

## API License and Terms of Use

Last Updated: 18 September 2021

THIS API LICENSE AND TERMS OF USE ("**AGREEMENT**") IS BETWEEN MARKETPLACER AND THE ORGANIZATION AGREEING TO THESE TERMS ("**YOU**" OR "**YOUR**"). THIS AGREEMENT GOVERNS ACCESS TO AND USE OF THE MARKETPLACER APIS. BY CLICKING 'CREATE' TO GENERATE AN API KEY OR OTHERWISE ACCESSING OR USING THE MARKETPLACER APIS, YOU AGREE TO BE LEGALLY BOUND BY THE TERMS OF THIS AGREEMENT.

IF YOU ARE AGREEING TO THIS AGREEMENT FOR USE OF THE MARKETPLACER APIS BY AN ORGANIZATION, YOU ARE AGREEING ON BEHALF OF THAT ORGANIZATION. YOU MUST HAVE THE AUTHORITY TO BIND THAT ORGANIZATION TO THESE TERMS, OTHERWISE YOU MUST NOT CREATE AN API KEY OR USE OR ACCESS THE MARKETPLACER APIS. YOU MUST SPECIFY THE FULL LEGAL NAME OF THE ORGANIZATION WHERE PROMPTED PRIOR TO GENERATING AN API KEY.

"**MARKETPLACER**" MEANS THE MARKETPLACER ENTITY DETERMINED BY WHERE YOU ARE DOMICILED AS SPECIFIED IN [EXHIBIT A](#).

The parties agree as follows:

1. Definitions.

1.1. "**API Key**" means the secret key and access token that allow you to make authenticated requests to the Marketplacer APIs.

1.2. "**Application**" means the software application, website, interface, or any other means you use to access the Marketplacer APIs using the API Key.

1.3. "**Confidential Data**" means data that is intended only for a limited audience or whose release would likely have an adverse financial or reputational effect on Marketplacer or a third party and includes Personal Information.

1.4. "**Confidential Information**" means all information disclosed by a party (the "**Disclosing Party**") to the other party (the "**Recipient**") that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure and in the case of Marketplacer, includes:

- i. all non-public information which you have access to through the Application, the Marketplacer APIs or in connection with this Agreement;
- ii. the API Key; and
- iii. all Confidential Data,

but does not include any information that:

- iv. is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;
- v. was known to the party receiving the information prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;
- vi. is received from a third party without breach of any obligation owed to the Disclosing Party; or
- vii. was independently developed by the Recipient without breach of any obligations owed to the Disclosing Party.

Despite the foregoing, the protections in this Agreement for Confidential Data remain in full force and effect even where Confidential Data meets the criteria in (iv) - (vii) above.



1.5. **"Customer"** means a buyer, seller, or other user of an Operator Marketplace, including a user or recipient of the goods or services provided by the Operator.

1.6. **"Feedback"** means any suggestion or idea for improving or otherwise modifying the API or Services.

1.7. **"Marketplacer API Documentation"** means the documentation found at [api.marketplacer.com](https://api.marketplacer.com) and any other documentation provided to you.

1.8. **"Marketplacer APIs"** means Marketplacer's Application Programming Interfaces and related tools, content, documentation, and services, whether tangible or intangible, in whatever form or medium that are made available by Marketplacer in connection with the Services, and which may be further described in Marketplacer API Documentation.

1.9. **"Operator"** means a customer of Marketplacer that enters into a contract with Marketplacer for platform services in connection with an online marketplace or e-commerce site.

1.10. **"Operator Marketplace"** refers to each Operator's instance(s) of the Marketplacer platform.

1.11. **"Personal Information"** means any information relating to a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, a phone number, an email address, an identification number, location data, an online identifier, or any other information specific to that natural person.

1.12. **"Services"** means the service of access to and use of the Marketplacer platform and related integrations, services, and applications.

## 2. Use/Authorization.

2.1. Subject to clause 2.2, Marketplacer grants to you a worldwide, nonexclusive, non-transferrable, revocable, limited, royalty-free, non-sublicensable license to use the Marketplacer APIs solely for the purpose of enabling and facilitating the Services.

2.2. Any use of or access to the Marketplacer APIs other than as expressly allowed by this clause 2 is prohibited, unless you first obtain Marketplacer's prior written consent.

## 3. API Restrictions. When using the Marketplacer APIs, you shall:

3.1. restrict disclosure of the API Key, or any part thereof, to your agents, employees, or service providers, who must require access to use, maintain, implement, correct, or update the Application, and who are subject to contractual obligations equal to or greater than those contained herein;

3.2. not use or access the Marketplacer APIs in order to monitor the availability, performance, or functionality of the Marketplacer APIs, the Services or any portion thereof or for any similar benchmarking purposes;

3.3. not remove or destroy any copyright notices, proprietary markings or confidentiality notices placed upon, contained within, or associated with the Marketplacer APIs;

3.4. not engage in any activity that interferes with, disrupts, harms, damages, or accesses in an unauthorized manner the servers, security, networks, data, applications or other properties or services of Marketplacer or any third party;

3.5. not circumvent technological measures intended to prevent direct database access, or manufacture tools or products of Marketplacer;

3.6. not modify, translate, reverse engineer, disassemble, reconstruct, decompile, copy, or create derivative works of the Marketplacer APIs or the Services, or any aspect or portion thereof, except to the extent that this restriction is expressly prohibited by applicable law;

3.7. not bypass restrictions on Marketplacer APIs for any reason;

3.8. not develop Applications that excessively burden the Marketplacer system, distribute spyware, adware or other commonly objectionable programs;

3.9. not develop an Application whose primary purpose is to migrate customers away from the Marketplacer platform;



3.10. not access or use the Marketplacer APIs to develop or distribute the Application in any way in furtherance of criminal, fraudulent, or other unlawful activity;

3.11. not request more than the minimum amount of data from Marketplacer APIs needed by the Application to provide the Operator with the intended Application functionality, or any data outside any permissions granted by the Operator;

3.12. not falsify or alter any unique identifier in, or assigned to the Application, or otherwise obscure or alter the source of queries coming from an Application; and

3.13. not include code in any Application which performs any operations not related to the services provided by the Application, whether or not the Application obtains consent from the end user to do so.

#### 4. Security.

4.1. You must maintain and enforce a written privacy and security program that (i) aligns with a global industry recognized information security management system; (ii) includes administrative, technical and physical safeguards reasonably designed to protect the confidentiality, integrity and availability of data; (iii) is appropriate to the nature, size and complexity of your business operations; and (iv) complies with any laws applicable for the geographic region in which you do business.

4.2. You must take reasonable steps to prevent Confidential Data from unauthorized use, access, disclosure, theft, manipulation, reproduction, a Security Breach or otherwise.

5. Ownership. You do not acquire ownership of any rights by using Marketplacer APIs. Marketplacer retains title and ownership of the Marketplacer APIs, Services and all subsequent copies, including the intellectual property rights therein, regardless of the form or media in or on which the Marketplacer APIs, Services or subsequent copies exist. You retain title and ownership of the Application.

6. Feedback. Marketplacer has not agreed to and does not agree to treat as confidential any Feedback you provide to Marketplacer, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Marketplacer's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting you.

7. Copy Restrictions. Unauthorized copying of the Marketplacer APIs or any accompanying written materials is expressly forbidden. You may be held legally responsible for any copyright infringement that is caused or encouraged by your failure to abide by the terms of this Agreement.

8. Updates. Marketplacer may update the Marketplacer APIs from time to time and you will receive access to any updates to the Marketplacer APIs released by Marketplacer. Marketplacer will use reasonable commercial efforts to inform you in advance if your Application needs to be updated to maintain compatibility with the Marketplacer APIs.

#### 9. Privacy

9.1. **Deletion.** You agree to delete Personal Information when requested by Marketplacer or if you are not an Operator, if requested by an Operator, or when it is no longer necessary for the Application.

9.2. **Compliance with Privacy Laws.** You agree to cause the Application and your use of the Marketplacer APIs to comply with all applicable laws, rules, regulations, and best practices concerning privacy and data protection. You shall prepare and make publicly available an appropriate privacy policy for the Application that you abide by, as necessary to comply with laws.

9.3. **Personal Information.** You agree that: (i) the Application's collection and use of Personal Information will be only as authorized by the owner of the Personal Information; (ii) you will comply with your privacy policy (if applicable); (iii) you will not collect, store, use, disclose or otherwise process Personal Information for any purpose other than facilitating the use of the Services as permitted under this Agreement.

9.4. **Data Breach.** You shall promptly notify Marketplacer of any actual or suspected breach or compromise of Personal Information due to unauthorized access to facilities, networks or systems where Personal Information resides or any misuse or unlawful or accidental loss, destruction, alteration, damage, compromise or unauthorized processing of Personal Information (a "**Data Breach**") immediately on becoming aware of such occurrence. Upon learning of the Data Breach, at your own cost, you will: (A) promptly remedy the Data Breach to prevent any further loss of Personal Data; (B) investigate the incident; (C) take reasonable actions to mitigate any future anticipated harm to Marketplacer, Operator, and Customers; and (D) promptly



answer questions from Marketplacer relating to the Data Breach, regularly communicate the progress of your investigation to Marketplacer and cooperate to provide Marketplacer with any additional requested information in a timely manner.

9.5. **Application Testing.** The Sandbox Test Environment (the "**Sandbox**") is a production environment for testing Applications to ensure proper operation in respect of API integration. The Sandbox is intended for testing API logic and API behavior only. You may use information made available in the Sandbox for application development and test only. You are responsible for safeguarding your data and the data of your customers. You are prohibited from publishing confidential, Personal Data, or restrictive data in the Sandbox. You must delete the Application from the Sandbox immediately after testing is completed.

10. **Monitoring.** You agree that Marketplacer may monitor the Application's use of the Marketplacer APIs. This monitoring may include Marketplacer accessing and using the Application. Marketplacer may suspend your access and the Application's access to the Marketplacer APIs without notice if Marketplacer reasonably believes that the Application is, or you are, in violation of this Agreement.

11. **Force Majeure.** You acknowledge that use of the Marketplacer APIs may be interrupted due to (a) downtime for scheduled maintenance at Marketplacer's sole discretion, or (b) interruptions in internet connectivity or other website downtime caused by circumstances beyond Marketplacer's control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, pandemic, epidemic, computer or telecommunications failures, delays involving hardware or software not within Marketplacer's control, network intrusions or denial of service attacks. You agree that Marketplacer shall not, in any way, be liable for, or have responsibility with respect to, any such interruptions.

12. **Limited Warranty.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND EXCEPT AS EXPRESSLY SET FORTH HEREIN THE MARKETPLACER APIS AND SERVICES ARE PROVIDED "AS IS", AND MARKETPLACER AND ITS SUPPLIERS AND LICENSORS DO NOT MAKE AND SPECIFICALLY DISCLAIM, ALL EXPRESS AND IMPLIED WARRANTIES OF EVERY KIND RELATING TO THE MARKETPLACER API AND SERVICES (INCLUDING, WITHOUT LIMITATION, ACTUAL AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT), AS WELL AS ANY WARRANTIES THAT THE API OR SERVICES (OR ANY ELEMENTS THEREOF) WILL ACHIEVE A PARTICULAR RESULT, OR WILL BE UNINTERRUPTED OR ERROR-FREE.

13. **Indemnification.** You agree to indemnify, defend and hold harmless Marketplacer and its officers, directors, employees, agents and contractors from any loss, cost, expense (including attorney's fees and expenses), demand, claim, liability, damages or cause of action of any kind or, in any manner arising out of or relating to (i) any violation or breach by you of any provision of this Agreement; (ii) the Application, or (iii) your negligence, recklessness or intentional misconduct.

14. **Limitation of Liability.** To the maximum extent permitted by applicable law, in no event shall Marketplacer be liable under any theory of liability for any consequential, indirect, incidental, special, punitive or exemplary damages of any kind, including, without limitation, damages arising from loss of profits, revenue, data or use, or from interrupted communications or damaged data, or from any defect or error or in connection with your acquisition of substitute goods or services or malfunction of the Marketplacer APIs or Services, or any such damages arising from breach of contract or warranty or from negligence or strict liability, even if Marketplacer or any other person has been advised or should know of the possibility of such damages, and notwithstanding the failure of any remedy to achieve its intended purpose. Without limiting the foregoing or any other limitation of liability herein, regardless of the form of action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, your exclusive remedy and the total liability of Marketplacer or any supplier of services to Marketplacer for any claims arising in any way in connection with or related to this Agreement, for any cause whatsoever, including but not limited to any failure or disruption of the use of the Marketplacer APIs or Services, shall not exceed \$100. Marketplacer shall have no liability whatsoever to you for any claims of patent, copyright, or other intellectual property right infringement or misappropriation of trade secrets, made against you incident to the use of the Marketplacer APIs or Services.

15. **Confidentiality**



15.1. The Recipient agrees at all times during and for so long as is legally permissible after this Agreement is terminated to keep confidential the Confidential Information of the Disclosing Party.

15.2. The Recipient shall take all reasonable precautions to protect the Confidential Information, including all precautions the Recipient takes with respect to its own confidential information.

15.3. The Recipient agrees that it will not use, disclose or discuss the Disclosing Party's Confidential Information without the prior written approval of the Disclosing Party, except:

- (a) as specifically provided by this Agreement; or
- (b) to the extent required by law, a regulator, a court order or the rules of any stock exchange, providing the Recipient uses reasonable efforts to cooperate with the Disclosing Party, to disclose only the minimum information legally required to be disclosed and to allow the Disclosing Party to participate in the proceeding (if applicable).

15.4. The Recipient must not sell, transfer, assign or otherwise dispose of or grant any license in relation to any Confidential Information or make available copies (whether by photocopying, photographic reproduction or by electronically recorded data) of any Confidential Information to any person other than with the prior written consent of the other party.

15.5. The Recipient acknowledges that the Confidential Information as disclosed by the Disclosing Party, and all reproductions of that Confidential Information in any format or medium, is and remains the property of the Disclosing Party, and that the Disclosing Party retains any and all rights, including without limitation intellectual property rights, in the Confidential Information.

15.6. On request by the Disclosing Party at any time, the Recipient will either promptly return or certify the destruction of all Confidential Information, including all documentation and materials and all copies which embody the Confidential Information, in its possession or under its control.

#### 16. Termination.

16.1. Either party may terminate this Agreement for any reason by providing at least fifteen (15) days written notice to the other.

16.2. Upon termination of this Agreement, your license to use the Marketplacer APIs is terminated.

#### 17. General.

17.1. Choice of Law. This Agreement is governed by the laws determined by your place of domicile, in accordance with Exhibit A.

17.2. Attorney's Fees. The prevailing party in any action filed under this Agreement or related to the Marketplacer APIs is entitled to reasonable attorney's fees and costs.

17.3. Headings. The headings of the sections of this Agreement are for convenience only, and in no way limit or affect the terms and conditions or the meaning or interpretation of this Agreement.

17.4. Severability. If any provision of this Agreement is held to be invalid or unenforceable then that provision will be altered or limited such that it is enforceable and corresponds to the original provision as closely as possible. An invalid or unenforceable provision of this Agreement shall not affect the validity of the remaining provisions of this Agreement.

17.5. Waiver. Waiver by either party of a breach of any provision contained in this Agreement shall not constitute or be construed as a waiver of any succeeding breach of such provision or a waiver of the provision itself.



17.6. Time To File Lawsuit or Other Action. You agree to file any lawsuit or other action you may have against Marketplacer or its agents, employees, subsidiaries, affiliates or parent companies within one (1) year from the date of the event that caused the loss, damage or liability or be forever barred.

17.7. Completeness. This Agreement sets forth the entire understanding between you and Marketplacer with respect to the matters set forth herein and supersedes all previous agreements and representations with respect to the Marketplacer APIs.

17.8. Assignment. Neither party shall assign or otherwise transfer or purport to assign or otherwise transfer this Agreement or any of its rights or obligations hereunder or any part thereof without the prior written consent of the other party, except that Marketplacer may assign any of its rights or obligations to any successor-in-interest or to an entity that acquires all or substantially all of its assets, all or a majority of its equity in any form, or to an entity into which such party is merged.

17.9. Updates. Marketplacer may update these terms from time to time. The most up-to-date version will always be posted on [marketplacer.com/legal](https://marketplacer.com/legal). If you wish to receive notice of updates to this Agreement by email, please let us know at [legal@marketplacer.com](mailto:legal@marketplacer.com).



**Exhibit A: Contracting entity, notices, governing law and venue**

If you are domiciled in:	Marketplacer entity you are contracting with:	Address for notices:	Governing law is:	Courts with non-exclusive jurisdiction are:
United States	Marketplacer, LLC	4300 Stevens Creek Blvd. Suite 270, San Jose CA 95129 United States  Attention: Head of Legal	Delaware, United States	Courts of Delaware, United States
Rest of World	Marketplacer Pty Ltd	PO Box 37, Williamstown VIC 3016 Australia  Attention: Head of Legal	State of Victoria, Australia	Courts of the State of Victoria, Australia

