

E-BAY COMMERCE NETWORK MERCHANT AGREEMENT

This eBay Commerce Network Merchant Agreement (the “*Agreement*”) is by and between you (“*Merchant*”) and eBay Inc., a Delaware corporation, with an address at 2145 Hamilton Avenue, San Jose, California 95125 (“*eBay*”). Each of eBay and Merchant may be referred to as a “*Party*” and collectively as the “*Parties*” herein.

RECITALS:

WHEREAS, eBay, through the eBay Commerce Network, displays and distributes Merchant Content, including, without limitation, via syndication through the eBay Commerce Network and ECN Sites;

WHEREAS, Merchant desires to participate in eBay Commerce Network and display Merchant Content through ECN and ECN Sites;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS

“*Affiliate*” means any entity which controls, is controlled by, or is under common control of a Party. For purposes of this definition, “control” of an entity means having (i) direct or indirect ownership of more than fifty percent (50%) of the voting equity or beneficial interest of such entity, (ii) the right to vote for or appoint a majority of the board of directors or other governing body of such entity, or (iii) management or operational control of such entity.

“*eBay Commerce Network*” or “*ECN*” means eBay’s shopping comparison and product listing service.

“*ECN Sites*” mean sites, applications and other properties on which Merchant Content is syndicated or displayed via ECN.

“*Intellectual Property*” means all copyright, patent, trademark, trade secret, moral rights, authorship and other proprietary rights, whether registered or unregistered relating to any content, data, device, code or asset of any kind, including, without limitation, all rights necessary for the worldwide development, manufacture, modification, enhancement, sale, licensing, use, reproduction, publishing and display of such content, data, device, code or asset.

“*Marks*” means any trademarks, service marks, names, logos, or other graphics or branding elements owned, licensed or provided by a Party and/or its Affiliates under this Agreement.

“*Merchant Content*” means all data, information, functionality and content made available by Merchant (and any products or services offered by Merchant in any of the foregoing) pursuant to this Agreement in whatever form, including, but not limited to, Merchant’s Site information, user information, information provided to create or log into Merchant’s ECN account, product specifications, product descriptions, inventory information, local availability information, pricing, taxes, shipping fees, product reviews, images, Merchant Marks and other product information.

“*Merchant Sites*” mean all sites, applications and other properties to which Merchant Content links or directs.

“*Software*” means any software, interface or dashboard (such as the applicable country version of the ECN merchant account center), computer programs, APIs, File Transfer Protocol (“FTP”) sites, automated or partially automated data feed validators or uploaders, technologies, tracking tags, applications, links, or other tools, services, methods, procedures, designs and other proprietary rights, and any information, analytics or other data made available within such Software, owned and/or operated by eBay or a third party and made available to Merchant for installation, download or use in connection with the eBay Commerce Network (excluding any Software to the extent that it is governed by a separate agreement between Merchant and eBay, which separate agreement(s) shall remain in full force and effect), and any updates or revised or upgraded versions of any such Software.

2. IMPLEMENTATION AND DELIVERY

Merchant hereby agrees to provide eBay with, or otherwise make available to eBay, Merchant Content relating to Merchant’s product offerings. eBay may make available to Merchant the Software to facilitate Merchant’s provision of the Merchant Content or Merchant’s participation in the eBay Commerce Network, and, if Merchant elects to install, download or use the Software, Merchant agrees that this Agreement does not grant Merchant any Intellectual Property in or to the Software, or any copies Merchant might make of the Software, other than a limited, nonexclusive, nontransferable right to use the Software to transmit Merchant Content to eBay or otherwise participate in the eBay Commerce Network that will terminate upon the termination of this Agreement. Merchant acknowledges that (i) Merchant’s use of the Software is voluntary and at Merchant’s own risk and (ii) eBay may make available information, analytics and other data within such Software for Merchant’s use only in pre-determined formats and for limited time period(s) consistent with eBay’s standard business practices, which may change from time to time. Merchant may not and may not allow any third party to: (a) modify, copy, publish, license, sell, distribute or otherwise commercialize or create derivative works of the Software or any content associated with the Software; (b) rent, lease or otherwise transfer rights to the Software; or (c) use the Software in any manner that could impair any ECN Site in any way or interfere with any third party’s use or enjoyment of any ECN Site. eBay makes no guarantees with respect to the availability or uptime of the Software or eBay Commerce Network. eBay may conduct maintenance on or change the method of access to the Software or the eBay Commerce Network at any time without notice.

Merchant represents, warrants and covenants that Merchant Content and Merchant Sites shall be free from any spyware, malware, virus, worm, Trojan horse, or other malicious or harmful code, or any software application not expressly and knowingly authorized by users prior to being downloaded or installed on their computer or other electronic device. Merchant shall be solely responsible for ensuring that the Merchant Content is current, complete and accurate. In the event that the Merchant Content is or becomes outdated, incomplete or inaccurate, Merchant shall immediately take action to correct the Merchant Content.

Merchant agrees that Merchant will not use any automated means, including, without limitation, agents, robots, scripts, or spiders, to access Merchant’s ECN account or to monitor or copy the ECN Sites or the content contained therein, unless those automated means are made available to Merchant directly from eBay or authorized in advance and in writing by eBay. The ECN Sites may contain robot exclusion headers and Merchant agrees that Merchant will not use any device, software or routine to bypass robot exclusion headers, or to interfere or attempt to interfere with the proper working of the ECN Sites. Without limitation to the foregoing, Merchant further agrees that Merchant will not take any action that imposes an unreasonable or disproportionately large burden on eBay’s infrastructure (as determined by eBay in its sole discretion).

3. DISPLAY AND DISTRIBUTION

Merchant hereby grants to eBay and its Affiliates a non-exclusive, worldwide, royalty-free, irrevocable, sub-licensable (through multiple tiers) and transferable license to exercise the Intellectual Property rights in the Merchant Content and Merchant Marks, as well as the right to transmit, store, copy, modify, distribute, use, publicly perform, publicly display, reformat, excerpt, and create derivative works of the Merchant Content and Merchant Marks, for displaying and making available the foregoing on any media known now or developed in the future, including, without limitation, ECN Sites.

Neither Party shall take any action inconsistent with the other Party's ownership of its Marks, and any benefits accruing from any use of Marks as expressly authorized herein shall automatically vest in the Mark owners. There are no implied licenses under this Agreement. Each Party shall retain ownership of its own Intellectual Property, including, without limitation in the case of eBay, ECN and the Software. Merchant will obtain all rights and permissions necessary for eBay to use the Merchant Data as contemplated herein. Merchant will maintain a publicly available online privacy policy on each Merchant Site that: (i) provides notice of data collection practices related to its participation in ECN, including without limitation, use of a cookie, web beacon or other tracking mechanisms related to ECN; and (ii) complies with all applicable privacy laws, rules and regulations.

eBay specifically disclaims any warranty regarding the quantity, rank, location, placement and prominence of Merchant Content anywhere on the ECN Sites. eBay reserves the right to determine whether and where the Merchant Content will be displayed. eBay may elect to not display Merchant Content (or any portion thereof), or any of Merchant's products, in its sole discretion. eBay may provide free clicks, free impressions, ads, credits, and/or discounts. Additionally, eBay reserves the right to remove any Merchant Content from ECN or ECN Sites at any time for any or no reason, with or without notice to Merchant. Merchant agrees that eBay may display, store or otherwise use any content (including, without limitation, content that would constitute Merchant Content if provided by Merchant and user-generated content), artwork, creative copy, images, Intellectual Property, product titles, descriptions or reviews, or any other information of eBay and/or obtained from third parties in combination with the Merchant Content. Merchant further agrees that eBay may append Software to the Merchant Content and Merchant Sites, and may collect, store, transfer and use data received from such Software.

4. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants that (i) it is duly organized, validly existing, and in good standing in the jurisdiction of its organization; (ii) this Agreement is a valid agreement enforceable against that Party according to its terms; (iii) the person entering into this Agreement on behalf of such Party has been properly authorized and empowered to do so; and (iv) it has the right and authority to enter into this Agreement and grant all rights granted herein.

Merchant represents, warrants and covenants that (i) Merchant owns or has sufficient rights to all Intellectual Property necessary to fulfill Merchant's obligations and actions taken under this Agreement, including but not limited to the full power and authority to grant the licenses described herein, and that Merchant's granting of the license(s), and subsequent exercise thereof by eBay or its Affiliates, does not and will not violate any third-party rights, including, without limitation, Intellectual Property rights and rights of privacy and publicity; (ii) to the extent possible under applicable law, Merchant has obtained the necessary waivers of any moral rights owned by any third party in any of the Intellectual Property; (iii) the Merchant Content (as a whole or in part) (a) is not and will not be libelous, obscene, false, inaccurate, deceptive, illegal, hateful, racist, pornographic, defamatory, sexually explicit or otherwise inappropriate or violate any ECN policies; (b) does not and will not infringe or violate the Intellectual Property, privacy, publicity, or other rights of any third party; and (c) complies with all applicable laws; and (iv)

Merchant's performance hereunder, the products and/or services offered by Merchant, and the use of any data or information relating to any Merchant Site or user does not and will not violate Merchant's privacy policy or any applicable regulation, rule, statute or law or any agreement to which Merchant is a party or by which Merchant is bound.

Merchant further represents, warrants and covenants that (i) Merchant shall be solely responsible for the receipt, processing and fulfillment of orders for the products and services represented in the Merchant Content and all related actions, including but not limited to, shipping, invoicing, collecting payments, product returns or replacements, customer service, and payment of any taxes or other charges; and (ii) Merchant shall comply with any and all applicable legal requirements, qualifications, standards, licenses, permits or authorizations required for the operation of Merchant's business; and (iii) Merchant shall be solely responsible for Merchant's sales practices, product safety consumer guarantees and warranties, and the regulatory compliance of products and services represented in the Merchant Content or on the Merchant Sites.

5. CONFIDENTIALITY

Merchant acknowledges that by reason of its relationship to eBay under this Agreement, it may have access to certain information and materials concerning eBay's business, plans, customers, code and products that are confidential and may be of substantial value to eBay (herein "**Confidential Information**"), which value would be impaired if such Confidential Information were disclosed to third parties. Such information may be disclosed to Merchant by eBay either directly or indirectly, in writing, orally or by inspection of tangible objects or data feed or other electronic means. Confidential Information does not include information that is generally known and available, or in the public domain through no fault of Merchant or another party. Merchant agrees to maintain all Confidential Information received from eBay or relating to eBay and received by Merchant under or in connection with this Agreement, both orally and in writing, in confidence and agrees not to disclose or otherwise make available such Confidential Information to any third party without the prior written consent of eBay. Merchant further agrees to use the Confidential Information only for the purpose of performing its obligations under this Agreement. Upon the termination of this Agreement or at any other time upon the written request by eBay, Merchant shall immediately (i) return to eBay in a secure manner, all Confidential Information (or such portion requested), including any copies, duplicates, summaries, abstracts or other representations of any such Confidential Information, in whatever form, then in Merchant's possession or control and (ii) permanently delete such Confidential Information from its computers and storage systems and media, and destroy any and all tangible copies thereof. Merchant acknowledges and agrees that due to the unique nature of the Confidential Information, there can be no adequate remedy at law for any breach of Merchant's obligations hereunder, and that any such breach would result in irreparable harm to eBay. Therefore, upon any such breach, suspected breach or threat thereof, eBay shall be entitled to seek an injunction and other appropriate equitable relief in addition to whatever remedies it may have at law. In addition, if eBay prevails in any legal dispute hereunder, it shall be entitled to collect its reasonable legal fees and expenses.

6. INDEMNIFICATION

eBay hereby agrees to indemnify, hold harmless and defend Merchant, its respective successors and permitted assigns, and the officers, directors, employees, and agents of each of them, against any and all third party claims or actions and all liabilities, losses, expenses, damages and costs (including, without limitation, reasonable legal fees) (collectively, "**Claims**") arising from or in connection with (i) eBay's breach of this Agreement or (ii) ECN Marks.

Merchant hereby agrees to indemnify, hold harmless and defend eBay and its Affiliates and their respective successors and permitted assigns, and the officers, directors, employees, and agents of each of them, against any and all Claims arising from or in connection with (i) Merchant's violation of law or third-party rights, (ii) Merchant's breach of this Agreement, (iii) the Merchant Sites, or (iv) the Merchant Content.

7. DISCLAIMER OF WARRANTY; RELEASE

EXCEPT TO THE EXTENT REQUIRED BY APPLICABLE LAW OR AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EBAY AND ITS AFFILIATES DISCLAIM ANY AND ALL WARRANTIES, OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, RESULTS OF USE, RELIABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE AMOUNT OF REVENUE THAT MAY BE GENERATED, ANY ECONOMIC OR OTHER BENEFIT THAT MERCHANT MIGHT OBTAIN THROUGH MERCHANT'S PARTICIPATION IN ECN, TITLE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. THE ECN SITES, EBAY COMMERCE NETWORK AND SOFTWARE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND AND MERCHANT IS SOLELY RESPONSIBLE FOR ANY DAMAGES OR LOSS OF DATA THAT MAY RESULT FROM THE USE OF THE ECN SITES, EBAY COMMERCE NETWORK OR SOFTWARE. FURTHER, EBAY AND ITS AFFILIATES DISCLAIM ANY WARRANTY THAT MERCHANT'S USE OF THE EBAY COMMERCE NETWORK, ECN SITES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. EBAY AND ITS AFFILIATES DO NOT GUARANTEE THE ACCURACY OF CONTENT ON THE EBAY COMMERCE NETWORK, ECN SITES OR SOFTWARE, AND WILL NOT ASSUME ANY LIABILITY FOR: (1) USERS' PURCHASE DECISIONS (AND THE SUBSEQUENT USE OF PURCHASED PRODUCTS AND SERVICES) OR (2) THIRD PARTY CONTENT, ACTIONS OR INACTIONS, OR MERCHANT'S INTERACTIONS WITH ANY THIRD PARTIES IN CONNECTION WITH THE SOFTWARE, EBAY COMMERCE NETWORK OR ECN SITES.

IN CONNECTION WITH MERCHANT'S USE OF THE SOFTWARE, EBAY COMMERCE NETWORK OR ECN SITES, MERCHANT RELEASES EBAY AND ITS AFFILIATES (AND EACH OF THEIR OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS) FROM CLAIMS, DEMANDS AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES. BY ENTERING INTO THIS AGREEMENT MERCHANT UNDERSTANDS AND AGREES THAT MERCHANT IS WAIVING CALIFORNIA CIVIL CODE §1542, WHICH PROVIDES: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." IN ADDITION, MERCHANT HEREBY KNOWINGLY AND VOLUNTARILY WAIVES ANY PROTECTION THAT MAY EXIST UNDER ANY COMPARABLE OR SIMILAR STATUTES OR PRINCIPLES OF LAW APPLICABLE IN JURISDICTIONS OTHER THAN CALIFORNIA AS IT PERTAINS TO THE ENFORCEMENT OF THE RELEASE IN THIS SECTION.

TO THE EXTENT PERMITTED BY LAW, EBAY'S LIABILITY UNDER ANY WARRANTY THAT CANNOT LEGALLY BE EXCLUDED IS LIMITED IN ACCORDANCE WITH SECTION 8 OF THIS AGREEMENT.

8. LIMITATION OF LIABILITY

SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON LIABILITY. ONLY LIMITATIONS THAT ARE LAWFUL IN THE APPLICABLE JURISDICTION WILL APPLY TO MERCHANT, AND EBAY AND ITS AFFILIATES' LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

TO THE MAXIMUM EXTENT PERMITTED BY LAW: (A) IN NO EVENT SHALL EBAY OR ITS AFFILIATES BE LIABLE TO MERCHANT OR ANY OTHER PERSON OR ENTITY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY, STATUTORY, PUNITIVE, RELIANCE OR OTHER LIABILITY, WHETHER IN CONTRACT, TORT, OR ANY OTHER LEGAL THEORY UNDER THIS AGREEMENT OR IN ANY WAY RELATING TO THE ECN SITES, EBAY COMMERCE NETWORK OR SOFTWARE, WHETHER OR NOT MERCHANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITY AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND ALL STATUTORY OR IMPLIED CONDITIONS AND WARRANTIES ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW; AND (B) EBAY AND ITS AFFILIATES' AGGREGATE LIABILITY IS LIMITED TO AMOUNTS PAID OR PAYABLE TO EBAY BY MERCHANT UNDER THIS AGREEMENT IN THE MONTH PRECEDING THE CLAIM. IN THE EVENT THAT THE LIMITATION OF LIABILITY IN THE IMMEDIATELY PRECEDING SENTENCE IS NOT ENFORCEABLE, EBAY AND ITS AFFILIATES' AGGREGATE LIABILITY IS IN ANY CASE LIMITED TO \$5,000. THE FOREGOING LIMITATIONS SHALL APPLY TO ALL CLAIMS AND CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS OR CAUSES OF ACTION (TO THE EXTENT PERMITTED BY LAW).

9. FEES AND PAYMENT TERMS

Merchant agrees to pay eBay all applicable charges in connection with Merchant's account(s) in the currency designated by eBay, in accordance with the terms of payment in this Section 9 or as made available by eBay, either described within the Software or otherwise by eBay in writing. eBay reserves the right to modify the calculation method used to determine the applicable charges from time to time. Merchant may pay eBay via PayPal, wire transfer or other payment methods accepted by eBay.

Unless the Parties agree in writing to another payment option, Merchant will be enrolled in a pre-payment plan. eBay reserves the right to amend the applicable terms of payment, or to terminate Merchant's participation in a specific payment plan, or revoke any payment option at any time (including via email). Under the default pre-payment plan, Merchant will specify an initial pre-payment amount and a renewal pre-payment amount through the Software. eBay will charge the payment method associated with Merchant's account in the specified initial amount and, if the total of Merchant's charges reaches the specified initial amount (or the then-current renewal amount, as applicable), Merchant will be deemed to have authorized eBay automatically to charge Merchant's payment method in the specified renewal amount. Merchant may use the monthly budget feature contained within the Software to set a maximum monthly amount for Merchant's charges. If the total of Merchant's charges for any given month reaches the specified maximum amount, the Merchant Content may be removed from ECN Sites until the earlier of the beginning of the next month or Merchant's budget is increased.

If eBay agrees to charge in arrears, invoices will be sent monthly and will be due and payable within thirty (30) days after such invoice has been sent. In the event of any failure to make payment, Merchant will be liable for all reasonable expenses (including attorneys' fees) incurred by eBay in collecting such amounts. Merchant agrees to pay interest on all unpaid amounts hereunder at a rate equal to one and one-

half percent (1 1/2%) per month of such outstanding amounts or the highest rate allowed by law, whichever is less.

Any claims or disputes with respect to any charge must be submitted in writing to eBay within thirty (30) days after such charge was incurred, or such claim or dispute will be waived, and such charge will be final and not subject to challenge.

10. TERM, SUSPENSION, TERMINATION, SURVIVAL

The term of this Agreement will begin on the earlier of the date on which Merchant accepts this Agreement or the day on which Merchant first participates in ECN or uses the Software (the "Effective Date"). It will continue until terminated in accordance with this Agreement. If Merchant wishes to terminate this Agreement, Merchant will provide at least fourteen (14) days notice thereof (specifying the effective date of such termination) via email to: merchantsupport@ebaycommercenetwork.com. Any other method used by Merchant to terminate the Agreement will be void and will not result in a termination, unless confirmed in writing by eBay. eBay reserves the right to terminate or suspend this Agreement for any or no reason at any time upon notice and without liability.

Upon termination of this Agreement, all undisputed payments through the effective date of the termination will be immediately due and payable. Notwithstanding the expiration or termination of this Agreement, the following Sections shall survive termination of this Agreement: 1, 4-8, 13, 15 and any other Sections that expressly indicate they are to survive, such as this paragraph.

11. NOTICES

Notices to Merchant (including notice of changes to or termination of this Agreement by eBay) may be given to Merchant via email or via the Software. It is Merchant's responsibility to ensure that contact information is updated and correct. Unless otherwise provided herein, all notices to eBay will be made via email to merchantsupport@ebaycommercenetwork.com.

12. ASSIGNMENT, TRANSFER, NOVATION

Merchant may not assign, transfer or novate Merchant's rights, duties or obligations set forth in this Agreement, nor any account Merchant may create with eBay, in whole or in part, whether by assignment, merger, transfer of assets, sale of stock, bankruptcy, operation of law or otherwise, without the prior written consent of eBay. Any attempt to make such an assignment, transfer or novation shall be void. eBay may freely assign, transfer or novate this Agreement without notice.

13. CHOICE OF LAW

This Agreement shall be deemed to have been made in and shall be construed pursuant to the laws of the United States and the State of California without regard to conflicts of law principles, and any disputes related to this Agreement shall be resolved in the state or federal courts located in Santa Clara County, California, to whose sole and exclusive jurisdiction and venue the Parties hereto irrevocably submit.

14. FORCE MAJEURE

Neither Party shall be liable for, or be considered in breach of or default under this Agreement, due to any failure to perform its obligations under this Agreement as a result of a cause beyond its control, including any act of God, public enemy or terrorist, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm or other like event, disruption or outage of

communications (including the Internet or other networked environment), power or other utility, labor problem, unavailability of supplies, extraordinary market conditions or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing Party with reasonable care; provided that the non-performing Party shall be excused from its non-performance of affected obligations only for so long as such circumstances prevail and such Party continues to attempt to recommence performance whenever and to whatever extent possible without delay.

15. MISCELLANEOUS

eBay reserves the right to make changes to this Agreement from time to time. Any use of the Software or eBay Commerce Network by Merchant after the changes are posted via the Software (or otherwise made available to Merchant) constitutes Merchant's acceptance of any such changes. If Merchant does not agree to any such change in the Agreement, please discontinue using the Software and eBay Commerce Network.

Merchant and eBay are independent contractors. Nothing contained in this Agreement will be construed as creating or implying a joint venture, agency, legal partnership or employment relationship between Merchant and eBay, their respective employees and contractors, and neither Merchant nor eBay will have the right, power or authority to bind the other or incur any obligation on the other's behalf without the other's prior written consent.

Notwithstanding anything else herein, Merchant hereby authorizes eBay to use its name, Merchant Content and Marks in marketing materials relating to eBay products and services. Merchant shall not make any public statements or disclosures concerning this Agreement except with the prior written consent of eBay, or as required by law or the rules of any applicable stock exchange.

Except as specified in Section 9 of this Agreement, no failure to exercise or delay in exercising any right under the Agreement will operate as a waiver thereof, nor will any partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. Unless otherwise expressly provided herein, any waivers or amendments shall be effective only if made in writing and signed by Merchant and eBay.

If any provision of the Agreement is found by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable.

Merchant hereby acknowledges that monetary damages may not be a sufficient remedy for breach of this Agreement by Merchant and that eBay may, without waiving any other rights or remedies, seek injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, without obligation to post any bond. All remedies, whether under this Agreement, provided by law, or otherwise, shall be cumulative and not alternative.

This Agreement and any documents or terms expressly incorporated by reference constitute the entire agreement between the Parties in connection with the subject matter herein and supersede all previous and contemporaneous agreements, proposals and communications, written or oral, between Merchant and eBay with respect to the subject matter herein.

Merchant is responsible for complying with trade regulations and both foreign and domestic laws. Merchant represents and warrants that Merchant is not located in a country that is subject to a US Government embargo, or that has been designated by the US Government as a "terrorist supporting" country and Merchant is not listed on any US Government list of prohibited or restricted parties. The

Software or any underlying technology may not be downloaded to or exported or re-exported: (a) into (or to a resident or national of) Cuba, Iraq, Iran, Libya, North Korea, Syria or any other country subject to United States embargo; (b) to anyone on the US Treasury Department's list of Specially Designated Nationals or on the US Commerce Department's Denied Party or Entity List; and (c) to any prohibited country, person, end-user or entity specified by US Export Laws.