the year ended December 31, 2014 were \$548,778.77. Pay Governance did not provide any other services to eBay.

In addition, Towers Watson & Co. provided compensation advisory services to management to help it develop and execute eBay's overall compensation programs, including evaluating competitive compensation levels and programs for PayPal's executive officers and positions below executive officer, equity compensation, international compensation, and other issues as requested by eBay Human Resources.

### **Peer Group Considerations**

To set total compensation guidelines, the eBay Compensation Committee reviews market data of companies that are comparable to eBay and that it believes compete with eBay for executive talent, business, and capital. The Committee reviews both specific data from public filings from eBay peer group companies and general industry data for comparable technology companies that are included in proprietary third-party surveys. The eBay Compensation Committee believes that it is necessary to consider this market data in making compensation decisions to attract and retain talent. The Committee also recognizes that at the executive level, eBay competes for talent against larger global companies, as well as smaller, non-public companies.

In deciding whether a company should be included in the peer group, the eBay Compensation Committee generally considered the following screening criteria: revenue, market value, historical growth rates, primary line of business, whether the company had a recognizable and well-regarded brand, and whether eBay competes with the company for talent.

For each member of the eBay peer group, one or more of the factors listed above was relevant to the reason for inclusion in the group, and, similarly, one or more of these factors may not have been relevant to the reason for inclusion in the group.

For 2014, the eBay peer group consisted of the following companies: Adobe Systems Incorporated, Amazon.com, Inc., American Express Company, Capital One Financial Corp., Charles Schwab & Co., Inc., Cisco Systems, Inc. Facebook, Inc., Google Inc., Intel Corporation, Intuit Inc., MasterCard Incorporated, Microsoft Corporation, Symantec Corporation, Visa Inc. and Yahoo! Inc. To assess whether the eBay peer group continues to reflect the markets in which eBay competes for executive talent, the eBay Compensation Committee reviews the peer group each year with the assistance of its compensation consultant. For 2014, the eBay Compensation Committee removed Dell Inc. from the list of companies used in 2013 because it had become a private company and its compensation data was no longer publicly available. For 2015, the eBay Compensation Committee did not make any changes to the peer group (as a foreign registrant, compensation data for Alibaba Group Holding Limited is not available).

### Going Forward

Following the separation, the PayPal Compensation Committee will need to select compensation consultants and other advisors and may initially (but is not obligated to) choose to use the same consultants and advisors as those used by the eBay Compensation Committee. In addition, the PayPal peer group will be determined by the PayPal Compensation Committee. As is the case with eBay, it is expected that the PayPal Compensation Committee will set total compensation guidelines by reviewing market data of companies that are comparable to PayPal and that it believes compete with PayPal for executive talent, business, and capital.

#### 2014 SUMMARY COMPENSATION TABLE

The following table, footnotes, and narrative summarize the total compensation historically awarded to, earned by or paid to PayPal's named executive officers, or NEOs, for the fiscal year ended December 31, 2014. Position titles refer to each NEO's expected title at PayPal following the Spin-Off.

	Year	Salary	Bonus	Stock Awards	Option Awards	Non-Equity Incentive Plan Compensation	All Other Compensation	
Name and Principal Position (a)	(b)	(\$)(c)	(\$)(d)	(\$)(e)	(\$)(f)	(\$)(g)	(\$)(h)	Total (\$)(i)
Daniel H. Schulman President and Chief Executive	2014	204,231	0	14,508,104	1,330,803	335,960	22,308,808	38,687,906
Officer (1)								
Patrick L. A. Dupuis Senior Vice President, Interim Chief Financial Officer	2014	520,904	50,000	2,777,670	138,930	330,514	11,208	3,829,226
William J. Ready Senior Vice President, Merchant and Next Generation Commerce	2014	302,308	0	30,840,980	0	222,611	13,036	31,378,935
James J. Barrese Chief Technology Officer and Senior Vice President, Payment Services	2014	536,346	0	6,301,753	236,170	302,499	13,081	7,389,849
Hill Ferguson Senior Vice President, Consumer	2014	460,904	0	6,301,753	236,170	259,950	11,168	7,269,945

<sup>(1)</sup> Mr. Schulman joined the Company on September 30, 2014.

### Bonus (Column (d))

The amount reported in the Bonus column for Mr. Dupuis represents the final installment of a supplemental cash bonus provided by eBay in connection with hiring Mr. Dupuis in 2010.

### Stock Awards (Column (e))

The amounts reported in the Stock Awards column represent the aggregate grant date fair value of eBay time-based restricted stock units, or RSUs, and performance-based restricted stock units, or PBRSUs, granted to each of our NEOs in 2014, calculated in accordance with the Financial Accounting Standards Board's Accounting Standards Codification Topic 718, Compensation—Stock Compensation ("FASB ASC Topic 718"). The grant date fair value of RSUs is determined using the fair value of eBay common stock on the date of grant, and the estimated fair value of PBRSUs is calculated based on the probable outcome of the performance measures for the applicable performance period as of the date on which the PBRSUs are granted for accounting purposes. This estimated fair value for PBRSUs is different from (and lower than) the maximum value of PBRSUs set forth below.

### **RSUs:** For 2014:

Mr. Schulman was granted "new hire" RSUs in connection with his joining PayPal as President and CEO-designee in September. He was also granted a total of 154,544 "Make-Good RSU Awards" with an aggregate grant value of \$8,214,932, which were intended to make him whole for those equity awards granted by his former employer that would have otherwise vested within approximately 16 months from his date of hire and that he forfeited by joining PayPal.

Mr. Ready was granted RSUs by eBay in January 2014 in connection with PayPal's acquisition of Braintree, Inc. ("Braintree") in December 2013.

Mr. Dupuis, Mr. Barrese, and Mr. Ferguson were granted RSUs in connection with eBay's annual (focal) grant in April; each of them also received a supplemental retention RSU grant in August.

**PBRSUs:** PBRSUs provide an opportunity for certain of our NEOs to receive grants of time-based RSUs if the performance measures for a specified time period are met. For a description of the performance measures for the 2014-2015 PBRSU awards, see "Compensation Discussion and Analysis-Elements of the Executive Compensation Program-PBRSU Program" above.

#### For 2014:

Mr. Schulman was granted PBRSUs for accounting purposes in connection with his joining PayPal as President and CEO-designee in September.

Mr. Dupuis, Mr. Barrese, and Mr. Ferguson were granted PBRSUs for accounting purposes in connection with eBay's annual (focal) grant in April.

Mr. Ready was not granted any PBRSUs in 2014.

Assuming the highest level of performance is achieved under the applicable performance measures for the 2014-2015 PBRSU awards, the maximum possible value of the PBRSU awards allocated to our NEOs for the 2014-2015 performance period using the fair value of eBay common stock on the date that such awards were granted for accounting purposes is (a) for Mr. Schulman, \$6,124,557; (b) for Mr. Dupuis, \$1,155,993; (c) for Mr. Barrese, \$1,965,155; and (d) for Mr. Ferguson, \$1,965,155.

The value that our NEOs received in 2014 from the vesting of their eBay stock awards is reflected in the 2014 Option Exercises and Stock Vested table below. Additional information on all outstanding stock awards as of December 31, 2014 is reflected in the 2014 Outstanding Equity Awards at Fiscal Year-End table below.

### Option Awards (Column (f))

The amounts reported in the Option Awards column represent the grant date fair value of eBay stock option awards granted to each of our NEOs in 2014, calculated in accordance with FASB ASC Topic 718. The estimated fair value of each eBay option award on the date of grant was calculated by using a modified Black-Scholes option pricing model. The weighted-averages of the assumptions used were: risk-free interest rate of 1.2%; expected life of 4.1 years; no dividend yield; and expected volatility of 29%. The computation of expected volatility was based on a combination of historical and market-based implied volatility from traded options on eBay common stock. The computation of expected life was determined based on historical experience of similar awards, giving consideration to the contractual terms of the stock-based awards, vesting schedules, and expectations of future employee behavior. The interest rate for periods within the contractual life of the award was based on the U.S. Treasury yield curve in effect at the time of grant.

### For 2014:

Mr. Schulman was granted options in connection with his appointment as President and CEO-designee of PayPal in September.

Mr. Dupuis, Mr. Barrese, and Mr. Ferguson were granted options as part of eBay's annual (focal) grant in April.

Mr. Ready was not granted any stock options in 2014.

The value that our NEOs received in 2014 from the exercise of their eBay stock options is reflected in the 2014 Option Exercises and Stock Vested table below. Additional information on all outstanding option awards as of December 31, 2014 is reflected in the 2014 Outstanding Equity Awards at Fiscal Year-End table below.

# Non-Equity Incentive Plan Compensation (Column (g))

The amounts reported in the Non-Equity Incentive Plan Compensation column represent amounts earned by each of our NEOs under the eBay annual cash incentive plan for services they rendered in 2014. See "Compensation Discussion and Analysis–Elements of the Executive Compensation Program–Annual Cash Incentive Awards" above for more information.

#### All Other Compensation (Column (h))

#### General

The amounts reported in the All Other Compensation column include, for each of our NEOs, the sum of:

- a) the amount of the matching contributions made by eBay to eBay's 401(k) savings plan for the benefit of Messrs. Dupuis, Ready, Barrese, and Ferguson, subject to a maximum of \$10,400 applicable to each participating employee for 2014, including our NEOs;
- b) the cost of certain information technology support services provided by the Company for computer equipment located at the residence of Mr. Schulman;
- c) the dollar value of the premiums paid by eBay for group life insurance and accidental death and dismemberment coverage for the benefit of each of our NEOs;
- d) the dollar value of the "Make-Good Cash Payments" provided to Mr. Schulman for cash payments and equity awards to the extent that Mr. Schulman forfeited or was otherwise required to repay them to his former employer as a result of his leaving his former employer to join the Company, as described below;
- e) the cost of temporary housing for Mr. Schulman for the portion of 2014 following the date of his commencement of employment with PayPal, and the reimbursement of Mr. Schulman for the amount of income taxes relating to the temporary housing and travel-related benefits provided to him, as described below;
- the cost of PayPal promotional items given to Mr. Schulman, and a tax reimbursement for \$117 covering the cost of the gift; and
- g) the cost of a gift given to Mr. Ready, and a tax reimbursement for \$62 covering the cost of the gift.

Perquisites are valued at the incremental cost of providing such perquisites, net of any reimbursements provided by our NEOs.

### Make-Good Cash Payments - Mr. Schulman

The 2014 amount reported for Mr. Schulman includes \$22,178,202 in "Make-Good Cash Payments" intended to make him whole for lost cash and equity awards to the extent that Mr. Schulman's former employer caused him to forfeit or required him to repay such amounts as a result of his leaving his former employer to join PayPal:

- a) \$13,620,415 to cover the pre-tax income Mr. Schulman was required to repay to his former employer for equity and annual incentive compensation received within the last two years prior to his joining PayPal (and a portion of which was paid directly by eBay to his former employer);
- b) \$3,631,250 to make up for the 2014 annual bonus opportunity that Mr. Schulman forfeited by leaving his former employer to join PayPal;
- c) \$1,300,000 representing the portion paid in 2014 (which is 50% of the \$2,600,000 total amount to be paid to Mr. Schulman) to make up for the cash-based incentive "portfolio" awards that Mr. Schulman forfeited by leaving his former employer to join PayPal; and
- d) \$3,626,537 to make up for the vested options in his former employer's common stock that Mr. Schulman forfeited by leaving his former employer to join PayPal.

# Relocation Benefits - Mr. Schulman

The 2014 amount reported for Mr. Schulman also includes the following amounts to cover certain relocation benefits as outlined below:

- a) \$68,112, representing the cost of temporary housing for Mr. Schulman in the San Francisco Bay Area for that portion of 2014 following his commencement of employment with the PayPal in September; and
- b) \$61,118, representing the cost of a tax reimbursement for the amount of income taxes relating to the temporary housing and certain travel benefits provided to him.

# 2014 GRANTS OF PLAN-BASED AWARDS

The following table, footnotes, and narrative set forth certain information regarding grants of plan-based awards to each of our NEOs for the fiscal year ended December 31, 2014.

			Estimated Future Payouts Under Non-Equity Incentive Plan Awards		Estimated Future Payouts Under Equity Incentive Plan Awards			All Other Stock Awards: Number	All Other Option Awards:	Exercise		
Name (a)	Approval Date (b)	Grant Date (c)	Threshold (\$)(d)	Target (\$)(e)	Maximum (\$)(f)	Threshold (#)(g)	Target (#)(h)	Maximum (#)(i)	of Shares of Stock or Units (#)(j)	Number of Securities Underlying Options (#)(k)	or Base Price of Option Awards (\$/Sh)(1)	Grant Date Fair Value (\$)(m)
Daniel H. Schulman		10/										
Options	9/26/ 2014	10/ 15/ 2014	_	_	_	_	_	_	_	101,588	50.24	1,330,803
RSUs	9/26/ 2014	10/ 15/ 2014	_	_	_	_	_	_	84,657	_	_	1 252 169
RSUs	2014	10/	=	=	=	=	_	=	84,037	=	=	4,253,168
KSUS	9/26/	15/										
	2014	2014	_	_	_	_	_	_	77,950	_	_	3,916,208
RSUs	2014	10/							11,550			3,710,200
RSOS	9/26/	15/										
	2014	2014	_	_	_	_	_	_	76,594	_	_	3,848,083
eIP - company performance	N/A	N/A	134,026	268,053	536,106	_	_	_		_	-	_
eIP - individual performance	N/A	N/A	- ′	89,351	178,702	_	-	-	_	-	-	-
PBRSUs (2014-2015 performance		10/		ĺ								
period)	9/26/ 2014	15/ 2014	_	_	_	20,318	50,794	121,906	-	_	_	2,490,645
Patrick L. A. Dupuis												
Options	1/29/ 2014	4/1/ 2014	_	_	_	_	_	_	_	10,314	56.04	138,930
RSUs	1/29/ 2014	4/1/ 2014	-	-	-	-	-	_	5,157	-	-	288,998
RSUs	8/7/ 2014	8/15/ 2014	_	_	_	_	_	_	37,514	_	_	1,974,737
eIP - company performance	N/A	N/A	117,203	234,407	468,814	_	-	-	-	-	-	_
eIP - individual performance	N/A	N/A	-	78,136	156,271	-	-	-	-		-	-
PBRSUs (2014-2015 performance period)	1/29/ 2014	4/1/ 2014	_	_	_	3,438	8,595	20,628	_	_	-	513,935
William J. Ready												
RSUs	11/21/	1/15/										
RSOS	13	2014	_	_	_	_	_	_	472,756	_	_	25,429,545
RSUs	11/21/ 13	1/15/ 2014	_	_	_	_	_	_	100,603	_	_	5,411,435
eIP - company performance	N/A	N/A	75,581	151,162	302,323	_	-	-	-	_	-	_
eIP - individual performance	N/A	N/A	_	50,387	100,774	_	-	-	-	-	-	-
James J. Barrese												
Options Options	1/29/	4/1/										
	2014		-	_	-	-	-	_	-	17,533	56.04	236,170
RSUs	1/29/ 2014		-	-	-	-	-	-	8,767	-	-	491,303
RSUs	8/7/	8/15/										
ID 2	2014	2014	120 (70	241.256	402.711	-	_	_	93,784	-	-	4,936,790
eIP - company performance	N/A	N/A	120,678	241,356	482,711	-	-	_	-	-	_	_
eIP - individual performance	N/A	N/A	_	80,452	160,904	_	_	_	_	_	_	_
PBRSUs (2014-2015 performance period)	2014	4/1/ 2014	_	_	-	5,845	14,611	35,067	_	-	-	873,660
Hill Ferguson												
Options	1/29/	4/1/										
· F	2014		_	_	-	-	-	-	-	17,533	56.04	236,170
RSUs	1/29/	4/1/								,		,
	2014	2014	_	_	_	_	_	_	8,767	_	_	491,303
RSUs	8/7/ 2014	8/15/ 2014	_	_	_	_	_	_	93,784	_	_	4,936,790
	_U1 T	2017							75,701			.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,

eIP - company performance	N/A	N/A	103,703	207,407	414,814	_	_	=	_	_	-	_
eIP - individual performance	N/A	N/A	_	69,136	138,271	_	_	-	_	_	-	_
PBRSUs (2014-2015 performance	1/29/	4/1/										
period)	2014	2014	_	_	_	5,845	14,611	35,067	_	_	_	873,660

# Estimated Future Payouts Under Non-Equity Incentive Plan Awards (Annual Cash Incentive Plan) (Columns (d), (e), and (f))

The amounts reported under these columns relate to the possible awards under the eBay annual cash incentive plan. For further details, see "Compensation Discussion and Analysis–Elements of the Executive Compensation Program–Annual Cash Incentive Awards" above. In 2014, the total annual target incentive amounts under the eBay annual cash incentive plan as a percentage of base salary for the NEOs were: (a) for Mr. Schulman, 175%; (b) for Mr. Dupuis, 60%; (c) for Mr. Ready, 66.67%; (d) for Mr. Barrese, 60%; and (e) for Mr. Ferguson, 60%.

The total 2014 annual target incentive amounts under the eBay annual cash incentive plan for the NEOs were allocated 75% to company (eBay) performance and 25% to individual performance. No funding occurs for the individual performance component of the eBay annual cash incentive plan unless the minimum thresholds for both FX-neutral revenue and non-GAAP net income are met; in 2014, these thresholds were met.

Actual payouts to our NEOs under the eBay annual cash incentive plan for the fiscal year ended December 31, 2014 are reflected in the Non-Equity Incentive Plan Compensation column in the 2014 Summary Compensation Table above.

*eIP - Company Performance*: The amounts shown in the rows entitled "eIP - company performance" reflect estimated payouts for the fiscal year ended December 31, 2014 under the annual cash incentive plan for the portion of the award payable based on company (eBay) performance, as follows:

*Threshold:* The amounts shown in this column reflect the minimum payment levels if the minimum FX-neutral revenue and non-GAAP net income thresholds are met, which are 50% of the amounts shown under the Target column.

Target: The amounts shown in this column reflect the target payment levels if target non-GAAP net income is met.

*Maximum*: The amounts shown in this column represent the maximum amounts payable based on company performance, which are 200% of the amounts shown under the Target column.

The payout for the achievement of each of the eNPS and NPS metrics is independent from the payout tied to company financial performance (but will only be paid in a year in which the minimum thresholds for both FX neutral revenue and non-GAAP net income are met). For 2014, no payout was made for either the eNPS or NPS metric because the respective targets were not met. See "Compensation Discussion and Analysis-Elements of the Executive Compensation Program-Annual Cash Incentive Awards" above.

eIP - Individual Performance: The amounts shown in the rows entitled "eIP - individual performance" reflect estimated payouts for the fiscal year ended December 31, 2014 under the annual cash incentive plan for the portion of the award payable based on individual performance, as follows:

Threshold: Although there are no thresholds under the annual cash incentive plan for individual performance, there is no payout for individual performance unless the minimum thresholds for both company-wide FX-neutral revenue and non-GAAP net income are met. In addition, in circumstances where company financial performance is above thresholds but below targets, a modifier is applied to the individual performance component to reduce it in proportion based on the company financial performance component.

Target: The amounts shown in this column reflect 100% of the target award for individual performance.

Maximum: The amounts shown in this column are 200% of the amounts shown under the Target column.

# Estimated Future Payouts Under Equity Incentive Plan Awards (PBRSUs) (Columns (g), (h), and (i))

The amounts shown reflect estimated payouts of PBRSUs for the 2014-2015 performance period, as follows:

*Threshold:* The amounts shown in this column reflect the awards if the minimum FX-neutral revenue and non-GAAP operating margin dollar thresholds are met and the lowest return on invested capital modifier is applied, and are 40% of the amounts shown under the Target column.

*Target:* The amounts shown in this column reflect the awards if the FX-neutral revenue and non-GAAP operating margin dollar amounts are at target, and the target return on invested capital modifier is applied.

*Maximum:* The amounts shown in this column reflect the awards if the maximum FX-neutral revenue and non-GAAP operating margin dollar amounts are met and the maximum return on invested capital modifier is applied, and are 240% of the amounts shown under the Target column.

For further discussion of the PBRSUs, including their vesting schedules, see "Compensation Discussion and Analysis-Elements of the Executive Compensation Program-Equity Incentive Awards-PBRSU Program" above.

### All Other Stock Awards: Number of Shares or Stock Units (RSUs) (Column (j))

The awards reflect the number of eBay RSUs on the grant date. For 2014:

Mr. Schulman was granted "new hire" RSUs in connection with his joining PayPal as President and CEO-designee in September. His "new hire" RSU award vests over four years, with 25% vesting annually on each of the first four anniversaries of the date of grant. He was also granted a total of 154,544 "Make-Good RSU Awards" with an aggregate grant value of \$8,214,932, which were intended to make him whole for those equity awards granted by his former employer that would have otherwise vested within approximately 16 months from his date of hire and that he forfeited by joining PayPal. One of Mr. Schulman's Make-Good RSU Awards vested 100% on December 24, 2014, and the other will vest 100% on January 28, 2016.

Mr. Dupuis, Mr. Barrese, and Mr. Ferguson were granted RSUs in connection with eBay's annual (focal) grant in April; those awards become fully vested after four years, with 25% vesting annually on each of the first four anniversaries of the date of grant. Each of them also received a supplemental retention RSU grant in August; those awards become fully vested after three years, with 33 1/3% vesting annually on each of the first three anniversaries of the date of grant.

Mr. Ready was granted RSUs by eBay in January 2014 with an aggregate grant value of \$30,320,000 in connection with PayPal's acquisition of Braintree in December 2013. His RSUs will become fully vested after four years, with 20% vesting on the second anniversary of the date of grant and 3 1/3% vesting monthly thereafter.

#### All Other Option Awards (Stock Options) (Columns (k) and (l))

The awards reflect the number of stock options on the grant date. For 2014:

Mr. Schulman was granted options in connection with his appointment as President and CEO-designee of PayPal in September.

Mr. Dupuis, Mr. Barrese, and Mr. Ferguson were granted options as part of eBay's annual (focal) grant in April.

"New hire" option grants vest over four years, with 25% vesting on the first anniversary of the date of grant and 1/48th vesting monthly thereafter. Options granted in connection with eBay's annual (focal) grant vest over four years, with 12.5% vesting on the sixmonth anniversary of the date of grant and 1/48th vesting monthly thereafter. The exercise price of options is the closing price of eBay common stock on the date of grant.

# Grant Date Fair Value (Column (m))

The fair value of each option and RSU award was calculated using the fair value of eBay common stock on the date of grant. The estimated fair value of PBRSUs was calculated based on the probable outcome of the performance measures for the 2014-2015 performance period as of the date on which those PBRSUs were granted for accounting purposes. The estimated fair value of each eBay option award on the date of grant was calculated by using a modified Black-Scholes option pricing model. The weighted-averages of the assumptions used during 2014 were: risk-free interest rate of 1.2%; expected life of 4.1 years; no dividend yield; and expected volatility of 29%. The computation of expected volatility was based on a combination of historical and market-based implied volatility from traded options on eBay common stock. The computation of expected life was determined based on historical experience of similar awards, giving consideration to the contractual terms of the stock-based awards, vesting schedules, and expectations of future employee behavior. The interest rate for periods within the contractual life of the award was based on the U.S. Treasury yield curve in effect at the time of grant.

# 2014 OUTSTANDING EQUITY AWARDS AT FISCAL YEAR-END

The following table and footnotes set forth certain information regarding outstanding equity awards for each of our NEOs as of December 31, 2014.

	Option Awards							Stock Awards					
<u>Name</u>	Number of Securities Underlying Unexer- cised Options (#) Exercisable	Number of Securitie Underlyin Unexercised Options (#) Unexercisable	s ig	Equity Incentive Plan Awards: Number of Securities Underlying Unexercised Unearned Options (#)	Option Exercise Price (\$)	Option Grant Date	Option Expiration Date	Number Shares o Units of Stock That Hax Not Vested (#	r f ve	Market Value Shares or Units of Stock That Have Not Vested (\$) (1)	Stock Grant Date	Equity Incentive Plan Awards: Number of Unearned Shares, Units or Other Rights That Have Not Vested (#)	Equity Incentive Plan Awards: Market or Payout Value of Unearned Shares, Units or Other Rights That Have Not Vested (\$) (1)
Daniel H. Schulman						10/ 15/	10/15/						
	0	101,588	(4)	0	50.24	2014	2021	84,657 76,594	(7) (9)	4,750,951 4,298,455	10/ 15/ 2014 10/ 15/ 2014		
Patrick L. A. Dupuis						4/2/						20,318 (8)	1,140,246
rution B. 11. Bupuis	314	5,034	(3)	0	36.59	2012 4/1/	4/2/2019						
	4,251	5,951	(2)	0	55.71	2013	4/1/2020						
	1,719	8,595	(2)	0	56.04	4/1/ 2014	4/1/2021						
								3,774	(6)	211,797	4/2/ 2012		
								31,500	(11)	1,767,780	4/2/ 2012		
								3,825	(5)	286,268	4/1/ 2013		
								9,013	(16)	505,810	3/1/ 2014		
								5,157	(5)	289,411	4/1/ 2014		
								37,514	(14)	2,105,286	8/15/ 2014		
								3,656	(17)	205,175	3/1/ 2014		
William J. Ready								28,958	(12)	1,625,123	12/ 19/ 2013 12/	3,438 (8)	192,941
								96,523	(12)	5,416,871	19/ 2013		
								100,603	(13)	5,645,840	1/15/ 2014		
								472,756	(13)	26,531,067	1/15/ 2014		
James J. Barrese	1,896	1,138	(2)	0	32.29	3/1/ 2011 4/2/	3/1/2018						
	1,031	3,300	(3)	0	36.59	2012	4/2/2019						
	3,542	4,960	(2)	0	55.71	4/1/ 2013	4/1/2020						
	2,922	14,611	(2)	0	56.04	4/1/ 2014	4/1/2021						

								2,275	(5)	127,673	3/1/ 2011 3/1/			
								5,000	(10)	280,600	2011 4/2/			
								6,600	(6)	370,392	2012 4/2/			
								21,750	(11)	1,220,610	2012 4/1/			
								8,502	(5)	477,132	2013 4/1/			
								8,767	(5)	492,004	2014 8/15/			
								93,784	(14)	5,263,158	2014	5,845	(8)	328,021
Hill Ferguson	4,333	867	(15)	0	28.46	9/9/ 2011 4/13/	9/9/2018 4/13/					2,010		320,021
	3,133	1,567	(3)	0	36.12	2012 4/1/ 2013 4/1/	2019							
	2,362	3,306	(2)	0	55.71		4/1/2020							
	2,922	14,611	(2)	0	56.04	2014	4/1/2021				9/9/			
								650	(7)	36,478	2011 9/9/			
								5,000	(10)	280,600	2011 4/2/			
								2,024	(6)	113,587	2012 4/2/			
								6,750	(11)	378,810	2012 4/13/			
								1,074	(6)	60,273	2012 9/14/			
								21,044	(10)	1,180,989	2012			
								5,667	(5)	318,032	4/1/ 2013			
								3,542	(10)	198,777	4/1/ 2013			
								8,767	(5)	492,004	4/1/ 2014 8/15/			
								93,784	(14)	5,263,158	2014	5,845	(8)	328,021
												,		· ·

- (1) Market Value is calculated based on the closing price of \$56.12 of eBay common stock on December 31, 2014.
- (2) Annual option grant. Becomes fully vested after four years, with 12.5% vesting on the six-month anniversary of the date of grant, and 1/48th vesting monthly thereafter.
- (3) Annual option grant. Becomes fully vested after four years, with 12.5% vesting on the six-month anniversary of April 1st of the year when granted, and 1/48th vesting monthly thereafter.
- (4) New hire option grant. Becomes fully vested after four years, with 25% vesting on the one-year anniversary of the date of grant, and 1/48th vesting monthly thereafter
- (5) Annual RSU grant. Becomes fully vested after four years, with 25% vesting on each of the first four anniversaries of the date of grant.
- (6) Annual RSU grant. Becomes fully vested after four years, with 25% vesting on each of the first four anniversaries of April 1st of the year when granted.
- (7) New hire RSU grant. Becomes fully vested after four years, with 25% vesting on each of the first four anniversaries of the date of grant.
- (8) In accordance with the SEC executive compensation disclosure rules, represents the estimated future award of PBRSUs at the threshold performance level under the 2014-2015 performance period based on company (eBay) performance through 2014. PBRSUs are earned based on company FX-neutral revenue and non-GAAP operating margin dollars during the performance period (with the application of a return on invested capital modifier). See "Compensation Discussion and Analysis-Elements of the Executive Compensation-PBRSU Program" above for a more detailed discussion of these awards and the related performance measures.
- (9) Make-Good RSU Award. Becomes fully vested on January 28, 2016. See "Compensation Discussion and Analysis-Compensation Decisions for 2014-Hiring Dan Schulman as President of PayPal and its CEO Following the Spin-Off" for further discussion of this award.
- (10) Supplemental RSU grant. Becomes fully vested over four years, with 25% vesting on each of the first four anniversaries of the date of grant.
- (11) Supplemental RSU grant. Becomes fully vested over four years, with 25% vesting on each of the first four anniversaries of April 1st of the year when granted.
- (12) Assumed Braintree RSU grant. Becomes fully vested on the second anniversary of the closing of PayPal's acquisition of Braintree, Inc., with 66 2/3% vesting on the first anniversary of the closing and 33 1/3% vesting on the second anniversary of the closing.
- (13) Acquisition-related RSU grant. Becomes fully vested after four years, with 20% vesting on the second anniversary of the date of grant, and 3 1/3% vesting monthly thereafter.
- (14) Supplemental retention RSU grant. Becomes fully vested after three years, with 33 1/3% vesting on each of the first three anniversaries of the date of grant.
- (15) Acquisition-related new hire option grant. Becomes fully vested on the fourth anniversary of the closing of PayPal's acquisition of Zong SA, with 25% vesting on August 11, 2012, the first anniversary of the closing, and 1/48th vesting monthly thereafter.
- (16) PBRSU Award. Earned in connection with 2012-2013 performance; 50% vested on March 1, 2014, and the remaining 50% vested on March 1, 2015.
- (17) PBRSU Award. Earned in connection with 2013-2014 performance; 50% vested on March 1, 2015, and the remaining 50% vests on March 1, 2016.

### 2014 OPTION EXERCISES AND STOCK VESTED

The following table and footnotes set forth the number of shares acquired and the value realized upon the exercise of eBay stock options and the vesting of eBay stock awards by each of our NEOs for the fiscal year ended December 31, 2014.

	Option	1 Awards	Stock Awards			
Name	Number of Shares Acquired on Exercise (#)	Value Realized on Exercise (\$)(1)	Number of Shares Acquired on Vesting (#)	Value Realized on Vesting (\$)(2)		
Daniel H. Schulman	_	_	77,950	4,450,945		
Patrick L. A. Dupuis	118,752	2,815,183	44,947	2,556,212		
William J. Ready	_	_	222,008	12,308,124		
James J. Barrese	9,526	208,441	26,929	1,536,183		
Hill Ferguson	_	-	24,169	1,295,220		

<sup>(1)</sup> Value realized on exercise of stock options is based on the fair market value of eBay common stock on the date of exercise minus the exercise price and does not necessarily reflect proceeds actually received by the NEO.

<sup>(2)</sup> Value realized on vesting of stock awards is based on the fair market value of eBay common stock on the vesting date and does not necessarily reflect proceeds actually received by the NEO.

# 2014 NONQUALIFIED DEFERRED COMPENSATION

The following table and footnotes sets forth information concerning contributions, earnings, and withdrawals/distributions during 2014 under eBay's nonqualified deferred compensation plans for each of our NEOs.

Name	Executive Contributions in Last FY (\$)	Registrant's Contributions in Last FY (\$)	Aggregate Earnings in Last FY (\$)(1)	Aggregate Withdrawals/ Distributions (\$)	Aggregate Balance at Last FYE (\$)
Daniel H. Schulman	-	_	-	_	-
Patrick L. A. Dupuis	-	_	_	-	-
William J. Ready	-	_	-	-	-
James J. Barrese (2)	280,252	_	13,852	-	391,952
Hill Ferguson	-	_	_	_	_

<sup>(1)</sup> None of the earnings in this column are included in the 2014 Summary Compensation Table because they are not preferential or above market.

<sup>(2)</sup> Executive contributions during 2014 consisted of contributions by Mr. Barrese of a portion of his (a) base salary for 2013 and 2014 (in each case, paid in 2014) and (b) annual cash incentive award earned in 2013 and paid in 2014.

#### POTENTIAL PAYMENTS UPON TERMINATION OR CHANGE IN CONTROL

The following table, footnotes, and narrative set forth our payment obligations pursuant to the compensation arrangements for each of our NEOs, under the circumstances described below, assuming that their employment was terminated or a change in control occurred on December 31, 2014.

Name_	Voluntary Termination (\$)(a)	Termination for Cause (\$)(b)	Involuntary Termination Other than for Cause (\$)(c)	Change in Control (\$)(d)	Death or Disability (\$)(e)
Daniel H. Schulman	_	_	20,237,854	20,237,854	9,985,292
Patrick L. A. Dupuis	_	_	_	_	_
William J. Ready	-	-	7,041,994	_	_
James J. Barrese	-	_	_	_	_
Hill Ferguson	-	_	_	_	_

### **Involuntary Termination Other than for Cause (Column (c))**

### Severance Arrangements for Involuntary Termination Other than for Cause for Mr. Schulman

Mr. Schulman entered into an offer letter (the "Schulman Offer Letter") in connection with becoming President and CEO-designee of PayPal in September 2014. Under the terms of the Schulman Offer Letter, Mr. Schulman would be entitled to the following if his employment was terminated by eBay without "cause" or if he resigned for "good reason" as of December 31, 2014 and his termination date occurred more than 90 days prior to or more than 24 months following a "change in control" (as defined in the eBay Inc. 2008 Equity Incentive Award Plan, as amended and restated, or the eBay Plan):

a cash payment equal to two times the sum of (a) the greater of annual base salary or \$1 million, and (b) his target bonus amount (where the target bonus amount equals the greater of two times annual base salary or the target bonus amount) ("Cash Severance Payment");

a prorated annual cash bonus based on actual company performance and only covering the company performance component for the fiscal year in which employment is terminated ("Prorated Cash Incentive Award");

the unpaid portion of his Make-Good Cash Payments, which is otherwise scheduled to vest on February 15, 2016; and

a cash payment equal to the value of the unvested Initial Equity Awards and Make-Good RSU Awards (where value is determined using the average closing price of eBay common stock for the 10 consecutive trading days ending on and including the trading day immediately prior to the termination date).

For discussion of Mr. Schulman's severance arrangements in the event of his termination of employment without "cause" or resignation for "good reason" at or following the Spin-Off, see "Compensation Discussion and Analysis-Severance and Change-in-Control Arrangements with Executive Officers, and Clawbacks-Severance and Change-in-Control Arrangements for Mr. Schulman" above.

# Severance Arrangements for an Involuntary Termination Other than for Cause for Mr. Ready

In connection with PayPal's acquisition of Braintree in December 2013, Braintree granted RSU awards to Mr. Ready prior to closing in recognition of his significant contributions to Braintree. Upon the completion of the acquisition, eBay (as PayPal, Inc.'s parent) assumed the RSU awards granted by Braintree to Mr. Ready. Under the terms of those awards, Mr. Ready would be entitled to full acceleration of any then-unvested RSUs if his employment was terminated by Braintree without "cause" or he resigned with "good reason" (as defined in his Braintree RSU agreements).

### Change in Control (Column (d))

### Severance Arrangements for an Involuntary Termination in Connection with a Change in Control for Mr. Schulman

Under the terms of the Schulman Offer Letter, Mr. Schulman would be entitled to receive the following if a "change in control" (as defined in the eBay Plan) occurred as of December 31, 2014 and his employment was terminated by eBay without "cause" or he resigned for "good reason":

Cash Severance Payment;

Prorated Cash Incentive Award:

the unpaid portion of his Make-Good Cash Payments, which is otherwise scheduled to vest on February 15, 2016; and

a cash payment equal to the value of all unvested equity awards outstanding (where value is determined using the average closing price of eBay common stock for the 10 consecutive trading days ending on and including the trading day immediately prior to the termination date).

For discussion of Mr. Schulman's severance arrangements in the event of his termination of employment without "cause" or resignation for "good reason" in connection with a "change in control" following the Spin-Off or where the Spin-Off has not occurred by the second anniversary of his start date, see "Compensation Discussion and Analysis-Severance and Change-in-Control Arrangements with Executive Officers, and Clawbacks-Severance and Change-in-Control Arrangements for Mr. Schulman" above.

# Change in Control-Equity Awards

The amounts reported in the Change-in-Control column assume that, in a change-in-control transaction, the acquiring entity would assume or continue outstanding equity awards. If the acquiring entity does not assume or continue any outstanding equity awards and all the unvested and outstanding awards are fully accelerated upon a change in control, the aggregate value of accelerated vesting of such awards to each of the NEOs as of December 31, 2014, calculated based on the closing price of eBay common stock on December 31, 2014, would be as follows: (a) for Mr. Schulman, \$9,646,744; (b) for Mr. Dupuis, \$5,401,358; (c) for Mr. Ready, \$39,218,901; (d) for Mr. Barrese, \$8,326,339; and (e) for Mr. Ferguson, \$8,380,554.

The Committee has determined that the Spin-Off will not constitute a Change in Control for purposes of these protections and therefore these benefits will not be available solely as a result of the execution of the Spin-Off.

#### Death or Disability (Column (e))

#### Severance Arrangements in the Event of Death or Disability for Mr. Schulman

Under the terms of the Schulman Offer Letter, if Mr. Schulman's employment terminates due to his death or permanent disability, he will be entitled to receive within 30 days of his termination date a cash payment equal to the value of any unvested equity awards that would have otherwise vested within 24 months of his termination date.

### THE PAYPAL HOLDINGS, INC. 2015 EQUITY INCENTIVE AWARD PLAN

#### Summary of Plan Terms

The following is a summary of the key provisions of the 2015 Equity Incentive Award Plan (the "2015 Plan"), which will be adopted by PayPal prior to the separation and effective as of [●]. This summary is qualified in its entirety by reference to the full text of the 2015 Plan. The PayPal equity-based compensation awards into which the eBay equity-based compensation awards are converted upon the separation (see Treatment of eBay Awards held by PayPal Employees) will be issued pursuant to the 2015 Plan (the "Assumed Awards").

#### Administration

The Compensation Committee has the exclusive authority to administer the 2015 Plan, including the power to determine eligibility, the types and sizes of awards, the price and timing of awards, the acceleration or waiver of any vesting restriction, and the authority to delegate such administrative responsibilities.

The Compensation Committee may delegate to a committee of one or more of our directors or one or more of our officers the authority to grant or amend awards to participants other than our senior executives who are subject to Section 16 of the Exchange Act or employees who are "covered employees" within the meaning of Section 162(m) of the Code. Unless otherwise determined by the Board, the Compensation Committee will consist solely of two or more members of the Board, each of whom is an "outside director" within the meaning of Section 162(m) of the Code, a non-employee director, and an "independent director" under the rules of the Nasdaq Global Select Market (or other principal securities market on which shares of our common stock are traded).

### Eligibility

Employees of the Company and its subsidiaries and affiliates, and consultants and non-employee members of our Board as determined by the Compensation Committee are eligible to participate in the 2015 Plan.

#### Limitation on Awards and Shares Available

The number of shares of common stock authorized for issuance pursuant to the 2015 Plan is [●] million plus the aggregate number of shares subject to the Assumed Awards, which number is expected to be [●]. The shares of common stock covered by the 2015 Plan may be treasury shares, authorized but unissued shares, or shares purchased in the open market.

The 2015 Plan counts awards against the available plan reserve based on ratios tied to the expected value of the award, with full value awards counting as [•] share for each share granted, and options and stock appreciation rights counting as [•] shares for each option and stock appreciation right granted. This [•] ratio equates to approximately one full value award equaling [•] options and [•] stock appreciation rights. "Full value awards" are defined as awards denominated in shares of our common stock, other than stock options and stock appreciation rights.

To the extent an award granted under the 2015 Plan terminates, expires, or lapses for any reason or is settled in cash without delivery of shares to the participant, any shares subject to that award may be used again for new grants under the 2015 Plan, pursuant to the terms of the 2015 Plan. However, any shares that are tendered or withheld to satisfy the grant, exercise price, or tax withholding obligation pursuant to any award may not be used again for new grants under the 2015 Plan. To the extent permitted by applicable law or any exchange rule, shares issued in the assumption of, or in the substitution for, any outstanding awards of any entity acquired in any form of combination by us or any of our subsidiaries or affiliates will not be counted against shares available for issuance under the 2015 Plan. The payment of cash dividend equivalents in conjunction with outstanding awards will not be counted against the shares available for issuance under the 2015 Plan.

The maximum number of shares of our common stock that may be subject to one or more awards granted to any one participant pursuant to the 2015 Plan during any calendar year is [•] shares, and the maximum amount that may be paid in cash to a "covered employee" during any calendar year with respect to any performance bonus award is \$ [•].

#### Awards

The 2015 Plan provides for the grant of incentive stock options, nonqualified stock options, restricted stock, restricted stock units ("RSUs"), performance-based restricted stock units ("PBRSUs"), stock appreciation rights, performance shares, performance stock units, dividend equivalents, stock payments, deferred stock units ("DSUs"), other stock-based awards, and performance-bonus awards. No determination has been made as to the types or amounts of awards that will be granted in the future to specific individuals pursuant to the 2015 Plan.

Stock Options. Stock options, including incentive stock options as defined under Section 422 of the Code, and nonqualified stock options, may be granted pursuant to the 2015 Plan. The option exercise price of all stock options granted pursuant to the 2015 Plan will not be less than 100% of the fair market value of our common stock on the date of grant. Stock options may be exercised as determined by the Compensation Committee, but in no event may a stock option have a term extending beyond ten years from the date of grant.

Although we do not currently intend to grant any incentive stock options, to preserve maximum flexibility, the 2015 Plan allows us to grant incentive stock options. Incentive stock options granted to any person who owns, as of the date of grant, stock possessing more than ten percent of the total combined voting power of all classes of our stock, however, shall have an exercise price that is not less than 110% of the fair market value of the common stock on the date of grant and may not have a term extending beyond the fifth anniversary of the date of grant. The aggregate fair market value of the shares with respect to which options intended to be incentive stock options are exercisable for the first time by an employee in any calendar year may not exceed \$100,000, or such other amount as the Code provides.

The Compensation Committee determines the methods by which an option holder may pay the exercise price of an option or the related taxes, including, without limitation: (1) cash, (2) shares of common stock (including, in the case of payment of the exercise price of an award, shares of stock issuable pursuant to the exercise of the award) having a fair market value on the date of delivery equal to the aggregate payments required, or (3) other property acceptable to the Compensation Committee (including through the delivery of a notice that the award holder has placed a market sell order with a broker with respect to shares of common stock then issuable upon exercise or vesting of an award, and that the broker has been directed to pay a sufficient portion of the net proceeds of the sale to us in satisfaction of the aggregate payments required; provided that payment of such proceeds is then made to us upon settlement of that sale). However, no participant who is a member of the Board or an "executive officer" of the Company within the meaning of Section 13(k) of the Exchange Act will be permitted to pay the exercise price of an option in any method which would violate the prohibitions on loans made or arranged by us as set forth in Section 13(k) of the Exchange Act.

Time-Based Restricted Stock Units. RSUs may be granted pursuant to the 2015 Plan. An RSU award provides for the issuance of common stock at a future date subject to continuing employment as set forth in the applicable award agreement. The vesting and maturity dates will be established at the time of grant and may provide for the deferral of receipt of the common stock beyond the vesting date. On the maturity date, we will transfer to the participant one unrestricted, fully transferable share of common stock for each RSU scheduled to be paid out on such date and not previously forfeited (subject to applicable tax withholding requirements).

Performance-Based Restricted Stock Units. PBRSUs may be granted pursuant to the 2015 Plan. A PBRSU award provides for the issuance of common stock at a future date upon the satisfaction of specific performance conditions as set forth in the applicable award agreement. The vesting and maturity dates will be established at the time of grant and may provide for the deferral of receipt of the common stock beyond the vesting date. On the

maturity date, we will transfer to the participant one unrestricted, fully transferable share of common stock for each PBRSU scheduled to be paid out on such date and not previously forfeited (subject to applicable tax withholding requirements).

Restricted Stock. Restricted stock may be granted pursuant to the 2015 Plan. A restricted stock award is the grant of shares of common stock at a price determined by the Compensation Committee (including zero), that is nontransferable and may be subject to substantial risk of forfeiture until specific conditions are met. Conditions may be based on continuing employment or achieving performance goals. During the period of restriction, participants holding shares of restricted stock may have full voting and dividend rights with respect to such shares. The restrictions will lapse in accordance with a schedule or other conditions determined by the Compensation Committee.

*Performance Bonus Awards*. Performance bonus awards may be granted pursuant to the 2015 Plan. Performance bonus awards are cash bonuses payable upon the attainment of pre-established performance goals based on established performance criteria and are intended to be performance-based awards within the meaning of Section 162(m) of the Code. The goals are established and evaluated by the Compensation Committee and may relate to performance over any periods as determined by the Compensation Committee.

*Performance-Based Awards*. The following is a brief discussion of the requirements for awards, including performance bonus awards, to be treated as performance-based awards within the meaning of Section 162(m) of the Code.

The Compensation Committee may grant awards to employees who are or may be "covered employees," as defined in Section 162(m) of the Code, that are intended to be performance-based awards within the meaning of Section 162(m) of the Code in order to preserve the deductibility of these awards for federal income tax purposes. Under the 2015 Plan, these performance-based awards may be either equity awards or performance bonus awards. Participants are entitled to receive payment for a performance-based award for any given performance period only to the extent that pre-established performance goals set by the Compensation Committee for the period are satisfied.

These pre-established performance goals are based on one or more of the following types of performance criteria:

volume criteria (including trading volume, gross merchandise volume, and total payment volume)

users

revenue

income criteria (including operating income, EBITDA, net earnings (either before or after interest, taxes, depreciation, and amortization), net income (either before or after taxes), earnings per share, and earnings using a non-GAAP measurement)

multiples of price-to-earnings

multiples of price-to-earnings to growth

return criteria (including return on net assets, return on gross assets, return on equity, return on invested capital, stock price appreciation, and total shareholder return)

stock price

cash flow (including, but not limited to, operating cash flow and free cash flow)

margin criteria (including net margins and operating margins)

economic profit

employee productivity

customer satisfaction metrics

market share

employee engagement/satisfaction metrics

Any of the above criteria may be measured with respect to us, or any subsidiary, affiliate, or other business unit of ours, either in absolute terms, terms of growth, or as compared to any incremental increase, as compared to results of a peer group and either in accordance with, or not in accordance with, GAAP. The Compensation Committee defines in an objective fashion the manner of calculating the performance criteria it selects to use for such awards. With regard to a particular performance period, the Compensation Committee will have the discretion to select the length of the performance period, the type of performance-based awards to be granted, and the goals that will be used to measure the performance for the period. In determining the actual size of an individual performance-based award for a performance period, the Compensation Committee may reduce or eliminate (but not increase) the initial award. Performance-based awards are subject to the annual per-person limits described above in "Limitation on Awards and Shares Available." Unless otherwise provided in an award agreement, a participant will have to be employed by or providing services to the Company on the date the performance-based award is paid to be eligible for a performance-based award for any period.

### Prohibition on Repricing

Except for adjustments described below in "Adjustment Provisions," the Committee will not, without stockholder approval, authorize the amendment of any outstanding award to reduce its purchase price per share, the replacement or substitution of any award for an award having a lesser purchase price per share, or an offer to purchase any previously granted option or stock appreciation right for a payment in cash.

#### Vesting Limitations on Full Value Awards

Subject to the acceleration of vesting as permitted under the terms of the 2015 Plan or the applicable award agreement, including upon a change in control, full value awards (i.e. stock awards other than stock options and stock appreciation rights) that are granted to employees or consultants will become vested on one or more vesting dates over a period of at least three years (or, in the case of performance-based awards, a performance period of at least one year), except that the following awards may be granted without regard to this minimum vesting requirement: (i) awards that result in the issuance to one or more participants of up to 5% of the aggregate number of shares available under the 2015 Plan; (ii) awards granted to independent directors in lieu of cash retainers; and (iii) awards granted to participants who are subject to laws or regulations imposing certain requirements or restrictions on the compensation of such participants. Such minimum vesting requirements do not apply to the Assumed Awards.

#### Adjustment Provisions

Certain transactions with our stockholders not involving our receipt of consideration, such as a stock split, spin-off, stock dividend, or certain recapitalizations, may affect the share price of our common stock (which transactions are referred to collectively as "equity restructurings"). In the event that an equity restructuring occurs, the Board will equitably adjust the class of shares issuable and the maximum number of shares of our stock subject to the 2015 Plan, as well as the maximum number of shares that may be issued to an employee during any calendar year, and will equitably adjust outstanding awards as to the class, number of shares, and price per share of our stock. Other types of transactions may also affect our common stock, such as a dividend or other distribution, reorganization, merger, or other changes in corporate structure. In the event that there is such a transaction, which is not an equity restructuring, and the Board determines that an adjustment to the 2015 Plan and any outstanding awards would be appropriate to prevent any dilution or enlargement of benefits under the 2015 Plan, the Board will equitably adjust the 2015 Plan as to the class of shares issuable and the maximum number of shares of our stock subject to the 2015 Plan, as well as the maximum number of shares that may be

issued to an employee during any calendar year, and will adjust any outstanding awards as to the class, number of shares, and price per share of our stock in such manner as it may deem equitable.

### Effect of Certain Corporate Transactions

Outstanding awards do not automatically terminate in the event of a change in control. A "change in control" generally means a transaction in which any person or group acquires more than 50% of our voting securities, a change in a majority of the Board over a two-year period that is not approved by at least two-thirds of the incumbent Board members, a sale or other disposition of all or substantially all of our assets, a merger or consolidation in which we are not the surviving corporation, or a reverse merger in which we are the surviving corporation but the shares of our stock outstanding immediately preceding the merger are converted by virtue of the merger into other property or a liquidation or dissolution of the Company. In the event of a change in control, any surviving corporation or acquiring corporation must either assume or continue outstanding awards or substitute similar awards. If it does not do so, then with respect to awards held by participants whose service has not terminated, the vesting of such awards (and, if applicable, the time during which such awards may be exercised) will be accelerated in full and all forfeiture restrictions on such awards shall lapse. The unexercised portion of all outstanding awards may terminate upon the change in control.

#### Amendment and Termination

The Compensation Committee, subject to approval of the Board, may terminate, amend, or modify the 2015 Plan at any time; however, stockholder approval will be obtained for any amendment (1) to the extent necessary and desirable to comply with any applicable law, regulation, or stock exchange rule, (2) to increase the number of shares available under the 2015 Plan, (3) to permit the Compensation Committee or the Board to grant options with a price below fair market value on the date of grant, or (4) to extend the exercise period for an option beyond ten years from the date of grant. In addition, absent stockholder approval, no option may be amended to reduce the per share exercise price of the shares subject to such option below the per share exercise price as of the date the option was granted and, except to the extent permitted by the 2015 Plan in connection with certain changes in capital structure, no option may be granted in exchange for, or in connection with, the cancellation or surrender of an option having a higher per share exercise price.

In no event may an award be granted pursuant to the 2015 Plan on or after the tenth anniversary of the date the stockholders approve the amended and restated 2015 Plan.

# U.S. Federal Income Tax Consequences

The following is a general summary under current law of the material federal income tax consequences to participants in the 2015 Plan. This summary deals with the general tax principles that apply and is provided only for general information. Certain types of taxes, such as state and local income taxes, are not discussed. Tax laws are complex and subject to change and may vary depending on individual circumstances and from locality to locality. The summary does not discuss all aspects of income taxation that may be relevant to a participant in light of his or her personal investment circumstances. This summarized tax information is not tax advice.

With respect to nonqualified stock options, we are generally entitled to deduct and the optionee recognizes taxable income in an amount equal to the excess of the fair market value of the purchased shares at the time of exercise over the option exercise price. A participant receiving incentive stock options will not recognize taxable income upon grant or at the time of exercise. However, the excess of the fair market value of the common stock received over the option price is an item of tax preference income potentially subject to the alternative minimum tax. If stock acquired upon exercise of an incentive stock option is held for a minimum of two years from the date of grant and one year from the date of exercise, the gain or loss (in an amount equal to the difference between the fair market value on the date of sale and the exercise price) upon disposition of the stock will be treated as a long-term capital gain or loss, and we will not be entitled to any deduction. If the holding period requirements are

not met, the incentive stock option will be treated as one that does not meet the requirements of the Code for incentive stock options, and in the year of the disposition the participant will recognize compensation taxable as ordinary income in an amount equal to the lesser of (1) the actual gain realized upon the disposition (i.e., the sale price minus the exercise price) or (2) the fair market value of the shares on the date of exercise over the exercise price, and we generally will be entitled to a corresponding deduction.

The current U.S. federal income tax consequences of other awards authorized under the 2015 Plan generally follow certain basic patterns: stock appreciation rights are taxed and deductible in substantially the same manner as nonqualified stock options; nontransferable restricted stock subject to a substantial risk of forfeiture results in income recognition equal to the excess of the fair market value of the shares over the price paid, if any, only at the time the restrictions lapse (unless the recipient elects to accelerate recognition as of the date of grant); and RSUs, stock-based performance awards, dividend equivalents and other types of awards are generally subject to tax at the time of payment. Compensation otherwise effectively deferred is taxed when paid. In each of the foregoing cases, we will generally have a corresponding deduction at the time the participant recognizes income, subject to Section 162(m) of the Code with respect to covered employees.

Section 162(m) of the Code denies a deduction to any publicly held corporation for compensation paid to certain "covered employees" in a taxable year to the extent that compensation to such covered employee exceeds \$1 million. Certain kinds of compensation, including qualified "performance-based compensation," are disregarded for purposes of the deduction limitation. In accordance with U.S. Treasury Regulations issued under Section 162(m), compensation attributable to stock awards will generally qualify as performance-based compensation if (1) the award is granted by a compensation committee composed solely of two or more "outside directors," (2) the plan contains a per-employee limitation on the number of awards that may be granted during a specified period, (3) the plan is approved by the stockholders, and (4) under the terms of the award, the amount of compensation an employee could receive is based solely on an increase in the value of the stock after the date of the grant (which requires that the exercise price of the option is not less than the fair market value of the stock on the date of grant), and for awards other than options and stock appreciation rights, established performance criteria that must be met before the award actually will vest or be paid.

The 2015 Plan is intended to meet the requirements of Section 162(m) of the Code; however, full value awards granted under the 2015 Plan will be treated as qualified performance-based compensation under Section 162(m) only if the full value awards and the procedures associated with them comply with all other requirements of Section 162(m) of the Code. It is possible that compensation attributable to awards under the 2015 Plan, including the Assumed Awards, when combined with all other types of compensation received by a covered employee from us, may cause this limitation to be exceeded in any particular year. We cannot assure you that compensation attributable to options, full value awards and the Assumed Awards issued under the 2015 Plan will be treated as qualified performance-based compensation under Section 162(m) of the Code and thus be deductible to us.

The tax consequences for equity awards outside of the U.S. may differ from the U.S. federal income tax consequences described above.

#### PAYPAL EMPLOYEE INCENTIVE PLAN

#### Summary of Plan Terms

The following is a summary of the key provisions of the PayPal Employee Incentive Plan (the "Incentive Plan") which will be adopted by PayPal prior to the separation and effective as of [●]. This summary is qualified in its entirety by reference to the full text of the Incentive Plan.

PayPal employees who were eligible to participate in the eBay Incentive Plan immediately prior to the effective time will be eligible to participate in the Incentive Plan as of the effective time in accordance with the employee matters agreement. Under the employee matters agreement, PayPal will assume all obligations with respect to incentive awards for performance periods that are pending at the time of the separation, with changes, if any, to the performance goals that were applicable to the incentive awards under the eBay Incentive Plan as may be necessary in order to reflect the PayPal business after the separation.

#### Administration

The Compensation Committee is responsible for administering the Incentive Plan. The members of the Compensation Committee (or the sub-committee selected to administer the Incentive Plan) must qualify as "outside directors" under Section 162(m) of the Code in order for incentive awards to "covered employees" to qualify as deductible "performance-based compensation" under the Code. The Compensation Committee has complete and absolute authority to make decisions regarding the administration of the Incentive Plan, including interpreting the terms and provisions, and establishing, adjusting, or paying incentive awards. Under the Incentive Plan, no participant may receive an award of more than  $[\bullet]$  million (or the equivalent amount of equity, based on fair market value on the date of grant) in any calendar year.

### Eligibility

All active regular full-time and part-time employees of PayPal after the effective time who are notified by us are eligible to participate in the Incentive Plan. Employees who participate in other bonus programs, such as any sales incentive plan, are not eligible to participate in the Incentive Plan unless they are specifically made eligible in writing by one of our executive officers. In addition, we may, in our sole discretion, provide for a payout under the Incentive Plan for any employee who has changed positions and, as a result, may have been eligible to participate in the Incentive Plan and another bonus program during a quarter. The Incentive Plan contains special provisions for designating additional eligible employees (e.g., new hires) for participation in the Incentive Plan. In addition, in connection with the separation and pursuant to the terms of the employee matters agreement, each employee of PayPal who was participating in the eBay Incentive Plan as of the effective date of the Incentive Plan shall become an eligible to participate in the Incentive Plan of such effective date.

### **Performance**

Under the Incentive Plan, the Compensation Committee will determine the performance period for measuring actual performance. The Compensation Committee will establish for each performance period (1) the performance measures based on business criteria and target levels of performance; and (2) a formula for calculating a participant's award based on actual performance compared to the preestablished performance goals.

Performance measures are based on one or more of the following types of performance criteria:

volume criteria	(including t	rading vo	lume, gro	ss merchand	lise volume	e, and t	total	payment	volume	)
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users

revenue

income criteria (including operating income, EBITDA, net earnings (either before or after interest, taxes, depreciation, and amortization), net income (either before or after taxes), earnings per share, and earnings using a non-GAAP measurement)

multiples of price-to-earnings

multiples of price-to-earnings to growth

return criteria (including return on net assets, return on gross assets, return on equity, return on invested capital, stock price appreciation, and total shareholder return)

cash flow criteria (including operating cash flow and free cash flow)

margin criteria (including net margins and operating margins)

economic profit

employee productivity

customer satisfaction metrics

market share

employee engagement/satisfaction metrics

Any of the above criteria may be measured with respect to us, or any subsidiary, affiliate or other business unit of ours, either in absolute terms, terms of growth or as compared to any incremental increase, as compared to results of a peer group and either in accordance with, or not in accordance with, generally accepted accounting principles, or GAAP. The Compensation Committee defines in an objective fashion the manner of calculating the performance criteria it selects to use for such awards.

The Compensation Committee may set performance periods and performance goals that differ from participant to participant. This may include designating performance goals on either company-wide or business unit performance, as appropriate for a participant's specific responsibilities.

### Committee Certification and Determination of Incentive Awards

As soon as practicable after the end of each performance period, the Compensation Committee will certify in writing (which may include minutes of a compensation committee meeting) whether the stated performance goals have been met and will determine the amount of the incentive award to be paid to each Incentive Plan participant. The Compensation Committee may decrease (but cannot increase) an incentive award paid to a covered employee. In determining that amount, the Compensation Committee will consider the established target bonuses, the degree to which the established standards were satisfied and any other objective or subjective factors it deems appropriate and may reduce the amount of, or eliminate altogether, any incentive award that would otherwise be payable.

### Payment of Incentive Awards

Following the Compensation Committee's determination of incentive awards to be paid, those incentive awards will generally be paid in cash (subject to any election made by an eligible employee to defer all or a portion of the incentive award, if permitted to do so) or equity pursuant to a PayPal equity-based award plan under which securities have been registered on Form S-8 Registration Statement.

### Awards Subject to Clawback

Any incentive awards paid under the Incentive Plan are subject to forfeiture, recovery, or other action by PayPal as necessary for compliance with any company policy or as required by law.

# Amendment and Termination

The Compensation Committee may amend or terminate the Incentive Plan at any time and for any reason. If appropriate to maintain the Incentive Plan's qualification under Section 162(m) of the Code, material amendments of the Incentive Plan will be conditioned on stockholder approval.

#### Section 162(m) Considerations

The Incentive Plan is intended to meet the requirements of Section 162(m) of the Code; however, it is possible that compensation attributable to awards under the Incentive Plan, including awards for performance periods that are pending at the time of the separation, when combined with all other types of compensation received by a covered employee from us, may cause the \$1 million deduction limitation for certain compensation that is not "performance-based compensation" under Section 162(m) of the Code to be exceeded in any particular year. Consequently, we cannot assure that compensation attributable to awards issued under the Incentive Plan will be treated as qualified performance-based compensation under Section 162(m) of the Code and thus be deductible to us.

#### CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

#### Agreements with eBay

Following the separation and distribution, PayPal and eBay will operate separately, each as an independent public company. PayPal will enter into a separation and distribution agreement with eBay, which is referred to in this information statement as the "separation agreement" or the "separation and distribution agreement." In connection with the separation, PayPal will also enter into various other agreements to effect the separation and provide a framework for its relationship with eBay after the separation, such as an operating agreement, a transition services agreement, a tax matters agreement, an employee matters agreement, an intellectual property matters agreement, colocation services agreements, a data sharing addendum and a product development agreement. These agreements will provide for the allocation between PayPal and eBay of eBay's assets, employees, liabilities and obligations (including its investments, property and employee benefits and tax liabilities) attributable to periods prior to, at and after PayPal's separation from eBay and will govern certain relationships between PayPal and eBay after the separation. The material agreements listed above will be filed as exhibits to the registration statement on Form 10 of which this information statement is a part.

The summaries of each of the agreements listed above are qualified in their entireties by reference to the full text of the applicable agreements, which are incorporated by reference into this information statement. When used in this section, "distribution date" refers to the date on which eBay distributes PayPal's common stock to the holders of eBay common stock.

### **Separation Agreement**

### Transfer of Assets and Assumption of Liabilities

The separation and distribution agreement will identify the assets to be transferred, the liabilities to be assumed and the contracts to be assigned to each of PayPal and eBay as part of the separation of eBay into two companies, and it provides for when and how these transfers, assumptions and assignments will occur. In particular, the separation and distribution agreement will provide, among other things, that subject to the terms and conditions contained therein:

Certain assets related to the PayPal business, which are referred to as the "PayPal Assets," will be transferred to PayPal, including:

equity interests in PayPal, Inc. and its subsidiaries, which hold assets relating to the PayPal business;

certain office facilities located in San Jose, California and other locations;

contracts (or portions thereof) that relate to the PayPal business;

information, technology, software, intellectual property (including patents) and information related to the PayPal Assets, the PayPal Liabilities, or the PayPal business;

rights and assets expressly allocated to PayPal pursuant to the terms of the separation and distribution agreement or certain other agreements entered into in connection with the separation;

permits that primarily relate to the PayPal business;

any other assets exclusively related to the PayPal business; and

other assets that are included in the PayPal pro forma balance sheet included in the unaudited pro forma condensed combined financial statements of PayPal, which appear in the section entitled "Unaudited Pro Forma Condensed Combined Financial Statements."

Certain liabilities related to the PayPal business or the PayPal Assets, which are referred to as the "PayPal Liabilities," will be retained by or transferred to PayPal, including:

certain litigation matters that relate to the PayPal business;

50% of certain contingent liabilities that will be equally divided between PayPal and eBay;

liabilities and obligations expressly allocated to PayPal pursuant to the terms of the separation and distribution agreement or certain other agreements entered into in connection with the separation; and

other liabilities that are included in the PayPal pro forma balance sheet included in the unaudited pro forma condensed combined financial statements of PayPal, which appear in the section entitled "Unaudited Pro Forma Condensed Combined Financial Statements."

All of the assets and liabilities (including whether accrued, contingent, or otherwise) other than the PayPal Assets and PayPal Liabilities (all such assets and liabilities, other than the PayPal Assets and the PayPal Liabilities, referred to as the eBay Assets and eBay Liabilities, respectively), will be retained by or transferred to eBay. This will include any and all proceeds received as a result of the sale, initial public offering, or other disposition of all or a portion of the eBay Enterprise business and any liabilities relating to, arising out of, or resulting from any such transaction.

Except as expressly set forth in the separation and distribution agreement or any ancillary agreement, neither eBay nor PayPal will make any representation or warranty as to the assets, business or liabilities transferred or assumed as part of the separation, as to any approvals or notifications required in connection with the transfers, as to the value of or the freedom from any security interests of any of the assets transferred, as to the absence or presence of any defenses or right of setoff or freedom from counterclaim with respect to any claim or other asset of either PayPal or eBay, or as to the legal sufficiency of any assignment, document or instrument delivered to convey title to any asset or thing of value to be transferred in connection with the separation. All assets will be transferred on an "as is," "where is" basis and, subject to the provisions of the separation and distribution agreement described under "Further Assurances" below, the respective transferees will bear the economic and legal risks that any conveyance will prove to be insufficient to vest in the transferee good and marketable title, free and clear of all security interests, and that any necessary consents or governmental approvals are not obtained or that any requirements of laws, agreements, security interests, or judgments are not complied with.

Information in this information statement with respect to the assets and liabilities of the parties following the distribution is presented based on the allocation of such assets and liabilities pursuant to the separation and distribution agreement, unless the context otherwise requires. The separation and distribution agreement will provide that, in the event that the transfer or assignment of certain assets and liabilities to PayPal or eBay, as applicable, does not occur prior to the separation, then until such assets or liabilities are able to be transferred or assigned, PayPal or eBay, as applicable, will hold such assets on behalf and for the benefit of the other party and will pay, perform, and discharge such liabilities, for which the other party will reimburse PayPal or eBay, as applicable, for all commercially reasonable payments made in connection with the performance and discharge of such liabilities.

### The Distribution

The separation and distribution agreement will also govern the rights and obligations of the parties regarding the distribution following the completion of the separation. On the distribution date, eBay will distribute to its stockholders that hold eBay common stock as of the record date for the distribution all of the issued and outstanding shares of PayPal's common stock on a pro rata basis. Stockholders will receive cash in lieu of any fractional shares.

#### Conditions to the Distribution

The separation and distribution agreement will provide that the distribution is subject to satisfaction (or waiver by eBay) of certain conditions described under "The Separation and Distribution-Conditions to the

Distribution." eBay has the sole and absolute discretion to determine (and change) the terms of, and to determine whether to proceed with, the distribution and, to the extent it determines to so proceed, to determine the record date for the distribution, the distribution date and the distribution ratio.

# Settlement of Accounts Between PayPal and eBay

The separation and distribution agreement will provide that all intercompany receivables and payables as to which there are no third parties and that are between PayPal or a PayPal subsidiary, on the one hand, and eBay or an eBay subsidiary, on the other hand, other than accounts related to the agreements to be entered into in connection with the separation and post-separation agreements between eBay and PayPal and other than any accrued liabilities incurred in connection with providing the services that will be memorialized by the operating agreement, in each case existing as of immediately prior to the completion of the separation, will be settled, capitalized, cancelled, assigned, or assumed by PayPal or one or more PayPal subsidiaries.

#### Cash Amounts

The separation and distribution agreement will provide that prior to the distribution date, eBay will transfer, or cause its subsidiaries to transfer, an aggregate amount of \$[•] of cash to PayPal (including through one or more capital contributions).

#### Claims

In general, each party to the separation and distribution agreement will assume liability for all pending, threatened and unasserted legal matters related to its own business or its assumed or retained liabilities and will indemnify the other party for any liability to the extent arising out of or resulting from such assumed or retained legal matters.

#### Releases

In general, each party to the separation and distribution agreement will assume liability for all pending, threatened and unasserted legal matters related to its own business or its assumed or retained liabilities and will indemnify the other party for any liability to the extent arising out of or resulting from such assumed or retained legal matters.

# Indemnification

In the separation and distribution agreement, PayPal will agree to indemnify, defend and hold harmless eBay, each of its affiliates and each of their respective directors, officers and employees, from and against all liabilities relating to, arising out of or resulting from:

the PavPal Liabilities;

the failure of PayPal or any other person to pay, perform or otherwise promptly discharge any of the PayPal Liabilities, in accordance with their respective terms, whether prior to, at or after the distribution;

specified litigation matters that relate to the PayPal business, and fifty percent (50%) of certain shared contingent liabilities;

any breach by PayPal of the separation and distribution agreement or certain of the ancillary agreements;

except to the extent relating to an eBay Liability, any guarantee, indemnification or contribution obligation for the benefit of PayPal by eBay that survives the distribution; and

any untrue statement or alleged untrue statement or omission or alleged omission of material fact in the registration statement of which this information statement forms a part, or in this information statement (as amended or supplemented), other than any such statements or omissions made explicitly in eBay's name.

eBay agrees to indemnify, defend and hold harmless PayPal, each of its affiliates and each of its respective directors, officers and employees from and against all liabilities relating to, arising out of or resulting from:

the eBay Liabilities;

the failure of eBay or any other person to pay, perform, or otherwise promptly discharge any of the eBay Liabilities, in accordance with their respective terms whether prior to, at, or after the distribution;

specified litigation matters that relate to the eBay business, and fifty percent (50%) of certain shared contingent liabilities;

any breach by eBay of the separation and distribution agreement or certain of the ancillary agreements;

except to the extent relating to a PayPal Liability, any guarantee, indemnification or contribution obligation for the benefit of eBay by PayPal that survives the distribution; and

any untrue statement or alleged untrue statement or omission or alleged omission of a material fact made explicitly in eBay's name in the registration statement of which this information statement forms a part, or in this information statement (as amended or supplemented).

The separation and distribution agreement will also establish procedures with respect to claims subject to indemnification and related matters.

#### Insurance

The separation and distribution agreement will provide for the allocation between the parties of rights and obligations under existing insurance policies with respect to occurrences prior to the distribution and sets forth procedures for the administration of insured claims.

#### Further Assurances

In addition to the actions specifically provided for in the separation and distribution agreement, except as otherwise set forth therein or in any ancillary agreement, both PayPal and eBay will agree in the separation and distribution agreement to use reasonable best efforts, prior to, on and after the distribution date, to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws, regulations and agreements to consummate and make effective the transactions contemplated by the separation and distribution agreement and the ancillary agreements.

# Dispute Resolution

The separation and distribution agreement will contain provisions that govern, except as otherwise provided in any ancillary agreement, the resolution of disputes, controversies or claims that may arise between PayPal and eBay related to the separation or distribution. These provisions will contemplate that efforts will generally be made to resolve disputes, controversies and claims by escalation of the matter to executives of PayPal and eBay, then to a committee comprised of executives and directors of PayPal and eBay and then to non-binding mediation before PayPal or eBay may initiate adversarial proceedings.

#### **Expenses**

Except as expressly set forth in the separation and distribution agreement or in any ancillary agreement, all costs and expenses incurred in connection with the separation and distribution incurred prior to the distribution date, including costs and expenses relating to legal and tax counsel, financial advisors and accounting advisory work related to the separation and distribution, will be paid by the party incurring such cost and expense.

#### Other Matters

Other matters that will be governed by the separation and distribution agreement include access to financial and other information, confidentiality, access to and provision of records and treatment of outstanding guarantees and similar credit support.

#### **Termination**

The separation and distribution agreement will provide that it may be terminated, and the separation and distribution may be modified or abandoned, at any time prior to the distribution date in the sole discretion of eBay without the approval of any person, including PayPal's or eBay stockholders. In the event of a termination of the separation and distribution agreement, no party, nor any of its directors, officers, or employees, will have any liability of any kind to the other party or any other person. After the distribution date, the separation and distribution agreement may not be terminated except by an agreement in writing signed by both PayPal and eBay.

### **Operating Agreement**

PayPal and eBay will enter into an operating agreement that governs certain aspects of the relationship between the parties following the separation and distribution, including certain terms and conditions relating to PayPal's provision of payment processing and credit services, and other related services, to customers on eBay.com and other core eBay Marketplaces properties (including mobile applications). The agreement will not address PayPal's provision of services through eBay's other properties existing at the effective time of the distribution, such as StubHub, eBay Enterprise, Magento, Classifieds, Shopping.com, Gmarket, or Half.com, and except in certain circumstances, will not cover properties acquired or created by eBay after the effective time of the distribution. The operating agreement will be non-exclusive and will not prevent eBay from contracting with third parties for the provision of comparable or unrelated services.

### Pricing for eBay Merchants

The operating agreement will require PayPal to use reasonable best efforts to offer comparable eBay merchants (determined on an aggregate or average basis) pricing for PayPal's payment processing services comparable to the pricing PayPal offers to non-eBay merchants for comparable services. Characteristics used to determine comparability may include some or all of: the mix of PayPal product(s) used by the customer, the geographic market in which the customer is located, the customer's industry, the nature of the customer's business, the total volume of transactions (by PayPal product), the average size of the customer's transactions, and whether pricing for the PayPal product used by the merchant is variable or fixed. It is expected that the PayPal rates for eBay merchants will therefore remain largely consistent with today's pricing relationship. On an annual basis, the parties will retain a third party independent auditor to conduct a market check on a jurisdiction-by-jurisdiction basis to ensure that eBay merchants are receiving pricing as required under the agreement. If the market check determines that pricing for eBay merchants in a jurisdiction is higher than what is specified in the operating agreement, then PayPal will be required to adjust its pricing for the remainder of the term of the agreement, and eBay and PayPal will cooperate in good faith to mutually agree on a remedy (such as a refund or discount) for any affected eBay merchants.

In addition, in certain jurisdictions and subject to certain exceptions, the agreement imposes certain obligations if PayPal offers to non-eBay merchants who use or access PayPal's services through websites or applications (including mobile) operated by certain competitive platform operators of eBay (as specified in the operating agreement) (a) overall economic terms that are more favorable than the terms currently offered to eBay merchants in the same jurisdiction or (b) any non-economic term that is not offered to eBay merchants in the same jurisdiction, except for any such non-economic term that is exclusive to that competitive platform operator. In either of these circumstances, PayPal will be required to offer the applicable economic or non-economic term, together with the relevant terms and conditions, to eBay for the benefit of the eBay merchants in that jurisdiction, and eBay will have an opportunity to accept these terms. If eBay accepts the terms offered by PayPal, eBay and the eBay merchants will be entitled to the benefit of such terms so long as eBay also complies with the related conditions (other than certain specified conditions with which eBay or eBay merchants are not reasonably capable of complying).

### Referral Services Fees and Usage Payments

During the term of the operating agreement, PayPal will make certain payments to eBay based on certain referral services by eBay that have benefitted PayPal in the past and that the companies intend to continue following the separation and distribution. Subject to the Penetration Rate (as defined below) remaining above 60% at the beginning of each quarter, PayPal will pay a referral services fee to eBay (calculated quarterly and paid annually) in an amount to be specified in the operating agreement. It is anticipated that the number of new PayPal users who are introduced through the eBay platform will remain consistent with current experience. If the number of new users introduced to PayPal in this manner increases or decreases from the expected rate, the parties will adjust the referral services fee accordingly. In addition, PayPal will make a payment (calculated quarterly and paid annually) to eBay based on the use of PayPal Credit by eBay consumers and merchants on eBay properties equal to 0.30% of the Net TPV attributable to such transactions.

PayPal and/or eBay will also make certain payments to each other based on the usage of PayPal's payment services by eBay consumers and merchants on the core eBay Marketplaces platform. These payments are intended to provide an incentive to eBay to support the continued use of PayPal as a payment service on the core eBay Marketplaces platform (referred to as the "Penetration Rate") at current levels and to reward eBay if the Penetration Rate increases. The Penetration Rate will generally be calculated as the portion of eBay's Core GMV processed by PayPal but will exclude off platform properties, vehicles and real estate transactions worldwide, domestic trade in China and Latin America and transactions in which the seller's eBay account location is in Russia or India.

The agreement will provide for a baseline Penetration Rate of 80% (the "Baseline Rate"), which is approximately equal to the current Penetration Rate prior to the separation and distribution. The Baseline Rate will be adjusted annually to account for the impact of foreign currency exchange rates. The payments will be determined as follows:

For each percentage point that the Penetration Rate exceeds the Baseline Rate, PayPal will make a payment to eBay at an annualized rate of \$13 million. The payment amount will be determined on a quarterly basis by multiplying (a) the amount by which the Penetration Rate exceeds the Baseline Rate for the quarter, rounded to the nearest hundredth, by (b) \$3.25 million.

If the Penetration Rate falls below the Baseline Rate by an amount up to 5 percent, eBay will make a payment to PayPal at an annualized rate of \$13 million per percentage point decline. The payment amount will be determined on a quarterly basis by multiplying (y) the amount by which the Penetration Rate falls below Baseline Rate for the quarter, rounded to the nearest hundredth, by (z) \$3.25 million.

If the Penetration Rate falls below the Baseline Rate by an amount in excess of 5 percent, eBay will make a payment to PayPal at an annualized rate of \$13 million per percentage point for the first 5 percentage points below the Baseline Rate, and an additional \$50 million, at an annualized rate, per percentage point (rounded to the nearest hundredth of a percent) for each additional percentage point. The payment amount will be determined on a quarterly basis according to the following formula: \$16.25 million plus ((a) \$12.5 million times (b) (the Baseline Rate minus the eBay Penetration Rate minus 5%, rounded to the nearest hundredth of a percentage point).

The payments described above will be made annually based on the sum of the calculated quarterly amounts. The agreement also provides that, for those PayPal products made available on the eBay platform, in the event that PayPal's TPV for customers other than eBay falls below established minimum thresholds, eBay would no longer be obligated to make any payments in respect of the Penetration Rates to PayPal.

### Merchant of Record

Subject to certain exceptions, the operating agreement will also provide that for the term of the operating agreement (but not the tail period described below), eBay will not declare itself as the single merchant of record for transactions effected through any service or offering available on the core eBay Marketplaces properties unless PayPal is acquired by certain specified competitors of eBay. For purposes of the agreement, the term "Merchant of Record" generally means the entity that PayPal holds financially liable for all full and partial returns as well as any chargebacks initiated by the customer. In the event that PayPal is acquired by certain specified competitors of eBay, eBay may elect to become a merchant of record by giving written notice to PayPal within 90 days of the consummation of such acquisition, and such election would become effective on a date specified by eBay that is between 15 and 21 months after the consummation of such acquisition.

### Non-Compete

Subject to certain exceptions, eBay and its controlled affiliates will be prohibited from directly or indirectly engaging in the business of marketing, distributing, promoting or selling its own proprietary payment solutions for use on the core eBay Marketplaces properties or on properties operated by third parties in most geographic jurisdictions in which eBay Marketplaces operates, and PayPal and its controlled affiliates will be prohibited from directly or indirectly engaging in the business of marketing, distributing, promoting or selling its own proprietary marketplace offering for the sale of physical goods. These restrictions will continue for the term of the operating agreement but will not continue during the tail period described below.

#### **Product Development**

The operating agreement will provide for eBay and PayPal to enter into a product development agreement that requires eBay and PayPal to mutually discuss in good faith and agree on a product development plan for optimizing the PayPal experience on the core eBay Marketplaces properties and to invest development resources in other strategic initiatives related to the provision of payment processing and credit services by PayPal. PayPal and eBay will agree in the product development agreement to commit certain resources and development staff to the projects included in the product development plan.

# Data Sharing

The operating agreement will also provide for eBay and PayPal to enter into a data sharing addendum pursuant to which eBay and its subsidiaries, on the one hand, and PayPal and its subsidiaries, on the other hand, will share information for risk, trust and fraud modeling and customer service operations in a manner consistent with current usage and in conformance with legal and regulatory requirements. Neither party will be permitted to use such data for any purpose beyond the scope of the agreement without entering into a separate, arms-length commercial arrangement that is in compliance with legal and regulatory requirements.

In the event that PayPal is acquired by certain specified competitors of eBay, eBay may elect to terminate all or any portion of the data sharing addendum by giving written notice to PayPal within 90 days of the consummation of such acquisition, and such election would become effective on a date specified by eBay. In addition, and regardless of whether eBay terminates the data sharing addendum, the operating agreement will restrict the specified competitor that consummates the acquisition and its subsidiaries and affiliates (other than PayPal and its subsidiaries) from using eBay user data for any purpose.

#### Term; Termination

The operating agreement will have an initial term of 5 years following the distribution date and will be renewable by mutual agreement for successive 1-year terms. At the expiration of the operating agreement, there will be a 1-year tail period during which the provisions of the agreement will continue to apply, except for eBay's obligation to make payments in respect of the Penetration Rate, the restriction on eBay's ability to declare itself a merchant of record, the non-compete restrictions applicable to eBay and PayPal and the parties' respective obligations under the product development agreement. During the 1-year tail period and for up to 1-year after the termination of the agreement for a material breach, the parties will use reasonable best efforts to cooperate in good faith to transition off of the services provided under the agreement, with such cooperation reimbursed by the other party at cost. During the term of the operating agreement, both parties can mutually decide to amend the agreement as appropriate. In addition, either party will be able to terminate for certain uncured material breaches so long as the parties have first gone through the dispute resolution procedures set forth below.

### Dispute Resolution; Governance

The operating agreement will require the parties to generally follow the dispute resolution provisions set forth in the separation and distribution agreement. The operating agreement will also provide for regular review of the effectiveness of the parties' performance under the operating agreement and the product development agreement, the costs and benefits of the operating agreement and the product development agreement and the general relationship between the parties by members of management, including the CEOs of eBay and PayPal, as well as the respective boards of directors of eBay and PayPal.

#### Other Matters

The operating agreement will also include other customary terms and conditions, including the establishment of service levels to measure PayPal's performance of its payment processing and credit services as well as provisions addressing information security, data protection, disaster recovery, confidentiality, indemnification and other matters.

#### **Transition Services Agreement**

PayPal and eBay will enter into a transition services agreement prior to the distribution pursuant to which eBay and its subsidiaries and PayPal and its subsidiaries will provide, on an interim, transitional basis, various services to each other, including, but not limited to, related to human resources administrative systems and related support services, hosting services, separation of commingled information technology assets, and customer service and loyalty programs support. These services will be provided, generally for a period of up to 24 months (including extensions), on a cost-plus basis. The recipient for a particular service will generally be able to terminate that service prior to the scheduled expiration date, subject to a specified minimum notice period. Due to interdependencies between services, certain services may be extended or terminated early only if other services are likewise extended or terminated.

The cumulative liability of each party under the transition services agreement will be limited to the aggregate charges paid and payable to the provider in connection with the provision of services under the agreement, except for breaches of confidentiality obligations or in the case of gross negligence, willful misconduct or fraud. The transition services agreement will also provide that each party will not be liable to the other party for any indirect, incidental, consequential, special, punitive, exemplary, remote, speculative or similar damages, except in the case of gross negligence, willful misconduct or fraud or certain third-party claims.

### **Tax Matters Agreement**

PayPal and eBay will enter into a tax matters agreement that will govern the parties' respective rights, responsibilities and obligations after the distribution with respect to tax matters, including responsibility for taxes, entitlement to refunds, allocation of tax attributes, preparation of tax returns, certain tax elections, control of tax contests, cooperation, and certain other tax matters.

Under the tax matters agreement, eBay generally will be responsible for all taxes (and will be entitled to all related refunds of taxes) imposed on eBay and its subsidiaries (including subsidiaries that will be transferred to PayPal pursuant to the separation) with respect to taxable periods (or portions thereof) that end on or prior to the distribution date, except that PayPal will be responsible for such taxes to the extent (i) they relate to matters with respect to which PayPal or one of its subsidiaries has reflected a FIN 48 reserve in its financial statements or (ii) they result from any breach of any representation or covenant made by PayPal in the tax matters agreement or other separation-related agreements. eBay will also be responsible for certain taxes imposed on PayPal with respect to the 12-month period following the distribution to the extent such taxes relate to specified historic tax reporting positions taken by eBay.

The tax matters agreement will provide special rules that allocate tax liabilities in the event the distribution together with certain related transactions, fails to qualify as a transaction that is generally tax-free, for U.S. federal income tax purposes, under Sections 368(a)(1)(D) and 355 of the Code. Under the tax matters agreement, each party generally will be responsible for any taxes and related amounts imposed on eBay or PayPal that arise from the failure of the distribution, together with certain related transactions, to qualify as a transaction that is generally tax-free, for U.S. federal income tax purposes, under Sections 368(a)(1)(D) and 355 of the Code, to the extent that the failure to so qualify is attributable to a breach of the relevant representations or covenants made by that party in the tax matters agreement or an acquisition of such party's equity securities. In addition, the tax matters agreement will impose certain restrictions on PayPal and its subsidiaries (including restrictions (subject to specified exceptions) on share issuances, business combinations, sales of assets and similar transactions) during the two-year period following the distribution that are designed to preserve the tax-free status of the distribution and certain related transactions.

Under the tax matters agreement, eBay generally will have the right to control any audits or other tax proceedings with respect to any eBay consolidated federal income tax return (or other group return that includes eBay or any of its subsidiaries and PayPal or any of its subsidiaries), provided that PayPal will have participation rights with respect to any such audit or tax proceeding that could result in additional taxes for which PayPal is liable under the tax matters agreement. PayPal will have the right to control any audits or other tax proceedings with respect to any PayPal consolidated federal income tax return or any separate tax returns of PayPal or any of its subsidiaries, provided that eBay will have participation rights with respect to any such audit or tax proceeding that could result in additional taxes for which eBay is liable under the tax matters agreement.

### **Employee Matters Agreement**

PayPal and eBay will enter into an employee matters agreement prior to the separation to allocate liabilities and responsibilities relating to employment matters, employee compensation and benefits plans and programs and other related matters. The employee matters agreement will govern certain compensation and employee benefit obligations with respect to the current and former employees and non-employee directors of each company.

The employee matters agreement will provide that, unless otherwise specified, eBay will be responsible for liabilities associated with employees who will be employed by eBay following the separation, former employees whose last employment was with the eBay businesses and certain specified current and former corporate employees (collectively, the "eBay allocated employees"), and PayPal will be responsible for liabilities associated with employees who will be employed by PayPal following the separation, former employees whose last employment was with the PayPal businesses and certain specified current and former corporate employees (collectively, the "PayPal allocated employees").

### **Employee Benefits Generally**

PayPal allocated employees will be eligible to participate in PayPal benefit plans following the separation in accordance with the terms and conditions of the PayPal benefit plans as in effect from time to time. Generally, PayPal will agree to establish and maintain (i) welfare benefit arrangements that are substantially similar in the aggregate to those provided by eBay to PayPal allocated employees immediately prior to the separation, through at least December 31, 2015 and (ii) retirement benefits with terms that are substantially the same as the corresponding eBay arrangements and that provide benefits that are no less favorable than those provided by eBay to eligible PayPal allocated employees immediately prior to the separation, through at least December 31, 2015.

In general, PayPal will credit each PayPal allocated employee with his or her service with eBay prior to the separation for all purposes under the PayPal benefit plans to the same extent such service was recognized by eBay for similar purposes and so long as such crediting does not result in a duplication of benefits.

The employee matters agreement will also include provisions relating to cooperation between the two companies on matters relating to employees and employee benefits and other administrative provisions.

### Retirement and Deferred Compensation Programs

PayPal will establish a defined contribution plan as well as a non-qualified deferred compensation plan for active PayPal allocated employees. In connection with the separation, assets, liabilities and account balances (as applicable) of PayPal allocated employees will be transferred to PayPal or PayPal plans, as applicable, and eBay or eBay plans will retain assets, liabilities and account balances (as applicable) of eBay allocated employees and former PayPal allocated employees.

# **Equity Compensation Awards**

The employee matters agreement will provide for the adjustment of outstanding awards granted under eBay's equity compensation programs (including awards under assumed plans) to reflect the impact of the separation in accordance with the terms of such program. Generally, each employee holder of eBay equity awards (but not common stock derived from vested equity awards, which shall be treated like all other common stock) will hold equity awards only in the company that employes such employee following the separation. For example, eBay equity awards held by PayPal employees will be assumed by PayPal and converted into awards that relate to shares of PayPal common stock at the separation, and eBay equity awards held by employees who will remain employed by eBay after the separation will continue to be equity awards that relate to shares of eBay common stock, but adjusted to reflect the effect of the separation.

In addition, (1) certain previously disclosed executives of eBay who will not be employed with either eBay or PayPal after the separation ("transitioning executives") and (2) nonemployee directors of eBay, including any nonemployee director who immediately after the separation will serve on our board of directors, will receive both adjusted eBay equity awards (relating to shares of eBay common stock) and adjusted PayPal awards (relating to shares of PayPal common stock), based on the distribution ratio being applied to shares of eBay common stock held by all eBay stockholders in the distribution.

Treatment of eBay Equity Awards held by PayPal Employees

Outstanding eBay equity awards held by PayPal employees are expected to be treated as shown in the table below:

Award Type Treatment

**Stock Options** Each eBay stock option held by a PayPal employee will be converted into an option to purchase

shares of PayPal common stock. The exercise price and number of shares subject to each such PayPal stock option will be adjusted as described in the employee matters agreement in order to preserve the aggregate intrinsic value of the original eBay stock option, as measured immediately

before and immediately after the distribution date, subject to rounding.

**Restricted Stock Units**Each award of eBay restricted stock units held by a PayPal employee will be converted into a

PayPal restricted stock unit award. The number of shares of PayPal common stock subject to the award will be adjusted as described in the employee matters agreement in order to preserve the aggregate intrinsic value of the original eBay restricted stock unit award, as measured

immediately before and immediately after the distribution date, subject to rounding.

**Restricted Stock Awards** Each award of eBay restricted stock held by a PayPal employee will be converted into a PayPal

restricted stock award. The number of shares of PayPal common stock subject to the award will be adjusted as described in the employee matters agreement in order to preserve the aggregate intrinsic value of the original eBay restricted stock award, as measured immediately before and

immediately after the distribution date, subject to rounding.

**Target PBRSU Awards** Each eBay target performance-based restricted stock unit award with a fiscal year 2014-2015

performance period or a fiscal year 2015-2016 performance period held by a PayPal employee (including awards granted for accounting purposes) will be converted into a PayPal performance-based restricted stock unit award, with the performance criteria for the 2014-2015 award being adjusted so that performance will be based on aggregate eBay Inc. performance for 2014 and PayPal-specific performance for 2015. The target number of PayPal shares subject to the PayPal award will be adjusted as described in the employee matters agreement in order to preserve the aggregate intrinsic value of the original eBay target performance-based restricted stock unit share

award, as measured immediately before and immediately after the distribution date, subject to rounding.

Awards Held by Directors

Outstanding eBay equity awards held by nonemployee directors of eBay are expected to be treated as shown in the table below:

Award Type Treatment

**Stock Options** Each eBay stock option held by a director will be converted into an adjusted eBay stock option

and a PayPal stock option, as described in the employee matters agreement, based on the distribution ratio being applied to shares of eBay common stock held by all eBay stockholders in the distribution, which together are intended to preserve the aggregate intrinsic value of the original eBay stock option, as measured immediately before and immediately after the separation,

subject to rounding.

**Deferred Stock Units** Each award of eBay deferred stock units held by a director will generally remain in place with

such director also receiving an award of deferred stock units of PayPal, as described in the employee matters agreement, based on the distribution ratio being applied to shares of eBay common stock held by all eBay stockholders in the distribution, in an amount that reflects the distribution to eBay shareholders, by applying the distribution ratio to the eBay deferred stock

units as though they were unrestricted eBay shares.

In addition, upon a change in control of PayPal in the case of a director transferring to PayPal or a change in control of eBay in the case of a continuing eBay director, all adjusted equity awards held by any such director of the company experiencing the change in control will become vested.

### Awards Held by Transitioning Executives

In the separation, pursuant to the eBay transition success and retention program, transitioning executives are expected to become vested in certain unvested awards, and otherwise receive both adjusted eBay equity awards (relating to shares of eBay common stock) and adjusted PayPal awards (relating to shares of PayPal common stock), based on the distribution ratio being applied to shares of eBay common stock held by all eBay stockholders in the distribution, in the same manner as the awards for the nonemployee directors of eBay as described above.

#### Treatment of Options under the eBay Employee Stock Purchase Plan

PayPal will be required to adopt the PayPal Employee Stock Purchase Plan, under which all outstanding options held under the eBay Employee Stock Purchase Plan by PayPal employees will be converted into options for PayPal shares under the PayPal Employee Stock Purchase Plan in the same manner as their equity awards, as described above.

### Application of Foreign Laws

To the extent that the equity award adjustment and/or conversion provisions described above would be prohibited under the laws of a jurisdiction outside of the United States in which an affected eBay or PayPal employee resides, such provisions shall be modified or suspended to the extent necessary to comply with such laws.

### Health and Welfare Plans

eBay will generally be responsible for medical, dental, vision, life, accidental death and dismemberment, long-term disability, and travel accident claims incurred under the eBay welfare plans prior to the effective time, whether incurred by employees who will be employed by eBay or PayPal following the effective time or by former employees. PayPal will generally be responsible for claims incurred under its welfare plans at or following the effective time. PayPal will also be responsible for all liabilities with respect to earned vacation, severance, unemployment compensation and similar categories for the PayPal employees.

### **Intellectual Property Matters Agreement**

PayPal and eBay will enter into an intellectual property matters agreement that will memorialize each of PayPal's and eBay's ownership, after the distribution, of intellectual property assets such as patents, patent applications, trademarks, domains and copyrights. The agreement will also vest in each of PayPal and eBay the sole right to prosecute, maintain, enforce and defend its interest in the intellectual property assets owned by it after the distribution, will include limited non-exclusive licenses by each of PayPal and eBay to the other to use certain software code owned by it after the distribution, and will include limited covenants not to sue by each of PayPal and eBay to the other for certain intellectual property assets owned by it after the separation. The intellectual property agreement will remain in effect until the expiration of the last to expire of the intellectual property rights licensed or for which a covenant not to sue is given thereunder, unless terminated earlier by mutual agreement of the parties.

#### **Colocation Services Agreements**

PayPal and eBay will enter into colocation services agreements for eBay and its subsidiaries to provide to PayPal and its subsidiaries colocation space and related information technology services at various eBay data center facilities. eBay will provide space to PayPal for the placement of PayPal data center equipment within eBay's facilities in exchange for specific monthly charges intended to allow eBay to recover the cost of maintaining and servicing such space, and eBay will provide related services and infrastructure to PayPal on a cost-plus basis, including power distribution, fiber (internet and telecommunications) connections, HVAC and climate control, fire protection, on site security, general property management, and back up redundancy systems. Each such agreement will have a fixed term of two years and, with respect to certain of the facilities, may be renewed by PayPal under certain circumstances. Further, with respect to certain of the facilities, PayPal will purchase such facilities at the end of the fixed term, which purchase will be on market terms. In addition, following such purchase, PayPal will, to the extent required, to provide similar colocation services to eBay on a cost plus basis for a term of three years thereafter.

### **Procedures for Approval of Related Party Transactions**

It is expected that PayPal' s board will adopt a written policy for the review of related party transactions other than those governed by the operating agreement. For purposes of the policy, a related party transaction will include transactions in which (1) the amount involved is more than \$120,000 in any consecutive 12-month period, (2) PayPal is a participant, and (3) any related party has a direct or indirect material interest. The policy is expected to define a "related party" to include directors, nominees for director, executive officers, holders of more than 5% of PayPal' s outstanding common stock and their respective immediate family members. Pursuant to the policy, all related party transactions must be approved by the appropriate committee of PayPal' s board of directors or, in the event of an inadvertent failure to bring the transaction to the committee for pre-approval, ratified by the committee. In the event that a member of the Committee has an interest in a related party transaction, the transaction must be approved or ratified by the disinterested members of the committee. In deciding whether to approve or ratify a related party transaction, the reviewing committee will consider the following factors:

whether the terms of the transaction are (1) fair to PayPal and (2) at least as favorable to PayPal as would apply if the transaction did not involve a related party;

whether there are demonstrable business reasons for PayPal to enter into the transaction;

whether the transaction would impair the independence of an outside director under PayPal's director independence standards; and

whether the transaction would present an improper conflict of interest for any director or executive officer, taking into account the size of the transaction, the overall financial position of the related party, the direct or indirect nature of the related party's interest in the transaction and the ongoing nature of any proposed relationship, and any other factors the committee deems relevant.

### MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES

The following is a discussion of material U.S. federal income tax consequences of the distribution of shares of our common stock to "U.S. Holders" (as defined below) of shares of eBay common stock. This summary is based on the Code, U.S. Treasury regulations promulgated thereunder, rulings and other administrative pronouncements issued by the IRS, and judicial decisions, all as in effect on the date of this information statement, and all of which are subject to change at any time, possibly with retroactive effect. No assurance can be given that the IRS would not assert, or that a court would not sustain, a position contrary to any of the tax consequences described below. This discussion applies only to U.S. Holders of eBay common stock who hold such shares as a capital asset within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion is based upon the assumption that the distribution, together with certain related transactions, will be consummated in accordance with the separation documents and as described in this information statement. This summary is for general information only and is not tax advice. It does not discuss all aspects of U.S. federal income taxation that may be relevant to a particular holder in light of its particular circumstances or to holders subject to special rules under the Code (including, but not limited to, insurance companies, tax-exempt organizations, financial institutions, broker-dealers, partners in partnerships that hold our common shares, pass-through entities, traders in securities who elect to apply a mark-to-market method of accounting, stockholders who hold our common shares as part of a "hedge," "straddle," "conversion," "synthetic security," "integrated investment," or "constructive sale transaction," individuals who receive our common shares upon the exercise of employee stock options or otherwise as compensation, holders who are liable for the alternative minimum tax or any holders who actually or constructively own more than 5% of eBay common stock). This discussion also does not address any tax consequences arising under the unearned Medicare contribution tax pursuant to the Health Care and Education Reconciliation Act of 2010, nor does it address any tax considerations under state, local or foreign laws or U.S. federal laws other than those pertaining to the U.S. federal income tax.

If a partnership, including for this purpose any entity or arrangement that is treated as a partnership for U.S. federal income tax purposes, holds eBay common stock, the tax treatment of a partner in such partnership will generally depend upon the status of the partner and the activities of the partnership. An investor that is a partnership and the partners in such partnership should consult their own tax advisors regarding the U.S. federal income tax consequences of the distribution.

For purposes of this discussion a "U.S. Holder" is any beneficial owner of eBay common stock that is, for U.S. federal income tax purposes:

an individual who is a citizen or resident of the United States;

a corporation (or entity treated as a corporation) created or organized in the United States or under the laws of the United States, any state thereof, or the District of Columbia;

an estate, the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; and

a trust if (1) a U.S. court is able to exercise primary supervision over the administration of such trust and one or more U.S. persons have the authority to control all substantial decisions of the trust or (2) it has a valid election in effect under applicable Treasury Regulations to be treated as a U.S. person.

THE FOLLOWING DISCUSSION IS A SUMMARY OF MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE DISTRIBUTION UNDER CURRENT LAW AND IS FOR GENERAL INFORMATION ONLY. HOLDERS OF EBAY COMMON STOCK SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES OF THE DISTRIBUTION TO THEM, INCLUDING THE APPLICATION AND EFFECT OF U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS.

eBay has not sought and does not intend to seek a ruling from the IRS with respect to the treatment of the distribution and certain related transactions for U.S. federal income tax purposes and there can be no assurance that the IRS will not assert that the distribution and/or certain related transactions are taxable. It is a condition to the distribution that eBay receive an opinion of outside counsel or tax advisors regarding the qualification of the distribution, together with certain related transactions, as a transaction that is generally tax free, for U.S. federal income tax purposes, under Sections 368(a)(1)(D) and 355 of the Code. The opinion of counsel will be based and rely on, among other things, certain facts and assumptions, as well as certain representations, statements and undertakings of eBay and PayPal (including those relating to the past and future conduct of eBay and PayPal). If any of these representations, statements or undertakings are, or become, inaccurate or incomplete, or if eBay or PayPal breach any of their respective covenants in the separation documents, the opinion of counsel may be invalid and the conclusions reached therein could be jeopardized. An opinion of counsel is not binding on the IRS or the courts.

Notwithstanding receipt by eBay of an opinion of counsel, the IRS could assert that the distribution and/or certain related transactions do not qualify for tax-free treatment for U.S. federal income tax purposes. If the IRS were successful in taking this position, eBay, PayPal and eBay stockholders could be subject to significant U.S. federal income tax liability. Please refer to "Material U.S. Federal Income Tax Consequences if the Distribution is Taxable" below.

# Material U.S. Federal Income Tax Consequences if the Distribution Qualifies as a Transaction That is Generally Tax Free under Sections 368(a)(1)(D) and 355 of the Code.

Assuming the distribution, together with certain related transactions, qualifies as a transaction that is generally tax free for U.S. federal income tax purposes under Sections 368(a)(1)(D) and 355 of the Code, the U.S. federal income tax consequences of the distribution are as follows: (i) the distribution will generally not result in any taxable income, gain or loss to eBay, other than taxable income or gain possibly arising out of internal reorganizations and restructurings undertaken in connection with the distribution and with respect to items required to be taken into account under U.S. Treasury regulations relating to consolidated federal income tax returns; (ii) no gain or loss will generally be recognized by (and no amount will be included in the income of) U.S. Holders of eBay common stock upon their receipt of PayPal common stock in the distribution, except with respect to any cash received in lieu of fractional shares of PayPal common stock (as described below); (iii) the aggregate tax basis of the eBay common stock and the PayPal common stock received in the distribution (including any fractional share interest in PayPal common stock for which cash is received) in the hands of each U.S. Holder of eBay common stock after the distribution will equal the aggregate basis of eBay common stock held by the U.S. Holder immediately before the distribution, allocated between the eBay common stock and the PayPal common stock (including any fractional share interest in PayPal common stock for which cash is received) in proportion to the relative fair market value of each on the date of the distribution; and (iv) the holding period of the PayPal common stock received by each U.S. Holder of eBay common stock in the distribution (including any fractional share interest in PayPal common stock for which cash is received) will generally include the holding period at the time of the distribution for the eBay common stock with respect to which the distribution is made. A U.S. Holder who receives cash in lieu of a fractional share of PayPal common stock in the distribution will be treated as having sold such fractional share for cash, and will recognize capital gain or loss in an amount equal to the difference between the amount of cash received and such U.S. Holder's adjusted tax basis in such fractional share. Such gain or loss will be long-term capital gain or loss if the U.S. Holder's holding period for its eBay common stock exceeds one year at the time of the distribution.

U.S. Treasury regulations provide that if a U.S. Holder of eBay common stock holds different blocks of eBay common stock (generally shares of eBay common stock purchased or acquired on different dates or at different prices), the aggregate basis for each block of eBay common stock purchased or acquired on the same date and at the same price will be allocated, to the greatest extent possible, between the PayPal common stock received in the distribution in respect of such block of eBay common stock and such block of eBay common stock, in proportion to their respective fair market values, and the holding period of the PayPal common stock

received in the distribution in respect of such block of eBay common stock will generally include the holding period of such block of eBay common stock. If a U.S. Holder of eBay common stock is not able to identify which particular shares of PayPal common stock are received in the distribution with respect to a particular block of eBay common stock, for purposes of applying the rules described above, the U.S. Holder may designate which shares of PayPal common stock are received in the distribution in respect of a particular block of eBay common stock, provided that such designation is consistent with the terms of the distribution. Holders of eBay common stock are urged to consult their own tax advisors regarding the application of these rules to their particular circumstances.

#### Material U.S. Federal Income Tax Consequences if the Distribution is Taxable.

As discussed above, eBay has not and does not intend to seek a ruling from the IRS with respect to the treatment of the distribution and certain related transactions for U.S. federal income tax purposes. Notwithstanding receipt by eBay of an opinion from outside counsel or tax advisors described above, the IRS could assert that the distribution does not qualify for tax-free treatment for U.S. federal income tax purposes. If the IRS were successful in taking this position, the consequences described above would not apply and eBay, PayPal and eBay stockholders could be subject to significant U.S. federal income tax liability. In addition, certain events that may or may not be within the control of eBay or PayPal, could cause the distribution and certain related transactions to fail to qualify as a transaction that is generally tax free, for U.S. federal income tax purposes, under Sections 368(a)(1)(D) and 355 of the Code. Depending on the circumstances, PayPal may be required to indemnify eBay for taxes (and certain related losses) resulting from the distribution not qualifying as tax-free.

If the distribution fails to qualify as a transaction that is generally tax free, for U.S. federal income tax purposes, in general, eBay would recognize taxable gain as if it had sold the PayPal common stock in a taxable sale for its fair market value (unless eBay and PayPal jointly make an election under Section 336(e) of the Code with respect to the distribution, in which case, in general, (i) the eBay group would recognize taxable gain as if PayPal had sold all of its assets in a taxable sale in exchange for an amount equal to the fair market value of the PayPal common stock and the assumption of all of PayPal's liabilities and (ii) PayPal would obtain a related step up in the basis of its assets) and eBay stockholders who receive PayPal common stock in the distribution would be subject to tax as if they had received a taxable distribution equal to the fair market value of such shares.

In addition, even if the distribution were to otherwise qualify as tax-free under Sections 368(a)(1)(D) and 355 of the Code, it may result in taxable gain to eBay under Section 355(e) of the Code, if the distribution were later deemed to be part of a plan (or series of related transactions) pursuant to which one or more persons acquire, directly or indirectly, shares representing a 50% or greater interest (by vote or value) in eBay or PayPal. For this purpose, any acquisitions of eBay stock or of PayPal shares within the period beginning two years before the separation and ending two years after the separation are presumed to be part of such a plan, although eBay or PayPal may be able to rebut that presumption.

In connection with the distribution, eBay and PayPal will enter into a tax matters agreement. For a discussion of the tax matters agreement, please refer to "Certain Relationships and Related Party Transactions-The Tax Matters Agreement."

### Backup Withholding and Information Reporting.

Payments of cash to a U.S. Holder of eBay common stock in lieu of fractional shares of PayPal common stock may be subject to information reporting and backup withholding (currently, at a rate of 28%), unless such U.S. Holder delivers a properly completed IRS Form W-9, certifying such U.S. Holder's correct taxpayer identification number and certain other information, or otherwise establishing a basis for exemption from backup withholding. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be refunded or credited against a U.S. Holder's U.S. federal income tax liability provided that the required information is timely furnished to the IRS.

U.S. Treasury regulations require certain U.S. Holders who receive shares of PayPal common stock in the distribution to attach to such U.S. Holder's U.S. federal income tax return for the year in which the distribution occurs a detailed statement setting forth certain information relating to the tax-free nature of the distribution.

THE FOREGOING DISCUSSION IS A SUMMARY OF MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE DISTRIBUTION UNDER CURRENT LAW AND IS FOR GENERAL INFORMATION PURPOSES ONLY. THE FOREGOING DISCUSSION DOES NOT PURPORT TO ADDRESS ALL U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE DISTRIBUTION OR TAX CONSEQUENCES THAT MAY ARISE UNDER THE TAX LAWS OF OTHER JURISDICTIONS OR THAT MAY APPLY TO PARTICULAR CATEGORIES OF STOCKHOLDERS. HOLDERS OF EBAY COMMON STOCK SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES OF THE DISTRIBUTION TO THEM, INCLUDING THE APPLICATION AND EFFECT OF U.S. FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS.

# DESCRIPTION OF MATERIAL INDEBTEDNESS

PayPal does not currently expect to incur any material indebtedness in connection with the separation and distribution, although that expectation may change.

#### SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Before the separation, all of the outstanding shares of PayPal's common stock will be owned beneficially and of record by eBay. Following the distribution, PayPal expects to have outstanding an aggregate of approximately [•] billion shares of common stock based upon approximately [•] billion shares of eBay common stock outstanding on [•], 2015, excluding treasury shares and assuming no exercise of eBay stock options, and applying the distribution ratio.

## **Security Ownership of Certain Beneficial Owners**

The following table reports the number of shares of PayPal common stock that PayPal expects will be beneficially owned, immediately following the completion of the distribution by each person (other than PayPal's expected executive officers and directors) who will beneficially own more than five percent of PayPal's common stock. The table is based upon information available as of [•], 2015 as to those persons (other than PayPal's expected executive officers and directors) who beneficially own more than five percent of eBay's common stock and an assumption that, for every [•] shares of eBay common stock held by such persons, they will receive one share of PayPal common stock.

Name and Address of Beneficial Owner	Ownership	Percent of Class

# **Share Ownership of Executive Officers and Directors**

The following table sets forth information, immediately following the completion of the separation calculated as of [●], 2015, based upon the distribution of one share of PayPal common stock for every [●] shares of eBay common stock, regarding (1) each expected director, director nominee and named executive officer of PayPal and (2) all of PayPal's expected directors and executive officers as a group. The address of each director, director nominee and executive officer shown in the table below is c/o PayPal Holdings, Inc., Attention: Corporate Secretary, 2211 North First Street, San Jose, California 95131.

Name of Beneficial Owner	Shares Beneficially Owned	Exercisable Stock Options (1)	Percent of Class
Daniel H. Schulman			
Jonathan Christodoro			
Scott D. Cook			
John J. Donahoe			
David W. Dorman			
Gail J. McGovern			
David M. Moffett			
Pierre M. Omidyar			
Frank D. Yeary			
James J. Barrese			
Patrick L. A. Dupuis			
Hill Ferguson			
William J. Ready			
All directors and officers as a group ([●] persons)			

<sup>\*</sup> Indicates that the percentage of beneficial ownership of the director or executive officer does not exceed 1 percent of the class.

#### DESCRIPTION OF PAYPAL'S CAPITAL STOCK

PayPal's certificate of incorporation and bylaws will be amended and restated prior to the separation. The following is a summary of the material terms of PayPal's capital stock that will be contained in the amended and restated certificate of incorporation and bylaws. The summaries and descriptions below do not purport to be complete statements of the relevant provisions of the certificate of incorporation or of the bylaws that will be in effect at the time of the distribution, which you must read for complete information on PayPal's capital stock as of the time of the distribution. The certificate of incorporation and bylaws, each in a form expected to be in effect at the time of the distribution, are included as exhibits to PayPal's registration statement on Form 10, of which this information statement forms a part. The summaries and descriptions below do not purport to be complete statements of the Delaware General Corporation Law.

#### General

PayPal's authorized capital stock will consist of [●] billion shares of common stock, par value \$0.0001 per share, and 100 million shares of preferred stock, par value \$0.0001 per share, all of which shares of preferred stock are undesignated. PayPal's board of directors may establish the rights and preferences of the preferred stock from time to time. Subject to the terms of an agreement entered into between eBay Inc. and the Icahn Group and filed as Exhibit 99.2 to eBay Inc.'s Current Report on Form 8-K dated January 23, 2015 (the "Icahn Agreement"), immediately following the distribution, PayPal expects that approximately [●] billion shares of its common stock will be issued and outstanding and that no shares of preferred stock will be issued and outstanding.

#### **Common Stock**

Each holder of PayPal common stock will be entitled to one vote for each share on all matters to be voted upon by the common stockholders, and there will be no cumulative voting rights. To be elected in an uncontested election for board members, a director nominee must receive more votes "for" than "against" by shares present in person or by proxy and entitled to vote. In a contested election for board members, the board members are elected by a plurality of shares present in person or by proxy and entitled to vote.

Subject to any preferential rights of any outstanding preferred stock, holders of PayPal common stock will be entitled to receive ratably the dividends, if any, as may be declared from time to time by its board of directors out of funds legally available for that purpose. If there is a liquidation, dissolution or winding up of PayPal, holders of its common stock would be entitled to ratable distribution of its assets remaining after the payment in full of liabilities and any preferential rights of any then outstanding preferred stock.

Holders of PayPal common stock will have no preemptive or conversion rights or other subscription rights, and there are no redemption or sinking fund provisions applicable to the common stock. After the distribution, all outstanding shares of PayPal common stock will be fully paid and non-assessable. The rights, preferences and privileges of the holders of PayPal common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of preferred stock that PayPal may designate and issue in the future.

#### Preferred Stock

Under the terms of PayPal's amended and restated certificate of incorporation, its board of directors will be authorized, subject to limitations prescribed by the Delaware General Corporation Law (the "DGCL"), and by its certificate of incorporation, to issue up to 100 million shares of preferred stock in one or more series without further action by the holders of its common stock. PayPal's board of directors will have the discretion, subject to limitations prescribed by the DGCL and by PayPal's certificate of incorporation, to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock.

## **Corporate Governance**

PayPal will institute stockholder-friendly corporate governance practices, as described below and elsewhere in this information statement. Responsible and appropriate corporate governance will ensure that PayPal's board always keeps stockholder interests top of mind when crafting value-creating strategies at all levels of the organization.

Single Class Capital Structure. PayPal will have a single class common equity capital structure with all stockholders entitled to vote for director nominees. Each holder of common stock will have one vote per share.

Annual Director Elections. Commencing with the first annual meeting of stockholders following the distribution, which will be held within twelve (12) months of the distribution date, directors will be elected at the annual meeting of stockholders and thereafter each director will serve until the next annual election and until his or her successor is duly elected and qualified, or until his or her earlier resignation or removal. At any meeting of stockholders for the election of directors at which a quorum is present, the election will be determined by a majority of the votes cast by the stockholders entitled to vote in the election, with directors not receiving a majority of the votes cast required to tender their resignations for consideration by the board, except that in the case of a contested election, the election will be determined by a plurality of the votes cast by the stockholders entitled to vote in the election.

Special Stockholder Meetings. PayPal's amended and restated certificate of incorporation will provide that special meetings of the stockholders of the corporation may only be called by (1) the board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors, (2) the chairman of the board, (3) the chief executive officer, or (4) subject to certain procedures and conditions set forth therein, by PayPal's corporate secretary at the request of one or more stockholders who have held beneficial ownership of at least a twenty percent (20%) "net long position" of the outstanding common stock of PayPal for at least thirty (30) days prior to the delivery of such request. Until such time as a single stockholder, or "group" of stockholders who have filed as such under Section 13(d) of the Exchange Act with respect to their ownership of PayPal common stock, owns at least a majority of PayPal's outstanding common stock, no stockholder will be permitted to propose the removal of directors or the election of directors at stockholder-called special meetings.

Proxy Access. In recognition of the growing sentiment in the investment community that significant stockholders ought to have the opportunity to propose candidates for election as directors in the Company's proxy statement, we will provide proxy access rights in our organizational documents. PayPal's amended and restated certificate of incorporation will provide that, in certain circumstances, a stockholder or group of up to 15 stockholders may include director candidates that they have nominated in our annual meeting proxy materials. Such stockholder or group of stockholders will need to own 3% or more of PayPal's outstanding common stock continuously for at least three years. The number of stockholder-nominated candidates appearing in any of our annual meeting proxy materials will not exceed 20% of the number of directors then serving on the Board, rounded down to the nearest whole number, subject to reduction in certain circumstances, including where stockholders have nominated candidates for election at the same meeting outside the proxy access process. The nominating stockholder or group of stockholders will also be required to deliver certain information and undertakings, and each nominee will be required to meet certain qualifications, as described in more detail in the amended and restated certificate of incorporation.

No Supermajority Provisions. Other than with respect to the interested stockholder provision described below in "Anti-Takeover Effects of Various Provisions of Delaware Law and PayPal's Certificate of Incorporation and Bylaws–Interested Stockholder Provision" (which is being implemented in connection with PayPal's opting out of Section 203 of the DGCL), PayPal's amended and restated certificate of incorporation and bylaws do not have supermajority voting provisions, and stockholders can approve binding bylaw amendments with a simple majority vote.

Other Expected Corporate Governance Features. Governance features related to PayPal's board of directors are set forth in the section of this information statement captioned "Directors." In addition to the foregoing, it is expected that PayPal will implement stock ownership guidelines for directors and senior executive officers, annual board performance evaluations, clawback, anti-hedging and anti-pledging policies, conflict of interest policies, risk oversight procedures and other practices and protocols.

#### **Exclusive Forum**

PayPal's amended and restated certificate of incorporation will provide that, unless PayPal consents in writing to the selection of an alternative forum, the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Company, (2) any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the Company or the Company's stockholders, (3) any action asserting a claim against the Company or any director or officer or other employee of the Company arising pursuant to any provision of the DGCL or PayPal's certificate of incorporation or the bylaws (as either may be amended from time to time), or (4) any action asserting a claim against the Company or any director or officer or other employee of the Company governed by the internal affairs doctrine shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware).

#### Limitations on Liability, Indemnification of Officers and Directors and Insurance

The DGCL authorizes corporations to limit or eliminate the personal liability of directors to corporations and their stockholders for monetary damages for breaches of directors' fiduciary duties as directors, and PayPal's amended and restated certificate of incorporation will include such an exculpation provision. PayPal's amended and restated certificate of incorporation and bylaws will include provisions that indemnify, to the fullest extent allowable under the DGCL, the personal liability of directors or officers for monetary damages for actions taken as a director or officer of PayPal, or for serving at PayPal's request as a director or officer or another position at another corporation or enterprise, as the case may be. PayPal's amended and restated certificate of incorporation and bylaws will also provide that PayPal must indemnify and advance reasonable expenses to its directors and officers, subject to its receipt of an undertaking from the indemnified party as may be required under the DGCL. PayPal's amended and restated certificate of incorporation will expressly authorize PayPal to carry directors' and officers' insurance to protect PayPal, its directors, officers and certain employees for some liabilities.

The limitation of liability and indemnification provisions that will be in PayPal's amended and restated certificate of incorporation and bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against PayPal's directors and officers, even though such an action, if successful, might otherwise benefit PayPal and its stockholders. However, these provisions will not limit or eliminate PayPal's rights, or those of any stockholder, to seek non-monetary relief such as injunction or rescission in the event of a breach of a director's duty of care. The provisions will not alter the liability of directors under the federal securities laws. In addition, your investment may be adversely affected to the extent that, in a class action or direct suit, PayPal pays the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions. There is currently no pending material litigation or proceeding against any PayPal directors, officers or employees for which indemnification is sought.

#### **Authorized but Unissued Shares**

PayPal's authorized but unissued shares of common stock and preferred stock will be available for future issuance without your approval. PayPal may use additional shares for a variety of purposes, including future public offerings to raise additional capital, to fund acquisitions and as employee compensation. Certain limitations on the use of authorized but unissued preferred stock are contained in the Icahn Agreement. Nonetheless, the existence of authorized but unissued shares of common stock and preferred stock could render more difficult or discourage an attempt to obtain control of PayPal by means of a proxy contest, tender offer, merger or otherwise.

## Anti-Takeover Effects of Various Provisions of Delaware Law and PayPal's Certificate of Incorporation and Bylaws

Provisions of the DGCL and PayPal's certificate of incorporation and bylaws could potentially impact the prospect of an acquisition of PayPal by means of a tender offer, a proxy contest or otherwise, or affect the ability to remove incumbent officers and directors. These provisions may discourage certain types of coercive takeover practices and takeover bids that PayPal's board of directors may consider inadequate and may encourage persons seeking to acquire control of PayPal to first negotiate with PayPal's board of directors. PayPal believes that the benefits of increased protection of its ability to negotiate with the proponent of an unsolicited proposal to acquire or restructure the Company outweigh the disadvantages of discouraging takeover or acquisition proposals because, among other things, negotiation of these proposals could result in an improvement of their terms.

Size of Board and Vacancies. PayPal's amended and restated bylaws will provide that the number of directors on its board of directors will initially be nine and thereafter shall be fixed exclusively by its board of directors. Any vacancies created in its board of directors resulting from any increase in the authorized number of directors or the death, resignation, retirement or removal from service will be filled only by a majority of the board of directors then in office, even if less than a quorum is present, or by a sole remaining director.

Interested Stockholder Provision. PayPal has elected not to be governed by Section 203 of the DGCL, an anti-takeover statute that prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the time the person became an interested stockholder, unless the business combination or the acquisition of shares that resulted in a stockholder becoming an interested stockholder is approved in a prescribed manner. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. PayPal's amended and restated certificate of incorporation will, however, contain a provision that generally mirrors Section 203 of the DGCL, except that an "interested shareholder" under the interested stockholder provision in the amended and restated certificate of incorporation will be defined to be a person or entity who, together with its affiliates and associates, owns (or within three years prior to the determination of interested stockholder status did own) twenty percent (20%) or more of a corporation's voting stock (Section 203 of the DGCL sets this threshold at fifteen percent (15%)). The existence of this provision would be expected to have an anti-takeover effect with respect to transactions not approved in advance by PayPal's board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by PayPal's stockholders.

Stockholder Action by Written Consent. PayPal's amended and restated certificate of incorporation will provide that stockholders may not act by written consent. Stockholder action must take place at the annual or a special meeting of PayPal stockholders.

Requirements for Advance Notification of Stockholder Nominations and Proposals. PayPal's amended and restated bylaws will establish advance notice procedures with respect to stockholder proposals and nomination of candidates for election as directors other than nominations made by or at the direction of its board of directors or a committee of its board of directors.

No Cumulative Voting. The DGCL provides that stockholders are denied the right to cumulate votes in the election of directors unless the company's certificate of incorporation provides otherwise. PayPal's amended and restated certificate of incorporation will not provide for cumulative voting.

Undesignated Preferred Stock. The authority that PayPal's board of directors will possess to issue preferred stock could potentially be used to discourage attempts by third parties to obtain control of PayPal through a merger, tender offer, proxy contest or otherwise by making such attempts more difficult or more costly. PayPal's board of directors may be able to issue preferred stock with voting rights or conversion rights that, if exercised, could adversely affect the voting power of the holders of common stock.

#### Icahn Agreement

Certain of the provisions above, including under the sections entitled "Interested Stockholder Provision" in the "Anti-Takeover Effects of Various Provisions of Delaware Law and PayPal's Certificate of Incorporation and Bylaws" section and the section entitled "Special Stockholder Meetings" in the "Corporate Governance" section, were designed to comply with the Icahn Agreement. In addition, pursuant to the Icahn Agreement, (i) the Icahn Group has agreed to specified "standstill" restrictions for a certain period of time, and (ii) PayPal will, among other things, not have a "stockholder rights plan" in effect at the time of the distribution and, until the conclusion of the standstill period, any "stockholder rights plan" adopted by PayPal will not have a threshold at or below 19.99% and will expire if not ratified by PayPal's stockholders within 135 days of the plan taking effect.

#### Listing

PayPal intends to apply to have its common stock authorized for listing on The NASDAQ Stock Market under the symbol "PYPL."

#### Sale of Unregistered Securities

On January 30, 2015, PayPal issued 1,000 shares of its common stock to eBay pursuant to Section 4(2) of the Securities Act. PayPal did not register the issuance of the issued shares under the Securities Act because such issuances did not constitute public offerings.

## **Transfer Agent and Registrar**

After the distribution, the transfer agent and registrar for PayPal's common stock will be Computershare Trust Company, N.A.

#### WHERE YOU CAN FIND MORE INFORMATION

PayPal has filed a registration statement on Form 10 with the SEC with respect to the shares of PayPal common stock being distributed as contemplated by this information statement. This information statement is a part of, and does not contain all of the information set forth in, the registration statement and the exhibits and schedules to the registration statement. For further information with respect to PayPal and its common stock, please refer to the registration statement, including its exhibits and schedules. Statements made in this information statement relating to any contract or other document filed as an exhibit to the registration statement include the material terms of such contract or other document. However, such statements are not necessarily complete, and you should refer to the exhibits attached to the registration statement for copies of the actual contract or document. You may review a copy of the registration statement, including its exhibits and schedules, at the SEC's public reference room, located at 100 F Street, NE, Washington, D.C. 20549, by calling the SEC at 1-800-SEC-0330 as well as on the Internet website maintained by the SEC at www.sec.gov. Information contained on any website referenced in this information statement is not incorporated by reference in this information statement.

As a result of the distribution, PayPal will become subject to the information and reporting requirements of the Exchange Act and, in accordance with the Exchange Act, will file periodic reports, proxy statements and other information with the SEC.

PayPal intends to furnish holders of its common stock with annual reports containing combined financial statements prepared in accordance with U.S. generally accepted accounting principles and audited and reported on, with an opinion expressed, by an independent registered public accounting firm.

You should rely only on the information contained in this information statement or to which this information statement has referred you. PayPal has not authorized any person to provide you with different information or to make any representation not contained in this information statement.

## INDEX TO FINANCIAL STATEMENTS

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All other schedules have been omitted because the information required to be set forth therein is not applicable or is shown in the financial statements or notes thereto.

## Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of eBay Inc.:

In our opinion, the accompanying combined balance sheets and the related combined statements of income, of comprehensive income, of equity, and of cash flows present fairly, in all material respects, the financial position of PayPal (the "Company") at December 31, 2014 and December 31, 2013, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2014 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all material respects, the information set forth therein when read in conjunction with the related combined financial statements. These financial statements and financial statements and financial statements and financial statements schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

/s/ PricewaterhouseCoopers LLP

San Jose, California February 25, 2015

# PayPal COMBINED BALANCE SHEET

	December 31, 2014	December 31, 2013
LOOPERO	(In m	illions)
ASSETS		
Current assets:	ф <b>2 2</b> 01	Φ 1 CO 4
Cash and cash equivalents	\$ 2,201	\$ 1,604
Short-term investments	29	321
Accounts receivable, net	65	52
Loans and interest receivable, net	3,586	2,789
Funds receivable and customer accounts	10,612	9,277
Notes and receivable from affiliates	694	310
Other current assets	378	267
Total current assets	17,565	14,620
Long-term investments	31	196
Property and equipment, net	922	858
Goodwill	3,189	3,187
Intangible assets, net	156	258
Other assets	_ 54	41
Total assets	\$ 21,917	\$ 19,160
LIABILITIES AND EQUITY		
Current liabilities:		
Accounts payable	\$ 115	\$ 73
Funds payable and amounts due to customers	10,612	9,277
Notes and payable to affiliates	1,093	1,103
Accrued expenses and other current liabilities	1,434	771
Income taxes payable		37
Total current liabilities	13,283	11,261
Long-term liabilities	386	509
Total liabilities	13,669	11,770
Commitments and contingencies (Note 10)		
Equity:		
Accumulated other comprehensive income (loss)	110	(61)
Net parent investment	8,138	7,451
Total equity	8,248	7,390
Total liabilities and equity	\$ 21,917	\$ 19,160

PayPal
COMBINED STATEMENT OF INCOME

	Year I	er 31,	
	2014	2013 (In millions)	2012
Net revenues	\$8,025	\$6,727	\$5,662
Operating expenses:			
Transaction expense	2,170	1,835	1,518
Transaction and loan losses	646	502	365
Customer support and operations	1,055	950	814
Sales and marketing	998	791	662
Product development	890	727	677
General and administrative	482	378	345
Depreciation and amortization	516	453	382
Restructuring	_	_	19
Total operating expenses	6,757	5,636	4,782
Operating income	1,268	1,091	880
Other income (expense), net	_(7)	_(7)	11
Income before income taxes	1,261	1,084	891
Income tax expense	842	129	113
Net income	\$419	\$955	\$778

# PayPal COMBINED STATEMENT OF COMPREHENSIVE INCOME

	Year	Year Ended December 31,		
	2014	2013 (In millions)	2012	
Net income	\$419	\$955	\$778	
Other comprehensive income (loss), net of reclassification adjustments:				
Foreign currency translation	(42)	11	6	
Unrealized gains on investments, net	_	_	2	
Unrealized gains (losses) on hedging activities, net	217	(45)	(104)	
Tax (expense) benefit on unrealized gains (losses) on hedging activities, net	(4)	2	3	
Other comprehensive income (loss), net of tax	171	(32)	(93)	
Comprehensive income	\$590	\$923	\$685	

PayPal

COMBINED STATEMENT OF EQUITY

	Net Parent Investment	Accumulated Other Comprehensive Income (Loss) (In millions)	Total Equity
Balances at December 31, 2011	\$ 5,181	\$ 64	\$ 5,245
Net income	778	_	778
Net transfers from parent	251	_	251
Foreign currency translation	_	6	6
Unrealized gains on investments, net	_	2	2
Unrealized (losses) on hedging activities, net	_	(104)	(104)
Tax benefit on unrealized gains (losses) on			
hedging activities, net	<u> </u>	3	3
Balances at December 31, 2012	\$ 6,210	\$ (29 )	\$ 6,181
Net income	955	_	955
Net transfers from parent	286	_	286
Foreign currency translation	_	11	11
Unrealized (losses) on hedging activities, net	_	(45)	(45)
Tax benefit on unrealized gains (losses) on			
hedging activities, net	<u> </u>	2	2
Balances at December 31, 2013	\$ 7,451	\$ (61)	\$ 7,390
Net income	419	_	419
Net transfers from parent	268	_	268
Foreign currency translation	_	(42)	(42)
Unrealized gains on hedging activities, net	_	217	217
Tax expense on unrealized gains on hedging			
activities, net		(4	(4)
Balances at December 31, 2014	\$ 8,138	\$ 110	\$ 8,248

PayPal
COMBINED STATEMENT OF CASH FLOWS

	For Ye	For Year Ended December		
	2014	2013	2012	
Cook flows from anaroting activities		(In millions)		
Cash flows from operating activities:  Net income	\$419	\$955	\$778	
Adjustments:	\$419	\$933	\$110	
Transaction and loan losses	646	502	365	
Depreciation and amortization	516	453	382	
Stock-based compensation	299	253	205	
Deferred income taxes	680	52	46	
Excess tax benefits from stock-based compensation	(41)	(76 )	(57	
Changes in assets and liabilities:	(41 )	(10 )	(37	
Accounts receivable	(13)	1	(20	
Notes and receivable from affiliates, net	(24)	79	(77	
Other assets	(39 )	(64)	(163	
Accounts payable	42	(13)	1	
Notes payable to affiliates, net	(2)	43	20	
Accrued expenses and other current liabilities	(300)	(233 )	(15	
Income taxes payable and other tax liabilities	37	41	100	
Net cash provided by operating activities	2,220	1,993	1,565	
Cash flows from investing activities:		1,775	1,000	
Purchases of property and equipment	(492)	(391)	(511	
Changes in principal loans receivable, net	(1,023)	(793)	(740	
Purchases of investments	(76)	(610 )	(265	
Maturities and sales of investments	409	320	180	
Acquisitions, net of cash acquired	(2)	(731)	(22	
Notes and receivable from affiliates, net	(362)	484	(168	
Net cash used in investing activities	(1,546)	(1,721)	(1,526	
Cash flows from financing activities:	(1,5 10)	(1,721)	(1,020	
Excess tax benefits from stock-based compensation	41	76	57	
Net transfers to parent	(71 )	(28)	(17	
Net (repayments) borrowings under financing arrangements	(21)	(133 )	20	
Banking deposits from affiliates	_	-	(270	
Funds receivable and customer accounts, net	(1,335)	(1,653)	(4,090	
Funds payable and amounts due to customers, net	1,335	1,653	4,090	
Net cash used in financing activities	(51)	(85)	(210	
Effect of exchange rate changes on cash and cash equivalents	(26)	3	(1	
Net increase (decrease) in cash and cash equivalents	597	190		
Cash and cash equivalents at beginning of period			(172	
	1,604	1,414	1,586	
Cash and cash equivalents at end of period	<u>\$2,201</u>	\$1,604	\$1,414	
Supplemental cash flow disclosures:				
Cash paid for interest	\$19	\$14	\$12	
Cash paid for income taxes	\$47	\$28	\$38	

#### **PayPal**

#### NOTES TO COMBINED FINANCIAL STATEMENTS

## Note 1-Overview and Summary of Significant Accounting Policies

## **Overview and Organization**

On September 30, 2014, eBay Inc. ("eBay") announced its intent to separate its payments business (the "Separation") into an independent, publicly-traded company (the "distribution"). To accomplish the distribution, in January 2015, eBay incorporated PayPal Holdings, Inc. ("PayPal Holdings"). PayPal Holdings was formed solely in contemplation of the separation and the distribution, has not commenced operations and has no liabilities or commitments. As of March 31, 2015, PayPal Holdings had no assets other than de minimis assets incidental to its formation.

PayPal Holdings will ultimately become the parent of PayPal, Inc. and will hold directly or indirectly all of the assets and liabilities associated with PayPal, Inc. PayPal, Inc. was incorporated in Delaware in March 1999. In 2002, PayPal, Inc. was acquired by eBay. All of our operations are conducted by PayPal, Inc. and its wholly owned subsidiaries.

These combined financial statements are comprised of the payments business of eBay Inc., including PayPal, Inc. and certain other assets and liabilities that have been historically held at the eBay Inc. corporate level, but are specifically identifiable and attributable to the payments business. These combined financial statements are collectively referred to as "PayPal". References in these combined financial statements to "we," "our," "us," "the Company" or "PayPal" refer to these combined entities.

To effect the separation, eBay will make a pro rata distribution of 100% of the outstanding common stock of PayPal Holdings to eBay's stockholders. The distribution is subject to a number of conditions, including, but not limited to, final approval of the spin-off by the board of both eBay Inc. and completion of the review of PayPal Holdings' Registration Statement on Form 10 by the Securities and Exchange Commission (the "SEC"). Immediately following the distribution, eBay will no longer have an ownership interest in PayPal Holdings or PayPal PayPal Holdings and eBay will enter into certain agreements providing for the separation of the companies and governing various relationships between the companies post-separation.

We are a leading technology platform company that enables digital and mobile payments on behalf of consumers and merchants worldwide. We strive to increase our relevance for consumers, merchants, friends and family to access and move their money anywhere in the world, anytime, on any platform and through any device (e.g., mobile, tablets, personal computers or wearables). We provide safer and simpler ways for businesses of all sizes to accept payments from merchant websites, mobile devices and applications, and at offline retail locations through a wide range of payment solutions across our Payments Platform, including PayPal, PayPal Credit, Venmo and Braintree products.

We operate globally and in a rapidly evolving regulatory environment characterized by a heightened regulatory focus on all aspects of the payments industry. Government regulation impacts key aspects of our business, and we are subject to regulations that affect the payments industry in the many countries in which we operate. Changes in or non-compliance with laws and regulations, changes in the interpretation of laws and regulations, and the enactment of new laws and regulations applicable to us could have a material adverse impact on our business, results of operations and financial condition. Therefore, we monitor these areas closely to ensure a compliant system for our customers who depend on us.

#### **Significant Accounting Policies**

Basis of presentation and principles of combination

The accompanying combined financial statements have been prepared on a stand-alone basis and are derived from eBay's consolidated financial statements and records. The combined financial statements reflect our financial position, results of operations, and cash flows as we operated as part of eBay prior to the distribution, in conformity with U.S. generally accepted accounting principles ("U.S. GAAP").

#### **PayPal**

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

These combined financial statements include expenses associated with workplace resources and information technology that were previously allocated to the Payments segment of eBay, and, additional expenses related to certain corporate functions, including senior management, legal, human resources and finance. These expenses also include allocations related to share based compensation. The expenses that have been incurred by eBay are allocated to us based on direct usage or benefit where identifiable, with the remainder allocated on a pro rata basis of revenue, headcount, or other systematic measure. We consider the expense allocation methodology and results to be reasonable for all periods presented. The combined financial statements also include certain assets and liabilities that have historically been held at the eBay corporate level, but which are specifically identifiable and attributable to us. The combined financial position, results of operations and cash flows of PayPal may not be indicative of our results had we been a separate stand-alone entity during the periods presented, nor are the results stated herein indicative of what the Company's financial position, results of operations and cash flows may be in the future. All intra-company transactions and accounts have been eliminated.

The accompanying financial statements are combined and include the financial statements of PayPal and our wholly and majority-owned subsidiaries. Investments in entities where we hold at least a 20% ownership interest and have the ability to exercise significant influence, but not control, over the investee are accounted for using the equity method of accounting. For such investments, our share of the investees' results of operations is included in other income (expense), net and our investment balance is included in long-term investments. Investments in entities where we hold less than a 20% ownership interest are generally accounted for using the cost method of accounting, and our share of the investees' results of operations is included in other income (expense), net in our combined statement of income to the extent dividends are received.

We have evaluated all subsequent events through April 9, 2015, the date the financial statements were available to be issued. We have disclosed material subsequent events in "Note 16–Subsequent Events."

#### Use of estimates

The preparation of combined financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the combined financial statements and the reported amounts of revenues and expenses, including allocations from eBay, during the reporting period. On an ongoing basis, we evaluate our estimates, including those related to transaction and loan losses, legal contingencies, income taxes, revenue recognition, stock-based compensation, goodwill and the recoverability of intangible assets. We base our estimates on historical experience and on various other assumptions which we believe to be reasonable under the circumstances. Actual results could differ from those estimates.

## Cash and cash equivalents

Cash and cash equivalents are short-term, highly liquid investments with original maturities of three months or less when purchased and are mainly comprised of bank deposits, certificates of deposit and commercial paper.

#### Investments

Short-term investments, which include time deposits and corporate debt securities with original maturities of greater than three months but less than one year when purchased, are classified as available-for-sale and are reported at fair value using the specific identification method. Unrealized gains and losses are excluded from earnings and reported as a component of other comprehensive income (loss), net of related estimated tax provisions or benefits.

#### PayPal

#### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

Long-term investments include corporate debt securities, equity method and cost method investments. Debt securities are classified as available-for-sale and are reported at fair value using the specific identification method. Unrealized gains and losses are excluded from earnings and reported as a component of other comprehensive income (loss), net of related estimated tax provisions or benefits.

We elect to account for certain assets underlying customer accounts, including foreign-currency denominated available-for-sale investments, under the fair value option. The changes in fair value related to initial measurement and subsequent changes in fair value are included in earnings as a component of other income (expense), net.

Our cost method investments consist of investments in privately held companies where we do not have the ability to exercise significant influence, or have control over the investee. These investments are recorded at cost and are subject to periodic tests for other-than-temporary impairment. Our equity method investments are investments in privately held companies where we have the ability to exercise significant influence, but not control, over the investee. Our proportionate share of the net income (loss) of our equity method investments is recognized on a one quarter lag as a component of other income (expense), net in our combined statements of income. Our share of investees' results of operations is not significant for any period presented.

We assess whether an other-than-temporary impairment loss on our investments has occurred due to declines in fair value or other market conditions. With respect to our debt securities, this assessment takes into account the severity and duration of the decline in value, our intent to sell the security, whether it is more likely than not we will be required to sell the security before recovery of its amortized cost basis, and whether we expect to recover the entire amortized cost basis of the security (that is, whether a credit loss exists).

## Loans and interest receivable, net

Loans and interest receivable, net primarily represent consumer receivables originated under PayPal Credit consumer accounts. The majority of the loans on these accounts are originated by a partner chartered financial institution in the U.S. and are made to individual consumers in the U.S. using PayPal Credit as a payment method. In the United Kingdom, loans on PayPal Credit consumer accounts are currently originated by our Luxembourg bank subsidiary.

The terms of our consumer relationships require us to submit monthly bills to the consumer detailing loan repayment requirements. The terms also allow us to charge the consumer interest and fees in certain circumstances. Due to the relatively small dollar amount of individual loans and interest receivable, we do not require collateral on these balances.

In August 2013, ownership of substantially all of the existing PayPal Credit consumer accounts in the U.S. was transitioned from one partner chartered financial institution to a new partner chartered financial institution. See "Note 8–Loans and Interest Receivable, Net". As of Q4 2014, this partner financial institution owned all of the existing PayPal Credit consumer accounts in the U.S. As part of the arrangement with this new partner financial institution, we sell a participation interest in the entire pool of consumer receivables outstanding to this partner financial institution. We apply a control-oriented, financial-components approach and account for the asset transfer as a sale and derecognize the portion of the participation interest for which control has been surrendered. We do not recognize gains or losses on the sale of the participation interest as the carrying amount of the participation interest sold approximates the fair value at time of transfer. Participation interests that are retained are included in loans and interest receivable and are accounted for at amortized cost, net of an allowance for loan losses. We maintain the servicing rights for the entire pool of consumer receivables outstanding and receive a fee approximating the fair value of servicing the assets underlying the participation interest sold.

#### **PayPal**

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

## Allowance for loans and interest receivable

The allowance for loans and interest receivable represents management's estimate of probable losses inherent in our PayPal Credit portfolio of receivables. The evaluation process to assess the adequacy of allowances is subject to numerous estimates and judgments, primarily forecasted principal balance delinquency rates ("roll rates"). Roll rates are the percentage of balances which we estimate will migrate from one stage of delinquency to the next based on our historical experience, as well as external factors such as estimated bankruptcies and levels of unemployment. Roll rates are applied to principal balances for each stage of delinquency, from current to 180 days past due, in order to estimate the principal loans which are probable to be charged off. Increases to the allowance for loans receivable are reflected as transaction and loan losses in our combined financial statements. The allowance for loss against the interest and fees receivable is primarily determined by applying historical average customer account roll rates to the interest receivable balance in each stage of delinquency to project the value of accounts that are not collectible. Increases to the allowance for interest and fees receivable are reflected as a reduction of net revenues in our combined financial statements.

We charge off loan receivable balances in the month in which a customer balance becomes 180 days past due. Bankrupt accounts are charged off within 60 days of receiving notification from the bankruptcy courts. Past due loans receivable continue to accrue interest until such time as they are charged off. Charge-offs that are recovered are recorded as a reduction to our allowance for loans and interest receivable.

#### Customer accounts

We hold all customer balances (both in the U.S. and internationally) as direct claims against us which are reflected on our combined balance sheet as a liability classified as amounts due to customers. Further, various jurisdictions where PayPal operates require us to hold eligible liquid assets, as defined by the regulators in these jurisdictions, equal to at least 100% of the aggregate amount of all customer balances. Therefore, we use the assets underlying the customer balances to meet these regulatory requirements and separately classify the assets as customer accounts in our combined balance sheets. We do not commingle the assets underlying the customer balances with corporate funds and separately maintain these assets in interest and non-interest bearing bank deposits, time deposits and government and agency securities. We classify the assets underlying the customer balances as current based on their purpose and availability to fulfill our direct obligation under amounts due to customers.

#### Funds receivable and funds payable

Funds receivable and funds payable arise due to the time required to clear transactions through external payment networks. When customers fund their account using their bank account or a credit card or debit card, or withdraw funds from their PayPal account to their bank account or through a debit card transaction, there is a clearing period before the cash is received or settled, usually one to three business days for U.S. transactions and generally up to five business days for international transactions.

#### Allowance for negative customer balances

Negative customer balances occur primarily when there are insufficient funds in a customer's PayPal account to cover charges applied for Automated Clearing House ("ACH") returns, debit card transactions, chargebacks, nondelivery or unsatisfactory delivery of goods or services. Negative balances can be cured by the customer by adding funds to the account, receiving payments, or through back-up funding sources. We also utilize third party collection agents. For negative customer balances that are not expected to be cured or otherwise collected, we provide an allowance for uncollectible accounts. The allowance is estimated based on known facts and circumstances, internal factors including our experience with similar cases, and historical trends involving collection and write-off patterns. Negative customer balances are included in other current assets, net of the

#### PayPal

# NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

allowance. Adjustments to the allowance for negative customer balances are recorded as a component of transaction and loan loss. The allowance for negative customer balances was \$118 million and \$88 million at December 31, 2014 and 2013, respectively.

#### Property and equipment

Property and equipment consists primarily of computer equipment, software and website development costs, land and buildings and leasehold improvements. Property and equipment are stated at historical cost less accumulated depreciation. Depreciation and amortization are computed using the straight-line method over the estimated useful lives of the assets; generally, one to three years for computer equipment and software, including capitalized software and website development costs, three years for furniture and fixtures, up to thirty years for buildings and building improvements, and the shorter of five years or the term of the lease for leasehold improvements.

#### Goodwill and intangible assets

Goodwill is tested for impairment at a minimum on an annual basis. Goodwill is tested for impairment at the reporting unit level by first performing a qualitative assessment to determine whether it is more likely than not that the fair value of the reporting unit is less than its carrying value. If the reporting unit does not pass the qualitative assessment, then the reporting unit's carrying value is compared to its fair value. The fair values of the reporting unit exceeds its fair value. The discounted cash flow method, a form of the income approach, uses expected future operating results and a market participant discount rate. The market approach uses comparable company prices and other relevant information generated by market transactions (either publicly traded entities or merger and acquisitions) to develop pricing metrics to be applied to historical and expected future operating results of the reporting unit. Failure to achieve these expected results, changes in the discount rate or market pricing metrics, may cause a future impairment of goodwill at the reporting unit. We conducted our annual impairment test of goodwill as of August 31, 2014 and 2013. We determined that no adjustment to the carrying value of goodwill of our reporting unit was required. As of December 31, 2014, we determined that no events or circumstances from August 31, 2014 through December 31, 2014 indicated that a further assessment was necessary.

Intangible assets consist of purchased customer lists and user base, marketing related intangibles, developed technologies and other intangible assets, including patents and contractual agreements. Intangible assets are amortized over the period of estimated benefit using the straight-line method and estimated useful lives ranging from one to eight years. No significant residual value is estimated for intangible assets.

## Impairment of long-lived assets

We evaluate long-lived assets (including intangible assets) for impairment whenever events or changes in circumstances indicate that the carrying amount of a long-lived asset may not be recoverable. An asset is considered impaired if its carrying amount exceeds the future net cash flow the asset is expected to generate.

#### Allowance for transaction losses

We are exposed to transaction losses due to credit card and other payment misuse as well as nonperformance of and credit losses from sellers who accept payments through PayPal. We establish an allowance for estimated losses arising from processing customer transactions, such as chargebacks for unauthorized credit card use and

#### PayPal

# NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

merchant-related chargebacks due to non-delivery of goods or services, ACH returns, buyer protection program claims, account takeovers, and debit card overdrafts. This allowance represents an accumulation of the estimated amounts necessary to provide for transaction losses incurred as of the reporting date, including those for which we have not yet identified. The allowance, which involves the use of actuarial techniques, is monitored monthly and is updated based on actual claims data reported by our claims processors and other actual data received. The allowance is based on known facts and circumstances, internal factors including experience with similar cases, historical trends involving loss payment patterns, and the mix of transaction and loss types. Additions to the allowance are reflected as transaction and loan losses in our combined statements of income. At both December 31, 2014 and 2013, the allowance for transaction losses totaled \$48 million and is included in accrued expenses and other current liabilities.

#### Derivative instruments

We have significant international revenues and costs denominated in foreign currencies, subjecting our operations to foreign currency risk. We enter into foreign currency exchange contracts that qualify as cash flow hedges, generally with maturities of 18 months or less, to reduce the volatility of cash flows primarily related to forecasted revenue denominated in certain foreign currencies. All outstanding derivatives are recognized on the balance sheet at fair value. The effective portion of the designated derivative's gain or loss is initially reported as a component of accumulated other comprehensive income (loss) and is subsequently reclassified into the financial statement line item in which the hedged item is recorded in the period the forecasted transaction affects earnings.

We also hedge our economic exposure to foreign currency denominated monetary assets and liabilities with foreign currency contracts. The gains and losses on the foreign exchange contracts economically offset transaction gains and losses on certain foreign currency denominated monetary assets and liabilities recognized in earnings. Accordingly, these outstanding non-designated derivatives are recognized on the balance sheet at fair value and changes in fair value from these contracts are recorded in other income (expense), net in the combined statement of income. Our hedging program is not designed or operated for trading or speculative purposes.

Our derivative instruments expose us to credit risk to the extent counterparties may be unable to meet the terms of the agreements. We seek to mitigate this risk by limiting counterparties to major financial institutions and by spreading the risk across several major financial institutions. In addition, the potential risk of loss with one counterparty resulting from this type of credit risk is monitored on an ongoing basis. See "Note 6–Derivative Instruments" for additional information related to the derivative instruments.

## Fair value of financial instruments

Our financial assets and liabilities are valued using market prices on both active markets (Level 1) and less active markets (Level 2). Level 1 instrument valuations are obtained from real-time quotes for transactions in active exchange markets involving identical assets. Level 2 instrument valuations are obtained from readily available pricing sources for comparable instruments, identical instruments in less active markets, or models using market observable inputs. As of December 31, 2014, and 2013 we did not have any assets or liabilities requiring measurement at fair value without observable market values that would require a high level of judgment to determine fair value (Level 3). Our financial instruments, including cash, cash equivalents, accounts receivable, loans and interest receivable, funds receivable, certain customer accounts, accounts payable, and funds payable and amounts due to customers are carried at cost, which approximates their fair value due to the short-term maturity of these instruments.

#### PayPal

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

#### Concentrations of risk

Our cash, cash equivalents, accounts receivable, loans and interest receivable, and funds receivable and customer accounts are potentially subject to concentration of credit risk. Cash, cash equivalents and customer accounts are placed with financial institutions that management believes are of high credit quality. In addition, funds receivable are generated primarily with financial institutions or credit card companies which management believes are of high credit quality. We invest our cash and cash equivalents and customer accounts in highly liquid, highly rated instruments which are uninsured. From time to time, we may also have corporate deposit balances with financial services institutions which exceed the Federal Deposit Insurance Corporation ("FDIC") insurance limit of \$250,000. As part of our cash management process, we perform periodic evaluations of the relative credit standing of these financial institutions. Our accounts receivable are derived from revenue earned from customers located in the U.S. and internationally. Our loans and interest receivable are derived primarily from consumer financing activities for customers located in the U.S. As of December 31, 2014 no customer accounted for more than 10% of net accounts receivable or net loans receivable. As of December 31, 2013, one customer accounted for more than 13% of the net accounts receivable balance and no customer accounted for more than 10% of net loans receivable. During the years ended December 31, 2014, 2013 and 2012, no customer accounted for more than 10% of net revenues. During the years ended December 31, 2014, 2013 and 2012, we earned approximately 29%, 32% and 33% of revenue from customers on eBay's Marketplaces platform.

#### Revenue recognition

We earn net revenues primarily from fees charged to customers on the volume of activity processed through our Payments Platform. Net transaction revenues resulting from a payment processing transaction are recognized once the transaction is complete. Based on historical experience, specified credits are made at the time revenue is recognized and recorded as a reduction to revenue. In certain circumstances, we are required to record payments to a customer as a reduction to revenue. These payments to customers primarily originate from certain customer acquisition arrangements. Net revenues include intercompany revenue earned from eBay for payment processing services.

We also earn net revenues from other value added services, including interest and fees earned on the PayPal Credit portfolio of loans receivable, subscription fees, revenue share we earn through partnerships and other services that we provide to our consumers and merchants.

Interest and fees earned on the PayPal Credit portfolio of loans receivable are computed and recognized based on contractual interest and fee rates, and are net of any required reserves and amortization of deferred origination costs.

Net revenues earned from other value added services are recognized over the period services are performed and when amounts are deemed to be fixed or determinable.

#### Advertising expense

We expense the cost of producing advertisements at the time production occurs and expense the cost of communicating advertisements in the period during which the advertising space or airtime is used as sales and marketing expense. Internet advertising expenses are recognized based on the terms of the individual agreements, which is generally over the greater of the ratio of the number of impressions delivered over the total number of contracted impressions, on a pay-per-click basis, or on a straight-line basis over the term of the contract. Advertising expense totaled \$272 million, \$176 million and \$193 million for the years ended December 31, 2014, 2013, and 2012, respectively.

#### **PayPal**

# NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

## Internal use software and website development costs

Direct costs incurred to develop software for internal use and website development costs are capitalized and amortized over an estimated useful life of one to three years and are recorded as depreciation and amortization. PayPal capitalized \$200 million and \$146 million of internally developed software and website development costs for the years ended December 31, 2014 and 2013, respectively. Amortization expense of previously capitalized amounts was \$129 million, \$97 million and \$91 million for the years ended December 31, 2014, 2013 and 2012, respectively. Costs related to the maintenance of internal use software and website development costs are expensed as incurred.

## Defined contribution savings plans

We have a defined contribution savings plan in the U.S. which qualifies under Section 401(k) of the Internal Revenue Code (the "Code"). Our non U.S. employees are covered by other savings plans. Expenses related to our defined contribution savings plans are recorded when services are rendered by our employees.

#### Stock-based compensation

Our employees are eligible to participate in eBay's equity incentive plans. eBay issues two types of stock-based awards to our employees: restricted stock units (including performance-based restricted stock units) and stock options. eBay primarily issues restricted stock units. We determine compensation expense associated with restricted stock units based on the fair value of eBay's common stock on the date of grant. We determine compensation expense associated with stock options based on the estimated grant date fair value method using the Black-Scholes valuation model. We generally recognize compensation expense using a straight-line amortization method over the respective vesting period for awards that are ultimately expected to vest. Accordingly, stock-based compensation expense for 2014, 2013 and 2012 has been reduced for estimated forfeitures. When estimating forfeitures, we consider voluntary termination behavior of our employees as well as trends of actual option forfeitures.

## Foreign currency

Most of our foreign subsidiaries use the local currency of their respective countries as their functional currency. Assets and liabilities are translated at exchange rates prevailing at the balance sheet dates. Revenues, costs and expenses are translated into U.S. dollars using daily exchange rates. Gains and losses resulting from the translation of our combined balance sheet are recorded as a component of accumulated other comprehensive income.

Gains and losses from foreign currency transactions are recognized as other income (expense), net.

#### Income taxes

We account for income taxes using an asset and liability approach which requires the recognition of taxes payable or refundable for the current year and deferred tax liabilities and assets for the future tax consequences of events that have been recognized in the financial statements or tax returns. The measurement of current and deferred tax assets and liabilities is based on provisions of enacted tax laws; the effects of future changes in tax laws or rates are not anticipated. If necessary, the measurement of deferred tax assets is reduced by the amount of any tax benefits that are not expected to be realized based on available evidence. We report a liability for unrecognized tax benefits resulting from uncertain tax positions taken or expected to be taken in a tax return. We recognize interest and penalties, if any, related to unrecognized tax benefits in income tax expense.

#### **PayPal**

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

#### **Recent Accounting Pronouncements**

In 2013, the Financial Accounting Standards Board ("FASB") issued new accounting guidance clarifying the accounting for the release of a cumulative translation adjustment into net income when a parent either sells a part or all of its investment in a foreign entity or no longer holds a controlling financial interest in a subsidiary or group of assets that is a nonprofit activity or a business within a foreign entity. The new standard was effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2013. The adoption of this guidance did not have a material impact on our financial statements.

In 2013, the FASB issued new accounting guidance clarifying the accounting for obligations resulting from joint and several liability arrangements for which the total amount under the arrangement is fixed at the reporting date. The new standard was effective for fiscal years, and interim periods within those fiscal years, beginning on or after December 15, 2013. The adoption of this guidance did not have a material impact on our financial statements.

In 2013, the FASB issued new accounting guidance requiring the presentation of certain unrecognized tax benefits as reductions to deferred tax assets rather than as liabilities in the combined balance sheets when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists. The new standard required adoption on a prospective basis in the first quarter of 2014. The adoption of this guidance did not have a material impact on our financial statements.

In 2014, the FASB issued new guidance related to pushdown accounting. The new guidance provides an acquired entity with an option to apply pushdown accounting in its separate financial statements upon occurrence of an event in which an acquirer obtains control of the acquired entity. The amendments are effective on November 18, 2014. We adopted this guidance, as required, on November 18, 2014. The adoption of this guidance did not have a material impact on our financial statements.

In 2014, the FASB issued new accounting guidance related to revenue recognition. This new standard will replace all current U.S. GAAP guidance on this topic and eliminate all industry-specific guidance. The new revenue recognition guidance provides a unified model to determine when and how revenue is recognized. The core principle is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration for which the entity expects to be entitled in exchange for those goods or services. This guidance will be effective beginning January 1, 2017 and can be applied either retrospectively to each period presented or as a cumulative-effect adjustment as of the date of adoption. We are evaluating the impact and approach to adopting this new accounting guidance on our financial statements.

## **Note 2-Business Combinations**

## 2014 Acquisition and Divestiture Activity

There were no acquisitions or divestitures completed in 2014.

## 2013 Acquisition and Divestiture Activity

In 2013, we completed three acquisitions, including:

#### Braintree

We completed the acquisition of Braintree on December 19, 2013. We acquired Braintree to accelerate PayPal's growth in mobile payments for total consideration of approximately \$713 million, consisting primarily of cash.

#### PayPal

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

The allocation of purchase consideration resulted in approximately \$126 million of intangible assets, net liabilities of approximately \$16 million, and initial goodwill of \$590 million, which was adjusted by \$13 million in 2014. We do not expect goodwill to be deductible for income tax purposes.

We have included the financial results of Braintree in our combined financial statements from the date of acquisition. Revenues and expenses related to Braintree for the period ending December 31, 2013 were not material.

#### Other

We completed two other acquisitions during 2013 for aggregate purchase consideration of approximately \$16 million, consisting primarily of cash. The allocation of the purchase consideration resulted in net liabilities of approximately \$1 million, purchased intangible assets of approximately \$5 million and goodwill of approximately \$12 million. The combined financial statements include the operating results of the acquired businesses since the respective dates of the acquisitions. Pro forma results of operations have not been presented because the effect of the acquisitions was not material to our financial results.

## 2012 Acquisition and Divestiture Activity

In 2012, we completed one acquisition for purchase consideration of approximately \$10 million, consisting primarily of cash. The allocation of the purchase consideration resulted in net liabilities of approximately \$1 million, purchased intangible assets of \$3 million and goodwill of \$8 million. The combined financial statements include the operating results of the acquisition from the date of acquisition. Pro forma results of operations have not been presented because the effect of this acquisition was not material to our combined results of operations.

#### Note 3-Goodwill and Intangible Assets

#### Goodwill

The following table presents goodwill balances and adjustments to those balances for the years ended December 31, 2014 and 2013:

	December 31, 2012	Goodwill Acquired	Adjustments/ Allocations	December 31, 2013 (In millions)	Goodwill Acquired	Adjustments/ Allocations	December 31, 2014
Total Goodwill	\$ 2,585	\$ 602	\$ -	\$ 3,187	<u>\$ - </u>	\$ 2	\$ 3,189

The goodwill acquired in 2013 was due primarily to the acquisition of Braintree.

# PayPal

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

## **Intangible Assets**

The components of identifiable intangible assets are as follows:

		December 31, 2014						Decer	nber 3	1, 2013	
		Gross Carrying Amount	Accumula <u>Amortizat</u>		Net Carrying <u>Amount</u>	Weighted Average Useful Life (Years) (In millions,	Gross Carrying Amount except years)	Accumulat <u>Amortizati</u>		Net Carrying Amount	Weighted Average Useful Life (Years)
In	tangible assets:										
	Customer lists and user base	\$ 520	\$ (477	)	\$ 43	6	\$ 520	\$ (460	)	\$ 60	6
	Marketing related	181	(117	)	64	5	208	(83	)	125	6
	Developed technologies	167	(153	)	14	3	169	(136	)	33	3
	All other	105	(70	)	35	4	101	(61	)	40	4
	Intangible assets, net	\$ 973	\$ (817	)	\$ 156		\$ 998	\$ (740	)	\$ 258	

All identifiable intangible assets are subject to amortization and no significant residual value is estimated for the intangible assets. Amortization expense for intangible assets was \$84 million, \$70 million and \$67 million for the years ended December 31, 2014, 2013 and 2012, respectively.

Expected future intangible asset amortization as of December 31, 2014 is as follows (in millions):

Fiscal years:	
Fiscal years: 2015	\$70
2016 2017	57
2017	13
2018 2019	13
2019	3
Thereafter:	-
	\$156

#### **Note 4-Investments**

At December 31, 2014 and 2013, the estimated fair value of our short-term and long-term investments classified as available for sale, are as follows:

		Decembe	r 31, 2014	
	Gross Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
		(In m	illions)	
term investments:				
ne Deposits	\$ 29	\$ -	\$ -	\$ 29

PayPal
NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

	December 31, 2013				
	Gross Amortized Cost	Gross Unrealized <u>Gains</u> (In m	Gross Unrealized Losses illions)	Estimated Fair Value	
Short-term investments:					
Corporate debt securities	\$ 321	\$ -	\$ -	\$ 321	
Long-term investments:					
Corporate debt securities	\$ 50	_	\$ -	\$ 50	

We had no material short-term and long-term investments that have been in a continuous unrealized loss position for greater than 12 months as of December 31, 2014 and 2013. Amounts reclassified to earnings from unrealized gains and losses were not material in 2014 and 2013.

### **Equity and Cost Method Investments**

We have made multiple equity and cost method investments which are reported in long-term investments on our combined balance sheet. As of December 31, 2014 and 2013, our equity and cost method investments totaled \$31 million and \$146 million, respectively. During 2014, we entered an agreement to dissolve a joint venture. As a result of the termination, we recorded an other-than-temporary impairment loss in our investment in the joint venture. Further, as part of the termination agreement, our obligation to contribute a portion of our business was terminated. This termination resulted in a reduction of our recognized liability related to this obligation. The impact of impairing our investment and de-recognizing the corresponding obligation to the joint venture was recorded as other income and expense and was not material to our results.

#### Note 5-Fair Value Measurement of Assets and Liabilities

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis as of December 31, 2014 and 2013:

<u>Description</u>	Balances at December 31, 2014	Quoted Prices in Active Markets for Identical Assets (Level 1) (In millions)	Significant Other Observable Inputs (Level 2)
Assets:			
Cash and cash equivalents	\$ 2,201	\$ 2,201	\$ -
Short-term investments:			
Time deposits	29		29
Total short-term investments	29	-	29
Funds receivable and customer accounts	4,161	_	4,161
Derivatives	135	-	135
Total financial assets	\$ 6,526	\$ 2,201	\$ 4,325
Liabilities:			
Derivatives	\$ 7	\$ -	\$ 7

PayPal
NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

<u>Description</u>	Balances at December 31, 2013	Quoted Prices in Active Markets for Identical Assets (Level 1) (In millions)	Significant Other Observable Inputs (Level 2)
Assets:			
Cash and cash equivalents	\$ 1,604	\$ 1,594	\$ 10
Short-term investments:			
Corporate debt securities	321		321
Total short-term investments	321		321
Funds receivable and customer accounts	3,587		3,587
Derivatives	28	-	28
Long-term investments:			
Corporate debt securities	50		50
Total long-term investments	50		50
Total financial assets	\$ 5,590	\$ 1,594	\$ 3,996
Liabilities:			
Derivatives	\$ 120	\$ -	\$ 120

Our financial assets and liabilities are valued using market prices on both active markets (level 1) and less active markets (level 2). Level 1 instrument valuations are obtained from real-time quotes for transactions in active exchange markets involving identical assets. Level 2 instrument valuations are obtained from readily available pricing sources for comparable instruments, identical instruments in less active markets, or models using market observable inputs. The majority of our derivative instruments are valued using pricing models that take into account the contract terms as well as multiple inputs where applicable, such as equity prices, interest rate yield curves, option volatility and currency rates. Our derivative instruments are primarily short-term in nature, generally one month to one year in duration. Certain foreign currency contracts designated as cash flow hedges may have a duration of up to 18 months. We did not have any transfers of financial instruments between valuation levels during 2014 or 2013. As of December 31, 2014 and 2013 we did not have any assets or liabilities requiring measurement at fair value without observable market values that would require a high level of judgment to determine fair value (Level 3).

Cash and cash equivalents are short-term, highly liquid investments with original or remaining maturities of three months or less when purchased and are comprised primarily of bank deposits and commercial paper. We had total funds receivable and customer accounts of \$10.6 billion and \$9.3 billion as of December 31, 2014 and 2013, respectively, of which \$4.2 billion and \$3.6 billion, respectively, was invested primarily in short-term investments. We elect to account for certain customer accounts, including foreign-currency denominated available-for-sale investments, under the fair value option. Election of the fair value option allows us to significantly reduce the accounting asymmetry that would otherwise arise when recognizing foreign exchange gains and losses relating to available-for-sale investments and the corresponding customer liabilities.

Our derivative instruments are valued using pricing models that take into account the contract terms as well as multiple inputs where applicable, such as equity prices, interest rate yield curves, option volatility, and currency rates. Our derivative instruments are primarily short-term in nature, and are one month to eighteen months in duration. We did not have any transfers of financial instruments between valuation levels during 2014 or 2013.

#### **PayPal**

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

#### **Note 6-Derivative Instruments**

#### **Summary of Derivative Instruments**

Our primary objective in holding derivatives is to reduce the volatility of earnings and cash flows associated with changes in foreign currency exchange rates. Our derivatives expose us to credit risk to the extent that our counterparties may be unable to meet the terms of the arrangement. We seek to mitigate such risk by limiting our counterparties to, and by spreading the risk across, major financial institutions. In addition, the potential risk of loss with any one counterparty resulting from this type of credit risk is monitored on an ongoing basis.

#### **Foreign Exchange Contracts**

We transact business in various foreign currencies and have significant international revenues as well as costs denominated in foreign currencies, which subjects us to foreign currency risk. We use foreign currency exchange contracts, generally with maturities of 18 months or less, to reduce the volatility of cash flows primarily related to forecasted revenues, expenses, assets and liabilities denominated in foreign currencies. The objective of the foreign exchange contracts is to help mitigate the risk that the U.S. dollar-equivalent cash flows are not adversely affected by changes in the applicable U.S. dollar/foreign currency exchange rate. For derivative instruments that are designated as cash flow hedges, the effective portion of the derivative's gain or loss is initially reported as a component of accumulated other comprehensive income (loss) and subsequently reclassified into earnings in the same period the forecasted transaction affects earnings. The ineffective portion of the unrealized gains and losses on these contracts, if any, is recorded immediately in earnings. We evaluate the effectiveness of our foreign exchange contracts on a quarterly basis. We do not use any foreign exchange contracts for trading purposes.

For our derivative instruments designated as cash flow hedges, the amounts recognized in earnings related to the ineffective portion were not material in each of the periods presented, and we did not exclude any component of the changes in fair value of the derivative instruments from the assessment of hedge effectiveness. As of December 31, 2014, we estimated that \$113 million of net derivative gains related to our cash flow hedges included in accumulated other comprehensive income will be reclassified into earnings within the next 12 months.

#### **Fair Value of Derivative Contracts**

The fair value of our outstanding derivative instruments as of December 31, 2014 and 2013 was as follows:

	<b>Balance Sheet Location</b>	December 31, 2014	December 31, 2013
		(In m	illions)
Derivative Assets:			
Foreign exchange contracts designated as cash flow hedges	Other Current Assets	\$ 128	\$ 15
Foreign exchange contracts not designated as hedging			
instruments	Other Current Assets	7	13
Total derivative assets		\$ 135	\$ 28
Derivative Liabilities:			
Foreign exchange contracts designated as cash flow hedges	Other Current Liabilities	\$ 2	\$ 106
Foreign exchange contracts not designated as hedging			
instruments	Other Current Liabilities	5	14
Total derivative liabilities		\$ 7	\$ 120
Total fair value of derivative instruments		\$ 128	<u>\$ (92)</u>

#### **PayPal**

# NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

Under the master netting agreements with the respective counterparties to our foreign exchange contracts, subject to applicable requirements, we are allowed to net settle transactions of the same type with a single net amount payable by one party to the other. However, we have elected to present the derivative assets and derivative liabilities on a gross basis in our balance sheet. As of December 31, 2014, the potential effect of rights of set-off associated with the above foreign exchange contracts would be an offset to both assets and liabilities by \$6 million, resulting in net derivative assets of \$129 million and net derivative liabilities of \$1 million. We are not required to pledge, nor are we entitled to receive cash collateral related to these derivative transactions.

## **Effect of Derivative Contracts on Accumulated Other Comprehensive Income**

The following tables summarize the activity of derivative contracts that qualify for hedge accounting as of December 31, 2014 and 2013, and the impact of designated derivative instruments on accumulated other comprehensive income for the years ended December 31, 2014 and 2013:

December 31, 2013	Amount of gain (loss) recognized in other comprehensive income (effective portion) (In mi	reclassified from accumulated other comprehensive income to net revenue (effective portion)	December 31, 2014
<u>\$ (91)</u>	181	(36 )	\$ 126
December 31, 	Amount of gain (loss) recognized in other comprehensive income (effective portion) (In mi	Amount of gain (loss) reclassified from accumulated other comprehensive income to net revenue (effective portion)	December 31, 2013
<b>\$</b> (46 )	(49 )	(4 )	\$ (91 )
	2013 \$ (91 ) December 31, 2012	December 31, 2013  Solution  Solutio	Amount of gain (loss) recognized in other comprehensive income (effective portion)  Solution  Solution  Amount of gain (loss) recognized in other comprehensive income (effective portion)  (In millions)  Amount of gain (loss) reclassified from accumulated other comprehensive income to net revenue (effective portion)  Amount of gain (loss) reclassified from accumulated other comprehensive income to net revenue (effective portion)  (In millions)

#### Effect of Derivative Contracts on Combined Statements of Income

The following table provides the location in the financial statements of the recognized gains or losses related to our derivative instruments:

Year Ended December 31,			
2014 2013		2012	
	(In millions)		
\$ (36 )	\$ (4 )	\$ 44	
(2)	3	2	
\$ (38 )	\$ (1 )	\$ 46	
	\$ (36 ) (2 )	2014 2013 (In millions) \$ (36 ) \$ (4 ) (2 ) 3	

#### **Notional Amounts of Derivative Contracts**

Derivative transactions are measured in terms of the notional amount, but this amount is not recorded on the balance sheet and is not, when viewed in isolation, a meaningful measure of the risk profile of the derivative

#### **PayPal**

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

instruments. The notional amount is generally not exchanged, but is used only as the basis on which the value of foreign exchange payments under these contracts is determined. The following table provides the notional amounts of our outstanding derivatives:

	December 31,	
	2014	2013
	(In mi	illions)
Foreign exchange contracts designated as cash flow hedges	\$1,598	\$1,963
Foreign exchange contracts not designated as hedging instruments	642	933
Total	\$2,240	\$2,896

## Note 7-Property and Equipment, Net

	As of Dec	ember 31,
	2014	2013
	(In mi	llions)
Property and equipment, net:		
Computer equipment, software & website development costs	\$2,278	\$1,920
Land and buildings, including building improvements	162	162
Leasehold improvements	186	166
Furniture and fixtures	72	63
Development in progress and other	164	92
	2,862	2,403
Accumulated depreciation	(1,940)	(1,545)
	\$922	\$858

Depreciation expense was \$432 million in 2014, \$383 million in 2013 and \$315 million in 2012.

#### Note 8-Loans and Interest Receivable, Net

Loans and interest receivable primarily represent consumer receivables originated under PayPal Credit consumer accounts. The majority of the loans on these accounts are originated by a partner chartered financial institutions in the U.S. and are made to individual consumers in the U.S. using PayPal Credit as a payment method. In the United Kingdom, the loans on PayPal Credit consumer accounts are currently originated by our Luxembourg bank subsidiary. Although a partner chartered financial institution continues to own each PayPal Credit consumer accounts in the U.S., we own the related consumer receivable and are responsible for all servicing functions related to the customer accounts. In August 2013, ownership of substantially all of the existing customer accounts in the U.S. was transitioned from one partner chartered financial institution to a new partner chartered financial institution. As of Q4 2014, this new partner financial institution owns all of the existing PayPal Credit consumer accounts in the U.S. As part of the arrangement with this new chartered financial institution, we sell a participation interest in the entire pool of consumer receivables outstanding associated with the PayPal Credit consumer accounts to this partner financial institution. We do not sell a participating interest in loans on international PayPal Credit consumer accounts issued directly by our Luxembourg bank subsidiary.

During 2014 and 2013, we purchased approximately \$5.3 billion and \$4.1 billion, respectively, in consumer receivables. As of December 31, 2014 and 2013, the total outstanding balance of this pool of consumer

#### **PayPal**

# NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

receivables was \$3.7 billion, and \$2.9 billion, respectively, of which we sold a participation interest to the new chartered financial institution of \$163 million or 4.4% and \$65 million or 2.2%, respectively. The chartered financial institution has no recourse related to its participation interest for failure of debtors to pay when due. The participation interest held by the charted financial institution has the same priority to the interests held by us and is subject to the same credit, prepayment, and interest rate risk associated with this pool of consumer receivables.

Loans and interest receivable are reported at their outstanding principal balances, net of participation interest sold and pro-rata allowances, including unamortized deferred origination costs and estimated collectible interest and fees. We use a consumer's FICO score, among other measures, in evaluating the credit quality of our consumer receivables. A FICO score is a type of credit score that lenders use to assess an applicant's credit risk and whether to extend credit. Individual FICO scores generally are obtained each quarter the consumer has an outstanding consumer receivable owned by PayPal Credit. The weighted average consumer FICO score related to our loans and interest receivable balance outstanding at December 31, 2014 was 687 compared to 688 at December 31, 2013.

The following table presents the principal amount of loans and interest receivable segmented by a FICO score range:

	As of Deco	ember 31,
	2014	2013
	(In mi	
> 760	\$553	\$454
680-759	1,439	1,139
600-679	1,344	1,057
< 599	341	265
Total	\$3,677	\$2,915

The following tables presents the delinquency status of the principal amount of loans and interest receivable:

			December 31, 2014			
			(In millions)			
<u>Current</u> 3,303	30-59 Days <u>Past Due</u> 163	60-89 Days Past Due	90-180 Days Past Due 149	Total Past Due 374	Total Financing Receivables 3,677	Recorded Investment > 90 Days and Accruing 149
Current 2,612	30-59 Days  Past Due  143	60-89 Days Past Due 47	December 31, 2013 (In millions)  90-180 Days Past Due  113	Total Past Due 303	Total Principal Loan Receivable 2,915	Recorded Investment > 90 Days and Accruing 113

#### **PayPal**

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

The following table summarizes the activity in the allowance for loans and interest receivable:

	2014	2013
	(In mil	llions)
Balance as of January 1	\$146	\$101
Charge-offs Charge-offs	(297)	(232)
Recoveries	28	14
Provisions	318	263
Balance as of December 31	\$195	\$146

During 2013, we launched a program working with a chartered financial institution to offer working capital advances to select merchant sellers in the U.S. We subsequently purchase the related merchant receivable from the chartered financial institution. Under the program, participating merchants can borrow a certain percentage of their annual payment volume processed by PayPal and are charged a fixed fee for the loan. In 2014, we have extended this program to a limited number of international markets whereby we grant working capital advances to merchants directly through our Luxembourg bank subsidiary or through other PayPal affiliates. The total net receivable outstanding as of December 31, 2014 and 2013 was approximately \$99 million and \$17 million, respectively.

## Note 9-Segment and Geographical Information

We determine operating segments based on how our chief operating decision maker manages the business, including making operating decisions, deciding how to allocate resources and evaluating operating performance. Our chief operating decision-maker is our Chief Executive Officer who reviews our operating results on a consolidated basis. We operate in one segment and have one reportable segment.

The following tables summarize the allocation of net revenues and long-lived assets based on geography:

	Year	Year Ended December 31,		
	2014	2013 (In millions)	2012	
Net revenues:				
U.S.	\$3,877	\$3,240	\$2,763	
United Kingdom	1,155	949	789	
Rest of world	2,993	2,538	2,110	
Total net revenues	\$8,025	\$6,727	\$5,662	

Voor Ended December 21

	Decem	December 31,	
	2014	2013	
	(In mi	(In millions)	
Long-lived assets:			
U.S.	\$3,784	\$3,820	
International	401	380	
Total long-lived assets	\$4,185	\$4,200	

Net revenues are attributed to U.S. and international geographies primarily based upon the country in which the merchant is located, or in the case of a cross border transaction, may be earned from both countries in which the

#### **PayPal**

## NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

consumer and merchant each reside. Net revenues earned from value added services are typically attributed to the country in which either the consumer or the merchant reside. Long-lived assets attributed to the U.S. and international geographies are based upon the country in which the asset is located or owned.

Information regarding net revenues by major products and services for 2014, 2013 and 2012, is as follows:

	Year Ended December 31,		
	2014	2013	2012
		(In millions)	
Transaction revenues	\$7,107	\$5,992	\$5,028
Other value added services:	918	735	634
Total net revenues	\$8,025	\$6,727	\$5,662

#### Note 10-Commitments and Contingencies

#### **Commitments**

As of December 31, 2014, approximately \$20.2 billion of unused credit was available to PayPal Credit account holders. While this amount represents the total unused credit available, we have not experienced, and do not anticipate, that all of our PayPal Credit account holders will access their entire available credit at any given point in time. In addition, the individual lines of credit that make up this unused credit are subject to periodic review and termination by the chartered financial institutions that are the issuer of PayPal Credit products based on, among other things, account usage and customer creditworthiness.

In June 2014, we agreed, subject to certain conditions, that we, one of our affiliates or a third party partner will purchase a portfolio of consumer loan receivables relating to the customer accounts arising out of our current credit program agreement with Synchrony (formerly GE Capital Retail Bank) for a price based on the book value of the consumer loan receivables portfolio at the time of the purchase (expected to be fourth quarter of 2016), subject to certain adjustments and exclusions. As of December 31, 2014, Synchrony had a net receivables portfolio under the credit program agreement of approximately \$1.5 billion.

## Lease Arrangements

We have lease obligations under certain noncancelable operating leases. Future minimum rental payments under noncancelable operating leases at December 31, 2014, are as follows:

	Operating Leases (In millions)
2015	\$ 33
2016	31
2017	28
2018	26
2019	17
Thereafter	24
Total minimum lease payments	\$ 159

Rent expense for the years ended December 31, 2014, 2013 and 2012 totaled \$43 million, \$44 million and \$39 million, respectively. The future minimum lease payments include the minimum commitments for facilities occupied by PayPal.

#### PayPal

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

#### Litigation and Regulatory Matters

Overview

We are involved in legal and regulatory proceedings on an ongoing basis. Many of these proceedings are in early stages, and may seek an indeterminate amount of damages. If we believe that a loss arising from such matters is probable and can be reasonably estimated, we accrue the estimated liability in our financial statements. If only a range of estimated losses can be determined, we accrue an amount within the range that, in our judgment, reflects the most likely outcome; if none of the estimates within that range is a better estimate than any other amount, we accrue the low end of the range. For those proceedings in which an unfavorable outcome is reasonably possible but not probable, we have disclosed an estimate of the reasonably possible loss or range of losses or we have concluded that an estimate of the reasonably possible loss or range arising directly from the proceeding (i.e., monetary damages or amounts paid in judgment or settlement) are not material. If we cannot estimate the probable or reasonably possible loss or range of losses arising from a legal proceeding, we have disclosed that fact. In assessing the materiality of a legal proceeding, we evaluate, among other factors, the amount of monetary damages claimed, as well as the potential impact of non-monetary remedies sought by plaintiffs (e.g., injunctive relief) that may require us to change our business practices in a manner that could have a material adverse impact on our business. With respect to the matters disclosed in this Note 10, we are unable to estimate the possible loss or range of losses that could potentially result from the application of such non-monetary remedies.

Amounts accrued for legal and regulatory proceedings for which we believe a loss is probable were not material for the year ended December 31, 2014. Except as otherwise noted for the proceedings described in this Note 10, we have concluded, based on currently available information, that reasonably possible losses arising directly from the proceedings (i.e., monetary damages or amounts paid in judgment or settlement) in excess of our recorded accruals are also not material. However, legal and regulatory proceedings are inherently unpredictable and subject to significant uncertainties. If one or more matters were resolved against us in a reporting period for amounts in excess of management's expectations, the impact on our operating results or financial condition for that reporting period could be material.

### **Regulatory Proceedings**

We routinely report to the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") on payments we have rejected or blocked pursuant to OFAC sanctions regulations and on any possible violations of those regulations. We have cooperated with OFAC in recent years regarding our review process over transaction monitoring and have self-reported a large number of small dollar amount transactions that could possibly be in violation of OFAC sanctions regulations. Beginning in September 2014, we have engaged in settlement discussions with OFAC regarding the possible violations arising from our practices between 2009 and 2013 as a result of which we have accrued reserves we believe are adequate to cover any findings of violation. In addition, we continue to cooperate with OFAC regarding more recent self-reported transactions that could also possibly be in violation of OFAC sanctions regulations. Such self-reported transactions could result in claims or actions against us including litigation, injunctions, damage awards or require us to change our business practices that could result in a material loss, require significant management time, result in the diversion of significant operational resources or otherwise harm our business.

On August 7, 2013 and January 13, 2014, eBay, PayPal and certain wholly owned subsidiaries of PayPal received Civil Investigative Demands ("CIDs") from the Consumer Financial Protection Bureau ("CFPB") requesting that we provide testimony, produce documents and provide information relating primarily to the acquisition, management, and operation of our PayPal Credit products, including online credit products and services, advertising, loan origination, customer acquisition, servicing, debt collection, and complaints handling

#### PayPal

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

practices. The CIDs could lead to an enforcement action and/or one or more significant consent orders, which may result in substantial costs, including legal fees, fines, penalties and remediation expenses. We are cooperating with the CFPB in connection with the CIDs and exploring whether we may be able to resolve these inquiries. Resolution of these inquiries could require us to make monetary payments to certain customers, pay fines and/or change the manner in which we operate the PayPal Credit products, which could adversely affect our financial results and results of operations.

#### **General Matters**

Other third parties have from time to time claimed, and others may claim in the future, that we have infringed their intellectual property rights. We are subject to patent disputes, and expect that we will increasingly be subject to additional patent infringement claims involving various aspects of our business as our products and services continue to expand in scope and complexity. Such claims may be brought directly or indirectly against our companies and/or against our customers (who may be entitled to contractual indemnification under their contracts with us), and we are subject to increased exposure to such claims as a result of our recent acquisitions, particularly in cases where we are entering into new lines of business in connection with such acquisitions. We have in the past been forced to litigate such claims, and we believe that additional lawsuits alleging such claims will be filed against us. Intellectual property claims, whether meritorious or not, are time consuming and costly to defend and resolve, could require expensive changes in our methods of doing business or could require us to enter into costly royalty or licensing agreements on unfavorable terms.

From time to time, we are involved in other disputes or regulatory inquiries that arise in the ordinary course of business, including suits by our customers (individually or as class actions) alleging, among other things, improper disclosure of our prices, rules or policies, that our practices, prices, rules, policies or customer/user agreements violate applicable law or that we have acted unfairly and/or not acted in conformity with such prices, rules, policies or agreements. In addition to these types of disputes and regulatory inquiries, our operations are also subject to regulatory and/or legal review and/or challenges that tend to reflect the increasing global regulatory focus to which the payments industry is subject and, when taken as a whole with other regulatory and legislative action, such actions could result in the imposition of costly new compliance burdens on our business and customers and may lead to increased costs and decreased transaction volume and revenue. Further, the number and significance of these disputes and inquiries are increasing as our company has grown larger, our business has expanded in scope (both in terms of the range of products and services that we offer and our geographical operations) and our products and services have increased in complexity. Any claims or regulatory actions against us, whether meritorious or not, could be time consuming, result in costly litigation, damage awards (including statutory damages for certain causes of action in certain jurisdictions), injunctive relief or increased costs of doing business through adverse judgment or settlement, require us to change our business practices in expensive ways, require significant amounts of management time, result in the diversion of significant operational resources or otherwise harm our business.

#### **Indemnification Provisions**

In the ordinary course of business, we include limited indemnification provisions in certain of our agreements with parties with whom we have commercial relations, including our standard marketing, promotions, and application-programming-interface license agreements. Under these contracts, we generally indemnify, hold harmless, and agree to reimburse the indemnified party for losses suffered or incurred by the indemnified party in connection with claims by any third party with respect to our domain names, trademarks, logos, and other branding elements to the extent that such marks are applicable to our performance under the subject agreement. In a limited number of agreements, we have provided an indemnity for other types of third-party claims, which

#### PayPal

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

are indemnities mainly related to intellectual property rights. We have also provided an indemnity to our payments processors in the event of certain third-party claims or card association fines against the processor arising out of conduct by us or our customers. It is not possible to determine the maximum potential loss under these indemnification provisions due to our limited history of prior indemnification claims and the unique facts and circumstances involved in each particular provision. To date, no significant costs have been incurred, either individually or collectively, in connection with our indemnification provisions.

#### **Off-Balance Sheet Arrangements**

As of December 31, 2014 and 2013, we had no off-balance sheet arrangements that have, or are reasonably likely to have, a current or future material effect on our combined financial condition, results of operations, liquidity, capital expenditures or capital resources.

eBay Inc. has a cash pooling arrangement with a financial institution for cash management purposes. We participate in this arrangement, which allows for cash withdrawals from this financial institution based upon eBay's aggregate operating cash balances within the same financial institution ("Aggregate Cash Deposits"). This arrangement also allows eBay to withdraw amounts exceeding the Aggregate Cash Deposits up to an agreed-upon limit. The net balance of the withdrawals and the Aggregate Cash Deposits is used by the financial institution as a basis for calculating eBay's net interest expense or income. As of December 31, 2014, we had \$1.6 billion relating to cash held in this pooling arrangement.

### **Note 11-Related Party Transactions**

In August 2009, we entered into a two-way Cash Management and Zero Balance Cash Sharing Agreement ("Cash Sharing Agreement") with eBay in which our excess U.S. funds are swept to eBay on a daily basis. The main purpose of the Cash Sharing Agreement is to implement a centralized cash management structure to effectively manage U.S. Dollar cash, to leverage administrative efficiencies, and to centralize the investment/borrowing of cash and settlement of payables and receivables at the eBay level. Since the Cash Sharing Agreement is two-way, we can receive funds back from eBay as needed. The rate earned on funds lent to eBay is the average daily LIBOR USD 1-month rate plus 20 basis points. The balance due from eBay and reported in notes and receivable from affiliates in our combined balance sheet was \$559 million and \$178 million at December 31, 2014 and 2013, respectively. Interest income earned on the arrangement was reported in other income (expense), net but was not material in any period presented.

In November 2008, we entered into an intercompany loan agreement with eBay in which the acquisition of receivables related to PayPal Credit accounts are funded through eBay's existing financing arrangements at an interest rate of 1.2% and 1.4% for December 31, 2014 and 2013, respectively. At December 31, 2014 and December 31, 2013, the loan balance included in notes and payable to affiliates in our combined balance sheet was \$809 million and \$850 million, respectively. The interest expense incurred during the year ended December 31, 2014, 2013 and 2012 was \$11 million, \$11 million and \$9 million respectively.

In May 2012, we entered into an intercompany loan agreement with eBay whereby we loaned eBay \$36 million at an interest rate of 0.6% per annum during the term of the loan. The loan was repaid on September, 2014. Interest income earned on the arrangement was reported in other income (expense), net but was not material in any period presented.

In September 2014, we entered into an intercompany loan agreement with eBay whereby we borrowed 130 million Brazilian Real for one year at an interest rate of 11% plus spread 0.5% per annum during the term of the loan. The loan is used to fund our installment payments product in Brazil. At December 31, 2014 the loan

#### **PayPal**

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

balance included in notes and payable to affiliates in our combined balance sheet was \$56 million. The interest expense incurred during the year ended December 31, 2014 was \$2 million and is included in other income (expense), net.

In September 2014, we entered into an intercompany loan agreement with eBay whereby we borrowed \$10 million from eBay for 6 months at an interest rate of 1.2% per annum. The loan is included in notes and payable to affiliates on our combined balance sheet in 2014. Interest income earned on the arrangement was reported in other income (expense), net but was not material in any period presented.

In October 2014, we entered into an intercompany loan agreement with eBay whereby we loaned eBay 580 million Indian Rupee for 6 months at an interest rate of 9.4% per annum. The balance due from eBay and reported in notes and receivable from affiliates in our combined balance sheet was \$9 million at December 31, 2014. Interest income earned on the arrangement was reported in other income (expense), net but was not material in the periods presented.

In December 2014, we entered into an intercompany loan agreement with eBay whereby we loaned eBay 500 million Indian Rupee for 6 months at an interest rate of 9.0% per annum. The balance due from eBay and reported in notes and receivable from affiliates in our combined balance sheet was \$8 million at December 31, 2014. Interest income earned on the arrangement was reported in other income (expense) but was not material during the periods presented.

All other contracts with related parties are at rates and terms that we believe are comparable with those that could be entered into with independent third parties. There were no other material related party transactions in the periods presented. As of December 31, 2014, there were no other material amounts payable to or amounts receivable from related parties. Post separation, we will no longer participate in cash management and intercompany funding arrangements with eBay.

Net revenues include \$113 million, \$92 million and \$84 million earned from eBay and its subsidiaries for the years ended December 31, 2014, 2013 and 2012, respectively.

We recover costs from eBay relating to customer protection programs offered on qualifying eBay purchases made with PayPal. These costs include the actual transaction losses associated with customer filed claims as well as an allocation of salary related expenses for customer support teams working on customer claims and disputes related to on eBay purchases. Recoveries associated with transaction losses incurred on eligible eBay purchases during the years ended December 31, 2014, 2013 and 2012 were \$43 million, \$48 million and \$36 million, respectively, which were recorded as a reduction to transaction and loan loss. Other costs recovered from eBay related to the customer protection program for the years ended December 31, 2014, 2013 and 2012, were \$22 million, \$19 million and \$17 million, respectively, and are included as a reduction to customer support and operations and general and administrative expenses in our combined statement of income.

We incur user acquisition fees from eBay on payment volume which we process from purchases made on eBay's platform. User acquisition fees for the years ended December 31, 2014, 2013 and 2012, were \$119 million, \$109 million, and \$95 million, respectively, and are included within sales and marketing.

These combined financial statements include expenses associated with workplace resources and information technology that were previously allocated to the Payments segment of eBay, and, additional expenses related to certain corporate functions, including senior management, legal, human resources and finance. These expenses also include allocations related to share based compensation. The expenses that have been allocated to us by eBay are based on direct usage or benefit where identifiable, with the remainder allocated on a pro rata basis of

#### **PayPal**

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

revenue, headcount, or other systematic measure. We consider the expense allocation methodology and results to be reasonable for all periods presented. The corporate costs and allocation of expenses to us from eBay included within customer support and operations, sales and marketing, product development, and general and administrative expenses were \$443 million, \$410 million and \$372 million for the years ended December 31, 2014, 2013 and 2012, respectively, of which \$207 million, \$183 million and \$168 million were included in general and administrative expenses.

#### Note 12-Stock-Based and Employee Savings Plans

#### **Equity Incentive Plans**

eBay has equity incentive plans under which it grants equity awards, including stock options, restricted stock units, performance-based restricted stock units and performance share units, to our directors, officers and employees. At December 31, 2014, eBay had 720 million shares authorized under its equity incentive plans and 52 million shares were available for future grant.

Stock options granted under these plans generally vest 12.5% six months from the date of grant (or 25% one year from the date of grant for grants to new employees) with the remainder vesting at a rate of 2.08% per month thereafter, and generally expire seven to ten years from the date of grant. The cost of stock options is determined using the Black-Scholes option pricing model on the date of grant.

Restricted stock units granted under eBay's equity incentive plans generally vest in equal annual installments over a period of three to five years, are subject to the employees' continuing service to us and do not have an expiration date. The cost of restricted stock units is determined using the fair value of eBay's common stock on the grant date.

Certain of our executives are eligible to receive performance-based restricted stock units. The number of restricted stock units ultimately received depends on eBay's business performance against specified performance targets set by the Compensation Committee. If the performance criteria are satisfied, the performance-based restricted stock units are granted, with one-half of the grant vesting in March following the end of the performance period and the remaining one-half vesting one year later.

### **Employee Stock Purchase Plan**

Prior to the distribution, eligible employees may participate in eBay's employee stock purchase plan. Under this plan, shares of eBay common stock may be purchased over an offering period with a maximum duration of two years at 85% of the lower of the fair market value on the first day of the applicable offering period or on the last day of the six-month purchase period. Employees may purchase shares having a value not exceeding 10% of their gross compensation during an offering period but not more than the statutory limitation of \$25,000 per year. The total shares of eBay common stock purchased for the years ended December 31, 2014, 2013, 2012 our employees purchased were approximately 1.5 million shares of eBay common stock at an average purchase price of \$42.16, 1.7 million shares at an average price of \$35.29, and 1.8 million shares at an average price of \$25.88, respectively.

#### **Employee Saving Plans**

eBay has a savings plan, which qualifies under Section 401(k) of the Code. Participating employees may contribute up to 50% of their eligible compensation, but not more than statutory limits. In 2014, 2013 and 2012, we contributed one dollar for each dollar a participant contributed, with a maximum contribution of 4% of each

#### **PayPal**

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

employee's salary, subject to a maximum employer contribution of, \$10,400, \$10,200 and \$10,000 respectively, per employee. Our non U.S. employees are covered by other savings plans. For the years ended December 31, 2014, 2013 and 2012, the matching contribution expense was approximately \$37 million, \$35 million and \$31 million, respectively.

### **Stock Option Activity**

The following table summarizes stock option activity of our employees under eBay's equity incentive plans as of and for the year ended December 31, 2014:

	Shares	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value
	(In t	thousands, except	t per share amounts :	and years)
Outstanding at January 1, 2014	4,274	\$25.97	-	_
Granted and assumed	592	\$54.59	_	_
Exercised	(1,848)	\$23.45	_	_
Forfeited/expired/canceled	(609)	\$38.42	_	_
Outstanding at December 31, 2014	2,409	\$33.33	4.53	\$ 55,055
Expected to vest	2,286	\$32.79	4.44	\$ 53,366
Options exercisable	1,332	\$29.58	3.35	\$ 35,358

The weighted average grant date fair value of options granted to our employees during the years 2014, 2013 and 2012 was \$13.38, \$14.90 and \$11.09 respectively. The aggregate intrinsic value was calculated as the difference between the exercise price of the underlying awards and the quoted price of eBay's common stock. During the years 2014, 2013 and 2012, the aggregate intrinsic value of options exercised under equity incentive plans was \$57 million, \$97 million and \$109 million, respectively, determined as of the date of option exercise. At December 31, 2014, 2.4 million options were in-the-money.

### Restricted Stock Units Activity and Performance Based Restricted Stock Units Activity

A summary of the status of restricted stock units granted to our employees (including performance-based restricted stock units that have been earned) under eBay's equity incentive plans as of December 31, 2014 and changes during the year ended December 31, 2014 are presented below:

	Units	Weighted Average Grant-Date Fair Value (per share)
	(In thousands, exc	ept per share amounts)
Outstanding at January 1, 2014	12,874	\$ 42.08
Awarded and assumed	9,125	\$ 54.50
Vested	(5,198)	\$ 41.45
Forfeited	(2,085)	\$ 48.24
Outstanding at December 31, 2014	14,716	\$ 51.10
Expected to vest at December 31, 2014	12.644	_

During the years 2014, 2013 and 2012, the aggregate intrinsic value of restricted stock units vested under equity incentive plans was \$292 million, \$303 million and \$242 million, respectively.

#### **PayPal**

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

#### **Stock-Based Compensation Expense**

We are charged by eBay for stock-based compensation expense related to our direct employees. eBay also charges us for the allocated costs of certain employees of eBay (including stock-based compensation) who provide general and administrative services on our behalf. Information included in this note is strictly limited to stock-based compensation associated with employees wholly dedicated to PayPal. See "Note 11–Related Party Transactions" for total costs allocated to us by eBay.

The impact on our results of operations of recording stock-based compensation expense for years ended December 31, 2014, 2013 and 2012 was as follows:

	Ye	Year Ended December 31,		
	2014	2014 2013		
	<u> </u>	(In millions)	<u></u> -	
Customer support and operations	\$ 63	\$ 74	\$ 49	
Sales and marketing	55	46	43	
Product development	109	87	60	
General and administrative	55	27	38	
Total stock-based compensation expense	\$ 282	\$ 234	\$ 190	

As of December 31, 2014, there was approximately \$511 million of unearned stock-based compensation estimated to be expensed from 2015 through 2018. If there are any modifications or cancellations of the underlying unvested awards, we may be required to accelerate, increase or cancel all or a portion of the remaining unearned stock-based compensation expense. Future unearned stock-based compensation will increase to the extent we grant additional equity awards, change the mix of grants between stock options and restricted stock units or assume unvested equity awards in connection with acquisitions. Total stock-based compensation costs included in capitalized software costs was \$10 million, \$10 million, and \$12 million, respectively, for the years ended December 31, 2014, 2013, and 2012.

### **Stock Option Valuation Assumptions**

We calculated the fair value of each option award on the date of grant using the Black-Scholes option pricing model. The following weighted average assumptions were used for the years ended December 31, 2014, 2013 and 2012:

	Year E	Year Ended December 31,			
	2014	2013	2012		
Risk-free interest rate	1.2 %	0.6 %	0.7 %		
Expected life (in years)	4.1	4.1	4.0		
Dividend yield	- %	- %	- %		
Expected volatility	29 %	34 %	38 %		

Our computation of expected volatility was based on a combination of historical and market-based implied volatility from traded options on eBay's stock. The computation of expected life was determined based on historical experience of similar awards, giving consideration to the contractual terms of the stock-based awards, vesting schedules, and expectations of future employee behavior. The interest rate for periods within the contractual life of the award is based on the U.S. Treasury yield curve in effect at the time of grant.

#### **PayPal**

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

#### Note 13-Income Taxes

We are a member of the eBay consolidated group and our U.S. taxable income is included in the consolidated U.S. federal income tax return of eBay as well as in returns filed by eBay with certain state and local taxing jurisdictions. Our foreign income tax returns are filed on a separate company basis. Our income tax liability has been computed and presented herein under the "separate return method," as if we were a separate tax paying entity, as modified by the benefits-for-loss approach. Accordingly, the operating losses and other tax attributes are characterized as utilized when those attributes have been utilized by other members of the eBay consolidated group; however, the benefits-for-loss approach does not impact our tax expense. Federal and state income taxes incurred are remitted to eBay pursuant to a tax sharing agreement between the companies.

The components of pretax income (loss) are as follows (in millions):

Year	Year Ended December 31,		
2014	2013	2012	
\$(111)	\$3	\$ 12	
1,372	1,081	879	
\$1,261_	\$1,084	\$ 891	
	2014 \$(111 ) 1,372	2014     2013       \$(111)     \$3       1,372     1,081       \$1,261     \$1,084	

The provision for income taxes is composed of the following (in millions):

	Yea	Year Ended December 31,			
	2014	2013	2012		
Current:					
Federal	\$ 90	\$ 45	\$ 23		
State and local	13	2	_		
Foreign	_ 59	30	44		
	\$ 162	\$ 77	\$ 67		
Deferred:					
Federal	\$ 699	\$ 72	\$ 45		
State and local	(3)	(3)	2		
Foreign	(16)	(17)	(1)		
	680	52	46		
	\$ 842	\$ 129	\$ 113		

### **PayPal**

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

The difference between the actual provision for income taxes and the provision computed by applying the federal statutory rate of 35% to income before income taxes is primarily the result of foreign income taxed at different rates and the accrual of U.S. income tax on undistributed foreign profits previously reinvested indefinitely. The following is a reconciliation of the difference between the actual provision for income taxes and the provision computed by applying the federal statutory rate.

	Year Ended December 31,			_		
	2014		2013		2012	
Provision computed at federal statutory rate	35.0	%	35.0	%	35.0	%
State taxes, net of federal benefit	0.8	%	(0.1)	)%	0.3	%
Foreign income taxed at different rates	(22.2	)%	(22.6	)%	(23.1	)%
Prior year foreign earnings no longer considered indefinitely reinvested	50.8	%	_	%	_	%
Stock based compensation	1.5	%	1.1	%	(0.4	)%
Tax credits	(0.8)	)%	(1.3	)%	0.1	%
Change in valuation allowances	-	%	(0.3)	)%	-	%
Other	1.7	%	0.1	%	0.8	%
Effective income tax rate	66.8	%	11.9	%	12.7	%

Deferred tax assets and liabilities are recognized for the future tax consequences of differences between the carrying amounts of assets and liabilities and their respective tax bases using enacted tax rates in effect for the year in which the differences are expected to reverse. Significant deferred tax assets and liabilities consist of the following (in millions):

	Decemb	oer 31,
	2014	2013
Deferred tax assets:		
Net operating loss and credit carryforwards	\$42	\$ 76
Accruals and allowances	138	102
Stock-based compensation	60	45
Net unrealized (gains) losses	8	3
Total deferred tax assets	248	226
Valuation allowance	(8 )	(8)
Net deferred tax assets	<u>\$240</u>	\$ 218
Deferred tax liabilities:		
Unremitted foreign earnings	\$(886)	\$ (143)
Fixed assets and other intangibles	(141 )	(129)
Acquired intangibles	(53)	(94)
Net unrealized losses (gains)	(1 )	(5)
Total deferred tax liabilities	(1,081)	(371)
Net deferred tax assets (liabilities)	<u>\$(841</u> )	\$(153)

As of December 31, 2014 and 2013, current deferred tax assets of \$2 million and \$24 million, respectively, are included as a component of other current assets in our combined balance sheet. As of December 31, 2014 and 2013, long-term deferred tax assets of \$10 million and \$7 million, respectively, are included as a component of other assets.

#### PayPal

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

As of December 31, 2014, a current deferred tax liability of \$708 million is included as a component of accrued expenses and other current liabilities. As of December 31, 2014 and 2013, long-term deferred tax liabilities of \$145 million and \$184 million, respectively, are included as a component of long-term liabilities on our combined balance sheet. The current and long-term deferred tax assets and current and long-term deferred tax liabilities were not netted since these items relate to different tax jurisdictions.

As of December 31, 2014, our federal, state and foreign net operating loss carryforwards for income tax purposes were approximately \$18 million, \$251 million, and \$33 million, respectively. The federal and state net operating loss carryforwards are subject to various limitations under Section 382 of the Code. If not utilized, the federal net operating loss carryforwards will begin to expire in 2018, and the state net operating loss carryforwards will begin to expire in 2015. As of December 31, 2014, our federal and state tax credit carryforwards for income tax purposes were approximately \$1 million and \$26 million, respectively. If not utilized, the federal tax credit carryforwards will begin to expire in 2027, and most of the state tax credits carry forward indefinitely.

At December 31, 2014 and 2013, we maintained a valuation allowance with respect to certain of our deferred tax assets relating primarily to operating losses in certain states that we believe are not likely to be realized.

As of December 31, 2013, we had approximately \$3.4 billion of indefinitely reinvested foreign earnings for which we had not provided U.S. income or applicable foreign withholding taxes. During the first quarter of 2014, we altered our capital allocation strategy, which included changing our intent with regard to the indefinite reinvestment of foreign earnings from certain of our foreign subsidiaries for 2013 and prior years. Accordingly, during the first quarter we determined that a portion of these foreign earnings are no longer considered indefinitely reinvested in our international operations. In connection with this change in our capital allocation strategy during the first quarter of 2014, we provided for U.S. income and applicable foreign withholding taxes on \$1.9 billion of undistributed foreign earnings of certain of our foreign subsidiaries for 2013 and prior years, and recorded a deferred tax liability of approximately \$650 million. The remaining undistributed foreign earnings of approximately \$1.5 billion for 2013 and prior years remains indefinitely reinvested in our international operations.

This change reflected our objective of increasing our available U.S. cash, preserving our credit rating and, providing greater liquidity to meet our other cash needs in the U.S., which may include, among other things and subject to market conditions and other uncertainties, merger and acquisition activity.

We have not provided for U.S. federal income and foreign withholding taxes on \$2.3 billion of our non-U.S. subsidiaries' undistributed earnings as of December 31, 2014, because such earnings are intended to be indefinitely reinvested in our international operations. We do not know the time or manner in which we would repatriate those funds. Because the time or manner of repatriation is uncertain, we cannot determine the impact of local taxes, withholding taxes and foreign tax credits associated with the future repatriation of such earnings and therefore cannot quantify the tax liability. In cases where we intend not to indefinitely reinvest a portion of our foreign subsidiaries' undistributed earnings, we provide U.S. taxes on such earnings and such taxes are included in deferred taxes or tax payable liabilities depending upon the planned timing and manner of such repatriation.

We benefit from tax rulings concluded in several different jurisdictions, most significantly Singapore and Luxembourg. These rulings provide for significantly lower rates of taxation on certain classes of income and require various thresholds of investment and employment in those jurisdictions. We evaluate compliance with our tax ruling agreements annually. These rulings resulted in tax savings of approximately \$217 million, \$211 million and \$139 million in 2014, 2013 and 2012, respectively. These tax rulings are in effect currently and expire over periods ranging from 2020 to 2021.

#### PavPal

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

The following table reflects changes in unrecognized tax benefits since January 1, 2012:

	Year Ended December 31,		
	2014	2013 (In millions)	2012
Gross amounts of unrecognized tax benefits as of the beginning of the period	\$ 134	\$ 148	\$ 129
Increases related to prior period tax positions	7	20	7
Decreases related to prior period tax positions	(2)	(44)	(2)
Increases related to current period tax positions	31	10	14
Settlements	_ (5)		
Gross amounts of unrecognized tax benefits as of the end of the period	\$ 165	\$ 134	\$ 148

During 2014, we increased our reserves by \$38 million for various issues that related to tax examination risks assessed during the year. In addition, we reduced our reserves by \$7 million based on audit findings and settlement of multiple uncertain tax positions. If the remaining balance of unrecognized tax benefits were realized in a future period, it would result in a tax benefit of \$138 million.

During all years presented, we recognized interest and penalties related to uncertain tax positions in income tax expense. In 2014, we recognized interest and penalties of \$10 million in income tax expense. The amount of interest and penalties accrued as of December 31, 2014 and 2013 was approximately \$36 million and \$27 million, respectively.

We are subject to taxation in the U.S. and various states and foreign jurisdictions. We are under examination by certain tax authorities for the 2003 to 2012 tax years. The material jurisdictions in which we are subject to examination by tax authorities for tax years after 2002 primarily include the U.S. (Federal and California), UK, Canada, France, India, Singapore and Israel. We believe that adequate amounts have been reserved for any adjustments that may ultimately result from these examinations.

Although the timing of the resolution of these audits is uncertain, we do not expect the total amount of the unrecognized tax benefits as of December 31, 2014 will materially change in the next 12 months. However, given the number of years remaining subject to examination and the number of matters being examined, we are unable to estimate the full range of possible adjustments to the balance of gross unrecognized tax benefits.

### **Note 14–Restructuring**

In the fourth quarter of 2012, we implemented a global restructuring plan to simplify and streamline our organization and strengthen the overall competitiveness of our existing businesses. The plan included a strategic reduction of our existing global workforce by approximately 300 employees and 300 contractors. In connection with the plan, we incurred aggregate charges of approximately \$19 million as of December 31, 2012, primarily related to severance and benefits. The associated liability was \$9 million as of December 31, 2012 due to payments of and other adjustments (including foreign currency translation) in accrued expenses and other current liabilities on our combined balance sheet. As of December 31, 2013, no liability remained and all restructuring actions under the plan were substantially complete. In 2014 and 2013, restructuring charges were not material and are recorded in general and administrative expenses on the combined statement of income.

### **PayPal**

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

### Note 15-Accumulated Other Comprehensive Income

The following table summarizes the changes in accumulated balances of other comprehensive income for the year ended December 31, 2014:

	Unrealized Gains (Losses) on Cash Flow Hedges	Foreign Currency <u>Translation</u> (In millions)	Estimated tax (expense) benefit	<u>Total</u>
Beginning balance	\$ (91)	\$ 26	\$ 4	\$(61)
Other comprehensive income before reclassifications	181	(42)	(4)	135
Amount of gain (loss) reclassified from accumulated other				
comprehensive income	(36)	_	-	(36)
Net current period other comprehensive income	217	(42)	(4)	171
Ending balance	\$ 126	\$ (16	\$ -	\$110

The following table summarizes the changes in accumulated balances of other comprehensive income for the year ended December 31, 2013:

	Gains on Ca	ealized (Losses) ash Flow edges	Forei <sub>t</sub> Currei <u>Transla</u> (In	ncy (expense)	)
Beginning balance	\$ (4	6 )	\$ 15	\$ 2	\$(29)
Other comprehensive income before reclassifications	(4	.9 )	11	2	(36)
Amount of gain (loss) reclassified from accumulated other					
comprehensive income	(4	. )	_	_	(4)
Net current period other comprehensive income	(4	.5 )	11	2	(32)
Ending balance	\$ (9	1)	\$ 26	\$ 4	<u>\$(61)</u>

The following table provides details about reclassifications out of accumulated other comprehensive income for the year ended December 31, 2014:

Details about Accumulated Other Comprehensive Income Components	Amount of C Reclassif Accumula Compre Inco	ied from ted Other hensive	Affected Line Item in the Statement of Income
	2014 (In mi	2013	
Gains (losses) on cash flow hedges-foreign	(111 1111	inons)	
exchange contracts	\$ (36 )	\$ (4 )	Net revenues
	\$ (36)	\$ (4)	Total, before income taxes
	_	_	Provision for income taxes
	\$ (36)	\$ (4)	Total, net of income taxes
Total reclassifications for the period	\$ (36)	\$ (4)	Total, net of income taxes

### **PayPal**

### NOTES TO COMBINED FINANCIAL STATEMENTS-(Continued)

### **Note 16-Subsequent Events**

In January 2015, at a regular meeting of eBay's Board of Directors ("eBay's Board"), eBay's Board approved a plan to implement a strategic reduction of its existing global workforce. As a result, we expect to reduce our workforce globally by approximately 1,000 positions worldwide. The reduction is expected to be substantially completed in the first half of 2015. We expect to incur pre-tax restructuring charges of approximately \$43 million primarily for employee-related costs.

# PayPal

### FINANCIAL STATEMENT SCHEDULE

The Financial Statement Schedule II-VALUATION AND QUALIFYING ACCOUNTS is filed as part of this information statement.

	Balance at Beginning of Period	Charged/ (Credited) to Net Income (In millio	Charges Utilized/ (Write-offs) ons)	Balance at End of Period
Allowance for Transaction Losses				
Year Ended December 31, 2012	\$ 110	\$ 248	\$ (251)	\$ 107
Year Ended December 31, 2013	107	323	(293)	137
Year Ended December 31, 2014	\$ 137	\$ 423	\$ (394 )	\$ 166
Allowance for Loans and Interest Receivable				
Year Ended December 31, 2012	\$ 59	\$ 170	\$ (128)	\$ 101
Year Ended December 31, 2013	101	263	(218)	146
Year Ended December 31, 2014	\$ 146	\$ 318	\$ (269 )	\$ 195

PayPal
CONDENSED COMBINED BALANCE SHEET

	March 31, 	December 31, 2014
	•	nillions) audited)
ASSETS	(UII:	auditeu)
Current assets:		
Cash and cash equivalents	\$2,365	\$ 2,201
Short-term investments	10	29
Accounts receivable, net	53	65
Loans and interest receivable, net	3,566	3,586
Funds receivable and customer accounts	10,945	10,612
Notes and receivable from affiliates	788	694
Other current assets	480	378
Total current assets	18,207	17,565
Long-term investments	31	31
Property and equipment, net	989	922
Goodwill	3,184	3,189
Intangible assets, net	138	156
Other assets	30	54
Total assets	\$22,579	\$ 21,917
LIABILITIES AND EQUITY		
Current liabilities:		
Accounts payable	\$125	\$ 115
Funds payable and amounts due to customers	10,945	10,612
Notes and payable to affiliates	868	1,093
Accrued expenses and other current liabilities	1,565	1,434
Income taxes payable	46	29
Total current liabilities	13,549	13,283
Long-term liabilities	390	386
Total liabilities	13,939	13,669
Commitments and contingencies (Note 8)		
Equity:		
Accumulated other comprehensive income	142	110
Net parent investment	8,498	8,138
Total equity	8,640	8,248
Total liabilities and equity	\$22,579	\$ 21,917

PayPal
CONDENSED COMBINED STATEMENT OF INCOME

	Three Months I	Three Months Ended March 31,		
	2015	2014		
	*	illions) ıdited)		
Net revenues	\$ 2,137	\$ 1,874		
Operating expenses:				
Transaction expense	575	514		
Transaction and loan losses	178	129		
Customer support and operations	275	255		
Sales and marketing	236	215		
Product development	224	198		
General and administrative	138	115		
Depreciation and amortization	141	130		
Restructuring	48			
Total operating expenses	1,815	1,556		
Operating income	322	318		
Other income (expense), net	(1)	(6 )		
Income before income taxes	321	312		
Income tax expense	66	694		
Net income/(loss)	\$ 255	\$ (382		

# PayPal

### CONDENSED COMBINED STATEMENT OF COMPREHENSIVE INCOME

		Months Ended Iarch 31,
	,	2014 n millions) (naudited)
Net income	\$ 255	\$ (382)
Other comprehensive income (loss), net of reclassification adjustments:		
Foreign currency translation	(33)	_
Unrealized gains (losses) on hedging activities, net	64	10
Tax (expense) benefit on unrealized gains (losses) on hedging activities, net	_1	_ (3)
Other comprehensive income (loss), net of tax	32	7
Comprehensive income	\$ 287	\$ (375)

PayPal
CONDENSED COMBINED STATEMENT OF CASH FLOWS

	Three I	Three Months Ended March 31	
	2015	_	2014
		(In mill (Unaud	,
Cash flows from operating activities:			
Net income	\$ 255		\$ (382
Adjustments:			
Transaction and loan losses	178		129
Depreciation and amortization	141		130
Stock-based compensation	79		68
Deferred income taxes	49		663
Excess tax benefits from stock-based compensation	(8	)	(23
Changes in assets and liabilities:			
Accounts receivable	12		4
Notes and receivable from affiliates, net	(38	)	(35
Other assets	(125	)	59
Accounts payable	13		11
Notes payable to affiliates, net	(113	)	(89
Accrued expenses and other current liabilities	59		(101
Income taxes payable and other tax liabilities	42		(9
Net cash provided by operating activities	544		425
Cash flows from investing activities:			
Purchases of property and equipment	(194	)	(100
Changes in principal loans receivable, net	(19	)	(2
Purchases of investments	_		(24
Maturities and sales of investments	15		367
Acquisitions, net of cash acquired	_		(1
Notes and receivable from affiliates, net	(56	)	(64
Net cash provided by (used in) investing activities	(254		176
Cash flows from financing activities:	(== :	/	
Excess tax benefits from stock-based compensation	8		23
Net transfers from parent	17		14
Net repayments under financing arrangements	(119	)	(43
Funds receivable and customer accounts, net	(333	)	(387
Funds payable and amounts due to customers, net	333	,	387
Net cash used in financing activities	(94		(6
Effect of exchange rate changes on cash and cash equivalents	(32	)	
Net increase in cash and cash equivalents	164		594
Cash and cash equivalents at beginning of period	2,201		1,604
Cash and cash equivalents at end of period	\$ 2,365	_	\$ 2,198
Supplemental cash flow disclosures:			
Cash paid for interest	\$ 7		\$ 5
Cash paid for income taxes	\$ 5		\$ 11

#### **PayPal**

# NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS (Unaudited)

### Note 1-Overview and Summary of Significant Accounting Policies

### **Overview and Organization**

We are a leading technology platform company that enables digital and mobile payments on behalf of consumers and merchants worldwide. We put our customers at the center of everything we do. We strive to become the most convenient and trusted way for consumers, merchants, friends and family to move and manage money anywhere in the world, anytime and through any device (e.g. mobile, tablets, personal computers or wearables). We provide safer and simpler ways for businesses of all sizes to accept payments from merchant websites, mobile devices and applications, and at offline retail locations through a wide range of payment solutions across our Payments Platform, including PayPal, PayPal Credit, Venmo and Braintree products.

We operate globally and in a rapidly evolving regulatory environment characterized by a heightened regulatory focus on all aspects of the payments industry. Government regulation impacts key aspects of our business, and we are subject to regulations that affect the payments industry in the many countries in which we operate. Changes in or non-compliance with laws and regulations, changes in the interpretation of laws and regulations, and the enactment of new laws and regulations applicable to us could have a material adverse impact on our business, results of operations and financial condition. Therefore, we monitor these areas closely to ensure a compliant system for our customers who depend on us.

PayPal Holdings, Inc. and PayPal, Inc. are presented on a combined basis.

### **Significant Accounting Policies**

Basis of Presentation and Principles of Combination

The accompanying condensed combined financial statements have been prepared on a stand-alone basis and are derived from eBay's consolidated financial statements and records. The condensed combined financial statements reflect PayPal's financial position, results of operations, and cash flows as its business was operated as part of eBay prior to the distribution, in conformity with U.S. generally accepted accounting principles (U.S. GAAP).

These condensed combined financial statements include expenses associated with workplace resources and information technology that were previously allocated to the Payments segment of eBay, and, additional expenses related to certain corporate functions, including senior management, legal, human resources and finance. These expenses also include allocations related to share based compensation. The expenses that have been incurred by eBay are allocated to us based on direct usage or benefit where identifiable, with the remainder allocated on a pro rata basis of revenue, headcount, or other systematic measure. We consider the expense allocation methodology and results to be reasonable for all periods presented. The condensed combined financial statements also include certain assets and liabilities that have historically been held at the eBay corporate level, but which are specifically identifiable and attributable to us. The condensed combined financial position, results of operations and cash flows of PayPal may not be indicative of our results had we been a separate stand-alone entity during the periods presented, nor are the results stated herein indicative of what the Company's financial position, results of operations and cash flows may be in the future. All intra-company transactions and accounts have been eliminated.

The accompanying condensed financial statements are combined and include the financial statements of PayPal and our wholly and majority-owned subsidiaries. Investments in entities where we hold at least a 20% ownership interest and have the ability to exercise significant influence, but not control, over the investee are accounted for using the equity method of accounting. For such investments, our share of the investees' results of operations is

included in other income (expense), net and our investment balance is included in long-term investments. Investments in entities where we hold less than a 20% ownership interest are generally accounted for using the cost method of accounting, and our share of the investees' results of operations is included in other income (expense), net in our condensed combined statement of income to the extent dividends are received.

These condensed combined financial statements and accompanying notes should be read in conjunction with the audited combined financial statements and accompanying notes for the year ended December 31, 2014.

We have evaluated all subsequent events through May 14, 2015, the date the financial statements were available to be issued.

#### Use of Estimates

The preparation of combined condensed financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the combined financial statements and the reported amounts of revenues and expenses, including allocations from eBay, during the reporting period. On an ongoing basis, we evaluate our estimates, including those related to provisions for transaction losses, legal contingencies, income taxes, revenue recognition, stock-based compensation, goodwill and the recoverability of intangible assets. We base our estimates on historical experience and on various other assumptions which we believe to be reasonable under the circumstances. Actual results could differ from those estimates.

### Recent Accounting Pronouncements

In 2014, the FASB issued new guidance related to pushdown accounting. The new guidance provides an acquired entity with an option to apply pushdown accounting in its separate financial statements upon occurrence of an event in which an acquirer obtains control of the acquired entity. The amendments became effective on November 18, 2014. We adopted this guidance, as required, on November 18, 2014. The adoption of this guidance did not have a material impact on our financial statements.

In 2014, the FASB issued new accounting guidance related to revenue recognition. This new standard will replace all current U.S. GAAP guidance on this topic and eliminate all industry-specific guidance. The new revenue recognition guidance provides a unified model to determine when and how revenue is recognized. The core principle is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration for which the entity expects to be entitled in exchange for those goods or services. This guidance will be effective beginning January 1, 2017 and can be applied either retrospectively to each period presented or as a cumulative-effect adjustment as of the date of adoption. We are evaluating the impact and approach to adopting this new accounting guidance on our financial statements.

In 2015, the FASB issued new guidance related to extraordinary and unusual items. The new standard eliminates the concept of extraordinary items from GAAP. The new standard is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. Early adoption is permitted. The company may apply the standard prospectively or retrospectively to all periods presented. The adoption of this standard is not expected to have a material impact on our financial statements.

In 2015, the FASB issued new guidance related to consolidations. The new guidance amends the guidelines for determining whether certain legal entities should be consolidated and reduces the number of consolidation models. The new guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. Early adoption is permitted. We are evaluating the impact, if any, of adopting this new accounting guidance on our financial statements.

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

In 2015, the FASB issued new guidance related to debt issuance costs. The new guidance requires debt issuance costs related to a recognized debt liability to be presented in the balance sheet as a direct deduction from the debt liability rather than as an asset. The new standard is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. Early adoption is permitted. We are evaluating the impact, if any, of adopting this new accounting guidance on our financial statements.

In 2015, the FASB issued new guidance related to accounting for fees paid in a cloud computing arrangement. The new standard provides guidance to customers about whether a cloud computing arrangement includes a software license. If a cloud computing arrangement includes a software license, then the customer should account for the software license element of the arrangement consistent with the acquisition of other software licenses. If a cloud computing arrangement does not include a software license, the customer should account for the arrangement as a service contract. The new standard is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2015. Early adoption is permitted. We are evaluating the impact, if any, of adopting this new accounting guidance on our financial statements.

### Note 2-Goodwill and Intangible Assets

#### Goodwill

The following table presents goodwill balances and adjustments to those balances during the three months ended March 31, 2015:

	December 31, 2014	Goodwill Acquired	Adjustments/ Allocations	March 31, 2015
		(In m	illions)	
Total Goodwill	\$ 3,189	\$ -	\$ (5 )	\$3,184

### **Intangible Assets**

The components of identifiable intangible assets are as follows:

		Marc	h 31,	2015			Decer	nber 3	1, 2014	
	Gross Carrying Amount	Accumulate Amortizatio		Net Carrying Amount	Weighted Average Useful Life (Years) (In millions,	Gross Carrying Amount except years)	Accumulat Amortizati		Net Carrying Amount	Weighted Average Useful Life (Years)
Intangible assets:										
Customer lists and										
user base	\$ 519	\$ (481	)	\$ 38	6	\$ 520	\$ (477	)	\$ 43	6
Marketing related	181	(125	)	56	5	181	(117	)	64	5
Developed										
technologies	167	(156	)	11	3	167	(153	)	14	3
All other	106	(73	)	33	4	105	(70	)	35	4
Intangible assets, net	\$ 973	\$ (835	_)	\$ 138		\$ 973	\$ (817	)	\$ 156	

All identifiable intangible assets are subject to amortization and no significant residual value is estimated for the intangible assets. Amortization expense for intangible assets was \$19 million and \$24 million for the three months ended March 31, 2015 and 2014, respectively.

### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

Expected future intangible asset amortization as of March 31, 2015 is as follows (in millions):

Fiscal years:	
Remaining 2015	\$51
2016	59
2017	13
2018	12
2019	3
Thereafter:	_
	\$138

### Note 3-Segment and Geographical Information

We determine operating segments based on how our chief operating decision maker manages the business, including making operating decisions, deciding how to allocate resources and evaluating operating performance. Our chief operating decision-maker is our Chief Executive Officer who reviews our operating results on a consolidated basis. We operate in one segment and have one reportable segment.

The following tables summarize the allocation of net revenues based on geography:

	Three Months Ende	ed March 31,
	2015	2014
	(In millio	ns)
Net revenues:		
U.S.	\$ 1,030	\$ 903
United Kingdom	277	270
Rest of world	830	701
Total net revenues	\$ 2,137	\$ 1,874
	<del></del>	
	March 31, 2015	<b>December 31, 2014</b>
	(In millio	ns)
Long-lived assets:		
U.S.	\$ 3,884	\$ 3,784
International	_ 410	401
Total long-lived assets	\$ 4,294	\$ 4,185

Net revenues are attributed to U.S. and international geographies primarily based upon the country in which the merchant is located, or in the case of a cross border transaction, may be earned from both countries in which the consumer and merchant reside. Net revenues earned from other value added services are typically attributed to the country in which either the consumer or the merchant reside. Long-lived assets attributed to the U.S. and international geographies are based upon the country in which the asset is located or owned.

### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

Information regarding net revenues by major products and services for March 31, 2015 and 2014 is as follows:

	Three Months E	nded March 31,
	2015	2014
	(In mil	llions)
Transaction revenues	\$ 1,914	\$ 1,674
Other value added services	223	200
Total net revenues	\$ 2,137	\$ 1,874

#### Note 4-Investments

At March 31, 2015 and December 31, 2014, the estimated fair value of our short-term and long-term investments classified as available for sale are as follows:

		March	31, 2015	
	Gross Amortized Cost	Gross Unrealized <u>Gains</u> (In mi	Gross Unrealized Losses illions)	Estimated Fair Value
Short-term investments:				
Time Deposits	\$ 10	\$ -	\$ -	\$ 10
		Decembe	r 31, 2014	
	Gross Amortized Cost	Gross Unrealized <u>Gains</u> (In mi	Gross Unrealized Losses illions)	Estimated Fair Value
Short-term investments:				
Time Deposits	\$ 29	\$ -	<b>\$</b> -	\$ 29

We had no material short-term investments that have been in a continuous unrealized loss position for greater than 12 months as of March 31, 2015. Amounts reclassified to earnings from unrealized gains and losses were not material for the three months ended March 31, 2015 and 2014.

### **Equity and Cost Method Investments**

We have made multiple equity and cost method investments which are reported in long-term investments on our combined balance sheet. As of March 31, 2015 and December 31, 2014, our equity and cost method investments totaled \$31 million.

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

### Note 5-Fair Value Measurement of Assets and Liabilities

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis as of March 31, 2015 and December 31, 2014:

<u>Description</u>	Balances at March 31, 2015	Quoted Prices in Active Markets for Identical Assets (Level 1) (In millions)	Significant Other Observable Inputs (Level 2)
Assets:			
Cash and cash equivalents	\$2,365	\$2,365	<u>\$-</u>
Short-term investments:			
Time deposits	10		10
Total short-term investments	10		10
Funds receivable and customer accounts	3,745	_	3,745
Derivatives	200	_	200
Total financial assets	\$ 6,320	\$ 2,365	\$ 3,955
Liabilities:			
Derivatives	\$9	<u>\$</u> -	\$9
<u>Description</u>	Balances at December 31, 2014	Quoted Prices in Active Markets for Identical Assets (Level 1) (In millions)	Significant Other Observable Inputs (Level 2)
Assets:	December 31, 2014	Active Markets for Identical Assets (Level 1) (In millions)	Observable Inputs (Level 2)
Assets: Cash and cash equivalents		Active Markets for Identical Assets (Level 1)	Observable Inputs
Assets: Cash and cash equivalents Short-term investments:	December 31, 2014 \$ 2,201	Active Markets for Identical Assets (Level 1) (In millions)	Observable Inputs (Level 2)  \$-
Assets: Cash and cash equivalents Short-term investments: Corporate debt securities	\$2,201 29	Active Markets for Identical Assets (Level 1) (In millions)	Observable Inputs (Level 2)  \$- 29
Assets: Cash and cash equivalents Short-term investments: Corporate debt securities Total short-term investments	\$2,201 29 29	Active Markets for Identical Assets (Level 1) (In millions)	S-  29 29
Assets: Cash and cash equivalents Short-term investments: Corporate debt securities	\$2,201 29	Active Markets for Identical Assets (Level 1) (In millions)	Observable Inputs (Level 2)  \$- 29
Assets: Cash and cash equivalents Short-term investments: Corporate debt securities Total short-term investments	\$2,201 29 29	Active Markets for Identical Assets (Level 1) (In millions)	S-  29 29
Assets: Cash and cash equivalents Short-term investments: Corporate debt securities Total short-term investments Funds receivable and customer accounts	\$2,201 \$2,201 29 29 4,161	Active Markets for Identical Assets (Level 1) (In millions)	Observable Inputs (Level 2)
Assets: Cash and cash equivalents Short-term investments: Corporate debt securities Total short-term investments Funds receivable and customer accounts Derivatives	\$2,201 \$2,201 29 29 4,161 135	Active Markets for Identical Assets (Level 1) (In millions)  \$2,201	S

Our financial assets and liabilities are valued using market prices on both active markets (Level 1) and less active markets (Level 2). Level 1 instrument valuations are obtained from real-time quotes for transactions in active exchange markets involving identical assets. Level 2 instrument valuations are obtained from readily available pricing sources for comparable instruments, identical instruments in less active markets, or models using market observable inputs. The majority of our derivative instruments are valued using pricing models that take into account the contract terms as well as multiple inputs where applicable, such as equity prices, interest rate yield curves, option volatility and currency rates. Our derivative instruments are primarily short-term in nature, generally one month to one year in duration. Certain foreign currency contracts designated as cash flow hedges may have a duration of up to 18 months. We did not have any transfers of financial instruments between

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

valuation levels during the first three months of 2015. As of March 31, 2015 we did not have any assets or liabilities requiring measurement at fair value without observable market values that would require a high level of judgment to determine fair value (Level 3).

Cash and cash equivalents are short-term, highly liquid investments with original or remaining maturities of three months or less when purchased and are comprised primarily of bank deposits and commercial paper. We had total funds receivable and customer accounts of \$10.9 billion and \$10.6 billion as of March 31, 2015 and December 31, 2014, respectively, of which \$3.7 billion and \$4.2 billion, respectively, was invested primarily in short-term investments.

Our derivative instruments are valued using pricing models that take into account the contract terms as well as multiple inputs where applicable, such as equity prices, interest rate yield curves, option volatility, and currency rates. Our derivative instruments are primarily short-term in nature, and are one month to eighteen months in duration. We did not have any transfers of financial instruments between valuation levels during the three months ended March 31, 2015.

#### **Note 6-Derivative Instruments**

#### **Summary of Derivative Instruments**

Our primary objective in holding derivatives is to reduce the volatility of earnings and cash flows associated with changes in foreign currency exchange rates. Our derivatives expose us to credit risk to the extent that our counterparties may be unable to meet the terms of the arrangement. We seek to mitigate such risk by limiting our counterparties to, and by spreading the risk across, major financial institutions. In addition, the potential risk of loss with any one counterparty resulting from this type of credit risk is monitored on an ongoing basis.

### Foreign Exchange Contracts

We transact business in various foreign currencies and have significant international revenues as well as costs denominated in foreign currencies, which subjects us to foreign currency risk. We use foreign currency exchange contracts, generally with maturities of 18 months or less, to reduce the volatility of cash flows primarily related to forecasted revenues, expenses, assets and liabilities denominated in foreign currencies. The objective of the foreign exchange contracts is to help mitigate the risk that the U.S. dollar-equivalent cash flows are not adversely affected by changes in the applicable U.S. dollar/foreign currency exchange rate. For derivative instruments that are designated as cash flow hedges, the effective portion of the derivative's gain or loss is initially reported as a component of accumulated other comprehensive income (loss) and subsequently reclassified into earnings in the same period the forecasted transaction affects earnings. The ineffective portion of the unrealized gains and losses on these contracts, if any, is recorded immediately in earnings. We evaluate the effectiveness of our foreign exchange contracts on a quarterly basis. We do not use any foreign exchange contracts for trading purposes.

For our derivative instruments designated as cash flow hedges, the amounts recognized in earnings related to the ineffective portion were not material in each of the periods presented, and we did not exclude any component of the changes in fair value of the derivative instruments from the assessment of hedge effectiveness. As of March 31, 2015, we estimated that \$182 million of net derivative gains related to our cash flow hedges included in accumulated other comprehensive income will be reclassified into earnings within the next 12 months.

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

#### **Fair Value of Derivative Contracts**

The fair value of our outstanding derivative instruments as of March 31, 2015 and December 31, 2014 was as follows:

	<b>Balance Sheet Location</b>	March 31, 2015	December 31, 2014
	_	(In ı	nillions)
Derivative Assets:			
Foreign exchange contracts designated as cash flow hedges	Other Current Assets	\$ 190	\$ 128
Foreign exchange contracts not designated as hedging instruments	Other Current Assets	10	7
Total derivative assets		\$ 200	\$ 135
Derivative Liabilities:			
Foreign exchange contracts designated as cash flow hedges	Other Current Liabilities	<b>\$</b> -	\$ 2
Foreign exchange contracts not designated as hedging instruments	Other Current Liabilities	9	5
Total derivative liabilities		\$ 9	\$ 7
Total fair value of derivative instruments		\$ 191	\$ 128

Under the master netting agreements with the respective counterparties to our foreign exchange contracts, subject to applicable requirements, we are allowed to net settle transactions of the same type with a single net amount payable by one party to the other. However, we have elected to present the derivative assets and derivative liabilities on a gross basis in our balance sheet. As of March 31, 2015, the potential effect of rights of set-off associated with the above foreign exchange contracts would be an offset to both assets and liabilities by \$8 million, resulting in net derivative assets of \$191 million and net derivative liabilities of less than \$1 million. We are not required to pledge, nor are we entitled to receive cash collateral related to these derivative transactions.

### Effect of Derivative Contracts on Accumulated Other Comprehensive Income

The following tables summarize the activity of derivative contracts that qualify for hedge accounting as of March 31, 2015 and December 31, 2014, and the impact of designated derivative instruments on accumulated other comprehensive income for the three months ended March 31, 2015:

	December 31, 2014	Amount of gain (loss) recognized in other comprehensive income (effective portion) (In mill	Amount of gain (loss) reclassified from accumulated other comprehensive income to net revenue (effective portion)	March 31, 
Foreign exchange contracts				
designated as cash flow hedges	\$ 126	\$ 114	\$ 50	\$ 190

### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

The following tables summarize the activity of derivative contracts that qualify for hedge accounting as of March 31, 2014 and December 31, 2013, and the impact of designated derivative instruments on accumulated other comprehensive income for the three months ended March 31, 2014:

	December 2013	31,	Amount of gain (le recognized in oth comprehensive inc (effective portion	er ome	Amount of gain reclassified accumulated comprehensive to net reverse (effective poons)	from other e income enue	March 31, 2014
Foreign exchange contracts							
designated as cash flow hedges	\$ (91	)	(7	)	(17	)	\$ (81)

### **Effect of Derivative Contracts on Combined Statements of Income**

The following table provides the location in the financial statements of the recognized gains or losses related to our derivative instruments:

		nths Ended ch 31,
	2015	2014
	(In m	illions)
Foreign exchange contracts designated as cash flow hedges recognized in net revenues	\$ 50	\$ (17)
Foreign exchange contracts not designated as cash flow hedges recognized in other income (expense), net	11	(4)
Total gain (loss) recognized from derivative contracts in the combined statement of income	\$ 61	\$ (21)

### **Notional Amounts of Derivative Contracts**

Derivative transactions are measured in terms of the notional amount, but this amount is not recorded on the balance sheet and is not, when viewed in isolation, a meaningful measure of the risk profile of the derivative instruments. The notional amount is generally not exchanged, but is used only as the basis on which the value of foreign exchange payments under these contracts is determined. The following table provides the notional amounts of our outstanding derivatives:

	Three Months En	Three Months Ended March 31,	
	2015	2014	
	(In mill	ions)	
Foreign exchange contracts designated as cash flow hedges	\$ 1,551	\$ 1,560	
Foreign exchange contracts not designated as hedging instruments	764	491	
Total	\$ 2,315	\$ 2,051	

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

#### Note 7-Loans and Interest Receivable, Net

For the three months end March 31, 2015 and March 31, 2014, we purchased approximately \$1.4 billion and \$1.1 billion, respectively, in consumer receivables. As of March 31, 2015, the total outstanding balance of this pool of consumer receivables was \$3.6 billion of which we sold a participation interest to the new chartered financial institution of \$169 million or 5%. The chartered financial institution has no recourse related to its participation interest for failure of debtors to pay when due. The participation interest held by the charted financial institution has the same priority to the interests held by us and is subject to the same credit, prepayment, and interest rate risk associated with this pool of consumer receivables. In April 2015, we concluded an arrangement with certain investors under which we have agreed to sell a participation interest in a portion of these consumer receivables. These investors have no recourse against us related to their participation interests for failure of debtors to pay when due. The participation interest held by these investors have the same priority to the interests held by us and are subject to the same credit, prepayment, and interest rate risk associated with the consumer receivables. As of March 31, 2015, we classified approximately \$700 million of the consumer receivables related to the participation interest we agreed to sell to investors as held for sale. The consumer receivables held for sale are recorded at the lower of cost or fair value on an aggregate portfolio basis. No adjustment to the carrying value was recorded as a result of classifying these consumer receivables as held for sale.

Loans and interest receivable are reported at their outstanding principal balances, net of participation interest sold and pro-rata allowances, including unamortized deferred origination costs and estimated collectible interest and fees. We use a consumer's FICO score, among other measures, in evaluating the credit quality of our consumer receivables. A FICO score is a type of credit score that lenders use to assess an applicant's credit risk and whether to extend credit. Individual FICO scores generally are obtained each quarter the consumer has an outstanding consumer receivable owned by PayPal Credit. The weighted average consumer FICO score related to our loans and interest receivable balance outstanding at March 31, 2015 was 684 compared to 687 at December 31, 2014.

As of March 31, 2015 and December 31, 2014, approximately 52.4% and 54.2%, respectively, of the pool of consumer receivables and interest receivable balance was due from consumers with FICO scores greater than 680, which is generally considered "prime" by the consumer credit industry. As of March 31, 2015 and December 31, 2014, approximately 11.0% and 9.3%, respectively, of the pool of consumer receivables and interest receivable balance was due from customers with FICO scores below 599. As of March 31, 2015 and December 31, 2014, approximately 90.9% and 89.8%, respectively, of the portfolio of consumer receivables and interest receivable was current.

The following table presents the principal amount of loans and interest receivable segmented by a FICO score range:

	March 31, 2015	<b>December 31, 2014</b>
	(In millio	ons)
> 760	\$ 502	\$ 553
680 - 759	1,388	1,439
600 - 679	1,324	1,344
< 599	_ 396	341
Total	\$ 3,610	\$ 3,677

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

The following tables presents the delinquency status of the principal amount of loans and interest receivable:

March 31, 2015 (In millions)

<u>Current</u> 3,283	30 - 59 Days <u>Past Due</u> 147	60 -89 Days Past Due 51	90 - 180 Days Past Due 129	Total Past Due 327	Total Financing Receivables 3,610	Recorded Investment > 90 Days and Accruing 129
December 31, 2014 (In millions)						
Current 3,303	30 - 59 Days Past Due 163	60 - 89 Days Past Due 62	90 - 180 Days Past Due 149	Total Past Due	Total Principal Loan Receivable 3,677	Recorded Investment > 90 Days and Accruing

The following table summarizes the activity in the allowance for loans and interest receivable:

	Three Months Ended March 31,		
	2015		2014
		(In million	s)
Balance as of January 1	\$ (195	)	\$ (146 )
Charge-offs	92		70
Recoveries	(11	)	(7)
Provisions	(86	)	(66 )
Balance as of March 31	\$ (200	)	\$ (149)

During 2013, we launched a program working with a chartered financial institution to offer working capital advances to select merchant sellers in the U.S. We subsequently purchase the related merchant receivable from the chartered financial institution. Under the program, participating merchants can borrow a certain percentage of their annual payment volume processed by PayPal and are charged a fixed fee for the loan. In 2014, we have extended this program to a limited number of international markets whereby we grant working capital advances to merchants directly through our Luxembourg bank subsidiary or through other PayPal affiliates. The total net receivable outstanding as of March 31, 2015 and December 31, 2014 was approximately \$125 million and \$99 million, respectively.

### **Note 8-Commitments and Contingencies**

#### **Commitments**

As of March 31, 2015, approximately \$21.5 billion of unused credit was available to PayPal Credit accountholders. While this amount represents the total unused credit available, we have not experienced, and do not anticipate, that all of our PayPal Credit accountholders will access their entire available credit at any given point in time. In addition, the individual lines of credit that make up this unused credit are subject to periodic review and termination by the chartered financial institutions that are the issuer of PayPal Credit products based on, among other things, account usage and customer creditworthiness. When a consumer funds a purchase in the U.S. using a PayPal Credit product issued by a chartered financial institution, the chartered financial institution extends credit to the consumer, funds the extension of credit at the point of sale and remits funds to the merchant. We subsequently purchase the receivables related to the consumer loans extended by the chartered financial

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

institution and, as a result of the purchase, bear the risk of loss in the event of loan defaults. Although the chartered financial institution continues to own each customer account, we own the related receivable and are responsible for all servicing functions related to the account.

In June 2014, we agreed, subject to certain conditions, that we, one of our affiliates or a third party partner will purchase a portfolio of consumer loan receivables relating to the customer accounts arising out of our current credit program agreement with Synchrony (formerly GE Capital Retail Bank) for a price based on the book value of the consumer loan receivables portfolio at the time of the purchase (expected to be the fourth quarter of 2016), subject to certain adjustments and exclusions. As of March 31, 2015, Synchrony had a net receivables portfolio under the credit program agreement of approximately \$1.5 billion.

### **Litigation and Regulatory Matters**

#### Overview

We are involved in legal and regulatory proceedings on an ongoing basis. Many of these proceedings are in early stages, and may seek an indeterminate amount of damages. If we believe that a loss arising from such matters is probable and can be reasonably estimated, we accrue the estimated liability in our financial statements. If only a range of estimated losses can be determined, we accrue an amount within the range that, in our judgment, reflects the most likely outcome; if none of the estimates within that range is a better estimate than any other amount, we accrue the low end of the range. For those proceedings in which an unfavorable outcome is reasonably possible but not probable, we have disclosed an estimate of the reasonably possible loss or range of losses or we have concluded that an estimate of the reasonably possible loss or range arising directly from the proceeding (i.e., monetary damages or amounts paid in judgment or settlement) are not material. If we cannot estimate the probable or reasonably possible loss or range of losses arising from a legal proceeding, we have disclosed that fact. In assessing the materiality of a legal proceeding, we evaluate, among other factors, the amount of monetary damages claimed, as well as the potential impact of non-monetary remedies sought by plaintiffs (e.g., injunctive relief) that may require us to change our business practices in a manner that could have a material adverse impact on our business. With respect to the matters disclosed in this Note 8, we are unable to estimate the possible loss or range of losses that could potentially result from the application of such non-monetary remedies.

Amounts accrued for legal and regulatory proceedings for which we believe a loss is probable were not material for the three months ended March 31, 2015. Except as otherwise noted for the proceedings described in this Note 8, we have concluded, based on currently available information, that reasonably possible losses arising directly from the proceedings (i.e., monetary damages or amounts paid in judgment or settlement) in excess of our recorded accruals are also not material. However, legal and regulatory proceedings are inherently unpredictable and subject to significant uncertainties. If one or more matters were resolved against us in a reporting period for amounts in excess of management's expectations, the impact on our operating results or financial condition for that reporting period could be material.

### **Regulatory Proceedings**

We routinely report to the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) on payments we have rejected or blocked pursuant to OFAC sanctions regulations and on any possible violations of those regulations. We have cooperated with OFAC in recent years regarding our review process over transaction monitoring and have self-reported a large number of small dollar amount transactions that could possibly be in violation of OFAC sanctions regulations. In March 2015, we reached a settlement with OFAC regarding the possible violations arising from our practices between 2009 and 2013, before our implementation of real-time monitoring processes. The settlement did not have a material impact on our financial statements. In addition, we

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

continue to cooperate with OFAC regarding more recent self-reported transactions that could also possibly be in violation of OFAC sanctions regulations. Such self-reported transactions could result in claims or actions against us including litigation, injunctions, damage awards or require us to change our business practices that could result in a material loss, require significant management time, result in the diversion of significant operational resources or otherwise harm our business.

On August 7, 2013 and January 13, 2014, eBay, PayPal and certain wholly owned subsidiaries of PayPal received Civil Investigative Demands (CIDs) from the Consumer Financial Protection Bureau (CFPB) requesting that we provide testimony, produce documents and provide information relating primarily to the acquisition, management, and operation of our PayPal Credit products, including online credit products and services, advertising, loan origination, customer acquisition, servicing, debt collection, and complaints handling practices. The CIDs could lead to an enforcement action and/or one or more significant consent orders, which may result in substantial costs, including legal fees, fines, penalties and remediation expenses. We are cooperating with the CFPB in connection with the CIDs and are engaging in settlement discussions. The CFPB provided us with a Notice and Opportunity to Respond and Advise and indicated that a lawsuit could be filed against us as early as the second quarter of 2015. Resolution of these inquiries could require us to make monetary payments to certain customers, pay fines and/or change the manner in which we operate the PayPal Credit products, which could adversely affect our business.

#### **General Matters**

Other third parties have from time to time claimed, and others may claim in the future, that we have infringed their intellectual property rights. We are subject to patent disputes, and expect that we will increasingly be subject to additional patent infringement claims involving various aspects of our business as our products and services continue to expand in scope and complexity. Such claims may be brought directly or indirectly against our companies and/or against our customers (who may be entitled to contractual indemnification under their contracts with us), and we are subject to increased exposure to such claims as a result of our recent acquisitions, particularly in cases where we are entering into new lines of business in connection with such acquisitions. We have in the past been forced to litigate such claims, and we believe that additional lawsuits alleging such claims will be filed against us. Intellectual property claims, whether meritorious or not, are time consuming and costly to defend and resolve, could require expensive changes in our methods of doing business or could require us to enter into costly royalty or licensing agreements on unfavorable terms.

From time to time, we are involved in other disputes or regulatory inquiries that arise in the ordinary course of business, including suits by our customers (individually or as class actions) alleging, among other things, improper disclosure of our prices, rules or policies, that our practices, prices, rules, policies or customer/user agreements violate applicable law or that we have acted unfairly and/or not acted in conformity with such prices, rules, policies or agreements. In addition to these types of disputes and regulatory inquiries, our operations are also subject to regulatory and/or legal review and/or challenges that tend to reflect the increasing global regulatory focus to which the payments industry is subject and, when taken as a whole with other regulatory and legislative action, such actions could result in the imposition of costly new compliance burdens on our business and customers and may lead to increased costs and decreased transaction volume and revenue. Further, the number and significance of these disputes and inquiries are increasing as our company has grown larger, our business has expanded in scope (both in terms of the range of products and services that we offer and our geographical operations) and our products and services have increased in complexity. Any claims or regulatory actions against us, whether meritorious or not, could be time consuming, result in costly litigation, damage awards (including statutory damages for certain causes of action in certain jurisdictions), injunctive relief or increased costs of doing business through adverse judgment or settlement, require us to change our business practices in expensive ways, require significant amounts of management time, result in the diversion of significant operational resources or otherwise harm our business.

#### PayPal

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

### **Indemnification Provisions**

In the ordinary course of business, we include limited indemnification provisions in certain of our agreements with parties with whom we have commercial relations, including our standard marketing, promotions, and application-programming-interface license agreements. Under these contracts, we generally indemnify, hold harmless, and agree to reimburse the indemnified party for losses suffered or incurred by the indemnified party in connection with claims by any third party with respect to our domain names, trademarks, logos, and other branding elements to the extent that such marks are applicable to our performance under the subject agreement. In a limited number of agreements, we have provided an indemnity for other types of third-party claims, which are indemnities mainly related to intellectual property rights. We have also provided an indemnity to our payments processors in the event of certain third-party claims or card association fines against the processor arising out of conduct by us or our customers. It is not possible to determine the maximum potential loss under these indemnification provisions due to our limited history of prior indemnification claims and the unique facts and circumstances involved in each particular provision. To date, no significant costs have been incurred, either individually or collectively, in connection with our indemnification provisions.

### **Off-Balance Sheet Arrangements**

As of March 31, 2015, we had no off-balance sheet arrangements that have, or are reasonably likely to have, a current or future material effect on our combined financial condition, results of operations, liquidity, capital expenditures or capital resources.

### **Protection Programs**

We provide merchants and consumers with protection programs on substantially all transactions completed through our Payments Platform, except for transactions using our gateway products. These programs protect both merchants and consumers from loss primarily due to fraud and counterparty performance. Our Buyer Protection Program provides protection to consumers for qualifying purchases by reimbursing the consumer for the full amount of the purchase if a purchased item does not arrive or does not match the seller's description. Our Seller Protection Programs provide protection to merchants against claims that a transaction was not authorized by the buyer or claims that an item was not received by covering the seller for the full amount of the payment on eligible sales.

The maximum potential exposure under our protection programs is estimated to be the portion of total eligible transaction volume (TPV) for which buyer or seller protection claims may be raised under our existing user agreements. Since eligible transactions are typically completed in a period significantly shorter than the period under which disputes may be opened, and based on our historical losses to date, we do not believe that that the maximum potential exposure is representative of our actual potential exposure. The actual amount of exposure cannot be quantified as we are unable to determine total eligible transactions where performance by a merchant or customer is incomplete or completed transactions that may result in a claim under our protection programs. We record a liability with respect to losses under these protection programs when they are probable and the amount can be reasonably estimated.

The following table provides management's estimate of the maximum potential exposure related to our protection programs as of March 31, 2015 and December 31, 2014:

	Maximum po	Maximum potential exposure		Allowance for Transaction Losses	
	March 31,	December 31,	March 31,	December 31,	
(In millions)	2015	2014	2015	2014	
Protection Programs	\$73,449	\$ 75,833	\$ 175	\$ 166	

#### PayPal

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

#### **Note 9-Related Party Transactions**

In August 2009, we entered into a Cash Sharing Agreement with eBay in which our excess U.S. funds are swept to eBay on a daily basis. The main purpose of the Cash Sharing Agreement is to implement a centralized cash management structure to effectively manage U.S. Dollar cash, to leverage administrative efficiencies, and to centralize the investment/borrowing of cash and settlement of payables and receivables at the eBay level. Since the Cash Sharing Agreement is two-way, we can receive funds back from eBay as needed. The rate earned on funds lent to eBay is the average daily LIBOR USD 1-month rate plus 20 basis points. The balance due from eBay and reported in notes and receivable from affiliates in our condensed combined balance sheet was \$612 million and \$559 million at March 31, 2015 and December 31, 2014, respectively. Interest income earned on the arrangement was reported in other income (expense), net but was not material for the three months ended March 31, 2015 and 2014.

In November 2008, we entered into an intercompany loan agreement with eBay in which the acquisition of receivables related to PayPal Credit accounts are funded through eBay's existing financing arrangements at an interest rate of 1.2% for the three months ended March 31, 2015. At March 31, 2015 and December 31, 2014, the loan balance included in notes and payable to affiliates in our condensed combined balance sheet was \$754 million and \$809 million, respectively. The interest expense incurred during the three months ended March 31, 2015 and 2014 was \$4 million and \$2 million, respectively.

In September 2014, we entered into an intercompany loan agreement with eBay whereby we borrowed 130 million Brazilian Real for one year at an interest rate of 11% plus spread 0.5% per annum during the term of the loan. The loan is used to fund our installment payments product in Brazil. The loan was repaid in March 2015. The interest expense incurred on the arrangement was reported in other income (expense), net but was not material for the three months ended March 31, 2015 and 2014.

In September 2014, we entered into an intercompany loan agreement with eBay whereby we borrowed \$10 million from eBay for six months at an interest rate of 1.2% per annum. The loan was repaid in March 2015. Interest income earned on the arrangement was reported in other income (expense), net but was not material for the three months ended March 31, 2015.

In October 2014, we entered into an intercompany loan agreement with eBay whereby we loaned eBay 580 million Indian Rupee for six months at an interest rate of 9.4% per annum. The balance due from eBay and reported in notes and receivable from affiliates in our condensed combined balance sheet was \$9 million at March 31, 2015. Interest income earned on the arrangement was reported in other income (expense), net but was not material for the three months ended March 31, 2015.

In December 2014, we entered into an intercompany loan agreement with eBay whereby we loaned eBay 500 million Indian Rupee for six months at an interest rate of 9.0% per annum. The balance due from eBay and reported in notes and receivable from affiliates in our condensed combined balance sheet was \$8 million at March 31, 2015. Interest income earned on the arrangement was reported in other income (expense) but was not material for the three months ended March 31, 2015.

All other contracts with related parties are at rates and terms that we believe are comparable with those that could be entered into with independent third parties. There were no other material related party transactions in the periods presented. As of March 31, 2015, there were no other material amounts payable to or amounts receivable from related parties. Post separation, we will no longer participate in cash management and intercompany funding arrangements with eBay.

Net revenues include \$28 million earned from eBay and its subsidiaries for the three months ended March 31, 2015 and 2014.

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

We recover costs from eBay relating to customer protection programs offered on qualifying eBay purchases made with PayPal. These costs include the actual transaction losses associated with customer filed claims as well as an allocation of salary related expenses for customer support teams working on customer claims and disputes related to on eBay purchases. Recoveries associated with transaction losses incurred on eligible eBay purchases during the three months ended March 31, 2015 and 2014, were \$10 million and \$12 million, respectively, which were recorded as a reduction to transaction and loan loss. Other costs recovered from eBay related to the customer protection program for the three months ended March 31, 2015 and 2014, were \$5 million in each period, and are included as a reduction to customer support and operations and general and administrative expenses in our combined statement of income.

We incur user acquisition fees from eBay on payment volume which we process from purchases made on eBay's platform. User acquisition fees for the three months ended March 31, 2015 and 2014 were \$30 million in each period and are included within sales and marketing expenses.

These combined financial statements include expenses associated with workplace resources and information technology that were previously allocated to the Payments segment of eBay, and, additional expenses related to certain corporate functions, including senior management, legal, human resources and finance. These expenses also include allocations related to share based compensation. The expenses that have been allocated to us by eBay are based on direct usage or benefit where identifiable, with the remainder allocated on a pro rata basis of revenue, headcount, or other systematic measure. We consider the expense allocation methodology and results to be reasonable for all periods presented. The corporate costs and allocation of expenses to us from eBay included within customer support and operations, sales and marketing, product development, and general and administrative expenses were \$160 million and \$136 million for the three months ended March 31, 2015 and 2014, respectively, of which \$61 million and \$60 million were included in general and administrative expenses.

### Note 10-Stock-Based and Employee Savings Plans

#### **Stock Option Activity**

The following table summarizes stock option activity of our employees under eBay's equity incentive plans for the three months ended March 31, 2015:

		Weighted Average
		<b>Grant-Date</b>
		Fair Value
	<u>Options</u>	(per share)
	(In thousands,	except per share amounts)
Outstanding at January 1, 2015	2,409	-
Granted and assumed	5	\$ 12.82
Exercised	(262 )	_
Forfeited/expired/canceled	(351)	\$ -
Outstanding at March 31, 2015	1,801	

The weighted average exercise price of stock options granted during the period was \$56.47 per share.

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

### Restricted Stock Units Activity and Performance Based Restricted Stock Units Activity

A summary of the status of restricted stock units granted (including performance-based restricted stock units that have been earned) under eBay's equity incentive plans for the three months ended March 31, 2015:

	Units	Weighted Average Grant-Date Fair Value (per share)
	(In thousands, exce	ept per share amounts)
Outstanding at January 1, 2015	14,715	_
Awarded and assumed	282	\$ 54.56
Vested	(936)	_
Forfeited	(1,118 )	\$ -
Outstanding at March 31, 2015	12,943	
Expected to vest at March 31, 2015	11.279	

### **Stock-based Compensation Expense**

We are charged by eBay for stock-based compensation expense related to our direct employees. eBay also charges us for the allocated costs of certain employees of eBay (including stock-based compensation) who provide general and administrative services on our behalf. Information included in this note is strictly limited to stock-based compensation associated with the employees wholly dedicated to PayPal (see "Note 9–Related Party Transactions" for total costs allocated to us by eBay).

The impact on our results of operations of recording stock-based compensation expense for the three months ended March 31, 2015 and 2014 was as follows:

	Three Months Ended March 31,	
	2015	2014
	(In m	illions)
Customer support and operations	\$ 15	\$ 16
Sales and marketing	13	12
Product development	29	24
General and administrative	18	12
Total stock-based compensation expense	\$ 75	\$ 64

Total stock-based compensation costs capitalized as part of internal use software and website development costs was \$2 million and \$1 million for the three months ended March 31, 2015 and 2014, respectively.

### Note 11-Income Taxes

We are a member of the eBay consolidated group and our U.S. taxable income is included in the consolidated U.S. federal income tax return of eBay as well as in returns filed by eBay with certain state and local taxing jurisdictions. Our foreign income tax returns are filed on a separate company basis. Our income tax liability has been computed and presented herein under the "separate return method" as if it were a separate tax paying entity, as modified by the benefits-for-loss approach. Accordingly, our operating losses and other tax attributes are characterized as utilized when those attributes have been utilized by other members of the eBay consolidated group; however, the benefits-for-loss approach does not impact our tax expense. Federal and state income taxes incurred are remitted to eBay pursuant to a tax sharing agreement between the companies.

### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

Our effective tax rate for the three months ended March 31, 2015 was 20.6%. The difference between our effective tax rate and the U.S. federal statutory rate of 35% was primarily the result of foreign income taxed at different rates, partially offset by discrete tax adjustments.

### Note 12-Restructuring

In January 2015, at a regular meeting of the eBay board of directors, the eBay's board of directors approved a plan to implement a strategic reduction of its existing global workforce. The reduction is expected to be substantially completed in the first half of 2015.

The following table summarizes the restructuring reserve activity during the three months ended March 31, 2015:

	Employee Severance and Benefits	Other Associated Costs (In millions)	<u>Total</u>
Accrued liability as of January 1, 2015	\$ -	\$ -	<b>\$</b> -
Charges (benefit)	48	_	48
Payments	(17)	_	(17)
Accrued liability as of March 31, 2015	\$ 31	\$ -	\$31

### Note 13-Accumulated Other Comprehensive Income

The following table summarizes the changes in accumulated balances of other comprehensive income for the three months ended March 31, 2015:

	Unrealized Gains (Losses) on Cash Flow Hedges	Foreign Currency <u>Translation</u> (In million	Estimated tax (expense) benefit	<u>Total</u>
Beginning balance	\$ 126	\$ (16 )	\$ -	\$110
Other comprehensive income (loss) before reclassifications	114	(33)	1	82
Amount of gain reclassified from accumulated other				
comprehensive income	50	-	-	50
Net current period other comprehensive income	64	(33)	1	32
Ending balance	\$ 190	<u>\$ (49 </u> )	\$ 1	\$142

The following table summarizes the changes in accumulated balances of other comprehensive income for the three months ended March 31, 2014:

	Unrealized Gains (Losses on Cash Flow Hedges	,	Foreign Currency Translation	Estimated tax (expense) benefit	<u>Total</u>
			(In mill	ions)	
Beginning balance	\$ (91	)	\$ 26	\$ 4	\$(61)
Other comprehensive loss before reclassifications	(7	)	-	(3)	(10)
Amount of loss reclassified from accumulated other					
comprehensive income	(17	)			(17)
Net current period other comprehensive income	10		-	(3)	7
Ending balance	\$ (81	_)	\$ 26	\$ 1	\$(54)

#### **PayPal**

### NOTES TO CONDENSED COMBINED FINANCIAL STATEMENTS-(Continued)

The following table provides details about reclassifications out of accumulated other comprehensive income for the three months ended March 31, 2015 and 2014:

Details about Accumulated Other <u>Comprehensive Income Components</u>	Amount of Gain (Loss) Reclassified from Accumulated Other Comprehensive Income		Affected Line Item in the Statement of Income
	Three Months Ended March 31, 2015 2014		
		n millions)	
Gains (losses) on cash flow hedges-foreign			
exchange contracts	\$ 50	\$ (17)	Net revenues
	\$ 50	\$ (17 )	Total, before income taxes
	_	-	Provision for income taxes
Total reclassifications for the period	\$ 50	\$ (17)	Total, net of income taxes

### **Note 14-Subsequent Events**

In April 2015, we concluded an agreement with certain investors under which we have agreed to sell a participation interest of approximately \$700 million in a portion of our purchased consumer receivables arising from loans made by our partner chartered financial institution to individual consumers to purchase goods and services using PayPal Credit products; this transaction was completed in May 2015. The carrying value of such consumer receivables upon the closing and funding of this participation interest was \$708 million and differed from the carrying value at March 31, 2015 due to normal, ongoing payment and resolution activity.

In April 2015, we completed our acquisition of Paydiant, Inc. for approximately \$285 million in cash. The acquisition of Paydiant is intended to expand our capabilities in mobile payments. Using Paydiant's platform, our merchant partners can create their own branded wallets to accelerate mobile-in-store payments and drive consumer engagement through mobile payments, loyalty, offers and the prioritization of preferred payment types, such as store branded credit cards and gift cards. We are in the process of determining the purchase price allocation for this acquisition.

In April 2015, we completed our acquisition of CyActive Security, Ltd. CyActive is a cybersecurity firm that specializes in technology that predicts how malware will develop. The acquisition of CyActive is intended to further enhance our risk assessment capabilities used to protect merchants and consumers on our Payments Platform. We are in the process of determining the purchase price allocation for this acquisition.