

Master Seller Appointment Agreement

1. Agreement

- 1.1. This document governs your appointment to the Marketplacer Seller Program known as "Curator" (**Program**). Capitalised terms not defined herein have the meanings given in the Seller Appointment Form supplied to you together with these terms (**Form**).
- 1.2. As consideration for the Fees, your appointment to the Program will grant you the opportunity to sell on Channels and access the Services described in the Form on these terms and conditions.
- 1.3. By signing one or more Forms which incorporate this Master Seller Appointment Agreement (together, the Form and these terms constitute the **Agreement**), you are entering into a legally binding contract pursuant to which you are: (a) joining the Program; (b) agreeing to comply with these terms and conditions when you sell through a Channel and/or use our Platform and Services; and (c) committing to pay the Fees specified in the Form as consideration for these services and opportunities.
- 1.4. On joining the Program you may offer to sell your products through one or more Storefronts. We will connect you to interested Channels, and, where you and a Channel jointly agree, we will facilitate your onboarding as a seller on the relevant Storefront.
- 1.5. As part of onboarding to each Channel, Channels will require legal binding commitments from you regarding the supply of your products on their Storefronts, which will take the form of either:
 - (a) (**Seller Contract**) a separate legal contract on the Channel's own terms and conditions between you and the Channel (**Seller Contract**). We are not a party to Seller Contracts; however, we will assist the Channel and you to finalise the Seller Contract for expediency. You should read the Seller Contract carefully before accepting it, and you should follow the Channel's instructions for entering into the Seller Contract; or
 - (b) (**Deed of Indemnity**) Channels may choose to rely on the commitments you make in respect of this MSAA, in which case you will be required to supply them with a Deed of Indemnity supplied by us and acceptable to both you and the relevant Channel which: (a) requires you to provide an indemnity in their favour, including for material breaches of this MSAA by you that cause them any loss or damage; and (b) may include Channel-specific policies, manuals service levels, and other special terms the Channel requires you to comply with in order to sell Products on their Storefront (being a **Deed of Indemnity**).
- 1.6. You will not be permitted to complete onboarding to a Channel's Storefront unless or until you have executed the contract referred to in clause 1.5(a) or (b) as applicable, completed all Checks described in clause 1.9 and entered into the PSP Account Agreement referred to in clause 6.
- 1.7. You must comply with both this Agreement between us, and the Seller Contract or Deed of Indemnity between you and the Channel, and nothing contained in any Seller Contract or Deed of Indemnity diminishes your responsibilities under this Agreement except as expressly stated herein.
- 1.8. To offer the Program as a scaled solution to multiple sellers and Channels, we limit our liability under clauses 13 and 14, and you agree to indemnify us for certain kinds of loss that you might cause us through your use of our Platform.
- 1.9. It is an important requirement of the Program that you must promptly, fully and accurately complete any due diligence checks required to verify your suitability for the Program, including initial and ongoing checks, or ad hoc checks on request, as required by us, our payment services provider (**PSP**), or a Channel (**Checks**) and in accordance with the remainder of this clause. Checks may be carried out on you, your personnel, beneficial owners and/or authorised users of the Platform or our payment services provider's services. If you refuse to complete Checks within 2 business days of receiving a request by email, or Checks produce unsatisfactory results (at our discretion), we may: (a) terminate this Agreement on 5 days' written notice; (b) refuse to provide or suspend one or more services to you; or (c) you may not be permitted to complete onboarding to the relevant Channel's Storefront. You acknowledge that provision of, and your use of, the services herein are subject to completion of Checks to Marketplacer's satisfaction.
- 1.10. You must provide complete, accurate, and up to date information at all times on request for the purpose of Checks. Losses arising from your failure to provide complete or accurate information to us, our payment services provider, or a Channel, and/or failure to provide requested information within the required timeline shall be your responsibility.
- 1.11. You acknowledge that neither this Agreement nor any Seller Contract guarantees you any exclusivity or minimum volume of Channel connections or any minimum number of sales on or through any Storefront. We do not guarantee that participation in the Program will result in you being invited to sell Products through a particular Channel, as invitations are always issued at the discretion of the Channel. We make no representations or guarantees that you will sell any Products using our Services.
- 1.12. We provide the Platform and Services to you so that you have the opportunity to list and sell your products and/or services (**Products**) to customers of Channels



(Buyers) through the Platform on Storefronts. You are responsible for Products and for the terms of sale you set for them. When you sell a Product to a Buyer, you are contracting directly with that Buyer to sell your Products to them, and neither us nor any Channel is a party to, or responsible for, that contract for the purchase and supply of your Products. We do not control and are not responsible for the actions of Buyers.

2. Modifications to Services or this Agreement

- 2.1. We reserve the right to update or make changes to any part of this Agreement on notice to you to the extent reasonably necessary to protect Marketplacer's legitimate business interests. We will notify you of these changes in a way which is reasonable based on the nature of the change and the impact it may have on your rights under this Agreement.
- 2.2. If you do not agree to any material changes we make under clause 2.1, you may cease using the Services and terminate this Agreement by providing notice to us before the end of the applicable notice period, in which case this Agreement shall continue unamended until your notice of termination takes effect and clause 15.9 will apply. All payment obligations for the remainder of any period of Minimum Commitment, if applicable, are non-cancellable and all amounts paid are non-refundable.
- 2.3. Your continued use of our Services following the end of the applicable notice period notified to you under clause 2.1 will constitute acceptance of any changes we make to this Agreement.

3. Marketplacer Platform

- 3.1. Subject to your satisfaction of the requirements in clause 1.6, we will provide you with an account within the relevant Channel's instance of the Platform which you may, depending on your method of integration, use to access our Platform and list and sell your products as agreed with the relevant Channel through that Channel's Storefront (**Products**). We are not responsible for product selection between you and the relevant Channel.
- 3.2. You are responsible for appointing the administrators, managers or other end users of your account (**End Users**). You are responsible for the activity that occurs on your accounts, and you must keep your account password and details secure. We are not responsible for any unauthorised activity on your account occurring because you failed to keep your account login information secure. You must ensure your accounts are not used for any illegal or fraudulent purpose. You will be responsible for any actions taken by End Users, your affiliates, agents, or other third parties on your behalf in connection with this Agreement.
- 3.3. The Platform is provided "as is" and is not provided free of defects, nor will it be available at all times and

uninterrupted. Marketplacer makes no guarantee that the Platform or any content on either of them will always be available or be uninterrupted except that Marketplacer will use reasonable efforts to minimise any downtime on the Platform. From time to time, the Platform may be unavailable for maintenance and/or updates, or due to unexpected technical issues.

- 3.4. Marketplacer grants to you during the Term a non-exclusive, non-transferable, non-sublicensable and terminable right to access and use the Platform on a 'software-as-a-service' basis for the purpose of listing and selling your goods and services to buyers on Storefronts, accessing the Services and in accordance with the terms of this Agreement.
- 3.5. You grant to Marketplacer a worldwide license to access, use, process, copy, distribute, perform, export, modify, make derivative works and display all data and information that is provided to or collected by Marketplacer in connection with this Agreement relating to you and your operations, business, buyers, service providers, distributors, personnel, consultants, advisors, assets and transactions in whatever form such information may exist, regardless of whether such data or information is provided by, or collected from, you or a third party (**Seller Data**):
 - (a) to the extent necessary to perform our obligations under this Agreement; and
 - (b) for the additional purposes described in clauses 3.6 and 3.7.
- 3.6. Without limitation, the following activities are expressly agreed by the parties to be within the scope of performing our obligations under this Agreement: assuring acceptable quality of service, Platform security, error monitoring, incident monitoring and management, user and technical support and supply of services to you or a Channel, including accessing your accounts and portals and the accounts and portals of any Channels you sell Products on, responding to support requests, product monitoring and management, usage and performance monitoring and management, supplying Services, Platform developments and improvements, and sharing Seller Data with Channels and PSPs and the relevant payment networks in connection with this Agreement.
- 3.7. You agree that Marketplacer may collect, aggregate, use and disclose Seller Data provided such data is de-identified, meaning that it cannot be attributed or connected to an individual (**Usage Data**). Notwithstanding anything to the contrary in this Agreement, Marketplacer owns all right, title and interest in any inferences, analytics or databases created using the Usage Data.
- 3.8. You must comply with our [Acceptable Use Policy](#) which is an essential term of the Agreement between us.



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- 3.9. The Platform may permit you to generate a secret key and access token that allows an individual or entity to make authenticated requests to our or our service providers' APIs (**API Key**). In order to generate an API Key, you are required to accept Marketplacer's [API Terms of Use](#), which are hereinafter incorporated by reference.
- 3.10. You must comply with any technical or security policies, specifications, limitations or other technical documentation (including product documentation) or instructions given to you by Marketplacer in connection with the use of the Platform or Services (**Documentation**). Notwithstanding anything to the contrary in this Agreement, Marketplacer is not liable for any liability or damage caused or contributed to by your failure to comply with the Documentation.
- 3.11. We reserve the right, at any time and from time to time, to alter or change the Platform and/or Services and associated functionality in any way.
- 3.12. We may, at our discretion, in connection with the Platform:
- (a) investigate any suspected illegal activity on your account;
 - (b) refer fraudulent or abusive or illegal activity to the relevant authorities and in doing so, disclose information to such authorities relating to your account; and
 - (c) use mechanisms that rate or review, or allow buyers to rate or review, your Products or performance as a seller and we may make these ratings publicly available.
- 3.13. Marketplacer has not agreed to and does not agree to treat as confidential any suggestion or idea for improving or otherwise modifying the Platform including but not limited to, feature requests and requests for custom reports (**Feedback**) you provide to us, 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.
- 4. Selling Products on Channels**
- 4.1. Subject to this Agreement, you will always be solely responsible to Buyers for any Products they purchase via Storefronts, and liable for: (a) your Products and their compliance with applicable laws; (b) any transactions between you and Buyers through the Storefronts, the fulfilment of orders placed through a Storefront for your Products (**Orders**) and delivery of your Products to Buyers; (c) your Products, Listing Content (defined in clause 4.7) and any representations you make about your Products; and (d) any faults or failures related to your Products and the provision of any repairs, replacement or refunds to Buyers as a result.
- 4.2. Orders will be received by you through the Platform, and must be retrieved by you daily for processing in accordance with all SLAs, policies, manuals or other instructions issued to you by the Channel or us on the Channel's behalf (together, the **Policies**).
- 4.3. You must deliver all Products to buyers in accordance with the Policies and your agreement with the Buyer, including (without limitation) complying with all Policies with respect to pricing, inventory maintenance and shipping.
- 4.4. You are responsible for the delivery of Orders to Buyers and ensuring deliveries are received by Buyers undamaged and as described in the Product listing to their nominated address for delivery.
- 4.5. You acknowledge that Channels may withdraw your right to sell Products on their Storefronts at any time for any reason; we are not liable to you if this occurs and have no control over the acts or omissions of Channels. You agree that Channels are responsible for Product selection, vetting and approval, and not us.
- 4.6. You agree to only sell Products you have a legal right to sell in the jurisdiction(s) agreed between you and the Channel (**Jurisdiction**). On request, you will provide us or the Channel with evidence that you are licensed or otherwise have the necessary rights to use Listing Content in the Jurisdiction.
- 4.7. You are responsible for all information and images uploaded to the Platform in order to place the Products on a Storefront through the Platform and in accordance with the relevant Channel's requirements (**Listing Content**). Among other things, this may include product images, descriptions, product information and titles.
- 4.8. You agree that we are not responsible for reviewing or policing Listing Content or any third party's use of such Listing Content. You must ensure that the Listing Content is materially accurate when provided and will promptly update Listing Content whenever there is a change to it.
- 4.9. You must ensure all Products delivered to buyers are materially as described in the Listing Content and that any material information that may affect a Buyer's decision to purchase a Product, such as product origin, condition, or potential hazards is disclosed in the relevant Product listing.
- 4.10. If we request that you remove Product listings or Listing Content from the Platform for any reason, you must make commercially reasonable efforts to remove them within no longer than 24 hours of such request and must not re-list them unless authorised by us in writing. If you do not comply with this clause, you agree that we may remove Product listings or Listing Content from the Platform on your behalf.



- 4.11. Where we receive a notification from any third party which alleges a breach of this clause 4 or applicable laws with regards to any Product listing or Listing Content, we have the right to edit, suspend, prohibit, remove, or take other action in relation to a Product listing on the Platform as we may determine, acting reasonably, is necessary, based on information available to us at the time. Without limiting the foregoing, Marketplacer may remove your Product listings from the Platform in response to notices of alleged copyright infringement, trademark misappropriation, or other infringements of **Intellectual Property Rights** (meaning any and all intellectual and industrial property rights subsisting in any part of the universe in any and all media (whether now known or created in the future) including, without limitation, rights in the nature of copyright, registered design or other design right, trade mark, patent rights, circuit layout rights, trade secrets and any corresponding proprietary rights (whether registered or common law) under the laws of any jurisdiction).
- 4.12. You must advise buyers when Products for which an Order has been made have become unavailable and, in such circumstances, promptly advise the relevant Channel.
- 4.13. You must:
- (a) comply with all applicable local, state, federal, and international laws, including but not limited to those related to consumer protection, product safety, advertising, privacy, and intellectual property;
 - (b) ensure that all Products are authentic, accurately described, and meet all applicable quality and safety standards. Counterfeit, unauthorised, or otherwise misrepresented Products are strictly prohibited;
 - (c) ensure all statements and descriptive literature about the Products (including the Listing Content) are, and will be, true and correct at the time such statements are made or literature uploaded to the Platform and/or a Storefront, and all such statements and literature are supported by data in compliance with applicable laws;
 - (d) own, or have the right to use, any intellectual property associated with Products and Listing Content, including trademarks, logos, images, and descriptions;
 - (e) ensure Listing Content and Products do not infringe third-party Intellectual Property Rights; and
 - (f) promptly co-operate and follow reasonable directions issued by the relevant Channel or

Marketplacer on its behalf, as the case may be, when any allegation is made that any Listing Content or Product infringes Intellectual Property Rights of any person or entity.

- 4.14. If applicable, all prices you provide in Product listings must be clear, accurate, and reflective of the total cost, including any additional fees or taxes. You are prohibited from engaging in price manipulation, false advertising, or deceptive practices that could mislead consumers or harm the competitive integrity of the Storefront.
- 4.15. You agree to notify us immediately on becoming aware of any matter which may affect your ability to comply with this clause 4.

5. Fulfillment

- 5.1. You agree to comply with the relevant Channel's instructions and this clause 5 in respect of fulfilment of Orders unless you and the relevant Channel have agreed that you will fulfill Orders using dropshipping, in which case the [Special Terms - Dropship](#) apply (in addition to any requirements imposed by the Channel). To the extent that there is any inconsistency between a Channel's fulfilment requirements and this clause 5 (including [Special Terms - Dropship](#) if applicable), the Channel's requirements take precedence.
- 5.2. Neither Marketplacer nor the Channel is the "seller of record". You are solely responsible for, and must fulfill, all transactions with buyers which occur as a result of you listing Products on a Storefront through the Platform, including sale and delivery of the Products (including any cancellation rights, returns and dealing with complaints), save to the extent that the relevant Channel has the right to step in and deal with customer complaints in accordance with a Seller Contract or relevant Policy (if applicable). You must identify yourself as the seller of record, including on all packing slips or other information provided to buyers.
- 5.3. You agree not to hold us or the relevant Channel responsible for the quality, safety or legality of Products advertised by you, the accuracy of your Listing Content, or the shipping and delivery of Products by you. In addition, you must (except to the extent the following conflicts with the express terms of an agreement between you and the Channel):
- (a) honour refund and return policies stipulated by the relevant Channel and to the extent any special return or refund conditions apply to a Product, ensure these are clearly disclosed to Buyers prior to purchase;
 - (b) provide responsive, fair, and courteous customer service to resolve buyer issues;



- (c) ensure timely, safe, and reliable shipping in accordance with Policies and that estimated delivery times are communicated to buyers; and
 - (d) use appropriate packaging, labeling, and tracking and, unless otherwise instructed by a Channel, immediately inform buyers of any delays or issues with their Orders.
- 5.4. When a buyer places an Order, you acknowledge and agree that:
- (a) a contract of sale exists between you and the buyer for the supply of the Products which are the subject of the Order;
 - (b) you will be committed to fulfilling the Order at the time the relevant Channel receives payment for the goods; and
 - (c) at no time will we or the relevant Channel take ownership of, or title in, the goods, and legal ownership of the goods will transfer directly from you to the buyer.
- 5.5. You will enter into a separate agreement with each Buyer for the sale and delivery of Products purchased through the Storefront and must include any restrictions on the purchase of Products in your contract with the Buyer (for example where you are unable to deliver to certain locations). Neither Marketplacer nor the Channel are parties to the contract between you and the Buyer, and you must not represent otherwise in your communications with Buyers.
- 5.6. Marketplacer has no responsibility for any disputes or complaints between you, any Buyer and/or the Channel.

6. Fees and payment

- 6.1. As consideration for your participation in the Program, you agree to pay us the Fees described in the Form. Fees are non-refundable for the Minimum Commitment stated in the Form.
- 6.2. Payouts from Storefronts for sales of your Products are made available to you through our M Pay Service. The Fees applicable to this service are stated in the Form. Marketplacer does not provide any service to you related to the processing or management of payments from transactions on the Storefront and will not receive funds belonging to you or your buyers, as all such activity is undertaken by a designated PSP. **Any payment services available as part of the Program that are regulated by applicable laws are provided by Marketplacer's chosen PSP or any of its regional banking partners. No such payment services are provided by Marketplacer itself.**
- 6.3. **As at the date of this Agreement, Marketplacer's PSP**

is:

- (a) **if the region in which the PSP services are being used is Australia, Airwallex Pty Ltd (registered number 609653312 and AFSL number 487221);**
 - (b) **if the region in which the PSP services are being used is the United Kingdom, Airwallex (UK) Limited (registered number 10103420 and license number 900876);**
 - (c) **if the region in which the PSP services are being used is the United States, Airwallex US, LLC (registered number 7083651 and NMLS identification number 1928093);**
 - (d) **if the region in which the PSP services are being used is the European Economic Area, Airwallex (Netherlands) BV (registered number 77519256 and Relation number R179622); or**
 - (e) **if the region in which the PSP services are being used is New Zealand, Airwallex (New Zealand) Limited (registered number 8151714 and NZ FSPR number 1001602).**
- 6.4. Buyers will place Orders using the Channel's checkout system and all proceeds from such transactions (including associated delivery charges) will first be processed by the relevant Channel (or its PSP), and then transferred to Marketplacer's PSP. Such proceeds received by Marketplacer's PSP are hereby referred to as the **Sales Proceeds**.
- 6.5. To enable you to receive payments in connection with the Program via the PSP, you may be required to (among such other things required by the PSP from time to time):
- (a) open an account with the PSP (**PSP Account**) and enter into each PSP's standard form account agreement (**PSP Account Agreement**);
 - (b) until such time as it stops making or receiving payments under the Program, remain a party to the PSP Account Agreement with a live (unblocked) PSP Account; and
 - (c) comply at all times with the terms of the PSP Account Agreement and any standards or policies of the PSP as notified by them or us, discharge all liabilities under the PSP Account Agreement, and not do anything which is prohibited by the PSP Account Agreement.
- 6.6. If applicable, you must ensure that the PSP Account is sufficiently funded at all times to allow refunds and other relevant amounts (e.g. reversal of duplicative



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transactions) to be paid from it.

- 6.7. You agree that we are irrevocably authorised to carry out such activity, access any information held by the PSP regarding your PSP Account, issue instructions to the PSP (which includes doing so in connection with enforcing compliance by you with this Agreement or an agreement between you and a Channel) and provide information to each PSP on your behalf, such as reporting of transaction data.
- 6.8. You hereby authorise Marketplacer (including via its PSP) to:
- (a) deduct the Fees and any other charges, authorised deductions or adjustments in accordance with this Agreement, (together the **Authorised Deductions**) from Sales Proceeds and otherwise when funds are loaded into your PSP Account;
 - (b) remit the remaining proceeds (Sales Proceeds received by Marketplacer less Authorised Deductions) to your nominated bank account or other agreed payment method in accordance with this Agreement.
- 6.9. If insufficient proceeds are available for Authorised Deductions under sub-paragraph 6.8, Marketplacer may, at its election, either:
- (a) offset any amounts owing to us from any future Sales Proceeds received by us; or
 - (b) require you to pay us any such amounts within 14 days of being notified by us.
- 6.10. Marketplacer is not a party to the PSP Account Agreement (which is a separate legal agreement between you and the PSP) and excludes any liability to you for the acts or omissions of the PSP. You have no recourse against us in respect of processing or managing payments under the Program and must seek recourse directly from the PSP.
- 6.11. You: (a) will provide such reporting on your PSP Account to us as may reasonably be required by us from time to time; and (b) authorise us to access your PSP Account and receive your data from the PSP to monitor your compliance with your obligations. You must provide all information reasonably required by us and/or a PSP in a timely and efficient manner. You agree that we may share any information provided by you with the PSP as reasonably required.
- 6.12. To the extent that we support you in technically integrating and administering the PSP Account as part of the Platform, we do so on behalf of (as agent for) you.
- 6.13. If you are granted access to a PSP Account, you are responsible for appointing the administrators,

managers or other end users of your PSP Account. You are solely responsible for the activity that occurs on your accounts, and you must keep your account password and details secure. Marketplacer is not responsible for any unauthorised activity on the Seller's account occurring because the Seller failed to keep its account login information secure. Seller must ensure its accounts are not used for any illegal or fraudulent purpose. Seller will be responsible for any actions taken by Users, its affiliates, agents, or other third parties on its behalf in connection with this Agreement and its PSP Account Agreement.

- 6.14. On an ongoing basis, Marketplacer's PSP may perform verification and checks on the Seller's PSP Account, including requesting additional information or documents in relation to the Seller or Seller's PSP Account. Seller must comply with any requests for additional information or documents from Marketplacer as directed by the PSP from time to time, and will do so on a timely basis. Seller must provide all additional requested information or documents within the timeframe specified by Marketplacer, the PSP, its partners and/or any other of the PSP's third-party service providers.
- 6.15. Seller agrees to provide all information necessary, including any information as the PSP may require from Marketplacer from time to time, to allow the PSP to allocate any funds it receives into the PSP Account or to make payouts for PSP accounts. Seller will perform all activities required for the PSP to provide the PSP services in accordance with the PSP's privacy policy.
- 6.16. Marketplacer will not be liable to you if its PSP withholds, rejects, conditions, cancels or delays any transaction in order to comply with applicable laws or for any other reason specified by the PSP in the relevant agreement between you.
- 6.17. We may change PSPs on reasonable written notice to you from time to time, and you will cooperate with us as needed in connection with such change.
- 6.18. You will indemnify us against all liabilities, costs, expenses, damages and losses (including any direct losses, loss of profit, loss of reputation and all interest, penalties, fines, charges, refunds, reversals and legal costs (calculated on a full indemnity basis) and other reasonable professional costs and expenses) suffered or incurred by us resulting from any third party claim arising out of or in connection with a breach of this clause 6.
- 6.19. You must keep accurate and complete books, records, compliance information and accounts related to goods, services, transactions and this Agreement, and you hereby grant us the right, upon not less than 14 days prior written notice, during the term of this Agreement and for two (2) years after its termination or expiration, to conduct, during regular business



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hours, full and independent audits and investigations of the same reasonably required by us to confirm your compliance with the terms of this Agreement and applicable laws.

- 6.20. You or the relevant Channel (or Marketplacer on the Channel's behalf) may authorise refunds or adjustments to a buyer via the Platform. We do not take responsibility for erroneous adjustments, refunds, credits, or other payments made by you or a Channel. You must comply with the Seller Contract and Policies (as applicable) in respect of dealing with customer complaints, issues, refunds and replacements.
- 6.21. Certain disputes related to payments (including chargeback requests and reports of fraud) will be dealt with by the PSP (including acquirors) whose determination is final.
- 6.22. You will be liable for any and all service or transaction fees levied by your bank or any third-party payment gateway in connection with any payments made by us to you.
- 6.23. With each payment, you will be issued a statement which outlines the total Sales Proceeds and Authorised Deductions for the payment period. Marketplacer is not responsible for any deductions made by the Channel prior to Sales Proceeds being received by us; any dispute regarding such deductions must be addressed directly with the Channel pursuant to your agreement with the Channel.
- 6.24. You must provide us with, and ensure that we always have, accurate, up-to-date details including but not limited to contact address, email address and payment information.
- 6.25. The relevant Channel will determine when "supply" of a Product has occurred but this will generally be at the time payment of the purchase price has been received in full by the channel, you have accepted the relevant Order from the Buyer, and delivery of the Product has occurred to the Buyer's nominated address.
- 6.26. To the extent that any breach of your agreement with a third party service provider results in us being temporarily or permanently unable to provide one or more services to you, we are not liable for any failure to provide such service to you.

7. Taxes

- 7.1. If Marketplacer reasonably determines that an applicable law or any taxing authority requires it to deduct or withhold any taxes from a payment to the Seller under the Agreement, Marketplacer shall deduct and withhold any such taxes as and when the legal obligation to withhold arises, and the Seller hereby irrevocably consents to such withholdings.

- 7.2. The Seller agrees to provide Marketplacer with appropriate withholding certificates or other certificates or documentation, before any payment is made to the Seller under this Agreement, as required by applicable laws, and upon subsequent request by Marketplacer.
- 7.3. The Seller agrees to file all required returns, report any income, and pay any applicable taxes incurred as a result of the payments the Seller receives under this Agreement in a timely fashion, and to provide, upon request, evidence to Marketplacer that such income was reported.
- 7.4. To the extent required by applicable laws, Marketplacer agrees to provide appropriate forms to you evidencing the amounts paid to you under the terms of the Agreement and any taxes withheld.
- 7.5. If applicable, you are responsible for: (a) the compliance and timely export and/or import of the Products anywhere in the world and for ensuring that the Products are customs cleared on the provision of accurate data elements (including the payment of any duties, levies and plastic packaging tax which apply at the rate applicable at the time of border clearance of the Products into the place of delivery); and (b) accounting for any plastic packaging tax or other taxes due when Products are imported into the place of delivery.

8. Confidentiality

- 8.1. You or your affiliates (each a **Receiving Party**) may receive non-public information relating to our business, or the business of our affiliates or service providers, or the business of Channels in connection with the Program (each a **Disclosing Party**), including the terms of this Agreement, whether or not originated by the Disclosing Party and whether or not disclosed prior to or after the signing of this Agreement, which is marked or otherwise designated as confidential at the time of disclosure or which, based on the nature of the information or the circumstances of its disclosure, would reasonably be understood to be confidential or proprietary (**Confidential Information**). Confidential Information does not include information:
- (a) which is or becomes part of the public domain other than through breach of this Agreement;
 - (b) which was already known to Receiving Party at the time of the disclosure by the Disclosing Party;
 - (c) which the Receiving Party receives from a third party entitled to disclose it; or
 - (d) independently developed without use of or reference to any Confidential Information of the Disclosing Party by employees of the



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Receiving Party who had no access to such information.

taken by a supervisory authority (such as an investigation or proceedings) in connection with your data protection practices.

8.2. You agree that:

- (a) all Confidential Information will remain our exclusive property;
- (b) you will use and disclose Confidential Information only as is necessary for performance of this Agreement or, if applicable, an Agreement;
- (c) you will not directly or indirectly (including through a third party), otherwise use or disclose Confidential Information to any other person; and
- (d) you will take all reasonable measures to protect the Confidential Information against any use or disclosure not expressly permitted in this Agreement.

8.3. The confidentiality obligations hereunder shall continue for 2 years from the expiration or termination of this Agreement; provided, however, that you shall keep any of our trade secrets confidential as long as such information is deemed a trade secret by us.

9. Data Protection

9.1. Where you provide us with personal information, our [Privacy Policies](#) will govern how we use or disclose that information. These can be found on our Privacy Page at marketplacer.com/legal.

9.2. For Buyer information, including personal information, (**Buyer Information**) we share with you or which you access through our Platform, you must:

- (a) only use Buyer Information solely for the purposes of fulfilling orders for Products made through the Platform and communicating with Buyers about those Products or Orders in accordance with this Agreement;
- (b) comply with the requirements of all applicable privacy laws and regulations and keep all Buyer Information confidential except for the purpose of complying with your obligations under this Agreement;
- (c) have in place appropriate technical and organisational security measures designed to protect any Buyer Information from unauthorised access or disclosure (including data breach); and
- (d) immediately notify us of any complaint you receive from a Buyer or any other third party about any Buyer Information or any action

9.3. If you become aware of any actual, suspected or potential unauthorised access to, or loss or interference with, Buyer Information (**Unauthorised Access**) you must:

- (a) immediately notify us of the Unauthorised Access by email sent to privacy@marketplacer.com;
- (b) cooperate with us and provide us with all necessary information to the extent necessary to determine the nature and extent of the Unauthorised Access, including full details of any personal data breach including those detailed under applicable laws at the same time, or as soon as reasonably possible after such notification;
- (c) identify Buyers (if any) who may be affected by the Unauthorised Access and comply with all requirements of applicable law in relation to notifying any affected Buyers, as well as any government or regulatory agencies in relation to that Unauthorised Access.

9.4. You must not, unless expressly authorised by us:

- (a) contact a Buyer, or request that a Buyer contact you, by any means other than through our Platform and the means of communication we provide; or
- (b) collect and collate Buyer contact information or the purpose of marketing or promoting any products or services directly to Buyers other than through our Services or the functionality we provide to you.

9.5. You must not:

- (a) refer to us or any Channel in any public statement regarding any data protection matter without our or the Channel's, as the case may be, written approval;
- (b) not retain or otherwise process the Buyer Information for longer than is necessary to carry out the purposes of this Agreement and/or a Seller Contract, a contract with a Buyer or as otherwise required by law;
- (c) on termination of this Agreement, ensure that any Buyer Information is securely destroyed unless you have a legal reason to retain the Buyer Information, but then always subject to the terms of this clause; and



- (d) if required by applicable laws, not transfer the Buyer Information outside of the Jurisdiction save to a country which is covered by an adequacy determination. Where such transfer is necessary, you shall ensure the transfer complies with all applicable laws ensuring all appropriate safeguards protecting the data subjects' rights and freedoms are implemented.

9.6. You authorise Marketplacer to view the information contained in the PSP Account for the purposes of performing Marketplacer's obligations under this Agreement and to cause that information, including the following information, to be entered into the PSP's system: Channel, PSP Account and/or Seller full name, amount payable, currency, and any additional information reasonably required by the PSP for payment purposes. You agree that such information shall be the sole source of evidence in respect of the balances due to the Seller and/or Channel.

9.7. When you create a PSP Account with the PSP, Marketplacer may have access to your personal data to enable the PSP to process such data for the purposes of the PSP Account Agreement or the PSP's master agreement with Marketplacer. The types of personal data that Marketplacer may have access to include your onboarding data required by the PSP to onboard you as seller (such as information collected as part of know-your-customer checks to facilitate the PSP's compliance with its obligations under applicable law), account data, beneficial owner information and payor/payee information. Marketplacer will process personal data for the PSP solely for the purposes specified in these terms and for the purpose of fulfilling the obligations set out in Marketplacer's master agreement with the PSP. You expressly agree and consent to the PSP verifying your identity with its service providers and database owners. You agree that Marketplacer is permitted to access, use, display and transfer the personal data solely for those purposes.

10. Representations and Warranties

10.1. You warrant and represent that:

- (a) all information provided to us, a Channel, any third party conducting Checks, and/or a PSP, is accurate, up-to-date, and complete. If you become aware of any inaccuracy in the information provided, you will immediately notify us and promptly correct such inaccuracy;
- (b) you have notified us of any pending or threatened litigation, arbitration, investigation, inquiry or proceeding in which you are involved that you are, or should reasonably be aware of, that will or may have an adverse

effect on (a) your business affairs; (b) our reputation or (c) the performance of any of your obligations under this Agreement or a Seller Contract;

- (c) you are not a seller who has had an agreement for the provision of payment processing or payment acquiring services terminated at the direction of a regulatory authority or due to a breach (or alleged breach) of an agreement;
- (d) your execution and performance of this Agreement will not contravene any agreement, instrument, judgment, order or award of any court or arbitrator to which you are a party, or any obligation you owe to another person;
- (e) you are not insolvent;
- (f) you hold and will maintain all applicable permits, registrations, licenses and other authorisations needed to conduct your business legally in all applicable jurisdictions;
- (g) any information provided by you to Marketplacer or a Channel (including in Listing Content) is accurate, current and complete and not misleading, deceptive, or fraudulent in any way, and Products will be provided to buyers on the same basis as advertised;
- (h) all Products sold by you, including the production, sale, packaging, labeling, safety, testing, importation and transportation thereof, and all representations, advertising, prices, and allowances, discounts or other benefits made, offered or authorised by you in connection with such sale: (a) were manufactured in accordance with all applicable laws and produced at an establishment that complies with all applicable laws, regulations, regulatory requirements, directives, orders and codes of practice in any relevant jurisdiction; (b) were not produced using child, forced, indentured or convict labor contrary to laws; and (c) do and shall conform to all representations by you, instructions, specifications, and samples;
- (i) you will not engage in any activity or conduct that may harm or diminish the reputation of Marketplacer or a Channel in any way;
- (j) you shall not use Listing Content to redirect end users of the Storefront to any other sales channels;
- (k) none of your directors or executive management have been convicted of an



offence relating to fraud or dishonesty;

- (l) you are not named as an employer that is currently not complying with workplace laws of any kind;
- (m) you are not on any government list of individuals or entities to which sanctions apply, and none of your personnel are on, or a member of an entity on, such list; and
- (n) you and your personnel have the necessary experience, qualifications, skills, knowledge and competence to perform all obligations under this Agreement and each Seller Contract you enter into.

10.2. You agree that you are solely liable for all liability, loss, damage or expense, including legal costs, any monies paid to a third party to settle or compromise a claim or demand and the costs of protecting or maintaining any Intellectual Property Rights or any claim made, threatened or commenced against us or our affiliates or service providers, by a third party.

10.3. You acknowledge that:

- (a) Marketplacer has entered into this Agreement; and
- (b) if applicable, any Channel relying on these agreement terms pursuant to clause 1.5(b) has permitted you to sell your Products on their Storefront,

in reliance on the warranties and representations contained in this Agreement and that your failure to comply with the standards and expectations set out herein could materially impact Marketplacer's and/or the Channel's (as the case may be) business, reputation and contracts with its customers causing it significant loss and damage.

10.4. You warrant that you will notify and fully disclose to Marketplacer any breach of any of the warranties in this clause as soon as you become aware of a breach, or any event or occurrence actual or threatened during the term of this Agreement that would materially affect your ability to perform any of its obligations under this Agreement.

10.5. If a maintenance obligation or warranty applies in relation to a Product (including any statutory warranties implied by applicable laws), you must ensure that such maintenance and warranty obligations are performed and complied with in full and that the benefit of such warranty is passed to Buyers.

11. Intellectual Property

11.1. You acknowledge and agree that notwithstanding

anything to the contrary in this Agreement, Marketplacer retains all right, title, and interest in or to the Intellectual Property Rights in: (a) the Platform; (b) Marketplacer APIs; (c) Integrations; (d) Services; and (e) related documentation, know-how and training materials, whether tangible or intangible, in whatever form or medium that are made available by Marketplacer in order to access the (including to corrections, updates, adaptations, enhancements or authorised copies of the Platform), and you do not acquire any rights, express or implied, in these Intellectual Property Rights, with the exception of any Listing Content or other images or data uploaded by you to the Platform (which remain your property).

11.2. You grant to Marketplacer a worldwide, irrevocable, royalty-free, perpetual, non-exclusive, sublicensable (through multiple tiers) right to exercise any and all Intellectual Property Rights you have in all Listing Content uploaded to, shared with or transmitted to the Platform for the purpose of the conduct of Marketplacer's business insofar as Marketplacer, acting reasonably, determines is necessary.

11.3. The Platform may utilise or suggest the use of stock images, descriptions and product specifications that are provided by third parties (including other Platform users) to sellers when uploading Product listings to the Platform. You and End Users are permitted to use such content solely in connection with listings placed through the Platform during the Term (defined in clause 15.2) and on the understanding that Marketplacer does not warrant that such content will always be accurate or up to date.

11.4. You hereby grant us, our affiliates and our service providers a non-exclusive, royalty-free, perpetual, sublicensable, irrevocable right and license to publish, reproduce, display, distribute, transmit and otherwise use your names, trademarks, service marks and logos.

12. Anti-Money Laundering and Sanctions

12.1. You undertake to provide us with all information and assistance that we reasonably request to manage our risks relating to money laundering, terrorism financing or economic and trade sanctions, or to comply with the Anti-Money Laundering and Sanctions Laws. **Anti-Money Laundering and Sanctions Law** means applicable rules, regulations or industry codes relating to anti-money laundering and counter-terrorism financing or economic or trade sanction. You acknowledge that we have the right to suspend the services we provide to you under this Agreement and/or delay, block, or refuse to process any payment or other transaction if: (a) we determine that it is reasonably necessary to mitigate or manage our money laundering or



terrorism financing risks or risks of breaching Anti-Money Laundering and Sanctions Laws; or (b) we know or reasonably suspect that the payment or transaction or the application of the transaction's proceeds will: (i) breach, or cause us or our affiliates to breach, any applicable laws (including Anti-Money Laundering and Sanctions Laws) or directives of any jurisdiction or any directive or regulation of any agency of any such state or jurisdiction; or (ii) allow the imposition of any penalty on us or any affiliate.

- 12.2. You agree that we may take any action that we reasonably believe is necessary to comply with Anti-Money Laundering and Sanctions Laws including, but not limited to, disclosing any information that we hold about you to service providers whether in Australia or outside Australia, or to any relevant Australian or foreign regulator;
- 12.3. You acknowledge that, notwithstanding anything else in this Agreement, we may collect information about you from time to time (from you or from third parties) for the purposes of satisfying our obligations under any Anti-Money Laundering and Sanctions Laws, and that we may reasonably use and disclose any such information as required.
- 12.4. You will not use a Storefront to directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any commodities, software or technology to any country, individual, corporation, organisation, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organisation, or entity under sanctions or embargoes administered by the United Nations, US Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority.

13. Liability

- 13.1. To the maximum extent permitted by law, neither party shall be liable to the other party under any theory of liability for any consequential, indirect, incidental, special, punitive or exemplary damages or any kind.
- 13.2. To the extent that you acquire goods or services from Marketplacer as a Consumer within the meaning of Schedule 2 to the Competition and Consumer Act 2010 (Cth) (the **Australian Consumer Law**), you have certain rights and remedies (including consumer guarantee rights) that cannot be excluded, restricted or modified by agreement (including this Agreement). Nothing in this Agreement excludes, restricts or modifies any such rights you may have under the Australian Consumer Law. To the extent that the Australian Consumer Law permits Marketplacer to limit its liability, then our liability is limited to: (a) in the case of services, supplying the services again or payment of the cost of having the services supplied again; and (b) in the case of goods, replacing the goods, supplying equivalent goods or repairing the goods, or payment of the cost of replacing the goods, supplying equivalent goods or having the goods repaired.
- 13.3. Without limiting the remainder of this clause 13, Marketplacer's maximum, aggregate liability to you for any actions, suits, causes of action, proceedings, claims or demands under, arising from, or in relation to this Agreement, regardless of form of action, whether in contract, tort (including negligence), under product liability and consumer protection legislation, under any other statute or regulation, breach of warranty or other legal or equitable grounds (including in each case negligence), is limited to the Fees paid by you in the twelve (12) months leading up to the date on which the relevant claim first accrues.
- 13.4. Marketplacer and its affiliates have no liability in respect of:
- (a) any loss outside of the direct control of Marketplacer and/or any of its affiliates that arises from the negligence, fraud or wilful misconduct or the insolvency of the PSP and/or any third-party (correspondent or partner) bank, liquidity provider, or other financial institution who is part of the payment network that has been used (directly or indirectly) to provide any of the Program services;
 - (b) any mistake or delay in the provision of the PSP services / Program that arises directly as a result of failure by the Seller or a Channel to provide complete, accurate, and timely instructions to Marketplacer.
- 13.5. The parties acknowledge and agree that the PSP Account Agreement between the Seller and the PSP governs provision of the PSP services. As a result, neither Marketplacer nor any Marketplacer affiliate have any liability to Seller, whether under contract (including under any indemnity), in tort (including negligence), under statute or otherwise, under or in connection with this Agreement in respect of the provision, or any failure to provide, any PSP services.
- 13.6. Subject only to clause 13.1, nothing in this Agreement operates to limit or exclude either party's liability to the other for: (a) death or personal injury caused by that party's negligence; (b) any fraudulent or reckless conduct by the other party; or (c) any



other liability which cannot be limited or excluded by law.

14. Indemnity

14.1. The Seller (the **Indemnifying Party**) shall fully indemnify, defend, and hold harmless Marketplacer and its affiliates (including any of their directors, officers, employees, agents, affiliates, successors, and assigns) (each an **Indemnitee**) from and against any and all losses, liabilities, claims, demands, damages, costs, compensation, penalties, and expenses (including all legal and professional fees on a full indemnity basis), whether direct or indirect, arising out of, in connection with, or resulting from:

- (a) any actual or alleged breach of this Agreement by the Indemnifying Party; and/or
- (b) any actual or alleged breach by the Indemnifying Party of any applicable laws, regulations, rules, or orders of a governmental or regulatory authority; and/or
- (c) any investigation, audit, inquiry, or enforcement action by a regulatory authority or government agency arising out of or relating to the Indemnifying Party's conduct; and/or
- (d) any actual or alleged fraud, misrepresentation, dishonesty, or willful misconduct by the Indemnifying Party or its personnel; and/or
- (e) any negligent act or omission by the Indemnifying Party or its personnel; and/or
- (f) any defective or recalled Products sold through a Storefront in connection with this Agreement; and/or
- (g) any third-party claim made, threatened or commenced arising from or relating to the matters described in subclauses 14.1(a) to 14.1(f);
- (h) any claims brought against Marketplacer by a third party, to the extent these claims arise out of or in consequence of or in connection with any breach of, or failure to comply with the terms of, a PSP Account Agreement, any other PSP terms, the terms of this Agreement or a Seller Contract;
- (i) instructions given by Seller to Marketplacer, who in turn provides such instructions to its PSP to make payments, or deduct fees, without authority;
- (j) without limiting the foregoing, Marketplacer

acting: (a) on any of the Seller's instructions; or (b) on any instructions which Marketplacer reasonably believes to have been made by the Seller;

- (k) breach of Seller's obligations to a Channel and/or Buyer;
- (l) any disputes between Seller, Channels, Buyers and/or PSPs and any other third parties;
- (m) any inaccurate, incomplete, illegal, fraudulent or misleading information provided by Seller to Marketplacer and/or PSPs as part of onboarding its PSP Account;
- (n) any failure to acquire binding acceptance of a PSP Account Agreement from Seller and/or Channels;
- (o) any chargebacks, refunds, fines, reversals of a transaction, deduction of fees, or negative balances arising from Seller or any Channel's PSP Account; and/or
- (p) any other act or omission by the Indemnifying Party that gives rise to a third-party claim made, threatened or commenced against an Indemnitee.

14.2. Each amount payable by you to us under the indemnities in this clause is a debt due and payable to us on our demand. You agree to pay or credit the amount to us, at our option, immediately after issue of the demand by us.

14.3. The foregoing obligations of Seller will not apply to the extent the applicable claim is directly attributable to Marketplacer's: (a) gross negligence; (b) willful misconduct or fraud; or (c) breach of this Agreement.

14.4. If, as a result of a breach of this Agreement, any member of the Marketplacer group of companies (**Group**) suffers any Loss, then such Losses may (at Marketplacer's option) be treated as if they had been suffered or incurred by Marketplacer. Accordingly, Marketplacer shall be entitled to recover any Losses suffered by any member of the Group from you subject to there being no double recovery of the same Losses by the relevant member of the Group. For this purpose, any Losses suffered by any member of the Group shall not be treated as being indirect or consequential pursuant to clause 13.1 simply because they have not been (or were not originally) suffered by Marketplacer itself.

15. Term and Termination

15.1. This Agreement commences on the Start Date and continues for the Minimum Commitment stated in



the Form (**Initial Term**).

- 15.2. On expiry of the Initial Term and unless otherwise terminated in accordance with this clause 15 the Agreement will automatically renew for successive Minimum Commitments of the same duration, usually 12 months unless otherwise specified in the Form (each, a "**Renewal Term**"). Together the Initial Term and any Renewal Terms constitute the **Term** of this Agreement.
- 15.3. Each Renewal Term will be subject to this Agreement, except that the Fees that Marketplacer is entitled to charge for the Services rendered during the Renewal Term will be based on its then prevailing price list as notified to you.
- 15.4. Either party can terminate and/or suspend this Agreement on 30 days' written notice to the other for any reason.
- 15.5. Either party may terminate and/or suspend this Agreement immediately on written notice to the other where:
- (a) the other party commits a material breach of this Agreement, or in the case of the Seller, has or is reasonably suspected of having committed a material breach of a Seller Contract or Deed of Indemnity;
 - (b) the other party commits or is reasonably suspected of committing repeated breaches of this Agreement and/or a Seller Contract or Deed of Indemnity;
 - (c) the other party suffers an **Insolvency Event**, meaning: (a) it goes into liquidation (except for the purpose of solvent amalgamation or reconstruction), administration, or receivership; (b) it enters into an arrangement or compromise with its creditors or takes steps to do so; (c) is deemed unable to pay its debts as they fall due as defined under applicable insolvency laws in the Jurisdiction; and/or (d) it suffers similar events to the above in any other jurisdiction;
 - (d) the other party, or its representatives or a member of its corporate group, does or fails to do anything which may (in the reasonable opinion of the party terminating or suspending) materially damage the party terminating or suspending's reputation or the reputation of any member of its group; or
 - (e) the PSP terminates its agreement with you in relation to the processing of payments made in respect of the Program, or Marketplacer (or its PSP) is otherwise unable lawfully to process such payments.

- 15.6. Marketplacer can terminate and/or suspend this Agreement on 10 days' written notice to you where we discover or reasonably suspect you exceed our risk tolerance for participants in our Program as determined by us (for example, due to volume of chargebacks and/or refunds received in relation to your Products).
- 15.7. Marketplacer can suspend this Agreement immediately (without notice) where we discover or reasonably suspect: (a) you have breached any laws; or (b) fraud or fraudulent activity relating to you or any of the Products.
- 15.8. If a Channel notifies us that you have breached any Seller Contract or Deed of Indemnity, we may suspend or terminate your account on the Platform, remove Listings, or take other corrective actions as reasonably necessary (including as directed by the relevant Channel).
- 15.9. On termination of this Agreement, unless we mutually agree otherwise:
- (a) you will continue to supply and fulfill all Orders which were placed prior to termination and will remain responsible for those Orders;
 - (b) we will delete your account and listings from the Platform and remove you from the Program within a reasonable period following termination;
 - (c) an invoice will be sent for any Fees payable under this Agreement, which become due immediately and payable in full on and from the date of termination; and
 - (d) all rights granted hereunder by Marketplacer to you will automatically terminate.
- 15.10. Termination of this Agreement will not discharge or otherwise affect any pre-termination obligations of either party under this Agreement at the time of termination or any provisions hereunder which are intended to survive the termination of this Agreement and/or necessary for the interpretation or enforcement of any rights under this Agreement

16. Disputes

- 16.1. You must cooperate fully with Marketplacer and the relevant Channel in the event of a dispute, investigation, or claim regarding Products, listings or interactions with buyers.

17. Insurance

- 17.1. You must hold and maintain a public liability/product liability insurance policy for personal injury or property damage caused by any Product in the Jurisdiction, and all other insurance



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policies (including worker compensation insurance) required by law and that a prudent operator of a business similar to that operated by you would hold.

- 17.2. You must have in place the insurances under this clause for the Term of this Agreement and an additional 3 years after termination.

18. General

- 18.1. Any failure or delay by one party to compel performance by another party of any of the terms and conditions of this Agreement does not constitute a waiver of those terms or conditions, nor does it affect or impair the right of the first party to enforce them against the other party at a later time or to pursue remedies it may have for any subsequent breach of those terms or conditions.
- 18.2. A single or partial exercise of a right by a party does not preclude another or further exercise of that right or the exercise of any other right.
- 18.3. This Agreement supersedes all previous agreements, understandings, negotiations and representations in respect of all matters dealt with in this Agreement.
- 18.4. This Agreement may be executed in one or more counterparts executed by one or more of the parties, each of which will constitute the one agreement which will be binding on all the parties when one such counterpart has been executed by each party.
- 18.5. Each indemnity in this Agreement is a continuing obligation, separate from the other obligations of a party, and survives termination of this Agreement.
- 18.6. All representations and warranties in this Agreement will survive the execution and delivery of this Agreement and the completion of the transactions contemplated by it.
- 18.7. If the Marketplacer entity named in the Form is registered in:
- (a) the United States, then the terms of this Agreement are governed by and construed in accordance with the laws of Delaware and the parties submit to the jurisdiction of the Courts of Delaware; or
 - (b) the United Kingdom, then the terms of this Agreement are governed by and construed in accordance with the laws of England and Wales, and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales; or
 - (c) anywhere else in the world, then the terms of this Agreement are governed by and

construed in accordance with the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia.

- 18.8. We may novate, or otherwise transfer, our rights and obligations in respect of any part of this Agreement, to another member of the Marketplacer group with 30 days' prior notice to you. You must not novate or otherwise transfer your rights and obligations in respect of any part of this Agreement to any third party without our prior written consent. Any purported novation or transfer by you in breach of this clause may result in termination of this Agreement with us.
- 18.9. You acknowledge that you have not relied upon any statements, representations, forecasts, forward looking statements, projections or predictions we or any member of the Marketplacer group has made to you or to any third party regarding the availability of the Platform or Storefronts, or the volume of Products that may be sold via the Storefronts, or any other matter relating to this Agreement.
- 18.10. Neither party will be liable for any delay or failure to perform any of its obligations under this Agreement by reasons, events, or other matters beyond its reasonable control.
- 18.11. This Agreement does not create any partnership, joint venture, franchise or employment agreement between us the relationship between us and you is as independent contractors. You are not authorised to make any offers or representations to third parties on our behalf.

19. Definitions and Interpretation

- 19.1. In this Agreement, unless the context otherwise requires:
- (a) headings are for convenience only and do not affect interpretation;
 - (b) references to a party also include the party's executors, administrators, substitutes (including persons taking by novation), successors and permitted assigns;
 - (c) each exhibit and schedule form part of this Agreement;
 - (d) a document includes any variation or replacement of it;
 - (e) references to any legislation or legislative provision will include modifying, consolidating, or replacing legislation or legislative provisions;
 - (f) references to a "breach of warranty" include that warranty not being complete, true or accurate;
 - (g) references to money are to the currency stated on



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CURATOR

BY MARKETPLACER

the Order Form;

- (h) the words "including", "for example", "such as" or similar are not words of limitation;
- (i) every covenant, provision, representation, warranty, obligation or an agreement applying to, binding or given by more than one person will bind them jointly

and each of them severally; and

- (j) a provision of this Agreement is not to be construed adversely against the party responsible for the preparation of it.

