## Business Services Agreement

<small>VERSION 2021.6</small>

## 1. Structure

1.1 This agreement sets out the terms on which Marketplacer provides access to and use of its Platform on a "software as a service" basis and provides related services.

1.2 This agreement takes effect when an Order Form is executed by both the Operator and Marketplacer or such later date specified on the Order Form ("**Start Date**").

1.3 This agreement consists of the following parts:

(a) the Order Form;

(b) exhibits to the Order Form; and

(c) this Business Services Agreement,

together the "**Agreement**". If there is any conflict between the parts of this Agreement, the part listed first prevails.

## 2. Definitions and Interpretation

2.1 In this Agreement, unless the context otherwise requires:

"**Affiliate**" means a related entity of Marketplacer that controls, is controlled by or is under common control with Marketplacer, where "control" refers to ownership or the right to direct more than 50% of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority of another entity;

"**API Key**" means the secret key and access token that allows an individual or entity to make authenticated requests to the Marketplacer APIs;

"**Application**" means the software application, website, interface or any other means used to access the Marketplacer APIs using an API Key;

"**Change Request**" means a written request to change, modify and/or amend the Services, including a request to introduce new features, amend existing features of the Services or engage with a new External Provider;

"**Claim**" means any actions, suits, causes of action, proceedings, claims or demands;

"**Confidential Information**" means, in respect of each party (a "**Disclosing Party**"), any and all information furnished or disclosed by or on behalf of a party or its Affiliates (in such capacity, the "**Disclosing Party**") to the other party (in such capacity, the "**Receiving Party**") in connection with this Agreement, and 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, except that 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 Receiving Party who had no access to such information;

"**Core Platform**" means Marketplacer's core software application which provides functionality to support third parties to sell goods and/or services to customers on the Operator's e-commerce website;

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

"**End Date**" is the date specified on the Order Form;

"**Extensions**" means software that is made available to the Customer to download and which is subject to its own terms and conditions;

"**External Provider**" means a third party service provider engaged by the Operator in connection with the Services;

"**Event of Default**" means:

(a) a party breaches this Agreement and such breach is either incapable of remedy or the party fails to remedy the breach (and provide satisfactory evidence of such remedy) within 21 days of receiving a notice specifying the action required to remedy the breach;

(b) a party persistently behaves in a manner which prevents or impedes the other from complying with the terms and conditions of this Agreement, and such an occasion has occurred at least three times in the past three months and on each occasion the prevention or impediment has lasted for more than

seven days after a written notice is issued by the non-breaching party demanding the breaching party to remedy its behaviour;

(c) in the case of the Operator, the Operator has not made a payment due under this Agreement by the relevant due date or time for payment, the Operator is given notice of such failure to pay, and fails to make the payment within 7 days of receipt of such notice;

(d) upon the commencement of any action for the dissolution or liquidation of a party if such action has not been dismissed within 45 days of commencement of the action;

(e) a party resolves to wind up or is subject to an order to wind up (other than for voluntary reconstruction);

(f) a party has a receiver, liquidator, custodian, trustee or similar official or fiduciary appointed to it or in respect of a substantial proportion of its assets or undertakings;

(g) a court or tribunal makes an order that a party be wound up in insolvency, unless the party successfully appeals such order; or

(h) in the case of Marketplacer, a court or tribunal makes an order that the Platform infringes a third party's Intellectual Property Rights and Marketplacer is unable to, within 90 days of such order, implement a workaround or arrange appropriate rights for the Operator to continue to use the Platform or substantially similar platform;

"**Feedback**" means any suggestion or idea for improving or otherwise modifying the Platform or the Services including but not limited to, feature requests and requests for custom reports;

"**Force Majeure Event**" means any failure or delay caused by or the result of causes beyond the reasonable control of a party which could not have been avoided or corrected through the exercise of reasonable diligence, and includes strikes, lock-outs, or other labor disputes, riots, civil disturbance, actions or inaction of governmental authorities, epidemics or pandemics, wars, embargoes, storms, floods, fires, earthquakes, acts of God or the public enemy, computer downtime, disruptions to public utilities, nuclear disasters or default of a common carrier, or any Federal or State restrictions on the movements of individuals or goods, orders from government or judicial institutions to halt business activities;

"**Intellectual Property Rights**" means 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;

"**Integrations**" means a Marketplacer integration with a third party service, such as a payment gateway or marketing automation platform;

"**Liability**" means liability, loss, damage or expense, including legal costs on a full indemnity basis, any monies paid to a third party to settle or compromise a claim or demand, the corruption or loss of Marketplacer's data and the costs of protecting or maintaining any Intellectual Property Rights or any Claim made, threatened or commenced against Marketplacer by a third party;

"**Marketplacer**" means the member of the Marketplacer Group named on the Order Form;

"**Marketplacer APIs**" means all software, including routines, data structures, object classes, protocols, programs, templates, libraries and interfaces, application programming interfaces, software development kits, developer tools, technical documentation, updates and other related materials, whether tangible or intangible, in whatever form or medium that are made available by Marketplacer in order to access the Services;

"**Marketplacer Group**" means Marketplacer Holdings Ltd and its Affiliates;

"**Onboarding Support**" means the onboarding support specified in the Order Form;

"**Operator**" has the meaning given in the Order Form;

"**Operator Data**" means all data and information that is provided to or collected by Marketplacer in connection with the Operator Marketplace and the Services relating to the Operator and its operations, business, Customers, 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, the Operator or a third party;

"**Operator Marketplace**" means the Operator's marketplace that allows multiple sellers to sell goods and/or services to multiple buyers;

"**Order Form**" means the duly executed order form which incorporates this Business Services Agreement by reference;

"**Platform**" means: (a) the Core Platform; (b) any tools, materials, processes, applications, knowledge base, training materials, interfaces, systems, databases, files, services, scripts, object code and/or source code associated with the Platform and/or Services; (c) Marketplacer's connectors and integrations; and (d) the Marketplacer APIs, but Platform does not include the Extensions or any third party services or integrations;

"**Platform Services**" means the service of access to and use of the Platform;

"**Sales Tax**" means the applicable tax(es) chargeable by Marketplacer to Operator made under this Agreement in the relevant jurisdiction;

"**Service Outputs**" means any outputs, documentation, reports or results generated by the Platform or Marketplacer in connection with the provision of the Services;

"**Services**" means the services described in the Order Form and any subsequent Statement of Work, and includes the Platform Services and any Onboarding Support;

"**Service Fees**" means the fees and charges payable by the Operator for the Services as set out in the Order Form;

"**Service Update**" means any update, upgrade, patch, modification or alteration to the Platform, a Service or Marketplacer's business generally, provided that such update is not specific only to the Operator. For example, updates include new features or functionalities and minor changes such as to rectify a bug;

"**Service Level Credits**" has the meaning given in the SLA;

"**SLA**" means the Service Level Agreement attached to the Order Form that Marketplacer must comply with when providing the Services to the Operator under this Agreement;

"**Start Date**" has the meaning given in clause 1.2;

"**Statement of Work**" means the document setting out the scope of the services to be provided by Marketplacer to the Operator in response to a Change Request, the terms and conditions on which Marketplacer will carry out the Change Request and the additional fees and charges which apply, in the form approved by Marketplacer from time to time;

"**Sub-processor**" means any processor engaged by Marketplacer or its Affiliates to assist in fulfilling its obligations with respect to providing the Services pursuant to this Agreement and may include third parties or Affiliates of Marketplacer but shall exclude Marketplacer employees, contractors, or consultants; and

"**Term**" has the meaning given in clause 3.

2.2 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 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.

**3. Term**

This Agreement commences on the Start Date and continues until the End Date (**Term**), unless earlier terminated.

**4. Platform Services**

4.1 Marketplacer grants the Operator 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 to provide an online marketplace to Operator's customers and in accordance with the terms of the Agreement. This right is subject to the Operator's compliance with this clause 4 and the Acceptable Use Policy in clause 6, both of which are essential terms of this Agreement.

4.2 The right granted to the Operator in clause 4.1 is subject to the further condition that the Operator agrees that Marketplacer may collect, aggregate, use and disclose Operator 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. If Marketplacer discloses insights drawn from Usage Data, then all such disclosures must be anonymized and aggregated and will not identify Operator, and must not be disclosed in a manner that would permit a third party to determine Operator's identity.

4.3 Operator acknowledges and agrees that notwithstanding anything to the contrary in this Agreement, Marketplacer retains all right, title, and interest in or to the Intellectual Property Rights in the Platform and the Services (including to corrections, updates, adaptations, enhancements or authorised copies of the Platform and/or the Services), and Operator does not acquire any rights, express or implied, in these Intellectual Property Rights.

4.4 As between the parties, Operator owns all Intellectual Property Rights in Operator Data. The Operator is responsible for the accuracy, quality and legality of Operator Data, the means by which the Operator acquired Operator Data, Operator's use of Operator Data with the Services, and the interoperation of any third party applications with which Operator uses the Platform or Services.

4.5 The Operator grants to Marketplacer a worldwide, limited term license to access, use, process, copy, distribute, perform, export, modify, make derivative works and display the Operator Data solely to the extent necessary to provide the Services to the Operator and for the limited purpose described in clause 4.2. Marketplacer may also access the Operator's accounts and portals and the Operator Marketplace to respond to support requests.

4.6 The Operator will immediately notify Marketplacer in writing of any breach or alleged breach of any rights, including but not limited to the Intellectual Property Rights, in or to the Platform or the Services by any third party of which the Operator becomes aware and will cooperate with Marketplacer in relation to any investigation or action that Marketplacer takes to protect its rights.

4.7 As between Marketplacer and the Operator, the Operator is responsible for any transactions which occur through or as a result of the Operator Marketplace. Marketplacer is not a party to such transactions and the Operator agrees Marketplacer has no liability in connection with them, nor does it have control over the goods and services transacted through the Operator Marketplace or the acts or omissions of Customers (such as failure to pay or failure to process a refund). The Operator must ensure that the Operator Marketplace is operated, and is responsible for taking reasonable steps to ensure users of the Operator Marketplace use it, in a manner that complies with applicable laws.

4.8 Subject to clause 4.9, Marketplacer will give the Operator at least 5 days' notice in advance of implementing a Service Update if Marketplacer reasonably believes that the Service Update will (or may) significantly prejudice the Operator's ability to use the Services or significantly reduce the quality or content of the Services being provided to the Operator.

4.9 Marketplacer may implement a Service Update with no notice or less notice than specified in clause 4.8 if it reasonably believes that the Service Update is critical for maintaining the integrity and/or security of the Platform or a Service and that compliance with clause 4.8 is inappropriate due to the urgency with which the Service Update must be implemented.

4.10 Marketplacer has not agreed to and does not agree to treat as confidential any Feedback Operator provides 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 Operator.

## 5. Onboarding Support

5.1 Marketplacer will provide Onboarding Support with a reasonable level of care and to industry standards. Marketplacer will reasonably co-operate with any third party engaged by the Operator to perform implementation services.

5.2 The Operator acknowledges that the ability of Marketplacer to provide Onboarding Support is dependent upon the Operator's cooperation in providing Marketplacer with timely, adequate and accurate responses to requests for data, documents, information, materials, access, decisions or approvals. Marketplacer is excused from performing Onboarding Support to the extent that Operator delays or refuses to provide Marketplacer with such cooperation.

5.3 The Operator must:

(a) comply with any policies, specifications, limitations or other technical documentation or instructions given to it by Marketplacer in connection with the use of Onboarding Support, including with respect to registration and administration of any website domain name connected with the Operator Marketplace; and

(a) provide Marketplacer with access to facilities and information, including Operator Data, within the Operator's possession or control which is reasonably required by Marketplacer to allow Marketplacer to review and assess the integrity or performance of Onboarding Support.

**6. Acceptable Use Policy**

6.1 The Operator must not, directly or indirectly:

(a) use the Platform or the Services for any purpose other than in accordance with this Agreement;

(b) reverse-engineer, decompile, translate or disassemble the Platform;

(c) bypass, or attempt to bypass, any security features of the Platform and Services, or introduce, upload or transmit any "back door", "time bomb", "logic bomb", "Trojan Horse", "worm", "drop dead device", "DoS attacks", "DDoS attacks", "virus" or any other malware, spyware or computer software routine having the effect of permitting unauthorised access to or use of any of Marketplacer's systems, networks, data or software or disabling, damaging, corrupting, interrupting or erasing, or disrupting or impairing the normal operation of any part of Marketplacer's systems, networks, data or software to the Platform and Services;

(d) copy, reproduce, distribute, publish or otherwise use the Platform in any manner or for any purpose not expressly authorised by this Agreement;

(e) assign, transfer, sell, lease, licence or sub-licence the Platform to any third party or dispose of, encumber or charge the Platform in favor of a third party;

(f) provide any third party with access to the Platform or Services other than as expressly permitted under this Agreement;

(g) infringe, challenge or repudiate or take any action to impair, prejudice or diminish the Intellectual Property Rights in the Platform or Services;

(h) make any representations to a third party or the public in regards to the Platform, Services and/or the Intellectual Property Rights in the Platform or Services;

(i) remove or interfere with any copyright or trade mark notices contained within the Platform and Services;

(j) demonstrate the Platform and Services for the purpose of engaging a person to replicate the functionality or features contained in the Platform and Services; or

(k) modify any documentation or manuals provided or made available in relation to the Platform and Services.

6.2 The Operator must not disclose or generate for the purpose of disclosure to a third party any API Key unless:

(a) the Operator has conducted reasonable due diligence to confirm that the third party has a genuine need to access Marketplacer's APIs for the purpose of a legitimate, bona fide and lawful Application;

(b) the third party has entered into an agreement with the Operator governing the party's development of the Application which contains as a key term a requirement to comply with the API Terms of Use.

**7. Fees, Payments and Invoicing**

7.1 Marketplacer will issue the Operator an invoice for the Service Fees plus applicable Sales Tax in accordance with the Order Form.

7.2 The Operator must pay the Service Fees and Sales Tax to Marketplacer within 30 days of the date of invoice or such other due date specified in an Order Form. The requirement to pay the Service Fees within the time limit(s) as set out in this Agreement is an essential term of this Agreement. Without limiting its other rights and remedies, Marketplacer is entitled to charge a monthly finance fee equal to the lesser of (a) 1.0% per month; or (b) the highest amount permitted by law, on any undisputed amounts not paid in full by the due date specified in the Order Form, which will accrue and be payable each month until such amount has been paid in full. Marketplacer will not exercise this right if Operator is disputing the relevant invoice reasonably and in good faith and is cooperating to resolve the dispute.

7.3 The parties acknowledge and agree that:

(a) unless otherwise expressly stated in this Agreement, the Service Fees are exclusive of Sales Tax;

(b) if any Sales Taxes are imposed on any Services provided under this Agreement, Marketplacer may recover from the Operator, in addition to any consideration payable for the Services, the amount of Sales Taxes due; and

(c) if the Operator is required to pay any amount of Sales Taxes in accordance with this clause 7 or in connection with any goods, services or any other things under this Agreement, the Operator will pay the amount of Sales Taxes at the same time as the consideration is provided for provision of Services, goods, service or any other thing under this Agreement.

7.4 The Operator agrees to pay the Service Fees by electronic funds transfer into Marketplacer's nominated bank account, or by such other method as Marketplacer may specify from time to time.

7.5 All amounts due under or in relation to this Agreement are non-refundable and must be paid in full without any deduction or withholding other than as required by law and the Operator will not be entitled to assert any credit, set off or counterclaim against Marketplacer in order to justify withholding payment of any such amount in whole or in part.

7.6 The Operator will keep and maintain accurate and complete books and records relating to the Services ("**Records**"). During the Term and for 2 years thereafter, Marketplacer will have the right, at its cost and expense and on reasonable prior written notice to the Operator, to inspect the Operator's Records during normal business hours and in a manner that does not interfere with the Operator's business operations. The Operator will provide direct access to its systems, facilities and employees as reasonably requested by Marketplacer for the audit. If the audit shows under reporting or under payment by the Operator of any amounts owed to Marketplacer, the Operator will promptly pay the additional sum(s) owed. If the audit shows under payment by Operator of five percent (5%) or more, the Operator must further reimburse Marketplacer for its reasonable audit costs and expenses.

7.7 Engagement of any External Providers is at the Operator's sole cost.

## 8. Change Request

8.1 From time to time during the Term, the Operator may submit a Change Request to Marketplacer.

8.2 As soon as reasonably practicable following receipt of the Change Request, Marketplacer will notify the Operator whether, or to what extent, Marketplacer (in its absolute discretion) is willing to carry out the Change Request and, if willing, Marketplacer will issue the Operator a Statement of Work.

8.3 The parties may discuss and agree changes to a Statement of Work, and any agreed changes will be incorporated into the Statement of Work prior to signing. For the avoidance of doubt, neither party is obliged to negotiate or sign a Statement of Work issued by Marketplacer.

8.4 Unless Marketplacer otherwise agrees in writing, the following terms apply to a Statement of Work:

(a) a Statement of Work issued by Marketplacer must be accepted by the Operator within 14 days of the date on which it was issued by Marketplacer;

(b) Marketplacer may withdraw a Statement of Work at any time prior to its acceptance by the Operator;

(c) subject to this clause, the Statement of Work takes effect on signing by both parties;

(d) a Statement of Work that is designated or described as a "draft" (or any other similar term) is not capable of acceptance by the Operator.

8.5 For the avoidance of doubt and unless a Statement of Work states otherwise, any changes, modifications or amendments to the Services introduced by a Statement of Work that has been duly accepted and signed in accordance with this clause constitute part of the Services provided by Marketplacer under this Agreement and the Statement of Work is deemed to be a variation to this Agreement.

## 9. Security

9.1 The Operator must not do anything to prejudice the security or privacy of Marketplacer's systems, software or Services or the information stored on the same.

9.2 If the Operator (or any of its personnel) become aware of any actual or potential compromise of the security of the Operator Marketplace or the Operator Data or suspect that any "back door", "time bomb", "logic bomb", "Trojan Horse", "worm", "drop dead device", "DoS attacks", "DdoS attacks", "virus" or any other malware, spyware or computer software routine having the effect of permitting unauthorised access to or use of any of Marketplacer's systems, networks, data or software or disabling, damaging, corrupting, interrupting or erasing, or disrupting or impairing the normal operation of any part of Marketplacer's systems, networks, data or software has been transmitted, uploaded or introduced, Operator must notify Marketplacer immediately.

9.3 Operator must promptly comply with any reasonable directions and instructions given by Marketplacer in connection with the Operator's use of the Services for the purpose of protecting the security of systems, networks, data or software.

9.4 Marketplacer will make reasonable efforts to ensure that the Operator Data is stored and transmitted according to accepted industry standards and in a secure manner, including by maintaining appropriate administrative, physical and technical safeguards designed to protect Operator Data against unauthorised access, destruction, loss, alteration or misuse.

9.5 Marketplacer will perform backups of the Operator Data in the manner and at such times and intervals as is reasonable for its business purposes. Marketplacer does not warrant that it is able to backup or recover specific Operator Data beyond its explicit commitments in this Agreement. The Operator is responsible for securing and maintaining its own backup of the Operator Data as required for its business purposes.

9.6 If either party becomes aware of any actual or suspected breach of security to the Operator Marketplace or the Services or in the case of the Operator, a compromise of the Operator's

account, that party will:

(a) promptly notify the other party in writing with reasonable details regarding the breach of security or compromise;

(b) reasonably cooperate with, and provide reasonable information to, the other party to enable that party to comply with its data breach notifications under applicable laws; and

(c) not disclose details about the breach of security to any third party without the other party's prior written consent, unless required by law.

9.7 The Operator is responsible for:

(a) maintaining and updating its own operating systems, Internet browsers, anti-virus software, or other software that it uses to access and use the Services;

(b) safeguarding usernames, passwords or other credentials used to access the Operator's account and any activity occurring in Operator's account (other than activity that Marketplacer is directly responsible for and which is not performed in accordance with the Operator's instructions); and

(c) ensuring the Operator does not use the Services in a way that would require Marketplacer to comply with industry-specific regulations to which it is not otherwise subject, such as the Children's Online Privacy Protection Act, the Payment Card Industry Data Security Standard or the Health Insurance Portability and Accountability Act.

9.8 The Operator must ensure that its Customers comply with the requirements of clause 9.7 to the extent applicable.

**10. Privacy**

10.1 In connection with this Agreement, each party must comply with any applicable laws related to the protection of personal data. If Operator is using Marketplacer to process the personal data of European Union citizens, then the Data Processing Addendum available at https://marketplacer.com/legal is hereby incorporated into this Agreement by reference and applies to the processing of all personal data by Marketplacer.

10.2 Operator must comply with the requirements of applicable laws or contractual obligations to third parties necessary in order to disclose to Marketplacer, and allow Marketplacer to collect, use, retain, and disclose, any information that is provided to Marketplacer or which Marketplacer is authorised to collect in its provision of the Services.

10.3 Operator must make its terms, including its privacy policy, easily accessible to any person accessing the Operator Marketplace and such terms must clearly disclose how Marketplacer will collect and process any personal data. For the purposes of this clause, Operator is directed to refer to Marketplacer's Privacy Policy available at https://marketplacer.com/legal for information on how Marketplacer will collect and process Operator Data, as updated from time to time ("**Privacy Policy**").

10.4 Operator will not, and must ensure that its Customers do not, submit to the Services: (i) any patient, medical or other protected health information regulated by HIPAA or any similar federal or state laws, rules or regulations; or (ii) any other information subject to regulation or protection under specific laws such as the Gramm-Leach-Bliley Act (or related rules or regulations) collectively, "**Sensitive Data**"). The Operator acknowledges that the Services are not HIPAA compliant. "**HIPAA**" means the Health Insurance Portability and Accountability Act, as amended and supplemented. Notwithstanding any other provision to the contrary, Marketplacer has no liability under this Agreement for Sensitive Data.

10.5 Operator provides general authorization for Marketplacer to engage Sub-processors to process Operator Data on Operator's behalf. The Sub-processors currently engaged by Marketplacer and authorized by Operator are available here. Marketplacer shall notify Operator if it adds or removes Sub-processors at least twenty (20) days prior to any such changes if Operator opts in to receive such notifications by emailing privacy@marketplacer.com.

10.6 Operator may object in writing to Marketplacer's appointment of a new Sub-processor within ten (10) days of receiving notice in accordance with clause 10.5, provided that such objection is based on reasonable grounds relating to data protection. In such event, the parties shall discuss such concerns in good faith with a view to achieving a commercially reasonable resolution. If no such resolution can be reached, Marketplacer will, at its sole discretion, either not appoint such Sub-processor, or permit Operator to suspend or terminate the affected Service in accordance with the termination provisions in this Agreement without liability to either party (but without prejudice to any fees incurred by Operator prior to suspension or termination).

10.7 Marketplacer shall: (i) enter into a written agreement with each Sub-processor containing data protection obligations that provide at least the same level of protection for Operator Data as those in this Agreement, to the extent applicable to the nature of the service provided by such Sub-processor; and (ii) remain responsible for such Sub-processor's compliance with the obligations of this Agreement and for any acts or omissions of

such Sub-processor that cause Marketplacer to breach any of its obligations under this Agreement.

10.8 Marketplacer does not knowingly collect any information, including personal data, from children under 18 years of age ("minors"). Operator represents and warrants that it will not permit any Customer who is a minor to use the Operator Marketplace. If you believe that we have inadvertently collected minor personal data, please contact us at privacy@marketplacer.com so that we can delete the information.

## 11. Confidentiality

11.1 Each party ("**Recipient**") agrees at all times during and for so long as is legally permissible after the Term to keep confidential the Confidential Information of the other party and will not disclose or discuss the same without the prior written approval of that other party, except:

(a) as specifically provided by this Agreement;

(b) to the extent permitted or required by law;

(c) to the extent required to perform any of the Recipient's obligations under this Agreement; or

(d) to the extent required to instruct the Recipient's professional advisers in relation to the preparation, completion and performance of this Agreement.

11.2 The Recipient must not sell, transfer, assign or otherwise dispose of or grant any licence 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.

11.3 Unless otherwise advised by the Operator or an exception applies under this Agreement, Marketplacer will treat all Operator Data which has not been de-identified as Confidential Information.

## 12. Warranties

12.1 Each party warrants to the other that:

(a) it has the full right, power and authority to enter into and perform this Agreement and to grant and license all rights and benefits hereby granted and licensed to the other party;

(b) it will not do anything which violates or infringes the rights, title or interest, including the Intellectual Property Rights, of the other party; and

(c) it will comply with any applicable laws, regulations, standards and guidelines applicable to the provision or use of the Services.

12.2 The Operator warrants to Marketplacer that it will take reasonable steps to ensure the Operator Marketplace and any listings or transactions on the Operator Marketplace comply with applicable laws, regulations, standards and guidelines.

## 13. Indemnity

13.1 The Operator indemnifies and agrees to indemnify Marketplacer and its directors, officers, employees and agents (each an "**indemnified party**") from and against all Liability which the indemnified party suffers or incurs in connection with:

(a) any dispute between the Operator and a third party;

(b) use of the Platform or Services by the Operator, another person under authority of the Operator or a Customer in a manner that is illegal or materially inconsistent with this Agreement;

(c) a third party's use of Marketplacer's APIs authorized by an API Key generated using the Operator's account;

(d) infringement of the rights of a third party, including Intellectual Property Rights or data privacy; or

(e) if applicable, failure to comply with the requirements of DMCA as specified in clause 23.

13.2 Both parties will use their reasonable endeavours to mitigate any loss, damage, liability, expenses and costs suffered by them under or arising out of this Agreement.

13.3 Each party's liability to the other is reduced proportionally to the extent that the liability arises as a direct result of an act or omission of the other party.

## 14. Limitations on Liability

14.1 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, including, without limitation, damages arising from loss of profits, revenue, data or use, or from any defect or error or in connection with Operator's acquisition of substitute services or malfunction of the Services, or any such damages arising from breach of contract or warranty or from negligence or strict liability, even if a party has been advised or should know of the possibility of such damages, and notwithstanding the failure of any remedy to achieve its intended purpose.

14.2 The Operator acknowledges that the Services are not provided free of defects nor will they be available at all times and uninterrupted, and Marketplacer makes no warranties, guarantees or undertakings in this regard except that

Marketplacer will use commercially reasonable endeavours to deliver the Services and make the Core Platform available in accordance with the SLA.

14.3 If Marketplacer fails to provide the Services in accordance with the SLA, Marketplacer will remit the applicable Service Level Credits (as defined in the SLA) to the Operator. The Operator agrees that the Service Level Credits contain the Operator's sole remedy in relation to Marketplacer's failure to provide the Services in accordance with the SLA.

14.4 In respect of Service Outputs, the Operator acknowledges and agrees that:

(a) the mere generation of Service Outputs does not mean that Marketplacer has validated or verified the correctness of the Operator Data comprised in the Service Outputs;

(b) Marketplacer has not expressed an opinion or provided advice that use of the Services by the Operator will produce any particular Service Outputs or other results, including the generation of any financial gains for the Operator or the avoidance of any financial losses for the Operator; and

(c) Marketplacer is under no obligation to interpret, extrapolate, construe, represent, decipher, analyse, comment, translate, apply or advise on the Service Outputs.

14.5 To the maximum extent permitted by law and subject to Marketplacer's obligation to comply with this Agreement, the Services are provided "as is" and all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise) that are not expressly contained in this Agreement are excluded, including but not limited to the IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

14.6 Marketplacer may make Integrations available to its customers through the Platform from time to time. The Operator acknowledges and agrees that:

(a) Marketplacer does not require the Operator to use any Integration, nor does it recommend any third party services are suitable for the Operator's particular purposes;

(b) Marketplacer does not make any representations or warranties of any kind regarding the quality or merchantability of any third party service;

(c) the third party service provider may:

(i) require the Operator to create an account prior to use of the Integration;

(ii) impose charges and fees for the Operator's use of the third party service; and

(iii) provide such service subject to its own terms and conditions and privacy policy; and

(d) Marketplacer is not the provider of the third party service and has no liability for the service or the acts or omissions of the service provider.

## 15. Liability Cap

15.1 Without limiting clause 14 and subject to clause 15.2, Marketplacer's maximum, aggregate liability to the Operator for any Claims 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:

(a) in relation to Claims arising in respect of the Operator Data, at Marketplacer's reasonable election:

(i) reconstruction or recovery of the relevant Operator Data (or so much of it as possible in the circumstances);

(ii) provision of a copy of the relevant Operator Data to the Operator; or

(iii) payment to the Operator of the reasonable costs required to recover or reconstruct (but not to re-collect) the relevant Operator Data,

or a combination of the foregoing; and

(b) in respect of other Claims, the Service Fees paid by the Operator in the 12 months leading up to the date on which the relevant Claim first accrues.

15.2 Subject only to clause 14.1, 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 conduct that is otherwise misleading or deceptive; or

(c) any other liability which cannot be limited or excluded by law.

## 16. Termination and Suspension

16.1 Where an Event of Default occurs in relation to

a party, the other party may terminate this Agreement by notice in writing to the party in respect of whom an Event of Default has occurred, and such termination becomes effective on the date that it is served on the relevant party.

16.2 In addition to its rights of termination, Marketplacer may suspend all or part of the provision of the Services to the Operator if an Event of Default occurs and the Event of Default is either incapable of remedy or the Operator fails to remedy it (and provide satisfactory evidence of such remedy to Marketplacer) within 7 days of receiving a notice in writing from Marketplacer party specifying the action required of the Operator to remedy the Event of Default.

16.3 On termination or expiration of this Agreement, the Operator must:

(a) cease using, and Marketplacer may cease making available, the Platform and the Powered by Marketplacer logo under clause 24, unless the parties mutually agree otherwise;

(b) at Marketplacer's election, forward or destroy (and where applicable erase) all materials containing the Intellectual Property Rights of Marketplacer in the possession or control of the Operator; and

(c) pay to Marketplacer all amounts due at the date of termination.

16.4 The Services include functionality that enables the Operator to export Operator Data at any time during the Term. Provided that the Operator makes the request in writing within 30 days of the date of termination, Marketplacer will also provide a copy of the Operator Data in Marketplacer's possession to the Operator following termination of this Agreement. Marketplacer will use reasonable efforts to provide the Operator Data within a reasonable timeframe following receipt of the request.

16.5 Upon the Operator's written request, Marketplacer will delete all Operator Data from its production environments.

16.6 Marketplacer will not have any further obligations to the Operator under this Agreement and is not otherwise required to provide any assistance to the Operator for the purposes of migrating or transitioning to another service, system or software unless the parties agree otherwise in writing.

16.7 The parties waive any rights of termination not expressly stated in this Agreement.

## 17. Dispute Resolution

The parties agree that in the event of any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination ("**Dispute**"), a party must not commence any court or arbitration proceedings relating to the Dispute (other than for urgent injunctions or interlocutory applications) until it has issued a notice to the other party and made reasonable attempts to resolve the Dispute by negotiation of senior management. This clause 17 does not apply in relation to the payment or non-payment of Service Fees under this Agreement.

## 18. Relationship of Parties

18.1 Marketplacer's relationship with Operator is that of an independent service provider. Neither Marketplacer nor Operator will have (and will not represent that it has) any power, right or authority to bind the other, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in the other's name.

18.2 Unless not allowed by law, Operator will not, without the prior written consent of Marketplacer, for the Term and a 6 month period after the Term, directly or indirectly solicit or offer employment or otherwise engage any employee of Marketplacer. Nothing in this clause will prevent a party from employing a person who responds to a general advertisement or recruitment agency seeking applications.

## 19. Force Majeure

19.1 Notwithstanding any other provision in this Agreement, no default, delay or failure to perform on the part of any party will be considered a breach of this Agreement to the extent such default, delay or failure to perform is shown to be due to a Force Majeure Event.

19.2 If a Force Majeure Event occurs, the time for performance required by a party under this Agreement will be extended for any period during which performance is prevented by the event.

19.3 If a Force Majeure Event prevents a substantial part of the Services being provided by Marketplacer to the Operator, the Operator is exempted from paying the relevant Service Fees that would otherwise be payable during the period in which that Force Majeure Event occurs.

19.4 Notwithstanding the above, if a delay or failure by a party to perform its obligations under this Agreement due to a Force Majeure Event exceeds 60 days, and that delay or failure prevents a substantial part of the Services from being provided by Marketplacer to the Operator, any party may immediately terminate this Agreement on providing notice to the other party, such notice to take effect 14 days after the date of such notice.

## 20. Notices

21. All notices and consents required or permitted

to be given under this Agreement must be in writing and given by personal service, mail (postage prepaid, return receipt requested), overnight courier or email to the parties at the address for notices set out in the Order Form or to such other address as either party may designate to the other by written notice. Notice is effective on the same day when delivered personally, on the next business day when sent by overnight courier service, on the next business day if sent by email or three business days after sending by mail (return receipt requested).

## 22. Assignment

22.1 Subject to clause 22.2, neither party may assign or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld. Any assignment in violation of this clause is null and void.

22.2 Marketplacer may assign or otherwise transfer its rights or obligations under this Agreement to any of its Affiliates or in connection with a change in ownership without the prior written consent of the Operator.

## 23. DMCA Notice and Takedown

Marketplacer supports the protection of intellectual property and asks the Operator to do the same. Marketplacer's policy is to respond to all notices of alleged copyright infringement. If someone believes an Operator is infringing their intellectual property rights, they can send a notice to Marketplacer using the Takedown Request Form. On receiving a notice, Marketplacer may remove or disable access to the content claimed to be a copyright infringement. Once provided with a notice of takedown, the Operator can reply with a counter notification if the Operator objects to the complaint using the Counter Notice Form. The original complainant has 14 business days after Marketplacer receives a counter notification to seek a court order restraining the Operator from engaging in the infringing activity, otherwise Marketplacer will restore the content.

## 24. Logos

24.1 Operator acknowledges and agrees that the Powered by Marketplacer logo must be retained on each page of the Operator Marketplace in the bottom left corner, or such other placement as Marketplacer notifies to the Operator from time to time. Operator is not permitted to modify the size, design or color of the Powered by Marketplacer logo without the prior permission of Marketplacer and agrees to comply with Marketplacer's reasonable directions in respect of the Powered by Marketplacer logo.

24.2 The Operator hereby consents to Marketplacer using the Operator's name and logo solely to identify Operator as a Marketplacer customer in its marketing and promotional materials, including but not limited to on Marketplacer's

websites. If Operator does not want its name or logo used in this way, it will notify brand@marketplacer.com.

## 25. General

25.1 This Agreement may only be amended, supplemented or replaced by a document in writing signed by the parties.

25.2 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.

25.3 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.

25.4 A party may give its approval or consent conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this Agreement expressly provides otherwise.

25.5 This Agreement constitutes the entire agreement and supersedes all previous agreements, understandings, negotiations and representations in respect of all matters dealt with in this Agreement.

25.6 Any provision of this Agreement which is prohibited, unenforceable or invalid in whole or in part is only ineffective to the extent of the prohibition, unenforceability or invalidity and this does not affect the remaining part of that provision or the other provisions of this Agreement, which will continue in full force and effect.

25.7 This Agreement may be executed in one or more counterparts executed by one or more of the parties, each of which counterparts will constitute the one agreement which will be binding on all the parties when one such counterpart has been executed by each party.

25.8 Each indemnity in this Agreement is a continuing obligation, separate from the other obligations of a party, and survives termination of this Agreement.

25.9 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.

25.10 If the Marketplacer entity named in the Order 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)     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.