

MARKETPLACE SELLER AGREEMENT

INTRODUCTION

You acknowledge and agree that by registering for or using the Seller Portal and/or the Makro Marketplace Program, you, as a Seller, expressly agree to be bound by the following terms and conditions, as may be updated and amended by Makro Marketplace from time to time at its sole discretion ("Agreement"). Any amendments to this Agreement shall become effective and binding on the Seller as soon as the amendments have been published the Seller Portal and/or the Makro Site (as applicable). This Agreement contains the terms and conditions that govern the Seller's access to, and use of, the Marketplace Program and is an agreement between the Seller and Makro Marketplace.

1. INTERPRETATION

1.1. No provision shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured or drafted such provision. The rule of interpretation that an agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.

1.2. Terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in the information and communications technology industry shall be interpreted in accordance with their generally accepted meanings.

1.3. If any conflict exists between the provisions of this Agreement and any Annexures attached hereto, the provisions of the Annexures shall prevail.

1.4. When any number of days is prescribed in this Agreement, it shall be reckoned to exclude the first and to include the last day.

1.5. Any reference in this Agreement to legislation or subordinate legislation is to such legislation or subordinate legislation at the date of signature hereof and as amended and/or re-enacted from time to time.

1.6. Words importing the singular shall include the plural, and vice versa, words importing the masculine gender shall include the feminine and neuter genders, and vice versa, and words importing natural persons shall include legal persons, and vice versa.

2. DEFINITIONS

2.1. Unless the context indicates otherwise, the words and expressions set out below shall bear the following meanings and cognate expressions shall bear corresponding meanings:

2.1.1. "Affiliate" means a wholly owned subsidiary of Makro Marketplace and/or Makro;

2.1.2. "Claim" or "Claims" shall mean any and all foreseeable or unforeseeable and alleged or actual actions, causes of action (whether in tort, agreement or strict liability, and whether in law, equity, statutory or otherwise), claims, demands, lawsuits, legal proceedings, administrative or other proceedings or litigation;

2.1.3. "Confidential Information" means all information communicated by a disclosing Party that should reasonably be considered confidential under the circumstances, notwithstanding whether it was identified as such at the time of disclosure, including, without limitation:

2.1.3.1. the terms of this Agreement (including all Annexures and policies referenced herein or attached hereto);

2.1.3.2. all trade secrets;

2.1.3.3. existing or contemplated services, designs, technology, processes, technical data, engineering, techniques, methodologies and concepts and any information related thereto;

2.1.3.4. Transaction Information, all Payment Card Data and all Tax Codes of Makro Marketplace.

2.1.4. "Content" shall mean all information, content and images, including without limitation, the product information, (i) provided or made available by Seller or its affiliates to Makro Marketplace or its Affiliates or Service Providers for use in connection with the Marketplace Program and (ii) otherwise made available by Seller or its affiliates to customers on the Makro Site (e.g., through Seller's hosting of such information, content or images);

2.1.5. "Customer" means a customer purchasing products through the Makro Site;

2.1.6. "Effective Date" means the date of acceptance of this Agreement;

2.1.7. "Excluded Offers" means private promotions offered only to all or a subset of Seller's existing customers by e-mail or regular mail, and Public Promotions that a seller has indicated in writing that it cannot support and an equivalent offer or promotion cannot be provided.

2.1.8. "Intellectual Property Right" means any patent, copyright, trademark, service mark, trade dress (including any proprietary "look and feel"), trade name, logo, moral right, trade secret and any other intellectual property right arising under any Law and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing;

2.1.9. "Law" shall mean any law, ordinance, rule, regulation, order, license, permit, judgment, decision or other requirement, now or hereafter in effect, of any governmental authority of competent jurisdiction, including without limitation the Consumer Protection Act 68 of 2008 and relevant South African National Regulatory of Compulsory Specifications requirements;

2.1.10. "Losses" shall mean any and all damages (including, without limitation, direct, consequential, economic, exemplary, future, incidental, indirect, noneconomic, past, special and punitive), sanctions, settlement payments, disbursements, judgments, liability, losses (including lost income or profit), costs or expenses of any nature whatsoever, whether accrued, absolute, contingent or otherwise, including, without limitation, attorneys' fees and costs (whether or not suit is brought);

2.1.11. "Makro Marketplace" means Marketplace Solutions (Pty) Ltd, registration number 2000/000513/07, a private company duly registered in accordance with the Laws of South Africa, and shall include its Affiliates;

2.1.12. "Makro" means Masstores (Pty) Ltd t/a Makro SA, registration number 1991/006805/07, a private company duly registered in accordance with the Laws of South Africa, and shall include its Affiliates;

2.1.13. "Makro Peace of Mind Policy" means Makro's then current peace of mind policy which sets out Makro's standard customer satisfaction and returns policy which is available on the Makro Site, and as may be updated and amended from time to time at the sole discretion of Makro.

2.1.14. "Makro Site" means www.makro.co.za and applicable applications;

2.1.15. "Marketplace Program" means the Makro Marketplace program;

2.1.16. "Marketplace Policy" means the Marketplace's privacy policy that governs Seller's use of Customer information obtained in connection with the Marketplace Program, and as may be published on the Makro Site and/or Seller Portal from time to time;

2.1.17. "On-Time Shipping Standard" means the time specified for each order to be processed and delivered;

2.1.18. "Orders" means orders placed by a customer through the Makro Site for the purchase of products;

2.1.19. "Party" or "Parties" means, individually, Makro Marketplace or the Seller as the context requires and, together, Makro Marketplace or the Seller;

2.1.20. "Payment Card" shall mean a debit or credit type card used for financial transactions;

2.1.21. "Payment Card Data" means any information located on a Payment Card, such as, but not limited to, debit or credit card number, expiration date, pin number, cardholder name, or cardholder address;

2.1.22. "PII" means any information that can be used to identify an individual and/or information that constitutes personal identifiable information.

2.1.23. "Products" means the products that the Seller desires to sell on the Makro Site, and approved by Makro Marketplace, and as reflected on the Seller Portal;

2.1.24. "Product Information" means the product information that Makro Marketplace requires;

2.1.25. "Public Promotions" means any public promotions generally available to all users of the Seller Site;

2.1.26. "Referral Fee" means the commission that Makro will retain from each sale of the Seller's Products made through the Marko Site;

2.1.27. "Referral Fee Percentage" means the commission, calculated as a percentage of Sales Proceeds excluding VAT; Referral Fee Percentages vary depending on the assigned product category;

2.1.28. "Sales Proceeds" means the gross sales proceeds from the sale of the Products, including VAT and excluding shipping;

2.1.29. "Seller" means third party vendors, distributors, wholesalers, retailers and any other incorporated company wanting to sell approved product through the Makro site, and who have registered on the Seller Portal and have agreed to the terms of this Agreement;

2.1.30. "Seller Customer Information" shall mean customer information in Seller's possession that was not received from Makro Marketplace as Transaction Information or in any other manner and was not obtained or received by Seller in connection with this Agreement or Seller's rights and obligations under this Agreement;

2.1.31. "Seller Portal" shall mean the web based tool or other web services or interfaces, provided by Makro Marketplace and/or Makro and/or a Service Provider that Seller can use to manage its settings, Content and other information related to the Marketplace Program, and including all associated

product listing requirements;

2.1.32. "Seller Marks" means Seller's name, trademarks, service marks and logos;

2.1.33. "Seller Share" shall mean the Sale Proceeds collected from the sale of the Sellers Products less the Referral Fee earned by Makro Marketplace for such Products;

2.1.34. "Seller Site" means any website, other than the Makro Site, where a seller displays any information related to the Seller or its products;

2.1.35. "Service Provider" means a third party that provides management software and services for the Marketplace Program;

2.1.36. "Service Level Agreement" means the service level agreement or SLA, that Sellers will be required to adhere to in order to provide the required service levels to and on behalf of Makro;

2.1.37. "Transaction Information" means the Customer's Order information, including but not limited to the Customer's name, email address, shipping address.

3. THIRD PARTY SERVICE PROVIDERS

3.1. Seller acknowledges and agrees that:

3.1.1. Makro may contract a Service Provider to provide management software and services for the Marketplace Program; and

3.1.2. Seller may provide Content to Makro Marketplace using the software and/or services of a Service Provider.

4. LICENSE OF SELLER'S CONTENT

License for Content.

4.1. Seller hereby grants Makro Marketplace, its Affiliates, and marketing partners, a non-exclusive, royalty-free, perpetual, irrevocable right and license to publish, use, reproduce, distribute, transmit, display, modify, create derivative works of and otherwise commercially exploit all Content (excluding the Seller Marks) in connection with the sale of products through the Makro Site and for the listing, advertising, marketing and promotion of such products or the Marketplace Program, including without limitation, through the Makro Site, third party websites, e-mail, social media or any other medium. Seller agrees that Makro Marketplace may permit users of the Makro Site to share and post Content on their own social media outlets. License for Marks.

4.2. Seller hereby grants Makro Marketplace and its Affiliates and marketing partners a non-exclusive, royalty-free, non-transferable license to publish, use, reproduce, distribute, transmit and display Seller's Marks during the term in connection with the Marketplace Program.

5. PRODUCT INFORMATION AND OTHER CONTENT

Information for Products

5.1. Seller will use the Seller Portal to list all the required Content, Pricing and Available Inventory per unique product. The Seller shall adhere to the minimum requirements as set out on Marketplace Seller Portal. In addition the Seller will:

5.1.1. use commercially reasonable efforts to ensure the Seller Portal always has an accurate error-free available inventory count per product listed on the Seller Portal.

5.1.2. at least every hour update the Seller Portal with an error-free updated inventory feed for only those Products where inventory levels have changed since the last inventory feed provided for such Product;

5.1.3. provide Makro Marketplace through the Seller Portal with a daily inventory feed for all Products;

5.1.4. provide Makro Marketplace with all Content requested by Makro Marketplace, including without limitation, the Product information as set forth in the Seller Portal;

5.1.5. only provide Content for Products that fit into the categories or parameters as set forth in the Seller Portal.

5.2. The Seller will be held solely responsible for the accuracy of its Pricing, available Inventory and all Content for Products and will be obliged to honour any order placed by a Customer through the Makro Site as a result of the Content provided. Excluded Products.

5.3. Seller will be restricted from selling any products already listed by Makro for sale in its physical stores. If Seller is restricted from selling certain Products on the Makro Site due to supplier brand restrictions or if Seller is not an authorized reseller for any Product, Seller will withhold such Products from the assortment it provides Makro Marketplace. Provided that if Seller removes a Product from the Makro Site due to brand restrictions or because Seller is not an authorized reseller it will promptly notify Makro Marketplace in writing of such removal. Upon Makro Marketplace's request, Seller will provide Makro Marketplace with a list of all Products withheld from the Marketplace Program (including why such Product is being withheld). Changes to Content.

5.4. Makro Marketplace will make commercially reasonable efforts to post updated Content provided by Seller on a daily basis through its standard transmission process; provided that Seller acknowledges that Makro Marketplace will impose freezes on Content updates from time to time in connection with releases on the Makro Site.

6. PRODUCT AUTHENTICITY AND SAFETY

Authenticity/Authorization.

6.1. Seller will receive all Products sold through the Marketplace Program directly from the brand owner or from an authorized supplier of the brand owner, and Seller must be an authorized reseller of the Products. Seller will maintain adequate processes and procedures for conducting diligence to ensure that Products are authentic, authorized for sale, and not stolen, counterfeit, illegal or misbranded. Upon Makro Marketplace's request, Seller will promptly provide Makro Marketplace with:

6.1.1. certificates of authenticity (or similar documentation) for Products; and

6.1.2. documentation (e.g. email verifications from the brand owner or supplier) showing that Seller is permitted to sell specific brands or Products through the Makro Site and within the Republic of South Africa. Safety, Testing and Certification.

6.2. Seller will comply with, and ensure that all Products comply with, all product safety, testing and certification requirements under applicable Law, and all other Law.

7. FEES AND PAYMENTS

Referral Fees.

7.1. Makro will earn a Referral Fee equal to a percentage of Sales Proceeds from each sale of Seller's Products through the Makro Site. The Referral Fee Percentages for Seller's Products are specific to each Makro category and are listed in the Seller Portal. The Referral Fee Percentages are subject to change at any time, without prior notice to the Seller, and shall be effective as soon as the changes are reflected on the Seller Portal.

Payment.

7.2. An Order is deemed complete only once:

7.2.1. The Product has been delivered with a proof of delivery signed by the customer; and

7.2.2. The returns and/or cancellation period stipulated in the Makro Peace of Mind Policy has expired ("Deemed Completion").

7.3. Makro Marketplace will make payment of the Seller Share for Orders that meet the Deemed Completion criteria on two set days of each month, namely the 15th and 30th of each month. When these dates do not fall on business days, payment will be made on the next business day after such a date.

7.3.1. For the sake of clarity, Orders that meet the Deemed Completion criteria on or before the 14th of a month will be paid on the last day of that month. Orders that meet the Deemed Completion criteria after the 15th of a month (but before the last day of that month) will be paid on or before the 15th day of the following month.

7.4. At Makro Marketplace's option, all payments to Seller's bank account will be made by mean of electronic funds transfer or similar method. If Makro Marketplace concludes that Seller's actions and/or performance in connection with this Agreement may result in customer disputes, chargebacks or other claims, then Makro Marketplace may, in its sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to Seller under this Agreement for the shorter of:

7.4.1. a period of ninety (90) days following the initial date of suspension; or

7.4.2. completion of any investigation(s) regarding Seller's actions and/or performance in connection with this Agreement.

7.5. The Seller expressly acknowledges and accepts that payment of the Seller Share by Makro Marketplace shall at all times be subject to Makro Marketplace having received the corresponding Sales Proceeds from Makro. Makro Marketplace shall have no liability to the Seller, and the Seller shall have no claim against Makro Marketplace, for any failure by Makro Marketplace to make payment of the Seller Share in circumstances where the Makro Marketplace has not received the corresponding Sales Proceeds from Makro.

8. PURCHASE/ORDER PROCESSING, FULFILLMENT AND SHIPPING

Orders Status Update

8.1. Customers purchasing Products through the Makro Site will place Orders using the Makro Site checkout and payment gateway. Makro will collect all proceeds from such transactions. Makro Marketplace will make available on the Seller Portal all the Transaction Information that Makro

- 8.2. Sellers need to manage all Orders via the Seller Portal. The Seller Portal requires sellers to update the Order status for the duration of the Order and delivery process.
- 8.3. Sellers will only receive Orders that have been paid for in full and accepted by Makro.
- 8.4. The Seller is obligated to update the Order status to "Accepted" (which means a confirmation by the Seller that it has stock), via the Seller Portal within 2 (two) hours of receiving an Order during business hours.
- 8.5. The Seller is obligated to update the Order status to "Ready for Collection" (which means the Order is picked, packed and ready for collection by the courier), via the Seller Portal within 48 (forty eight) hours of receiving an Order, during business hours.
- 8.6. The Seller is obligated to update the Order status to "Out with Courier" (which means the Seller has handed the packed Order to the courier for delivery), via the Seller Portal within 1 (one) hour of handing the Order over, during business hours. Risk of Fraud, Loss, and Cancellation
- 8.7. Makro will bear the risk of credit card fraud occurring in connection with any Order.
- 8.8. The Seller shall bear the full risk in and to any valid cancellation of an Order by a Customer, and expressly acknowledges that Customer's may have additional rights against the Seller as a result of the terms and conditions contained on the Makro Site (if any). Fulfillment of Orders
- 8.9. Once Makro Marketplace has transmitted an Order to Seller, Seller will, at its own expense, be solely responsible for, and bear all liability for, processing and updating all relevant statuses on the Seller Portal, including the accurate picking and packing of all applicable orders, including without limitation, any ad hoc customer service requests from Makro Marketplace.
- 8.10. If Seller cannot fulfill the entire quantity of a purchase order line in an Order, then the Seller will (prior to acceptance) reject that purchase order line through the "Pick Exception" status on the Seller Portal, and thereafter fulfill all other lines in the Order and promptly notify Makro Marketplace of such rejection. If the Order consists of one purchase order line and the Seller cannot fulfill the entire quantity for, then the Seller will be expected to reject or cancel the entire Order and promptly notify Makro Marketplace via email or the Seller Portal and will provide any additional information that may be required by Makro Marketplace.
- 8.11. All packaging material needs to comply with the minimum packaging standards as set out in the Seller Portal. Under no circumstances should packaged Orders contain any Seller marketing or other materials that are not included as standard with regard to the specific Product being sold.
- 8.12. Timing of Order transmission:
- 8.12.1. The Makro Site will accept multiple different payment methods from Customers. The Seller acknowledges that not all payment methods are processed by the relevant merchant bank within the same day in which they were received, and as such the Seller may only receive notification of an Order after the date of the Order.
- 8.12.2. The Seller accepts that it shall be obliged to honour all Orders based on the price and availability available on the Seller Portal as of the date of Order, notwithstanding that the Seller may have only been notified of the Order after the actual date of Order.
- 8.12.3. Makro will use all reasonable and commercially viable means to endeavor to keep such delays to a minimum.

8.13. Preferred Shipping Method (Recommended)

8.13.1. Makro undertakes to complete the shipping leg of an Order on the Sellers behalf. Makro will make use of approved couriers to collect and distribute all Seller Orders.

8.13.2. Seller is obligated to use the “shipping” function prescribed in the Seller Portal and complete the picking, packing, and waybill creation functions in order for the “Ready for Collection” status to be achieved.

8.13.3. Sellers are obligated to make available all facilities as are necessary in order for Makro approved couriers to collect packaged Orders from a single Seller warehouse or collection point. The Seller accepts that it shall be liable for any delays and/or Losses that may be suffered by Makro or the Makro Marketplace as a result of the Sellers failure in this regard.

8.13.4. For the sake of clarity, Makro’s obligations in terms of this clause 8.14 shall not apply to the collection of any returns for unwanted or defective Products, which shall be the sole responsibility and for the account of the Seller.

8.14. Alternative Shipping Method (not recommended)

8.14.1. The Seller may elect to handle its own shipping requirements as an alternative to 8.13 above, and should the Seller select this option, the provisions of this clause 8.14 will apply.

8.14.2. Seller is responsible for properly specifying the shipping options for all Products through the Seller Portal (including as may be requested by Makro Marketplace) and for properly handling all returns at its own cost.

8.14.3. Seller will be responsible for shipping all Products purchased by Customers in accordance with Makro Marketplace’s standard shipping practices. Seller will be responsible for all shipping charges and for any costs or charges related to shipping-related problems, including without limitation, damaged or lost Products, late shipments or misdelivery.

8.15. Shipping Terms (Applicable to both Preferred and Alternative Shipping Methods)

8.15.1. Seller will ship each Product within the On-Time Shipping Standard after receipt of the Transaction Information from Makro Marketplace. If Seller cannot meet the On-Time Ship Standard for any Product, it will provide Makro Marketplace with email notification of such delay.

8.15.2. Seller will be fully liable for any fines, costs or expenses incurred by Makro Marketplace or by Makro or by a third party resulting from any failure to satisfy the On-Time Ship Standard for any Product. The Seller will indemnify and hold harmless Makro Marketplace and its Affiliates and their officers, directors, employees and agents for any losses, liabilities, fines, costs or expenses (including costs on an attorney and own client basis) resulting from such failure. Seller will be solely liable for all costs related to any duplicate or inaccurate shipments based upon Seller’s acts or omissions.

8.16. Makro Marketplace will provide Seller with information on the status of Orders through the Seller Portal. Seller will be solely responsible for reviewing and monitoring such information. Within 48 (forty eight) hours of receipt of the information, the Seller shall provide Makro Marketplace with written notice of any discrepancies between the information provided and Seller’s fulfillment of any Orders. Seller is solely responsible for monitoring and responding to information provided by Makro Marketplace pursuant to this Agreement.

9. CANCELLATIONS, RETURNS AND REFUNDS

Responsibilities

- 9.1. Makro and/or Makro Marketplace shall process all Customer requests for cancellations, returns, refunds and/or customer service price adjustments. Seller will stop and/or cancel any Order if requested by Makro Marketplace; provided that if Seller has transferred Products to a courier, Seller will immediately notify Makro Marketplace and use commercially reasonable efforts to stop and or cancel the delivery.
- 9.2. The Seller expressly acknowledges and agrees that it shall at all times be bound by, and agrees to adhere to, the terms and conditions of the Makro Peace of Mind Policy as may be updated and amended from time to time at the sole discretion of Makro. Refunds and Returns
- 9.3. Makro Marketplace retains the right to accept or reject all refund, return, and exchange requests by Customers. Makro Marketplace will process all refunds, returns, and exchanges immediately upon confirmation from the Seller, which confirmation shall be provided by the Seller within 24 (twenty four) hours from receipt of a request from Makro Marketplace, failing which the Seller will be deemed to have provided its confirmation.
- 9.4. Refunds, returns, and exchanges will be determined via the Makro Peace of Mind Policy. Seller will be responsible for all exchanges and replacements, where applicable.
- 9.5. A Customer may return or cancel any Order for a Product sold through the Makro Site at any time within, and in accordance with, the Makro Peace of Mind Policy. The Seller is obligated to accept any return or cancellation that meets the return policy as stipulated in the Makro Peace of Mind Policy or on the Makro Site. Makro will use all reasonable and commercially viable means to endeavor to keep such returns and cancellations to a minimum.
- 9.6. Seller will be responsible for all applicable reverse logistics costs incurred in ensuring that the Product collected from the Customer and returned back to the Seller.
- 9.7. A Customer may return Products sold by the Seller to a Makro physical store or request that the Seller collect the Products from the same location they were delivered to.
- 9.7.1. Where returned Products are required to be collected from the Customer, the Seller will have 48 (forty eight) hours to collect the Products and then 5 (five) business days to assess return for resolution.
- 9.7.2. When Products are returned to a Makro physical store, Makro Marketplace will notify the Seller via the Seller Portal or email that there are Products that have been returned and require assessment before a refund can be processed. The Seller is obligated to collect and assess Products that are returned for resolution within 5 (five) business days of notification of return.
- 9.7.3. The Seller acknowledges that a return in terms of the Makro Peace of Mind Policy shall be deemed to have complied with the Makro Peace of Mind Policy if the Customer returns the Product to a Makro physical store within the stipulated period. This will apply notwithstanding the fact that the Seller may only receive the actual Products at a time after expiration of the applicable period.
- 9.8. The ultimate decision on whether or not to refund a Customer will always lie with Makro.
- 9.9. Sellers are obligated to facilitate all warranty claims made within 60 days of purchase date by the Customer, or within the warranty period provided by the applicable Original Equipment Manufacturer and attached to the Product.

10. PARITY WITH SELLER SALES CHANNELS

Parity

10.1. Seller will maintain parity between the Products it offers through the Seller Site and the Products offered on the Makro Site by ensuring that at all times:

10.1.1. except for in connection with Excluded Offers, the selling price and every other term of offer and/or sale of the Products (including associated shipping and handling charges and options, any "low price" guarantee, rebate or discount, any free or discounted products or other benefit available as a result of purchasing one or more other products, and terms of applicable return and refund policies is at least as favorable to users of the Makro Site as the most favorable terms upon which that Product is offered and/or sold via the Seller Site;

10.1.2. customer service for the Products is at least as responsive and available and offers at least the same level of support as the most favorable customer service offered in connection with the Seller Site; and

10.1.3. the Content provided by Seller to Makro Marketplace for the Makro Site:

10.1.3.1.1. is of least the same level of quality as the highest quality information displayed or used on the Seller Site; and

10.1.3.1.2. provides users of the Makro Site with at least as much product information, images and other content as the information provided on the Seller Site.

10.2. If Seller becomes aware of any non-compliance with 10.1 above, Seller will promptly notify Makro Marketplace and compensate adversely affected Customers by approving appropriate refunds to such Customers. Special Offers and Promotions

10.3. Seller will notify Makro Marketplace by email at support@makromarketplace.co.za (or through the Seller Portal) of all special offers and promotions (i.e., where Seller discounts an item or items by a certain amount for a certain period of time) offered on the Seller Site. Seller will make special offers and promotions available to Makro Customers in connection with the Marketplace Program, and will use commercially reasonable efforts to allow Makro Marketplace to support any such special offer or promotion through the Seller Portal. If Seller makes any Public Promotions generally available to all users of the Seller Site and Makro Marketplace cannot support such Public Promotion, then Seller will provide an equivalent offer or promotion to Makro Marketplace Customers to the extent possible. For example, if Seller lists a promotion code on the Seller Site that can be used by any customer for 10% off specific Products or all Products sold on the Seller Site and Makro Marketplace cannot support the promotion code, Seller will reduce the price of such Product or all Products, as applicable, through the Seller Portal by 10% for the duration of the special offer or promotion on the Seller Site. Seller will work in good faith with Makro Marketplace to maximize the number of Seller offers and promotions (including equivalent offers and promotions) made available to Makro Marketplace Customers.

10.4. Makro Marketplace may choose, in its sole discretion, not to permit certain special offers or promotions offered by Seller on the Makro Site (e.g., where Makro Marketplace cannot support the special offer or promotion) and may request that Seller filter out any such special offers or promotions. Notwithstanding the foregoing, Seller will not be required to make Excluded Offers available to Makro Marketplace Customers, provided that, if Makro Marketplace is able to support any Excluded Offer at any time during the Term and desires to do so, it will notify Seller and after receipt of such notification, Seller will make such special offer or promotion available to Makro Marketplace in connection with the Marketplace Program.

11. RECALLS AND DEFECTS

11.1. Seller is solely responsible for any non-conformity or defect in, or any public or private recall of Seller's Products. Makro Marketplace will have no responsibility or liability for any recalls of Products sold through the Makro Site. If Products are subject to a recall, Seller is responsible for all matters, costs and expenses associated with such recall, including without limitation, notices and refunds to Customers, contact and reporting of the recall to any governmental agency having jurisdiction over the affected Products, and compliance with all applicable Law with respect to such recall. Seller will promptly remove any recalled Products from the Makro Site by unpublishing or retiring the Product through the Seller Portal. Seller will notify Makro Marketplace by e-mail at support@makromarketplace.co.za of all Product recalls within 24 hours of becoming aware of the recall. Seller will promptly provide Makro Marketplace with all information reasonably requested in connection with the recall of any Product.

12. CONTACT WITH CUSTOMERS AND CUSTOMER SERVICE ESCALATION

Customer Service

12.1. Makro will be responsible for providing 1st line telephonic support for Customers;

12.2. Where the Customer query cannot be resolved by Makro, Makro will escalate the support query to Makro Marketplace for 2nd line support and resolution;

12.3. Where Makro Marketplace is unable to resolve a Customer support query, Makro Marketplace will escalate the support query to the Seller for 3rd line support and resolution.

12.3.1. Seller will always represent itself as a separate entity from Makro Marketplace and Makro when providing customer service for its Products sold through the Makro Site.

12.3.2. For the sake of clarity, the Seller shall not be entitled to contact the Customer directly under any circumstances without having first obtained Makro Marketplace's prior written consent.

12.4. Neither Party will disparage the other party or its affiliates or its or their products or services when performing obligations under this Agreement.

13. SELLER SYSTEMS AND SERVICE LEVELS

13.1. Seller shall be solely responsible for the adequate maintenance and uptime of all Seller systems that are necessary for the Seller to fulfil Orders and meet its obligations of this Agreement.

13.2. The Seller shall notify Makro Marketplace within 1 (one) business hour, of any down-time or related system issues, that may or will have an impact on the Sellers ability to fulfil Orders or otherwise meet its obligations on terms of this Agreement.

13.3. The Seller will comply with any service levels prescribed by Makro or Makro Marketplace from time to time, in connection with Seller's systems that, directly or indirectly, impacts the Makro Marketplace systems or the Marketplace Program; and

13.4. The Seller shall at all times comply with the Order and Customer Service Level Agreement, attached hereto as Annexure B.

14. REPORTING AND AUDITS

Reporting

14.1. Seller will, within a reasonable period of time, not to exceed thirty (30) days, following request from Makro Marketplace, make commercially reasonable efforts to provide Makro Marketplace with any reports, information or other documentation relating to Seller's compliance with this Agreement and applicable Law reasonably requested by Makro Marketplace; provided, however, that in the event Makro Marketplace requests that Seller provide Makro Marketplace with copies of reports that Seller was required to file with any regulatory agency, Seller will provide such reports within seven (7) days of Makro Marketplace's written request. Audit Rights

14.2. Seller will keep accurate and complete books, records and accounts related to Marketplace Program transactions and this Agreement, and will allow Makro Marketplace, or its duly authorized representative, the right, upon not less than five (5) business 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 hours, full and independent audits and investigations of all information, books, records and accounts reasonably required by Makro Marketplace to confirm Seller's compliance with the terms of this Agreement and applicable Law. Certifications

14.3. Upon Makro Marketplace's request, Seller will provide Makro Marketplace with written certification from an officer of Seller stating that Seller has complied with any of Seller's obligations under this Agreement, including, for example and without limitation, compliance with SLAs, consumer product safety laws, authenticity of Products, or restrictions on use of Transaction Information.

15. REPRESENTATIONS AND WARRANTIES

15.1. Each Party hereby represents and warrants to the other Party the following: Authority

15.2. The Party is a duly organized, validly existing and in good standing under the laws of the state where such Party was organized and the Party has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder without any further ratification or approval. This Agreement constitutes the legal, valid and binding obligations of the Party.

No Conflicts

15.3. Neither the execution and delivery of this Agreement by the Party nor the consummation of the transactions contemplated hereby will violate or conflict with any obligation, contract or license of such Party which could reasonably be expected to interfere with the consummation of the transactions contemplated hereby.

15.4. Seller hereby represents and warrants to Makro Marketplace the following:

Power and Authority

15.4.1. Seller has the right, power and authority to grant the rights and licenses hereunder free and clear of any claims, liens and encumbrances and to sell the Products. Compliance with Laws

15.4.2. Seller and all of its employees, subcontractors, agents and suppliers will comply with all applicable Law, as may be amended from time to time, in performing any of its obligations or exercising any of its rights under or related to this Agreement. All Products (including all packaging) and Content will comply with applicable Law. The production, manufacturing, offer, sale, shipping and delivery of all Products will comply with all applicable Law. Products will not be produced or manufactured by child labor or convict or forced labor. Principal Place of Business

15.4.3. Seller's principal place of business is in South Africa and Seller will not conduct any operations relating to this Agreement from outside South Africa.

Content

15.4.4. All Content will be truthful and accurate. Content will not:

15.4.4.1. be misleading or deceptive

15.4.4.2. be defamatory, libelous, threatening or harassing;

15.4.4.3. infringe upon or violate any Intellectual Property Rights or other right of any third party;

15.4.4.4. promote or depict gratuitous violence, the use of alcohol, tobacco or illegal substances or adult-oriented content; or

15.4.4.5. reflect unfavorably on Makro Marketplace, its Affiliates, or the Makro Site or be the type of content that could otherwise reasonably adversely impact or damage the reputation or public image of Makro Marketplace or its Affiliates. Seller will not use the Content to redirect Makro Marketplace Customers to any other sales channels.

Products

15.4.5. Seller will only offer Products for sale on the Makro Site that may be sold and shipped throughout South Africa. Seller will not offer for sale any Products through the Makro Site that Makro Marketplace indicates as prohibited, including without limitation, the Prohibited Products attached hereto as Annexure A. The list of Prohibited Products may be updated by Makro Marketplace from time to time and Makro Marketplace will notify Seller of such updates by email and/or through the Seller Portal. Personnel

15.4.6. All Seller personnel will be properly registered, documented, licensed and/or certified in accordance with applicable Law. Ongoing Warranties

15.4.7. Except as otherwise expressly provided herein, the representations and warranties made in this Agreement are continuous in nature and will be deemed to have been given by Seller at the execution of this Agreement and each stage of performance of this Agreement.

16. CONTROL OF MAKRO SITE

16.1. Makro has the sole right to determine the content, appearance, design, functionality and all other aspects of the Makro Site, including, without limitation, all content provided in connection with the sale of Products sold by Seller through the Makro Site. Makro Marketplace intends to use one set of content for each item sold through the Makro Site. Makro Marketplace may suspend any Product listing or display of Content or refuse to list any Products in its sole discretion and Makro Marketplace may require Seller to exclude any Products from the Makro Site. If Makro Marketplace requests that Seller remove Products from the Makro Site, Seller will make commercially reasonable efforts to remove those Products by unpublishing or retiring such Products through the Seller Portal within twenty four (24) hours of such request so such Products no longer appear for sale on the Makro Site and Seller will not include such removed Products on the Makro Site at any time unless the inclusion of such Products is specifically authorized by Makro Marketplace in writing. Makro Marketplace will have sole control of any marketing of:

16.1.1. any products on the Makro Site, including without limitation, Seller's Products; and

16.1.2. the Marketplace Program.

17. OWNERSHIP AND USE OF TRANSACTION INFORMATION

17.1. Makro Marketplace will own all Transaction Information. Seller may only use Transaction Information to further a transaction related to this Agreement, in accordance with the terms of the Agreement, the Marketplace Privacy Policy and applicable Law. Seller will not:

17.1.1. disclose or convey any Transaction Information to any third party (except as necessary for Seller to perform its obligations under the Agreement);

17.1.2. use any Transaction Information to conduct customer surveys or for any marketing or promotional purposes;

17.1.3. contact a Customer that has ordered a Product that has not yet been delivered with the intent to collect any amounts in connection therewith or to influence such Customer to make an alternative or additional purchase; or

17.1.4. target communications of any kind on the basis of the intended recipient being a Makro Marketplace user.

18. RATINGS AND REVIEWS

18.1. Makro Marketplace may use mechanisms that rate or review, or allow shoppers to rate or review, Seller's Products and Seller's performance as a seller and Makro Marketplace may make these ratings publicly available. Makro Marketplace will have no liability to Seller for the content or accuracy of any ratings or reviews. Seller will have no ownership interest in or license to use any rating or reviews posted on the Makro Site.

19. SUGGESTIONS AND FEEDBACK

19.1. If Seller or any of Seller's Affiliates or agents elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to Makro Marketplace in connection with or related to any Makro Site or The Marketplace Program (including any related technology), Makro Marketplace will be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in any manner. In order to protect Makro Marketplace's systems and customers, or to ensure the integrity and operation of Makro Marketplace's business and systems, Makro Marketplace may access and disclose any information Makro Marketplace considers necessary or appropriate, including but not limited to user contact details, IP addresses and traffic information, usage history, and posted content.

20. CONFIDENTIAL INFORMATION AND INFORMATION SECURITY

Obligations

20.1. Both Parties acknowledge that either Party may receive (the "Receiving Party") Confidential Information from the other Party (the "Disclosing Party") during the term of this Agreement, and such Confidential Information will be deemed to have been received in confidence and will be used only for purposes of this Agreement. The Receiving Party will:

20.1.1.1. use the Disclosing Party's Confidential Information only to perform its obligations and exercise rights under this Agreement; and

20.1.1.2. disclose the Disclosing Party's Confidential Information only to the Receiving Party's personnel, contractors and affiliates that:

20.1.1.2.1. have a need to know the information to assist the Receiving Party with fulfilling obligations under this Agreement; and

20.1.1.2.2. have agreed to keep the information confidential in accordance with the terms set forth herein.

20.2. The Receiving Party will treat the Confidential Information as it does its own valuable and sensitive information of a similar nature and, in any event, with not less than a reasonable degree of care. The obligation of confidentiality will continue for three (3) years from the expiration or termination of this Agreement; provided, however, the Receiving Party will continue to keep confidential:

20.2.1. any PII at all times and as required by this Agreement and any applicable Law;

20.2.2. any trade secrets of the Disclosing Party; and

20.2.3. the terms of this Agreement.

20.3. Seller agrees that Makro Marketplace may share Seller's Confidential Information with its Affiliates for internal use only. Exceptions

20.4. The obligations of either Party under this Section will not apply to information that the Receiving Party can demonstrate:

20.4.1. was in its possession at the time of disclosure and without restriction as to confidentiality;

20.4.2. at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act or failure to act by the Receiving Party; provided, however, PII remains subject to confidentiality obligations regardless of its availability to the public or availability through unauthorized disclosure;

20.4.3. has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by such third party or the Receiving Party; or

20.4.4. is independently developed by the Receiving Party without access to or use of the Confidential Information of the Disclosing Party.

20.5. In the event the Receiving Party is required by Law, stock exchange requirement or legal process to disclose any of the Confidential Information, the Receiving Party agrees to:

20.5.1. give the Disclosing Party, to the extent possible, advance notice prior to disclosure; and

20.5.2. limit the disclosure to minimum amount that is legally required to be disclosed.

21. TERM TERMINATION AND SUSPENSION

Term

21.1. This Agreement will apply to the Seller from the moment of registration on or use of the Seller Portal and/or the Makro Marketplace Program, and shall continue to apply for so long as the Seller remains part of the Marketplace Program;

21.2. Seller acknowledges and agrees that Makro Marketplace may amend and/or replace this

Agreement at any time in its sole discretion, and by logging onto the Seller Portal, the Seller shall automatically be bound by the latest Agreement.

Termination for Convenience

21.3. Either Party may terminate this Agreement for any reason by giving 48 (forty eight) hours prior written notice to the other Party.

Post-Termination Obligations

21.4. Seller will continue to have obligations under this Agreement after termination of the Agreement, including without limitation, the obligation to:

21.4.1. Fulfil all Orders that have been accepted but not yet delivered;

21.4.2. provide customer service to Customers who purchased Products on the Makro Site;

21.4.3. pay any invoices delivered by Makro Marketplace in connection with the Agreement;

21.4.4. notify Makro Marketplace and Customers of any recalls of its Products;

21.4.5. remit any taxes collected to the proper jurisdiction(s); and

21.4.6. immediately notify Makro Marketplace of any security breach that allows a third party to view or access or otherwise compromises any Transaction Information.

21.5. Makro Marketplace will pay Seller the Seller Share attributable to Orders placed by Customers prior to the termination of the Agreement in accordance with the payment terms set forth in this Agreement. Survival

21.6. The provisions of this Agreement which by their nature are intended to survive termination of the Agreement will survive its termination.

22. INDEMNIFICATION

Indemnification Obligations

22.1. Seller will defend, indemnify and hold harmless Makro Marketplace and its Affiliates and each of their respective stockholders, successors, assigns, officers, directors, employees, agents, representatives (each an "Indemnitee") from and against any and all Losses arising out of or related to any third party Claims asserted against, imposed upon or incurred by an Indemnitee due to, arising out of or relating to:

22.1.1. an actual or alleged breach by Seller of this Agreement;

22.1.2. the Seller Site and other sales channels, the Content or the Products (including, without limitation, the offer, sale, refund, or return of Products) or any violation of Law with respect to the foregoing (including but not limited to the Consumer Protection Act, 2008), or any actual or alleged infringement of any Intellectual Property Right by any of the foregoing, or personal injury, death or property damage related thereto or arising therefrom; and

22.1.3. any and all income, sales, use, ad valorem, and other taxes, surcharges, fees, assessments or charges of any kind whatever, together with any interest, penalties and other additions with respect

thereto, imposed by any federal, state, local or foreign government in any way related to the sale of the Products on the Makro Site, specifically excluding, however, any such taxes related to Makro Marketplace's net income. Procedure for Indemnification

22.2. Upon receipt of notice, from whatever source, of Claims against Makro Marketplace for which Seller is obligated to indemnify Makro Marketplace, Seller immediately will take necessary and appropriate action to protect Makro Marketplace's interests with regard to the Claims. Makro Marketplace will notify Seller of the assertion, filing or service of any Claims of which Makro Marketplace has knowledge, as soon as is reasonably practicable. Seller will use counsel reasonably satisfactory to Makro Marketplace to defend each Claim. Conflict

22.3. Notwithstanding the foregoing, however, if Makro Marketplace reasonably determines that there may be a conflict between its position and that of Seller in connection with the defense of a Claim or that there may be legal defenses available to Makro Marketplace different from or in addition to those available to Seller, then, at Seller's expense, counsel for Makro Marketplace will be entitled to conduct a defense to the extent Makro Marketplace reasonably determines necessary to protect the interest of Makro Marketplace. If Makro Marketplace, in its sole discretion, determines that the counsel provided by Seller to defend Makro Marketplace is unacceptable or that a conflict of interest exists between Makro Marketplace and counsel, Makro Marketplace may request that Seller replace the counsel. If Seller fails to timely replace counsel, Makro Marketplace may replace the counsel and, as part of Seller's indemnification obligation to Makro Marketplace, Seller will pay to the new counsel, or reimburse Makro Marketplace, any and all fees and expenses as to the new counsel, including any and all expenses or costs to change counsel. Settlement

22.4. Seller, in the defense of any Claim, will not, except with the prior written consent of Makro Marketplace, consent to entry of any judgment or enter into any settlement with respect to such Claim.

23. WARRANTY DISCLAIMER

23.1. NEITHER MAKRO, MAKRO MARKETPLACE, NOR ITS AFFILIATES, OFFICERS, DIRECTORS, LICENSORS, SUPPLIERS, EMPLOYEES OR AGENTS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, THAT THE MAKRO SITE, THE MARKETPLACE PROGRAM, ANY SELLER PORTAL, SERVICES PROVIDED BY MAKRO MARKETPLACE OR ANY SERVICE PROVIDER, OR SOFTWARE USED TO PROVIDE THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE OR ERROR-FREE, AND SELLER AGREES THAT MAKRO MARKETPLACE WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS, INCLUDING WITHOUT LIMITATION, SYSTEM OR SOFTWARE FAILURES OR OTHER INTERRUPTIONS THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION OR SETTLEMENT OF ANY TRANSACTIONS. NEITHER MAKRO, MAKRO MARKETPLACE NOR ITS AFFILIATES, OFFICERS, DIRECTORS, LICENSORS, SUPPLIERS, EMPLOYEES OR AGENTS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO SELLER WITH RESPECT TO THE SALE OF SELLER'S PRODUCTS THROUGH THE MAKRO SITE PURSUANT TO THIS AGREEMENT, AND ALL SUCH SERVICES PROVIDED BY MAKRO MARKETPLACE ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS.

23.2. MAKRO MARKETPLACE AND ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, AGENTS, LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS AND THOSE IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

24. LIMITATION OF LIABILITY

No Consequential Damages

24.1. IN NO EVENT SHALL MAKRO OR MAKRO MARKETPLACE BE LIABLE TO SELLER OR ANY THIRD PARTY UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR:

24.1.1. LOST PROFITS, LOST REVENUE, LOSS OF BUSINESS OR LOSS OF DATA;

24.1.2. EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR THE LIKE; OR

24.1.3. FOR COST OF COVER, RECOVERY OR RECOUPMENT OF ANY INVESTMENT, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER MAKRO MARKETPLACE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Monetary Cap

24.2. IN NO EVENT SHALL MAKRO MARKETPLACE'S AGGREGATE LIABILITY TO SELLER OR ANY THIRD PARTY FOR ANY CLAIMS, LOSSES, INJURIES, SUITS, DEMANDS, JUDGMENTS, LIABILITIES, COSTS, EXPENSES OR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, EXCEED THE TOTAL REFERRAL FEES PAID BY SELLER TO MAKRO MARKETPLACE PURSUANT TO THIS AGREEMENT DURING THE SIX MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES. THE LIMITATIONS SPECIFIED IN THIS SECTION WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

25. INSURANCE, RISK, AND OWNERSHIP

Insurance

25.1. Seller will maintain, at Seller's expense, commercial general, umbrella and/or excess liability in the aggregate covering liabilities caused by or occurring in connection with this Agreement or Seller's business (including without limitation, product, completed operations, hijacking, overturning and bodily injury), or as otherwise required by Makro Marketplace from time to time. All such policies will be occurrence based, will include Makro Marketplace as an additional insured, and will contain a waiver of subrogation.

25.2. The Seller acknowledges that it shall retain all risk in and to the Products until the Products have been delivered with a proof of delivery signed by the Customer. Ownership in and to the Products shall pass to the Customer when the Products have been delivered with a proof of delivery signed by the Customer.

26. CHOICE OF LAW, JURISDICTION AND VENUE

26.1. The Parties mutually acknowledge and agree that this Agreement will be construed and enforced in accordance with the Laws of the Republic of South Africa and without regard to any conflict of law provisions. The Parties agree that in any dispute arising from or related to this Agreement, shall be subject to the exclusive jurisdiction of the South Gauteng High Court, Johannesburg. The Parties mutually acknowledge and agree that they will not raise in connection therewith, and hereby waive, any defenses based upon venue, inconvenience of forum or lack of personal jurisdiction in any action or suit brought in accordance with the foregoing. The Parties acknowledge that they have read and understand this Section and agree voluntarily to its terms.

27. GENERAL

27.1. Assignment. Seller may not assign (including, without limitation, by way of merger, consolidation or sale of all or substantially all of Seller's stock or assets) this Agreement, or any of its respective rights or obligations hereunder, without the prior written consent of Makro Marketplace. Subject to the foregoing, this Agreement will be binding upon, and will inure to the benefit of, the Parties and their respective successors and permitted assigns. Any assignment or assumption without Makro Marketplace's prior written consent will be null and void.

27.2. Integrated Agreement. This Agreement, including all Annexures and policies referenced herein, constitutes the complete integrated agreement between the Parties concerning the subject matter hereof. All prior and contemporaneous agreements, understandings, negotiations or representations, whether oral or in writing, relating to the subject matter of this Agreement are superseded in their entirety.

27.3. Amendments. Makro Marketplace may amend the terms of this Agreement (including without limitation, any Annexures hereto) from time to time and will either post such amendments to the Seller Portal ("Amendment Notice"). If Seller objects to any amendment to the terms of this Agreement (including any Annexure hereto), Seller should terminate this Agreement IF SELLER CONTINUES TO PARTICIPATE IN THE MARKETPLACE PROGRAM AFTER THE EFFECTIVE DATE OF ANY AMENDMENT, SELLER WILL BE DEEMED TO HAVE AGREED TO AND ACCEPTED ANY MODIFICATIONS SET FORTH IN THE AMENDMENT.

27.4. Waiver. No waiver of any of the provisions of this Agreement will constitute a continuing waiver unless otherwise expressly so provided in writing. The failure of either Party to enforce at any time any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions.

27.5. Severability. If any provision of this Agreement is found by a court to be invalid, void or unenforceable, the Parties agree that the remaining provisions of this Agreement will not be affected thereby, and that this Agreement will in any event otherwise remain valid and enforceable.

27.6. Where any provision of this Agreement constitutes a provision in favour of Makro, such provision shall constitute a stipulatio alteri capable of acceptance by Makro at any time.

27.7. Independent Contractors. Makro Marketplace and Seller are acting hereunder as independent contractors. Seller will not be considered or deemed to be an agent, employee, joint venture or partner of Makro Marketplace. Seller's personnel will not be considered employees of Makro Marketplace, will not be entitled to any benefits that Makro Marketplace grants its employees and will have no authority to act or purport to act on Makro Marketplace's behalf. If any federal, state or local government agency, any court or any other applicable entity determines that any such personnel of Seller is an employee of Makro Marketplace for any purpose, Seller will indemnify, defend and hold harmless Makro Marketplace, its Affiliates, officers, directors, employees and agents from all liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) associated with such determination. Seller will remain primarily liable for Seller's obligations performed by any third party and for any act or omission of any such third party.

27.8. Publicity. Except as specifically provided herein, neither Party will use the name, logo, trademarks or trade names of the other Party or otherwise, directly or indirectly, refer to the other party in publicity releases, promotional material, customer lists, advertising, marketing or business generating efforts, whether written or oral, without obtaining such Party's prior written consent. Notwithstanding the foregoing, Makro Marketplace will have the right to refer to Seller as a participant in the Marketplace Program in marketing and promoting the Marketplace Program.

27.9. Nonexclusive. Each Party acknowledges and agrees that the rights granted to the other Party in

this Agreement are nonexclusive and that without limiting the generality of the foregoing, nothing in this Agreement will be deemed or construed to prohibit either Party from participating in similar business arrangements as those described herein.

27.10. Force Majeure. Notwithstanding the other provisions of this Agreement, if either Party is in good faith prevented from performing its obligations under this Agreement because of an unexpected extraordinary event beyond the control of the Party concerned, including without limitation, war (declared or undeclared), acts of god, terrorism, earthquake, accident, explosion, fire or flood, such Party will promptly notify the other Party, and while so affected, the affected Party will be relieved from performing its obligations provided that, the Party affected will take all reasonable steps to promptly remedy the cause of such delay or failure if it is in its power to do so.

27.11. Seller Portal Seller is solely responsible for maintaining the security of its password for any Seller Portal and for all action taken in connection with its account. If Seller has knowledge or suspects that its password has been compromised, Seller will immediately notify Makro Marketplace and fully cooperate with Makro Marketplace in investigating and preventing any further breach to Makro Marketplace's systems. Makro Marketplace shall not be liable to the Seller for any Losses it may suffer as a result of the Seller Portal being unavailable for any reason.

ANNEXURE A

LIST OF PROHIBITED PRODUCTS

"Prohibited Products" means:

1. cigars, cigarettes, or other tobacco products;
2. guns intended to provide lethal force (and related gun parts, kits and ammunition); mace, black powder and other explosives; disguised, undetectable or switchblade knives; martial arts weapons; or BB guns, stun guns, paintball guns, or airsoft guns;
3. any drug, vitamin, herbal product or similar substance which requires a doctor's or other health care provider's prescription as a prerequisite for purchase;
4. used, remanufactured, reconditioned or refurbished products;
5. stolen, counterfeit, misbranded or illegal products;
6. products that have been recalled;
7. products that violate applicable Law;
8. products that violate or infringe upon any Intellectual Property Right or other third party right;
9. products that contain material that is obscene, pornographic or offensive;
10. products containing viruses, Trojan horse, spyware or malicious code;
11. 'sex and sensuality' products;
12. loose gemstone products;
13. any product for which Seller is not an "authorized reseller" (as designated by the product's

manufacturer or distributor), or does not provide to Customers the manufacturer's standard warranty therefor;

14. products containing human growth hormone;
15. any age restricted products;
16. baby bottles that are not BPA-free;
17. prepaid access products (whether issued in the form of a card, electronic PIN or other device) that provide access to funds (or the value of funds) that have been paid in advance and can be retrieved in the future, including without limitation, gift cards, prepaid phones, or prepaid minutes;
18. caskets or funeral urns;
19. specific products or brand names that may not be sold on the Makro Site as are indicated by Makro Marketplace to Seller separately in writing (which in this case may include email or through any Seller Portal); and
20. any other types of products that in Makro Marketplace's discretion are not appropriate for sale on the Makro Site as indicated by Makro Marketplace to Seller separately in writing; provided that a Prohibited Product will cease to be a Prohibited Product when Makro Marketplace informs Seller of such change.

ANNEXURE B

ORDER AND CUSTOMER SERVICE LEVEL AGREEMENT

Makro Marketplace is committed to customer service. Sellers participating in the Marketplace Program will endeavor to meet the following service levels:

1. Seller will maintain an On-Time Ship Standard of at least 99%.
2. Seller will ensure that the correct Product is delivered to the correct Customer at a rate of 99.5% of all Products shipped.
3. Seller will maintain inventory to fulfill Customer Orders that result in a cancel rate (excluding Customer requested cancellations) of 1.5% or less;
4. Returns due to damaged or defective Products shall not exceed 3% of Sales Proceeds for Products sold on the Makro Site.
5. Seller shall limit emergency updates related to product information through any Seller Portal to a rate no greater than .03% of its entire SKU count in Makro Marketplace's catalogue per month; provided however, that Makro Marketplace makes no guarantee that all requests will be granted. Makro Marketplace will assess each emergency request on a case by case basis and make updates in situations Makro Marketplace deems critical.
6. Ninety-day Seller ratings shall, on average, remain above a seller rating of 90% positive.
7. Seller will within one (1) hour of receipt on a 24/7 basis, confirm every Order file received by Makro Marketplace on the Seller Portal.

8. Seller will, within four (4) hours of receipt on a 24/7 basis, confirm every order line within every Order file received by Makro Marketplace on the Seller Portal.
9. Seller will provide Makro Marketplace with electronic notice, on the Seller Portal, confirming shipment of each Product shipped and the corresponding shipment tracking information (if available) within four (4) hours of the Product/Order actually shipping so that Makro Marketplace may notify the Customer and allow the Customer to track shipment of Products.
10. Seller will send a refund request to Makro Marketplace through the data feed specified by Makro Marketplace, and on the Seller Portal, within 24 hours of receiving a Customer refund or adjustment request, unless Seller has refused to accept a Product for return for any reason.
11. Ninety percent (90%) of emails received from Makro Marketplace shall be answered by Seller within twenty four (24) hours of receipt.

Makro Marketplace may, at its discretion, work with a Seller to remedy any failure of a service level or performance issue under this Annexure B; provided, however, that no waiver by Makro Marketplace of any provision of this Annexure B may be deemed or constitute a waiver of any provision of this Agreement, whether or not similar, nor may the waiver constitute a continuing waiver by Makro Marketplace unless otherwise expressly so provided in writing. The failure of Makro Marketplace to require at any time performance by Seller of any of the provisions herein, may in no way be construed to be a present or future waiver of provisions or in any way affect the ability of Makro Marketplace to enforce each and every provision after such event.