

MAKRO MARKETPLACE SELLER AGREEMENT

(Terms and conditions for the Makro Marketplace Programme and Makro Fulfilment Services)

The terms and condition set out below will apply to all Makro Marketplace Sellers who list their Products for Sale on Makro Marketplace and utilise any Makro Marketplace Services and/or Tools.

1. INTERPRETATION AND DEFINITIONS

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

- 1.1. **“Agreement”** means this comprehensive Makro Marketplace Seller Agreement which shall be read together with the Makro Fulfilment Services terms and conditions, the Seller Performance Standards and Service Levels, and/or all Seller Policies and other policies which may be issued by Makro and/or Massmart from time to time and referenced herein;
- 1.2. **“Affiliate”** means a subsidiary of Masstores (Pty) Ltd or its holding company Massmart Holdings (Pty) Ltd and/or any subsidiary and/or holding company of the Seller;
- 1.3. **“Business Day”** shall mean Monday to Friday 8am to 5pm excluding weekends and public holidays;
- 1.4. **“Claim” or “Claims”** shall mean any and all foreseeable or unforeseeable, alleged or actual actions or omissions, causes of action (whether in relation to the law of property, both physical and intellectual, agreement or strict liability, and whether in law, equity, statutory or otherwise), claims, demands, lawsuits, legal proceedings, administrative or other proceedings or litigation;
- 1.5. **“Confidential Information”** means all information of a commercial, financial, personal or technical nature or otherwise relating in any manner to the business or affairs of any Party (including either Party’s Affiliates) irrespective of whether such information is identified as confidential or not and shall include:
 - 1.5.1. Personal Information of either Party and/or third parties;
 - 1.5.2. Customer information including any Personal Information collected by Massmart from Customers;
 - 1.5.3. Customer data bases;
 - 1.5.4. Trade secrets, know-how, business processes, business policies, marketing methods, promotional plans, strategic information;
 - 1.5.5. Details of internal controls systems of either Party;
 - 1.5.6. Intellectual Property of either Party;
 - 1.5.7. Contractual and/or financial arrangements between the Parties and/or any third parties, including Customers.
- 1.6. **“Consumer Protection Act”** means the Consumer Protection Act 68 of 2008 (as amended from time to time) together with any regulation, guidelines and/or code of conducts promulgated in accordance with such Act;

- 1.7. **“Content”** shall mean all information, content and images, including but not limited to, Product Information, provided or made available by the Seller or Makro or any Massmart Affiliate or third party service providers for use in connection with the Makro Marketplace Program and/or otherwise made available by the Seller on the Makro Marketplace;
- 1.8. **“Courier”** means a Makro approved Courier that the Seller will be obliged to utilise in instances where the Products are being fulfilled and delivered by the Seller to the Customer and **“Couriers”** will have a similar meaning.
- 1.9. **“Customer”** means any Customer who utilizes and/or purchases Products on Makro Marketplace and/or any Makro, Massmart or its Affiliates’ Customers;
- 1.10. **“Data”** means any data of Makro, Massmart or its Affiliates that the Seller may have access to and shall include but not be limited to any information, customer data, aggregated data, Personal Information, Personal Information of any Customer, service provider, agent, Massmart Affiliate, Massmart associate, contractors, sales data and promotional data and Data shall be classified as Confidential Information;
- 1.11. **“ECTA”** means the Electronic Communications and Transactions Act no 25 of 2002 (as amended from time to time) read together with any regulation, guidelines and/or code of conduct promulgated in accordance with ECTA which shall govern all electronic transactions including Orders processed via the Makro Marketplace;
- 1.12. **“Fees”** means the Fees which will be payable by the Seller to Makro for access to the Makro Marketplace, the Marketplace Services and the Marketplace Tools, which are more fully described in this Agreement and in Annexure “A” attached hereto;
- 1.13. **“Intellectual Property”** means the trademarks, service marks, trade and business names, rights in designs, patents, copy right, database rights, moral rights and rights in know-how and other intellectual property rights in each case whether registered or unregistered and including applications for the grant of any of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world;
- 1.14. **“Laws”** means all constitutions, statutes, regulations, by-laws, codes, ordinances, decrees, rules, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings or awards, policies, voluntary restraints; guidelines, directives, compliance notices, abatement notices, agreements with, requirements of, or instructions by any governmental body, and the common law, and **“Law”** shall have a similar meaning;
- 1.15. **“Makro”** means Makro, a division of Masstores (Pty) Ltd with registration number 1991/006805/07, a private company duly registered in accordance with the Laws of the Republic of South Africa with its registered address at 16 Peltier Drive, Sunninghill;
- 1.16. **“Makro Fulfilment Services”** means the fulfilment services offered by Makro and subject to Annexure “B” attached hereto which will be applicable if Makro agrees to provide the Makro Fulfilment Services to a Seller;

- 1.17. **“Makro Marketplace”** means the Makro Marketplace website and all applicable applications (including the Makro Marketplace Seller Centre) where the Products are made available for sale to Customers and/or any other marketplace domain operated by Makro and which in Makro discretion, is open to Sellers to sell products, such as a Makro Business Marketplace;
- 1.18. **“Makro Marketplace Program”** means collectively the Marketplace Services, Marketplace Tools and Makro Marketplace;
- 1.19. **“Marketplace Services”** means the services provided by Makro to the Seller in terms of the Makro Marketplace Program which will include any order processing, fulfilment, shipping, returns, and/or Makro Fulfilment Services and **“Services”** shall have a similar meaning;
- 1.20. **“Marketplace Tools”** means the tools that are provided by Makro to the Seller in terms of the Makro Marketplace Program which will include the platform, portal, web service, application, interface or any other tools provided by Makro and **“Tools”** shall have a similar meaning;
- 1.21. **“Massmart”** means Makro’s holding company and shall include all Affiliates within the Massmart group of Companies;
- 1.22. **“Massmart Privacy Policy”** means any policy which Massmart issues in respect of the collection, processing, use, retention and destruction of data from third parties including personal information;
- 1.23. **“Party”** means either Makro or the Seller and **“Parties”** means both Makro and the Seller;
- 1.24. **“Personal Information”** means the definition as determined in accordance with POPIA;
- 1.25. **“Platform Fee”** means the fee that is levied by Makro on all Sellers in order to register to sell on the Makro Marketplace and partake in the Makro Marketplace Program;
- 1.26. **“POPIA”** means the Protection of Personal Information Act no 4 of 2013 (as amended from time to time) together with any regulation, guidelines and code of conducts arising from such Act and all definitions as set out in this Act shall apply to this Agreement;
- 1.27. **“Product”** means any products that are sold by the Seller on the Makro Marketplace and may include services which services are approved by Makro for sale on Makro Marketplace;
- 1.28. **“Product Information”** means all information that Makro requires the Seller to provide in respect of the Products to be listed on Makro Marketplace including but not limited to:
 - 1.28.1. Product descriptions;
 - 1.28.2. Brands;
 - 1.28.3. Technical specifications;
 - 1.28.4. Labelling information;
 - 1.28.5. Dimensions;
 - 1.28.6. SKU’s;
 - 1.28.7. Categories;
 - 1.28.8. Images that depict the Products;
 - 1.28.9. Disclaimers and warnings in respect of the Products;
 - 1.28.10. Guarantee and warranty information;

- 1.28.11. Model numbers;
 - 1.28.12. Authentication certificates; and
 - 1.28.13. And any other information that Makro will require from time to time.
- 1.29. **“Prohibited Persons”** means any person who, subject to the terms of this Agreement, is prohibited from registering as a Seller on the Makro Marketplace which shall include:
- 1.29.1. any Massmart associates, unless Makro and/or Massmart has provided the associate with prior written consent to be registered as a Seller;
 - 1.29.2. any juristic person whose directors have been or is suspected of being convicted of a crime such as fraud;
 - 1.29.3. any person who has been sequestered, liquidated (whether provisionally or final) or under business rescue;
 - 1.29.4. any Seller that is under debt review or having entered into a compromise with its creditors;
 - 1.29.5. previously terminated Sellers, unless Makro has specifically authorised the relisting of such Seller;
 - 1.29.6. any Seller who has been associated with any corrupt activities and/or financial security investigations;
 - 1.29.7. any Seller who has been delisted, suspended or blocked for non-compliance with Massmart’s Ethics and Compliance policies, unless specifically authorized to relist as a Seller.
- 1.30. **“Transaction Information”** means the Customer’s Order Information, including but not limited to the name of the Customer, email address, contact number, shipping address and details of Products ordered;
- 1.31. **“Seller”** means the Seller who has registered to sell products on Makro Marketplace;
- 1.32. **“Seller Account”** means any account issued by Makro to the Seller in respect of the Makro Marketplace and which account is actively being paid for by the Seller;
- 1.33. **“Seller Centre”** means the web based tool or other web services or interfaces provided by Makro that the Seller will utilise to manage settings, Content, Product Information, access Seller Policies and other information relating to the Makro Marketplace Program;
- 1.34. **“Seller Performance Standards and Service Levels”** means the policy issued by Makro from time to time which sets out the performance standards and service levels that all Sellers must comply with;
- 1.35. **“Seller Policies”** means any policy (as amended from time to time) issued by Makro and/or Massmart in respect of the Makro Marketplace Program which can be found on the Seller Centre and/or Massmart website and shall include, but not be limited to, the Massmart Privacy Policy, Seller Performance Standards and Service Levels Policy, Safe Products Policy, Customer Service Policy, Tax Policy, Information Security Policy and any Massmart and/or Walmart Code of Conduct;

- 1.36. **“Seller Site”** means any website and/or applications, other than Makro Marketplace where a Seller may display any information relating to the Seller or its Products or where such Seller makes such Products available for sale;
- 1.37. **“Walmart”** means the holding company of Massmart;

2. **SELLER AGREEMENT AND WARRANTIES**

- 2.1. This Agreement applies to any Seller that wants to sell Products on Makro Marketplace and use any Makro Marketplace Services and/or Tools.
- 2.2. **The Seller agrees to be bound by all terms and conditions of this Agreement (including the Seller Policies and any updates to these terms or Seller Policies from time to time) by submitting application to be a Seller on the Makro Marketplace and/or clicking the “I’ve read and agree to the Terms and Conditions for Makro Marketplace and Makro Fulfillment Services” check box (which the Seller is prompted to click at sign up) and/or by offering any Products for sale on Makro Marketplace, using any of the Makro Marketplace Services and/or Tools.**
- 2.3. The Seller hereby warrants that:
- 2.3.1. in the event that the Seller is representing a juristic person then the Seller has the requisite right, power, and authority to enter into this Agreement and register on Makro Marketplace for and on behalf of the juristic person and bind the Seller to this Agreement;
- 2.3.2. in the event that the Seller is a natural person, then the Seller is over the age of 18 (eighteen) years and the Seller has the full legal capacity to enter into this Agreement and register on Makro Marketplace;
- 2.3.3. the Seller will update all of the information provided to Massmart in connection with the Makro Marketplace, Services and Tools as necessary to ensure that it at all times remains accurate, complete, and valid;
- 2.3.4. the Seller will comply with all applicable Laws including, but not limited to, Laws related to the protection of personal information (including POPIA), data privacy, tax laws, importation and customs laws, labour, health and safety laws, consumer laws, marketing, packaging, food safety, consumer protection product safety, medicines and control substances, product testing, labeling, warranties, product claims and pricing in respect of any Product supplied by the Seller using the Makro Marketplace Program, any transactions in respect of this Agreement and in connection with this Agreement;
- 2.3.5. the Seller and/or its directors, members, trustees and/or authorized representatives do not have any criminal records and/or have not been accused of (but not yet found guilty of) any crime; and
- 2.3.6. the Seller is not a Prohibited Person.

- 2.4. The Seller hereby authorizes Makro and/or Massmart to verify all Seller information (including Product Information and any updated information) from time to time. The Seller will provide Makro and/or Massmart with all such documentation as may be required to complete this verification.
- 2.5. Upon request, the Seller will promptly provide Makro and/or Massmart with:
 - 2.5.1. certificates of authenticity or letters of authority (or similar documentation) for Products;
 - 2.5.2. documentation (such as an email verification from the brand owner or supplier of Products) showing that the Seller has a legal right to sell the Products through Makro Marketplace;
 - 2.5.3. documentation (such as an email verification from applicable rights holders) showing that the Seller is licensed or otherwise has the right to use any Seller Product Information (as defined below), including providing letters of authorisation for the distribution of the Products; and/or
 - 2.5.4. any other information or documentation requested by Makro and/or Massmart.
- 2.6. All transactions in respect of the Sellers Products with Customers through the Makro Marketplace is between the Seller and the Customer, and the Seller will be the seller of record. Makro and/or Massmart is not a party to any transactions although Makro will provide the Makro Marketplace, Services and Tools in connection with all transactions. **The Seller hereby indemnifies and keeps Makro indemnified against any loss and/or damage (howsoever arising) suffered by any third party, including a Customer, as a result of any transaction between the Seller and the Customer.**
- 2.7. Makro may, from time to time, contract with third party service providers to provide the Makro Marketplace Services, tools and management software and other services as set out in this Agreement.
- 2.8. **Should the Seller be a natural person or a juristic person with an asset value or annual turnover of less than the threshold value determined by the Minister from time to time, in terms of Clause 6 of the Consumer Protection Act (which is R2 million rand as at February 2017) then the Seller must take special note of the text in bold font which is intended to bring to the Sellers attention the parts of the Agreement that have important legal consequences for the Seller. These clauses explain the fact, nature and effect of any terms and conditions that limit or exclude Massmart and/or Makro's liability to the Seller, and terms and conditions where the Seller may take on legal responsibility or risk. The bold text does not limit the meaning or application of the Agreement.**

3. REGISTRATION AS A SELLER

- 3.1. The registration process on the Makro Marketplace must be initiated directly by the Seller or an authorized representative of the Seller on the Seller's Centre, or indirectly at the Seller's written request to Makro. Makro is entitled to decide, in its sole discretion, whether or not to allow a potential seller to register on Makro Marketplace as a Seller and reserves the right to request any further information prior to registration of a potential seller.

- 3.2. Registration is complete when the Seller first logs in to the Seller Centre for the first time, with Makro's approval.
- 3.3. A Prohibited Person shall not be able to be a Seller on Makro Marketplace unless the Seller obtains the express written consent to do so by making an application to Makro. In the event that a Seller becomes a Prohibited Person after registration, Makro reserves the right to suspend the Seller and/or terminate the Seller Agreement.
- 3.4. Makro may reflect the Seller's business name, company registration number and/or VAT number on Makro Marketplace from time to time in order to comply with the provisions of ECTA and to ensure that the Customer is aware as to whom the Seller of the Products is and the Seller provides Makro with the consent to do so.
- 3.5. The Seller must also provide all other documentation and information reasonably requested by Makro for vetting purposes and as set out in clause 2 above.
- 3.6. The Seller hereby consent to Makro and/or Massmart performing a due diligence on the Seller and into the Seller's financial affairs upon registration and/or at any stage during the Agreement. The Seller hereby expressly consents and authorises Makro and/or Massmart to:
 - 3.6.1. conduct investigations with credit bureaus;
 - 3.6.2. contacting any trade references, banks and financial institutions;
 - 3.6.3. performing criminal checks and credit checks on the Seller and/or directors, members, trustees of the Seller;
 - 3.6.4. to provide personal information to credit bureaus from time to time; and/or
 - 3.6.5. verifying VAT registration and/or importer code status.

4. TERM AND TERMINATION OF THE AGREEMENT

- 4.1. This Agreement shall commence on the date on which the Seller registers to become a Seller in accordance with clause 3 and electronically accepts the Seller Agreement, or alternatively on physical signature of this Agreement by the Seller and Massmart, and shall continue indefinitely until terminated by Makro or the Seller in accordance with this Agreement.
- 4.2. Makro may, in its sole discretion, terminate or suspend any Seller on the Makro Marketplace, any Marketplace Services or Tools, or this Agreement as a whole, immediately on written notice (which may be via email or a pop up on the Seller Centre) to the Seller for any reason at any time. Any orders currently being processed may be cancelled, without consequence. Makro will provide the Seller with written notice either via the Seller Centre or by an email to the Seller's registered account.
- 4.3. Following the termination of this Agreement:
 - 4.3.1. Subject to any set off as a result of any Claims, Makro shall pay the Seller any balance (if positive) on their Seller Account. Makro may, in its sole discretion, delay the remittance of any positive balance on a Seller Account for a period of up to 90 (ninety) days following the date

of termination, provided further that if the Seller's then current return rate exceeds 5% (five percent), then Makro may extend such period to 180 (one hundred and eighty) days.

- 4.3.2. Makro will within 10 (ten) days of termination, make any Seller Products in its possession available for collection by the Seller and subject to Makro Fulfilment Services Terms and Conditions. The Seller will be liable for all costs of collection of the Product from Makro and failing collection by the Seller, Makro may, in its discretion, destroy such Products or alternatively return such Products to the Seller at the Sellers own cost and expense.
- 4.3.3. Makro may delay the return of any Products in its possession for up to 90 (ninety) days from date of termination, if:
 - 4.3.3.1. the current balance on the Sellers Account is positive but less than 10% (ten percent) of the previous three months' aggregate Sales Proceeds; or
 - 4.3.3.2. the termination relates to the sale of any unsuitable Products;and provided further that if the Seller's current return rate exceeds 5% (five percent) at termination, Makro may extend such period to 180 (one hundred and eighty) days. The Seller will, however, be liable for the cost of storage of such Products in Makro's possession.
- 4.3.4. If the balance on the Seller Account is negative, the Seller shall pay the full outstanding amount to Makro within 10 (ten) days of the date of termination. Should the Seller fail to do so, then Makro will be entitled, in its discretion, to retain any Products in its possession and dispose of such products provided that Makro provides the Seller with at least 20 (twenty) days' prior written notice of its intention to dispose of the Products (the "Warning Period"). On the expiry of the Warning Period, and should the Seller have failed to make the payment of the outstanding amount, then the Seller shall be deemed to have consented to such disposal.
- 4.3.5. Despite termination of the Agreement, the Seller shall continue to be liable for the cost of storage of any Products in Makro's and/or any Makro third party service provider's possession until such time as the Products have been collected by the Seller, delivered to the Seller (at the Sellers cost), and/or disposed of, in accordance with this Agreement.
- 4.3.6. Despite termination of the Agreement, the Seller shall remain liable to a Customer for any sale 6 (six) months (or such longer period as specified by any product warranty or guarantee) preceding the termination date.
- 4.3.7. The Seller will reimburse Makro for the cost of any delivery, attempted delivery and/or disposal of Products occurring in terms of this clause 4.
- 4.3.8. Clause 4 shall further apply to instances where the Agreement and/or the Seller Account is suspended in terms of this Agreement and/or the Seller Performance Standards and Service Levels (with the necessary changes being made) and/or in terms of any Seller Policy.

5. PRODUCTS THAT ARE LISTED AND SOLD ON MAKRO MARKETPLACE

- 5.1. The Safe Products Policy, read together with this Agreement set out certain obligations regarding the Products that Sellers may or may not list on Makro Marketplace. The Sellers may not list, market, promote, offer for sale, or sell any Products through Makro Marketplace that are in violation of this Agreement (including the Safe Product Policy) and/or any applicable Laws.
- 5.2. The Seller may sell a Product on Makro Marketplace if the Seller is an authorized reseller of that Product, and/or purchased and/or otherwise legally acquired that Product from an authorized reseller of that Product, or otherwise has a legal right to sell that Product within the Republic of South Africa and/or Africa.
- 5.3. The Seller may only sell Products on Makro Marketplace that are authentic.
- 5.4. The Seller must maintain adequate processes and procedures for conducting due diligence to assure that Products are authentic, authorized for sale, and not stolen, counterfeit, illegal or misbranded.
- 5.5. The Seller warrants that:
 - 5.5.1. it will not list any Product or Product Information on the Makro Marketplace that is counterfeit, illegal, stolen, or fraudulent, or infringes any third-party "Intellectual Property Rights" (meaning 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 or proprietary right), or that the Seller does not have the right to sell or the Products originating from a sanctioned country in terms of the US OFAC sanctions list;
 - 5.5.2. all information provided about the Product, including Product Information and descriptions, will be accurate, current, and complete and not misleading, deceptive, or fraudulent in any way;
 - 5.5.3. all Products have the correct indication of mass and/or volume on all packaging and in the Product Information on Makro Marketplace and within the tolerances provided for by law;
 - 5.5.4. all Products supplied to Customers on the Makro Marketplace will have adequate instructions and/or warnings to the Customer pertaining to any hazard arising or associated with the use of the Product and such notice shall comply with section 22 of the Consumer Protection Act;
 - 5.5.5. all Product Labelling and/or Product Information will be updated with any change of Laws and/or standards.
 - 5.5.6. Products will not be manufactured or produced by child, convict/prison or forced labour.
- 5.6. The Seller will ensure that all Products listings and/or Product Information and/or Product descriptions will be in accordance with all requirements as set out in the Seller Performance Standards and Service Levels and as further determined by Makro from time to time. Makro, in its sole discretion, may remove listings and/or Seller Product Information, and/or prohibit the Seller and/or ask the Seller to refrain from listing any Products.
- 5.7. The Seller will ensure that all Product Information will, at a minimum, be at least the same quality as the highest quality information displayed or used on any other Seller site and/or other online sales channels for the Seller's Products and shall provide the users of Makro Marketplace with at least as

much Product Information, images, and other pertinent information as may be provided by the Seller on the Seller site and/or other online sales channels for the Seller's Products. The Seller warrants that it is duly authorised to utilise all Product Information, images and other pertinent information that may be displayed on Makro Marketplace by the Seller.

- 5.8. The Seller must also promptly update such Product Information on the Seller Centre as necessary.
- 5.9. The Seller will be free to determine which of Seller Products will be listed for sale on Makro Marketplace provided such Products comply with this Agreement and all Seller Policies. Makro will, in its discretion, be entitled to approve and decline certain Product categories.
- 5.10. Makro will make commercially reasonable efforts to post updated Product Information provided by Seller on a daily basis through its standard transmission process. The Seller acknowledges that Makro will impose freezes on Information updates from time to time in connection with releases on Makro Marketplace.
- 5.11. Where a Product, purchased by a Customer, on Makro Marketplace reflects (a) any incorrect Product Information; and/or (b) the incorrect purchase price then:
 - 5.11.1. the Seller shall, if so required by Makro (notwithstanding Makro Marketplace online terms and conditions or any representations made by its agents), honour such transaction (in the case of (a), where reasonably possible), and shall receive the purchase price reflected on Makro Marketplace at the time of the Customer order, as full compensation for such Transaction; and
 - 5.11.2. the Seller shall honour the Transaction (in the case of (a), where reasonably possible) and Makro may remove the relevant Product from the Seller's inventory, and the Seller shall be deemed to have consented to such action;
 - 5.11.3. **Makro and/or Massmart shall not be liable for any loss suffered or incurred by the Seller as a result thereof - whether the error arose due to the Seller's fault, a delay in Makro updating any information (including Product Information) on the Website at the request of the Seller, or any other cause, whatsoever;**
 - 5.11.4. **the Seller hereby indemnifies and keeps Makro and/or Massmart indemnified against any loss and/or damage suffered by any Customer, third party and/or the Seller as a result of the provisions of this clause 5.11.**
- 5.12. In the event that the Seller includes a mistake or error in connection with a Product sold on the Makro Marketplace, upon receipt of an Order, at Makro's discretion and in accordance with the Consumer Protection Act, the Seller shall be required to honor such mistake or error and provide the Product to the Customer at the Sellers own cost.
- 5.13. In the event that a Seller has made a mistake or error then the Seller will be required to take reasonable steps to rectify the error and notify consumers of the error.
- 5.14. The Seller shall, at its own cost and expense, acquire and obtain all materials as may be required for the packaging of the Products in accordance with the Seller Performance Standards and Service Levels.

- 5.15. Makro may, from time to time, provide space on the Makro Marketplace for Sellers to pay a Fee to advertise the Products, which may include banners, landing page promotions and advertising campaigns in accordance with Makro's terms and conditions that will be determined by Makro from time to time.
- 5.16. The Seller consents to Makro contacting the Seller from time to time regarding possible advertising opportunities and Makro will provide the Seller with an insertion order form to be completed should the Seller wish to proceed with such advertising opportunities. Once a Seller has completed and returns the insertion order form then the Seller will be liable for the cost of the advertising opportunity as determined by Makro from time to time.
- 5.17. Campaign assets supplied by the Seller must be suitable for digital execution. In this regard, the images must be of sufficient resolution and quality, and contain no offensive or distasteful materials/imagery (equivalent language to the product content specification) and comply with all specifications determined by Makro from time to time.
- 5.18. The campaign assets must be provided to Makro in line with Makro's turnaround time. Makro will not be liable for any delays by the Seller in adhering to these deadlines and Makro shall be entitled to refuse any extension of the campaign as a result of the delay. The Seller waives any claim, wholly or partially for any costs incurred for the campaigns that have not commenced as a result of any delays by the Seller.
- 5.19. Makro does not, in any manner whatsoever, guarantee or warrant that the Seller will receive a return on the investment and/or increased sale of Products as a result of paying for such advertising opportunities on Makro Marketplace and Makro will not be liable for any loss and/or damage suffered by the Seller of any third party whatsoever as a result of such advertising opportunity.

6. SELLER FEES AND PAYMENT

- 6.1. The Seller will be liable to pay the Fees as set out in Annexure "A" attached hereto in respect of the overall Makro Marketplace Program and the Makro Fulfilment Services. Makro may, in its entire discretion, change, amend, remove existing Fees and/or introduce new Fees from time to time. The Fees will include the Platform Fee, the Referral Fee and Delivery Fees as more fully set out in Annexure "A" together with such additional Fees as may be applicable from time to time.
- 6.2. The Seller will be liable to pay the Platform Fee which will be charged by Makro to the Seller prior to the Seller being permitted to list and/or sell any Products on Makro Marketplace. This Fee is non-refundable.
- 6.3. The Seller will pay Makro a Referral Fee which will be earned on each Product sold and once the Order has been completed.
- 6.4. The Seller will pay the Delivery Fee for every order that is delivered and/or any Products that may be collected from any Customer as a return.

- 6.5. An Order is deemed complete only once the Product has been delivered with a proof of delivery provided by the courier.
("Deemed Completion")
- 6.6. Makro will pay the Seller its share of the Order (the "Seller's Share") which will be the total amount of the Product less any Fees due to Makro in accordance with this Agreement.
- 6.7. Makro will make payment of the Seller Share that meet the Deemed Completion criteria on 2 (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.
- 6.8. 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.
- 6.9. At Makro's option, all payments to the Seller's bank account will be made by means of electronic funds transfer or similar method. If Makro concludes that the Seller's actions and/or performance in connection with this Agreement may result in customer disputes, Seller suspension or delisting, chargebacks or other Claims, then Makro may, in its sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to the Seller under this Agreement for the shorter of:
 - 6.9.1. A period of 90 (ninety) days following the initial date of suspension or delisting as a Seller;
or
 - 6.9.2. Completion of any investigation(s) regarding the Seller's actions and/or performance in connection with this Agreement.
- 6.10. The Parties agree that the Seller will be paid net of any Customer Claims for delivery or refunds, delivery of returned items and re-delivery of replacement or repaired products.
- 6.11. Should Makro be obliged to compensate a Customer for any damage or losses that the Customer may have suffered due to errors, omissions, fault and/or negligence of the Seller, Makro shall be entitled to deduct all losses as a result of compensation offered to the customer to remedy Seller errors.
- 6.12. With regard to orders fulfilled by the Seller, Makro will not be responsible for the fulfillment or payment of courier fees where a waybill is not generated in Seller Centre or for Seller Fulfilled Consignments. In this instance the Seller is responsible for the fulfilment of the consignment, at the Seller's expense, and fulfilment must be in line with the Sellers Performance Standards and Service Levels Policy.
- 6.13. When a Customer returns a Product the Seller shall be liable for the actual return delivery fee to the Seller and as set out in Annexure "A".
- 6.14. If the Product return results in the delivery of a repaired or replacement product, then the Seller shall be liable to pay the subsequent actual outbound delivery fee.

6.15. Delivery fees will be charged to the Seller in accordance with the Fees as determined by Makro from time to time.

7. ORDER PROCESSING, FULFILMENT AND SHIPPING

7.1. All transactions with Customers are between the Seller and the Customer. Customers will place Orders using the Makro Marketplace checkout system and Makro Marketplace will collect all proceeds from such transactions on the Seller's behalf.

7.2. The Seller hereby authorize Makro (as its authorized agent) to accept payment from Customers for remittance to the Seller for the Products, and as such when a Customer pays Makro Marketplace, it shall be construed as if the Customer will be paying the Seller.

7.3. The Customer shall not be at risk of loss of funds upon payment to Makro Marketplace on the Seller's behalf.

7.4. Makro Marketplace will electronically transmit to the Seller the Order information that Makro determines is necessary to fulfill each Order (the "Transaction Information").

7.5. Makro will send an automated email message to each Customer confirming receipt of an Order.

7.6. Once Makro Marketplace has transmitted an Order to the Seller, then the Seller at its own cost, will be solely responsible for, and bear all liability for, the fulfillment of the Order, including but not limited to, the packaging and shipping and delivery of the Products and any customer service which Makro may require in accordance with the Customer Service Policy.

7.7. If the Seller cannot fulfill the entire quantity of a purchase order ("PO") line in an Order, then the Seller will cancel that PO line, fulfill all other lines in the Order and promptly notify Makro of such cancellation and in accordance with the Seller Performance Standards and Service Levels.

7.8. If the Order consists of one PO line that the Seller cannot fulfill the entire quantity for, then the Seller will cancel the entire Order and promptly notify Marko.

7.9. In the event that the Seller has opted into receiving the Makro Fulfillment Services and Makro has agreed to provide the Seller with the Makro Fulfilment Services, such obligations set out within this Clause shall not apply to the limited extent that such obligations are otherwise covered by the Makro Fulfillment Services Terms and Conditions as set out in Annexure "B" below.

7.10. Shipping Options:

7.10.1. The Seller is responsible for properly specifying shipping options for all Products through the Makro Marketplace Tool as requested by Makro Marketplace.

7.10.2. The Seller will only utilise the Couriers as approved by Makro from time to time to fulfill deliveries to any Customers.

7.10.3. The Seller will ensure that all Products to one Customer, with the same lead times, are included in one Courier waybill.

7.10.4. Except to the extent that Makro provides the Sellers with the applicable shipping charges for the utilization of the Couriers, the Seller will provide Makro Marketplace with the shipping,

handling, and any other charges for each Product required by the Makro Marketplace Tool, separate from the purchase price and will include the calculation of any customs duties for any Products imported into South Africa for the exclusive benefit of a Customer.

7.10.5. The Seller will not enable shipping in the Makro Marketplace Tool for any Product in any region where the sale of such Product violates this Agreement, any Seller Policy or applicable Law. Furthermore, the Seller shall only utilise Makro Marketplace to fulfil orders within the Republic of South Africa.

7.10.6. In the event that a Seller has opted in to receive the Makro Fulfillment Services as set out in Annexure "B" below, such obligations set out within this Clause shall not apply to the limited extent that such obligations are otherwise covered by the Makro Fulfillment Services as set out in Annexure "B" below.

7.11. Shipping Process:

7.11.1. The Seller will be responsible for shipping all Products purchased by Customers in accordance with the Sellers Performance Standards and Service Level Policy, except to the extent that the Seller has opted to receive the Makro Fulfillment Services and such specific service level is not applicable to the Seller's orders being fulfilled by Makro.

7.11.2. The Seller will be responsible for all shipping charges and for any costs or charges related to shipping-related problems, including but not limited to, damaged or lost Products, late shipments or missed delivery.

7.11.3. The Seller will be solely liable for all costs related to any duplicate or inaccurate shipments based upon the retransmission of Order files through any Makro Marketplace Tool.

7.11.4. Packaging for Products may not contain any Seller marketing materials, and emails sent by any Seller to Customers (if such emails are approved and in line with the Customer Care Policy) in connection with an Order will not contain any marketing materials or links to any Seller or third party website.

7.12. Shipping Status and Reports:

7.12.1. Orders that are not timely shipped in accordance with the Seller Performance Standards and Service Levels may be automatically cancelled by Makro and the Seller will be liable for all Product costs and shipping costs associated with such cancelled Order. The Seller will not be entitled to any claims for any payments of the Fees otherwise payable under this Agreement related to such cancelled Orders.

7.12.2. In the event that the Seller has opted into receive the Makro Fulfillment Services, then such obligations set out in this clause 7 shall not apply to the limited extent that such obligations are otherwise covered by the Makro Fulfillment Services as set out Annexure "B" below.

7.13. Risk of Fraud and Loss:

7.13.1. Makro will bear the risk of credit card fraud occurring in connection with an Order, and the Seller will bear all other risk of fraud or loss and all costs related thereto. The Seller will be

responsible for all credit card chargebacks and Makro will offset such chargeback amounts against amounts otherwise owed to the Seller, or alternatively, provide the Seller with an invoice and the Seller will settle such invoice within 30 (thirty) days of receipt. However, notwithstanding the foregoing, Makro will not bear the risk of credit card fraud in connection with any Product that is not shipped by the Seller to the shipping address specified in the Transaction Information provided by Makro, and the Seller will be responsible for all costs related to such credit card fraud under these circumstances.

8. CANCELLATION

- 8.1. Makro will process all Customer cancellations, returns, refunds and/or customer service price adjustments through the Makro Marketplace Tools. The Seller will be liable for costs associated with all Customer cancellations, returns, refunds and/or customer service price adjustments.
- 8.2. The Seller may cancel an order prior to the Products being shipped at no cost.
- 8.3. In the event that the Customer elects to cancel an order once the order has been shipped then in such event the Customer will need to follow the returns policy, as determined by Makro from time to time.
- 8.4. The Seller will stop and/or cancel any order if so requested by Makro and provided that, if the Seller has transferred Products to a courier, then the Seller will use commercially reasonable efforts to stop and/or cancel delivery by the courier.
- 8.5. The Seller will cancel an order if the Seller does not have sufficient quantity in stock which is required to fulfill the entire order requested by a Customer. The Customer will then have an option to source the complete order from another Seller or request a lower quantity order via Makro Marketplace.
- 8.6. The Seller warrants and represents that a valid return address shall be maintained on Makro Marketplace so that Customers or Makro can return the Products to the Sellers.
- 8.7. In the event that the Seller utilized the Makro Fulfillment Services, the parties acknowledge and agree that the Makro Fulfillment Services shall govern Customer cancellations and returns. In this regard, Products that are delivered to a Customer by the Seller (“fulfilled by Seller”) will be returned directly to the Seller. Products that are delivered to a Customer in accordance with the Makro Fulfillment Services will be returned to the Makro Fulfillment Centre.
- 8.8. Any Products that are imported into South Africa by a Makro identified and approved Cross Border Seller, will be returned to the Makro Fulfillment Centre. The Seller will be liable for all costs including but not limited to warehousing storage fees and/or disposal fees.
- 8.9. The Seller agrees with the final return evaluation as processed by the Makro Fulfillment Centre which will be binding on the Seller.
- 8.10. In the event that the Seller's Product is returned to Makro Marketplace or a third party, and the Seller fails to collect the Products within the period as specified by Makro from time to time, then it is agreed that such Products shall be considered abandoned by the Seller, and Makro shall have the sole discretion to handle the disposition of such Products. The Seller will be liable to pay any and all costs

incurred by Makro and third parties who improperly receive any Seller Products, including any warehousing storage and disposal fees.

9. RETURNS & REFUNDS

- 9.1. The Sellers shall comply with the Makro Marketplace Returns and Refunds Policy as determined by Makro from time to time. The Seller warrants that all returns shall be dealt with strictly in accordance with the Consumer Protection Act and the ECTA.
- 9.2. All refunds will be processed by Makro back to the Customer and the Seller will be responsible for reimbursing Makro for any cash refunds or adjustments Makro makes to a Customer and Makro, in Makro's sole discretion, will obtain reimbursement from the Seller either:
 - 9.2.1. via offset of any amounts payable by Makro to the Seller; or
 - 9.2.2. by billing the Seller for such amounts.
- 9.3. Makro reserves the right to set off any amounts due to the Seller by Makro against any refunds and/or claims that have been processed to Customers.

10. OWNERSHIP AND RISK

- 10.1. All risk of loss or damage in and to the Products (including whilst in transit) whether total or partial, from whatsoever cause shall remain with the Seller until the Products have been delivered by or on behalf of the Seller to a location specified by Makro and/or the Customer and Makro and/or the Customer has provided the Seller with signed acceptance of such delivery.
- 10.2. Ownership of the Products shall pass from the Seller to the Customer upon delivery thereof by or on behalf of the Seller to the Customer and signed acceptance thereof by the Customers.

11. RECALLS

- 11.1. Makro will not be liable for any recalls of Products sold through the Makro Marketplace by the Seller. The Seller is solely responsible and liable for any non-conformity and/or product defect (whether patent or latent), and/or any public or private recall and/or safety alert of any Seller's Products. The Seller will promptly remove any recalled Product from the Makro Marketplace by un-publishing the Product.
- 11.2. In addition to the rights and obligations set out in this Agreement, the Recalls shall be further subject to the terms and conditions set out in the Safe Product Policy, which shall be amended from time to time.
- 11.3. The Seller will immediately (and no later than 24 (twenty-four) hours) notify Makro by emailing Compliance@makro.co.za of becoming aware of a recall and/or a potential recall and will promptly provide Makro with all relevant information as may be requested in respect of such recall and/or potential recall.

- 11.4. Makro may require the Seller to immediately recall Products in the event that the Seller is and/or Makro and/or Massmart is ordered to do so by any Authority, including but not limited to the National Consumer Commission, the National Consumer Tribunal, ICASA, the NRCS, Department of Health, Department of Agriculture, or otherwise at Makro's sole discretion: i) if the Products do not conform to the Makro and/or Massmart's specified standards, including responsible sourcing standards or Laws, SABS standards, other applicable international standards or that it may otherwise pose a safety or health risk; and/or ii) after considering any complaints, analyses, audit reports, test reports, and other documents on which it is going to base its decision. Such a recall may be initiated if Makro and/or Massmart has become aware or suspects that a Product does not conform with the foregoing requirements or as a result of Consumer complaints or reports on failures of Products, defects or hazards or personal injury, death, illness or damage to property.
- 11.5. The Seller will be liable for the handling of the recall at their own cost and expenses and will be liable for any and all costs associated with any recall including but not limited to the upliftment, collection and storage of Products, warehousing costs for the storage of quarantined Products, testing of the Products, communication and advertising expenses (including but not limited to radio awareness and social media campaigns, newspaper articles, emailers and sms communication), destructions and disposal of Products. The Seller shall be liable for the refund and reimbursement of all Customers affected by the recall of the Products which refunds and reimbursement will be processed by Makro.
- 11.6. In the event of a recall, Makro will provide the relevant communication to the Customers and the Seller will ensure that all communication is processed through Makro and in accordance with the Customer Service Policy.
- 11.7. Makro may assist with collections of Products from Customers and all Products will then be returned to the Seller at the Seller's expense. In the event that the Seller fails to accept delivery of such Products then Makro may dispose of such Products and on-charge all costs to the Seller.
- 11.8. The Seller hereby indemnifies and keeps Makro and/or Massmart indemnified against any loss and/or damage which may be suffered by any third party, including Customers, as a result of any recall of products sold by the Seller via Makro Marketplace.

12. CUSTOMER SERVICES

- 12.1. The Seller shall comply with the Customer Care Policy in respect of the Seller's responsibilities for customer service.
- 12.2. In the event that Makro authorises the Seller to communicate directly with the Customer then the Seller will always represent itself as a separate entity from Makro and this shall, in no way, create an agency or principal relationship between Makro and the Seller. The Seller will not bring into disrepute Makro or its Affiliates or its or their products or services when performing customer service obligations or any other obligation under this Agreement.

- 12.3. If the Seller monitors or records any customer service calls, then the Seller must give notice of such monitoring or recording to all Customers during each such call prior to providing any customer service in accordance with applicable Law, including but not limited to the POPIA.
- 12.4. Makro reserves the right to provide a customer service adjustment (not to exceed the total amount paid by such Customer in connection with the Products, including without limitation, taxes and shipping fees) to a Customer that Makro reasonably determines has not been dealt with correctly by the Seller and in accordance with the Customer Care Policy and Makro may offset such amounts against amounts otherwise owed to/by the Seller or by billing the Seller for such amounts.

13. REPORTING AND AUDIT RIGHTS

- 13.1. The Seller will, within a reasonable period of time (which period will not exceed 30 (thirty) days) provide Makro with any reports, information or other documentation relating to the Seller's compliance with this Agreement and all applicable Laws as may be reasonably requested by Makro and/or Massmart from time to time.
- 13.2. The Seller will provide Makro and/or Massmart any reports which were required to be filed with any regulatory agency within 7 (seven) days of such written request by Makro and/or Massmart.
- 13.3. The Seller will keep accurate and complete books, records, product testing, compliance information and records, and accounts related to all Seller Products, the Makro Marketplace Program transactions and this Agreement.
- 13.4. Makro and/or Massmart, or its duly authorized representative, shall have the right, to conduct, during regular business hours, full and independent audits and investigations of all information, books, records, product testing, compliance information and records, and accounts reasonably required by Makro and/or Massmart to confirm the Seller's compliance with the terms of this Agreement and applicable Law. Makro and/or Massmart may request such audit by providing the Seller with 5 (five) Business Days' written notice of such audit request at any time during this Agreement and for a period of 2 (two) years after termination of this Agreement for any reason whatsoever.
- 13.5. The cost of any and all audits shall be borne by the Seller unless otherwise agreed to by Makro and/or Massmart.
- 13.6. Makro and/or Massmart may require the Seller to submit any Seller Products to additional audit and/or compliance testing which shall be at the Seller's sole cost and expense.

14. INTELLECTUAL PROPERTY, OWNERSHIP AND USE RIGHTS

- 14.1. Makro, Massmart, its Affiliates, and their service providers and licensors retain all right, title and interest (including any Intellectual Property Rights) in and to:
 - 14.1.1. All Makro, Massmart and/or their Affiliates Intellectual Property;
 - 14.1.2. Makro Marketplace, the Makro Sites, the Makro Marketplace Tools, and the Makro Marketplace Services;

- 14.1.3. Makro and Massmart (and their affiliates) brands, logos, names and/or content;
 - 14.1.4. Any and all Content on the Makro Marketplace and in any Makro Marketplace reports;
 - 14.1.5. Any and all training material in respect of the Makro Marketplace Programme;
 - 14.1.6. any and all Customer Data, Customer Databases and/or Customer information (including any Customer Personal Information and in accordance with POPIA)
 - 14.1.7. any of their Confidential Information.
- 14.2. Except for a limited right for the Seller to access the Makro Marketplace Sites and Makro Marketplace Tools made available to the Seller in accordance with and subject to all the terms and conditions of this Agreement, Makro, Massmart and its affiliates, and their service providers and licensors, as applicable, retain all rights in the foregoing and grant no other rights or licenses (whether by implication, estoppel, or otherwise) under any of their Intellectual Property Rights under or in connection with this Agreement.
- 14.3. Makro owns (and the Seller hereby assign to Makro) all Transaction Information and all other information relating to Orders or Products, including, but not limited to, information that is entered into Makro Marketplace Tool, information that is created as a result of a transaction, and ratings and reviews provided by Customers. All such information is subject to the Massmart Privacy Policy and any additional privacy guidelines posted by Makro on Seller Center.
- 14.4. The Seller may only use Transaction Information to further a transaction related to this Agreement, in accordance with the terms of the Agreement, Customer terms and conditions, the Massmart Privacy Policy, and all applicable Law.
- 14.5. The Seller will not:
- 14.5.1. disclose or convey any Transaction Information to any third party (except as necessary to perform the Sellers obligations under the Agreement;
 - 14.5.2. use any Transaction Information to conduct customer surveys or for any marketing or promotional purposes;
 - 14.5.3. 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;
 - 14.5.4. target communications of any kind on the basis of the intended recipient being a Customer;
or
 - 14.5.5. use any information about Customers gained through the Makro Marketplace Program to directly contact and/or solicit such Customers through any other sales channels.
- 14.6. The Seller shall be entitled to retain and utilise all information they have gathered independent of the Makro Marketplace Program; provided that, the Seller does not target communications on the basis of the intended recipient being a Makro Marketplace user.
- 14.7. Makro may use mechanisms that rate or review, or allow Customers to rate or review, Seller Products and/or Seller performance which ratings may be publicly available.

- 14.8. Makro will not be liable to review or moderate such ratings.
- 14.9. Makro will not be liable to the Seller, in any manner whatsoever, for any rating, reviews, information or accuracy of any ratings or reviews. The Sellers may request a removal of such ratings or reviews in specific circumstances as set out in the Customer Care Policy.
- 14.10. The Seller will have no ownership interest in or license to use any rating or reviews posted on the Makro Marketplace Site.
- 14.11. In the event that the Seller provides or makes available any suggestions, comments, ideas, improvements or other feedback or materials to Makro or its affiliates in connection with the Makro, the Makro Marketplace, or other subject matter of this Agreement, Makro will be free to disclose, reproduce, modify, license, transfer and otherwise distribute, and use and exploit any of the foregoing feedback or materials in any manner. For this purpose, the Seller grants in perpetuity Makro permission to use its name and other personal information reflected in the ratings for any marketing purpose.
- 14.12. Makro may, in its sole discretion, remove and Seller's listings in response to notices of alleged copyright infringement, trademark misappropriation, or other Intellectual Property Rights or other claims. If Makro requests that a Seller remove Products or Seller Product Information from the Makro Marketplace, then the Seller will remove the Products or Seller Product Information within 24 (twenty-four) hours of such request. The Seller will not list or include such removed Products or Seller Product Information on the Makro Marketplace at any time unless their inclusion is specifically authorized by Makro in writing.

15. PROTECTION OF PERSONAL INFORMATION AND DATA

- 15.1. In addition to any obligations set out in this Agreement, the Seller shall at all times strictly process all Personal Information, including Customer Personal Information, strictly in accordance with POPIA and any other applicable data protection Laws. The Seller shall further process all Customer Personal Information in accordance with this Agreement and the Massmart Privacy Policy.
- 15.2. The Seller shall:
 - 15.2.1. use and/or hold such Personal Information and any Data only for the purpose of performing its obligations in terms of this Agreement and only in the manner directly by Makro and/or Massmart from time to time;
 - 15.2.2. not modify, amend or alter the content of such Personal Information and any Data nor disclose nor permit the disclosure of such Personal Information and/or any Data to any third party unless specifically authorized by Makro or as may be required by Law;
 - 15.2.3. ensure that the Seller has appropriate technical and organizational measures against the unauthorized or unlawful processing of such Personal Information and/or Data and against the accidental loss, destruction of or damage to such Personal Information and/or Data;

- 15.2.4. not (and shall ensure that its agents shall not) process and/or transfer such Personal Information and/or Data outside of the Republic of South Africa without the prior written approval of Makro;
 - 15.2.5. immediately notify Makro if the Seller becomes aware of or has reasonable grounds to suspect any unauthorized and/or unlawful access to the Personal Information and/or Data;
 - 15.2.6. co-operate with Makro and/or Massmart in complying with any investigation and/or audit of such collection, retention, usage, processes and destruction of such Personal Information and/or Data;
 - 15.2.7. return any and all Personal Information and/or Data to Makro upon written request from Makro and in such format as is acceptable to Makro;
 - 15.2.8. not direct market to any Customer unless Makro has given the Seller expressed prior approval to send such marketing material to the Customer and such marketing material has been pre-approved by Makro;
 - 15.2.9. provide Makro with a certificate confirming that the Seller is no longer in possession of any Personal Information and/or Data once Makro has requested the return or destruction of such Personal Information and/or Data.
- 15.3. **The Seller hereby warrants that:**
- 15.3.1. **it has identified all reasonably foreseeable internal and external risks to any Personal Information and/or Data which may be in the possession of the Seller from time to time;**
 - 15.3.2. **it has established and will maintain appropriate safeguards against such risks identified;**
 - 15.3.3. **it will regularly verify that the safeguards are effectively implemented; and**
 - 15.3.4. **it will ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.**
- 15.4. **The Seller hereby indemnifies and keeps Makro, Massmart and its Affiliates, indemnified against any loss and/or damage suffered by any third party and/or any penalties and/or fines issued against Makro, Massmart and its Affiliates as a result of the Sellers failure to fully comply with POPIA and any applicable Laws relating to data protection, including ECTA.**

16. INDEMNITY

- 16.1. The Seller will, at Makro and/or Massmart's discretion, protect, defend, indemnify and hold Makro and/or Massmart and/or their affiliates (and their respective officers, employees, shareholders, directors, agents and representatives) harmless from and against any and all liabilities, costs, losses, damages, judgments, fines, penalties, interest, and expenses (including any legal costs on the scale as between attorney-and-own-client) arising out of any actual or alleged Claims (regardless of whether

such matters are groundless, fraudulent and/or false) that arise out of or relate to any actual or alleged in respect of:

- 16.1.1. any breach (or alleged acts or omissions that if true would be a breach) of any of the Seller's representations, warranties and/or obligations set out in this Agreement;
 - 16.1.2. Seller Site or other sales channels, the Products, any Seller Product Information, the advertisement, offer, sale or return of any Products;
 - 16.1.3. any actual or alleged violation, misappropriation and/or infringement of any Intellectual Property Rights by the Seller, the Products, or any Seller Product Information;
 - 16.1.4. any taxes assessed, incurred, or owed in connection with, or arising out of, any transaction undertaken on the Makro Marketplace Program, or the collection, payment or failure to collect or pay such taxes, including, but not limited to, the Seller's obligations set out in this Clause;
 - 16.1.5. death of and/or injury to any person, damage to any property, and/or any other damage and/or loss, by whomsoever, suffered, resulting and/or alleged to result in whole or in part from the Seller's use of the Makro Marketplace, the Seller Site, the Products, or any Seller Product Information.
- 16.2. The Seller hereby indemnifies Makro, Massmart, its Affiliates, officers and/or employees and holds each of them harmless from any and all liability including the costs of replacement, refund, and repair of any Seller Products which may be incurred by Makro and/or Massmart under clause 16.1 or under Sections 20, 55 or 56 of the Consumer Protection Act, damages, costs of scientific and technical investigations, legal costs (on the scale as between attorney-and-own-client) and any interest which Makro and/or Massmart may incur on any amount owed to any third party arising from or attributable to any failure by the Seller to perform or discharge any of its obligations in terms of this Agreement timeously or at all, including, but not limited to:
- 16.2.1. a breach of this clause;
 - 16.2.2. any non-compliance by the Seller of any applicable Laws relating to the Seller (including in respect of taxation, the payment of customs, duties and in respect of the importing of Products into South Africa or Africa); and/or
 - 16.2.3. any defect, failure and/or hazard (within the meaning of the Consumer Protection Act) of whatsoever nature in the Products.
- 16.3. If any legal action for which an indemnity is provided to Makro and/or Massmart and/or any Affiliate under this Agreement is threatened or commenced with, Makro and/or Massmart and/or any Affiliate shall provide the Seller with written notice of such threat within 7 (seven) days of receiving notice thereof, or of commencement of legal action, and the Seller shall be obliged to take control of the defence and investigation of such Claim and to employ and engage attorneys of its choice to handle and defend same and/or settle same, provided that Makro and/or Massmart has provided prior written consent to such settlement) and at the Sellers own expense.

16.4. **The Seller's liability to Makro and/or Massmart and/or any third party whatsoever, including Customers, shall in no event be limited in any manner whatsoever.**

16.5. This clause 16 shall survive the termination of this Agreement for any reason whatsoever.

17. MAKRO AND/OR MASSMART LIMITATION OF LIABILITY

17.1. **Makro and/or Massmart shall not be liable to the Seller and/or any third party for:**

17.1.1. **any loss and/or damage for any loss of profit, loss of use, loss of revenue, loss of business and/or loss of data, interruption of business;**

17.1.2. **exemplary, punitive, special, incidental, indirect or consequential damage;**

17.1.3. **cost of cover, recovery or recoupment of any investment.**

17.2. **In no event will Makro and/or Massmart or their affiliates aggregate liability to the Seller and/or any third party for any Claims, loss, costs, damages, judgments, fines, penalties, interest, and expenses (including reasonable attorney's fees, defense and settlement) for any reason whatsoever and howsoever arising, exceed the total Referral Fee by the Seller to Makro during the 6 (six) month period preceding the event giving rise to such liability.**

17.3. **The limitation of liability referred to in clause 17.1 and 17.2 shall survive the termination of this Agreement for any reason whatsoever.**

18. NO WARRANTIES BY MAKRO AND/OR MASSMART

18.1. **The Makro Marketplace Programme, Makro Sites, Makro Marketplace Services and any Makro Marketplace Tools that are provided by Makro to the Seller are provided on an "as is" basis. The Seller shall not be entitled to request, and Makro shall not be required to, amend any Services, Sites and/or Tools for any reason whatsoever.**

18.2. **Neither Makro, Massmart nor its Affiliates make any representations and/or warranties of any kind, whether express or implied, including but not limited to:**

18.2.1. **any implied or expressed warranties of merchantability, fitness for a particular purpose, title or non-infringement;**

18.2.2. **Any implied or expressed warranty pertaining to the usability of the Makro Marketplace, Makro Marketplace Services and/or Makro Marketplace Tools and/or that such Marketplace and/or Services and/or Tools will meet any Sellers specific requirements, will always be accessible and available, timely, secure or operate without any errors and/or bugs;**

18.2.3. **Any implied or expressed warranty pertaining to the usage of Makro Marketplace, Makro Marketplace Services and/or Makro Marketplace Tools in respect of the sale of the products and any potential revenue to be generated by the Seller through such Marketplace, Services and/or Tools.**

19. TAXES

- 19.1. The Seller hereby warrants that it is registered and in good standing with all applicable tax authorities.
- 19.2. The Seller will comply with the Sellers Tax Policy, as amended from time to time.
- 19.3. The Seller will be solely liable for any and all taxes to be paid to any applicable revenue services, including the South Africa Revenue Service, in respect of any Fees which may be paid by Makro to the Seller from time to time together with any customs duties that may be applicable in respect of the importing and/or exporting of any Products.
- 19.4. Makro and/or Massmart shall be entitled to deduct and withhold any taxes which Makro and/or Massmart are required to deduct and/or withhold in accordance with any applicable Laws and as and when such obligation may arise. The Seller hereby irrevocably provides Makro and/or Massmart with consent to withhold and/or deduct such amounts and pay the amount to the relevant tax authority.
- 19.5. The Seller will provide Makro and/or Massmart with all appropriate withholding tax certificates and/or such other documentations and/or certificates that Makro and/or Massmart will require from time to time and prior to any payments being made to the Seller in accordance with this Agreement.
- 19.6. The Seller hereby undertakes and agrees to file all required returns, report any income and pay any applicable taxes incurred as a result of the payments made to the Seller under this Agreement and provide Makro and/or Massmart with evidence that such income has been reported.
- 19.7. To the extent required by any applicable Law and upon reasonable notice, Makro agrees to provide any necessary information reasonably required by the Seller evidencing the amounts paid to the Seller under the terms of the Agreement and any taxes withheld.

20. CONFIDENTIALITY

- 20.1. In the event that the Seller has entered into a separate confidentiality undertaking with Makro and/or Massmart then the confidentiality obligations contained in this Agreement shall not modify such separate confidentiality undertakings.
- 20.2. The Seller shall treat as confidential all of Makro and/or Massmart's Confidential Information and shall ensure that such Confidential Information is protected from unauthorized access, use or disclosure.
- 20.3. It is recorded that either Party may share Confidential Information with the other Party during the term of this Agreement. The party who is receiving (the "Receiving Party") Confidential Information from the other Party (the "Disclosing Party") will be deemed to have received such Confidential Information in confidence.
- 20.4. The Receiving Party will:
 - 20.4.1. use the Disclosing Party's Confidential Information only to perform its obligation and exercise its rights in terms of this Agreement;
 - 20.4.2. only disclose such Confidential Information to its personnel, contractors and affiliates that need to know the information in order to assist the Receiving Party with fulfilling its obligation

in terms of this Agreement and where such personnel, contractors and affiliates have agreed to keep the information confidential in accordance with the terms of this Agreement.

- 20.5. The restrictions on disclosure shall not apply to the extent that such Confidential Information is required to be disclosed pursuant to any order or directive from a Court of law and/or relevant government authority provided that prior written notice of such disclosure is first given to the Disclosing Party.
- 20.6. The Seller shall return to Makro and/or Massmart any and all Confidential Information which the Seller may have in its possession upon written request from Makro and/or Massmart. Furthermore, on termination of this Agreement for any reason whatsoever, the Seller will return and/or destroy (at Makro and/or Massmart's option) all Confidential Information of Makro and/or Massmart (including any information pertaining to Customers) in its possession and provide Makro and/or Massmart with a certificate confirming that the Seller is no longer in possession of such Confidential Information.
- 20.7. The rights and obligations set out in this clause shall survive the termination of this Agreement.

21. INSURANCE

- 21.1. Regardless of whether the Seller has any manufacturer warranties, the Seller shall, at its own expense, take out appropriate insurance to cover all risk in and to any Products and services that are provided to Customers which insurance shall specifically cover the liability envisaged by the Consumer Protection Act.
- 21.2. The Seller shall name Makro and/or Massmart as an additional insured in any such insurance policy.
- 21.3. The Seller shall provide Makro and/or Massmart with certificates of insurance for all such coverage upon request.
- 21.4. Makro and/or Massmart may, at any stage and on notice to the Seller, take out and maintain at the Seller's expense commercial general and/or excess liability insurance with a minimum insurance limit of R1 000 000.00 (one million rand) per occurrence and/or aggregate covering liability in relation to the operation of the Seller's business, including the Products and any Product liability.

22. ANTI-CORRUPTION

- 22.1. Compliance with Law and Policy:

The Seller agrees its performance under this Agreement will be in full compliance with the Walmart's Global Anti-Corruption Policy (the "Policy", available at <https://walmartethics.com>) and all applicable anti-corruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act and the UK Bribery Act. The Seller and Makro agree that in their performance under this Agreement, they will not directly or indirectly offer, promise, give or authorize the giving of anything of value, or offer, promise, make or authorize the making of any bribe facilitation payment or other improper or unlawful payment to any government official, political party or candidate for public office

in order to obtain or retain business, gain any unfair advantage, or influence any act or decision of a government official.

22.2. Certification of Compliance.

The Seller agrees to certify its compliance with the applicable anti-corruption laws and regulations by executing a form supplied by Makro for this purpose, either annually or when otherwise requested by Makro.

22.3. Right to Audit and Obligation to Cooperate.

The Seller shall keep accurate books, records, and accounts with sufficient detail as to clearly reflect its transactions and disposition of its resources or assets in connection with this Agreement. The Seller agrees Makro has the right to audit such transactions at any time and upon reasonable notice. The Seller agrees to:

22.3.1. provide assistance and cooperation in any investigations involving Makro and the Seller;

22.3.2. submit to due diligence re-screening when requested by Makro;

22.4. Training:

The Seller agrees its employees, affiliates and other representatives responsible for its performance under this Agreement will participate in Makro's anti-corruption training, if requested by Makro.

22.5. Subcontractors:

The Seller must obtain prior written authorization from Makro before the Seller engages any subcontractor to perform any services under this Agreement requiring interaction with any government entity or government official on Makro's behalf.

22.6. Right to Terminate:

If Makro reasonably suspects the Seller has engaged in conduct violating the Policy, or any applicable anti-corruption laws or regulations, Makro may immediately suspend payment pending the issue's resolution. If Makro determines the Seller violated the Policy, or any applicable anti-corruption law or regulations, Makro may terminate the Agreement. Makro may also suspend payment and suspend or terminate the Agreement if the Seller does not comply with the ongoing anti-corruption compliance obligations set forth in this Agreement, or if the Seller does not successfully complete due diligence re-screening.

22.7. Form of Payment:

All payments under this Agreement shall: (i) be made solely by wire transfer for the benefit of, and to the account of, the Seller and not to any individual employee or representative of the Seller; (ii) be denominated in South African Rand; and (iii) not be in cash or bearer instruments.

22.8. Obligation to Provide Information:

If for any reason, the Seller proposes to materially change ownership or management or its current shareholders or partners transfer control of the Seller to a third party or a third party assumes control of the Seller, the Seller must notify Makro within 30 (thirty) days of such change in writing. In such

case, the Seller may be resubmitted through Makro's due diligence and approval procedure for third-party intermediaries.

23. **CESSION AND ASSIGNMENT**

- 23.1. The Seller may not cede and/or assign this Agreement and/or any rights and obligations under this Agreement without the prior written consent of Makro, whose consent may be withheld for any reason whatsoever.
- 23.2. In the event that Makro provides consent to such cession and/or assignment which may affect the bank details of the Seller, then in such event, Makro will require no less than 60 (sixty) days to effect such change to the bank details.
- 23.3. Makro may at any stage cede and/or assign this Agreement and/or any rights and obligations under this Agreement to any entity within the Massmart group of Companies, without prior notification or consent.

24. **SANCTIONS:**

- 24.1. The Seller will not use Makro to directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any commodities, software or technology to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by South Africa, United Nations, US Office of Foreign Assets Control under the US Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority.
- 24.2. **The Seller further agrees that, solely for purpose of carrying out the transactions of this Agreement:**
- 24.2.1. **The Seller nor any purchasing entity operating on the Seller's behalf may be owned or controlled, in whole or in part, by any country, individual or entity subject to sanctions or embargoed under any applicable export control Laws referred to above with which Makro, Massmart, Walmart and/or the Seller must comply.**
- 24.2.2. **No Confidential Information will be used by any party, directly or indirectly, to source, purchase or otherwise acquire products, commodities, technology, technical data or services from or for any country, including Iran, Syria, Cuba, North Korea, Ukraine regions of Crimea, Donetsk and Lihansk, individual and/or entity contrary to any export control Laws referred to above with which Makro, Massmart, Walmart and/or the Seller must comply.**
- 24.3. Makro will be required to provide additional consent (which consent may be withheld) for the registration of any Seller and/or listing of any Products originating from high risk countries as may be specified in the Safe Products Policy, including Afghanistan, Belarus, Colombia, Iraq, Lebanon,

Myanmar, Nicaragua, Pakistan, Panama, Russia, Thailand, United Arab Emirates, Venezuela and/or Yemen.

- 24.4. Makro may, in its sole discretion, approve, reject and/or delist any Seller (and any of their subsidiaries) that conduct activities within any restricted countries and/or list Products that originate from such restricted countries.
- 24.5. **Violations of the Seller's obligations as set out in this clause may, in the sole discretion of Makro, result in the immediate termination of this Agreement, injunctive relief and/or payment of damages.**
- 24.6. **The Seller hereby indemnifies and keeps Makro, Massmart and its Affiliates indemnified against any loss and/or damage and/or fines and/or penalties, whatsoever arising as a result of the Sellers failure to comply with this Sanctions clause and/or any applicable Laws regarding trade sanctions.**

25. DISPUTE RESOLUTION

- 25.1. The Parties hereby agree that, save in respect of those provisions of this Agreement which provide for their own remedies, or as it relates to anti-corruption as provided for in clause 24 above or involves a liquid document, any dispute arising from or in connection with this Agreement, including the interpretation, cancellation or rectification thereof shall be resolved in terms of this clause.
- 25.2. Either Party may declare a dispute by giving written notice to that effect to the other Party. If within 20 (twenty) business days of a dispute being declared, the General Counsel of Massmart and the person occupying a corresponding or similar position at the Seller do not meet and/or cannot settle the dispute or agree on a process to resolve the dispute (which must also include mediation prior to following the route of arbitration) the Parties hereby agree that such a dispute shall be submitted to arbitration upon written notification by either Party before an arbitrator to be appointed by agreement between the Parties to the dispute.
- 25.3. Should the Parties fail to agree on an arbitrator within 10 (ten) days after arbitration has been demanded by either Party, then any party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute.
- 25.4. The seat of arbitration shall be Johannesburg and the arbitration shall be conducted in English and shall take place in Sandton, South Africa.
- 25.5. In the event of the Parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator appointed, who shall be guided by the UNCITRAL Arbitration Rules in force at the relevant time.
- 25.6. The arbitrator shall state in writing the reasons for its conclusions and shall decide the allocation of the arbitration fees between the Parties.

- 25.7. Any Party to the arbitration may appeal the decision of the arbitrator in terms of the High Court Rules of South Africa in force at the relevant time.
- 25.8. Any arbitration in terms of this clause (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential the details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 25.9. Nothing herein contained shall be deemed to prevent or prohibit a party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated document.
- 25.10. The provisions of this clause will continue to be binding on the Parties notwithstanding any termination or cancellation of this Agreement.

26. **FORCE MAJEURE**

- 26.1. Neither Party shall be liable to the other for any consequences of delay in or failure to fulfil or perform its obligations under this Agreement if and to the extent that such delay or failure is caused by circumstances beyond that Party's reasonable control including, for example, flood, fire, earthquake, war, tempest, hurricane, national industry-wide strike, government restrictions or acts of God. For the avoidance of doubt, a lack of funds will not constitute a force majeure event.
- 26.2. The Seller shall immediately notify Makro in the event that the Seller is unable to fulfil any order, or part thereof, as a result of a force majeure event.
- 26.3. Should any event of force majeure arise, the affected Party shall notify the other Party without delay and the Parties shall meet within 7 (seven) Business Days of such notice to negotiate in good faith alternative methods of fulfilling its obligations in terms of this Agreement, if any.
- 26.4. In addition, the Seller shall continue to provide all Products sold on Makro Marketplace which are not affected by the event of force majeure.
- 26.5. Makro provides no guarantee and/or warranty that the Seller will have access to the Makro Marketplace at all times and Makro will not be liable for any loss or damage suffered by the Seller in the event that the Seller is unable to log into or transact on Makro Marketplace, for any reason whatsoever, including not limited to, scheduled or unscheduled down time.

27. **SUSPENSION AND TERMINATION**

- 27.1. Makro may, at any time and within its sole discretion, terminate this Agreement with the Seller without notice to the Seller on Seller Center or otherwise. Makro may, at any time and within its sole discretion, suspend the Seller without notice on the Seller Centre or otherwise.
- 27.2. During any termination period which may be given to the Seller, the Seller will use its best endeavors to ensure that the Customer continues to receive the best possible service.
- 27.3. Notwithstanding termination and/or suspension of this Agreement, the Seller shall be required to provide all reasonable termination assistance to Makro, which termination assistance shall include but not be limited to:

- 27.3.1. ensuring that all open Orders are delivered to the Customers as may be directed by Makro from time to time;
 - 27.3.2. providing Makro with written confirmation that all Orders have been fulfilled and Products delivered in good working order and condition;
 - 27.3.3. continuing to honour any and all product warranties (whether implied in terms of the Consumer Protection Act, or otherwise), guarantees and after sale services undertakings to all Customers;
 - 27.3.4. return any and all Data, Confidential Information and/or Intellectual Property of Makro, Massmart of its Affiliates.
- 27.4. **If Seller is in breach of this Agreement, Makro may, in its sole discretion, deem Seller in material breach of any other contract that Seller has with Makro, Massmart and/or its affiliates. Likewise, if Seller is in material breach of any other contract with Makro, Massmart and/or its affiliates, Makro may, in its sole discretion, deem Seller to be in material breach of this Agreement. In each case, Makro may pursue against Seller any and all remedies that Makro has at law or in equity.**

28. SURVIVAL

- 28.1. Clauses 4, 9, 12, 14, 15, 16, 18, 19, 20, 21, 24, 27 and 29 will survive termination of this Agreement together with any other clauses which specifically state that they will survive termination of this Agreement.
- 28.2. Any and all rights and obligations that accrued prior to termination (including those relating to outstanding or unfulfilled orders), those relating to dispute resolution, Confidential Information and Intellectual Property, and those relating to the return or disposal of Products received and/or stored by Makro as at the date of termination, shall survive termination of this Agreement.

29. NOTICES AND DOMICILIUM

- 29.1. Makro's address for receiving notices in accordance with this Agreement is:

- 29.1.1. Contact: Massmart General Counsel: Massmart Legal Department

- 29.1.2. Address: 16 Peltier Drive, Sunninghill, 2157

- 29.1.3. Email: MP.Legal@massmart.co.za

Or such other address as Makro may notify the Seller of from time to time by displaying a notice on its website.

- 29.2. The Seller's address for receiving notices in accordance with this Agreement will be the contact information, as captured by the Seller, on the Seller Center which information will include the Seller's name, physical address, email address, telephone number and contact person. The Seller shall ensure that this information is kept up to date at all times.

- 29.3. All notices in terms of this Agreement will be given in writing and in English and will be delivered by pre-paid courier service provider or sent by electronic email.
- 29.4. Any notification sent via email will be deemed to have been received on the day upon which the email was dispatched. Any notification sent via pre-paid courier service provider shall be deemed to be received per the date stamp received from the courier service provider.
- 29.5. Any notice given in writing in English and actually received by a Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding if such notice not given in accordance with this Agreement.

30. VARIATION OF SELLER AGREEMENT

- 30.1. While a Seller is active on the Seller Centre, Makro may from time to time be required to amend the Agreement in line with applicable Laws and best practices.
- 30.2. Makro may at any time request a change to the Agreement provided, such change is done in accordance with the procedures set out hereunder.
- 30.3. Makro may provide the Seller with formal notifications via the Makro Marketplace website and through pop up notifications. Makro shall ensure that a pop up message appears on the next login from a Seller on the Seller Centre. This pop up shall include a note on the amended clause and include a copy of the updated Agreement for the Seller to review and/or download.
- 30.4. Where Makro requests the Seller to tick a confirmation that the notice has been read then such notification will be deemed to have been received and effective once the Seller has ticked such confirmation. Failure to accept the Agreement will result in Makro suspending the Seller Account until the Seller accepts the updated Agreements or the matter is resolved via the Dispute Resolution process.
- 30.5. All amendments that are declared as minor shall take effect immediately. Should the Seller not accept the tick box, the Seller shall have 7 (seven) days to accept such change, failing to do so thereafter will result in the Seller's Account being suspended and all orders placed in the interim being cancelled.
- 30.6. All amendments deemed substantive shall only come into effect 30 (thirty) days from the date of notification to the Seller. The Seller shall, within 5 (five) Business Days of receipt thereof, evaluate the update and, as appropriate, either request further information as may be reasonably required to consider the request or notify Makro of the acceptance or rejection of the request, citing reasons for any rejection. Makro shall within 5 days revert to the Seller whether Makro is willing to accept any deviation or whether the amendments are material that failure to accept will result in termination of the relationship. In the event that Makro accepts any deviation, the updated Seller Terms as mutually agreed will be uploaded for the Seller's acceptance. Should the Seller fail to accept the updated Seller Terms thereafter or refuse to accept the updated Seller Terms, Makro reserves its right to suspend the Seller Account until the Seller accepts the updated terms and cancel all orders placed in the interim. Should the Seller fail to accept the updated Seller Terms after a period of 3 (three) months, Makro shall terminate the Agreement, without consequence.

- 30.7. Seller shall ensure that no activities performed by Seller during the implementation of any variation or amendment shall detract from the performance of the Seller's obligations to the Customer.
- 30.8. Each Party will bear its own costs incurred in reviewing, negotiating and/or accepting the Seller Agreement.
- 30.9. Both Parties accept that person logging into the Seller Center is the authorized representative of the Seller.

31. **GENERAL**

- 31.1. This Agreement constitutes the entire agreement between the Parties in respect of the Makro Marketplace, read together with all Seller Policies, guidelines and Marketplace terms and conditions issued by Makro from time to time.
- 31.2. **Makro may, from time to time, update, amend and change the Seller Agreement by providing an updated Seller Agreement to the Seller. The Seller will be deemed to have accepted the updated, amended and changed Seller Agreement should the Seller continue to participate in the Makro Marketplace Program and utilise the Makro Marketplace Services and Tools.**
- 31.3. With the exception of clause 32.2 of this Agreement, no other amendment, addition to, novation or consensual cancellation of this Agreement or any provision or term hereof, no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation).
- 31.4. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given
- 31.5. **To the extent that a Seller is already a party to an agreement with Makro regarding its participation as a Seller in the Makro Marketplace Program, the terms and conditions of that agreement are hereby terminated and replaced in their entirety with the terms and conditions of this Agreement but the Seller will continue to comply with all surviving obligations under that agreement.**
- 31.6. The Seller will be responsible for any actions taken by any Seller affiliates, agents, or other third parties acting on behalf of the Seller in connection with this Agreement.
- 31.7. The Seller and Makro are acting as independent contractors. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.
- 31.8. This Agreement will be governed by the Laws of the Republic of South Africa.
- 31.9. The Seller may not use the name, logo, trademarks, Intellectual Property and/or trade names of Makro and/or Massmart and/or any affiliates, directly or indirectly in any publicity release, promotional material, customer or partner list, advertising, marketing or business-generating effort, whether written or oral, without the prior written consent of Makro and/or Massmart.

- 31.10. Each provision of this Agreement is separate and severable from the other provisions. Should any provision hereof be found by a court of competent jurisdiction to be invalid or unenforceable for any reason, the Parties will consult one another in good faith in order to agree, if possible, an alternative provision in accordance with the intent and tenor of this Agreement. The remaining provisions of this Agreement shall nevertheless remain binding on the Parties and continue with full force and effect.
- 31.11. No indulgence which Makro may grant to the Seller shall constitute a waiver of any right of Makro, and Makro shall not thereby be precluded from exercising any rights against the Seller which may have arisen in the past or which might arise in the future.

ANNEXURE “A” – FEE SCHEDULE

Makro shall charge the Seller the Fees as set out in this Fee Schedule which Fees may be changed by Makro on 30 (thirty) days’ notice to the Sellers.

The following Fees will be payable by the Sellers:

1. PLATFORM FEE

- 1.1. The Platform Fee will be the sum of R200.00 (two hundred rand) exclusive of VAT per month which is payable in advance by the Seller to Makro.
- 1.2. The Fee is activated on registration as a Seller on Makro Marketplace.
- 1.3. The first Platform Fee will be charged to the Seller on the 1st of the subsequent month.
- 1.4. A Sellers Account can be cancelled in accordance with the Seller Agreement and the Fee will terminate at the end of the respective month, subject to all Orders and Deliveries being complete. Makro will not refund any prorata portion of the Platform Fee in the event of cancellation.
- 1.5. The Platform Fee is charged per Seller account, so in the event that the Seller has multiple accounts, the Platform Fee will be R200.00 (two hundred rand) exclusive of VAT, per Seller Account.

2. REFERRAL FEE

- 2.1. The Referral Fee is payable by the Seller in respect of each Product sold on Makro Marketplace and in accordance with the table set out below:

Commission % on VAT inclusive product selling price	Product Categories
Cellular	8%
Groceries & Beverages	8%
Liquor	8%
Beauty	12%
Toiletries	10%
Pets	10%
TV, Audio & Home Entertainment	8%
Photographic	6%
Personal Electronics	12%
Music, Gaming & Interactive	10%
Home Maintenance	10%

Automotive	10%
Personal Computers & Accessories	9%
Office & Stationery	10%
Sports & Exercise	13%
Outdoor & Garden	13%
Home Appliances	10%
Toys	12%
Baby Goods	13%
Homewares, Decor & Furniture	13%
Luggage	14%
Clothing & Fashion	13%
Books	14%
Health & Medical Equipment	10%

3. DELIVERY FEES

- 3.1. The Delivery Fees is payable by the Seller to Makro for every Delivery or pick up (in the event of a return to Seller).
- 3.2. The Delivery Fee will be per unit of Delivery and/or unit of Pick Up and as determined by Makro from time to time and advised to the Seller.
- 3.3. Makro Couriers must be utilized for each Delivery.

4. MAKRO FULFILMENT SERVICES FEES

- 4.1. Makro will update the Makro Fulfilment Services Fees, once the Makro Fulfilment Services are launched by Makro.

ANNEXURE “B” – MAKRO FULFILMENT SERVICES

These Terms and Conditions will apply to the Makro Fulfilment Services (“Terms and Conditions”) and will be read together with the Agreement to which this Annexure “B” is attached (the “Agreement”), and all Seller Policies. These Terms and Conditions will be applicable to Sellers when Makro has agreed to provide the Seller with Makro Fulfilment Services.

1. MAKRO FULFILMENT SERVICES

- 1.1. The Makro Fulfilment Services are governed by these Terms and Conditions, the Agreement and the Seller Policies.
- 1.2. Any and all definitions as contained in the Agreement and/or in any Seller Policies shall apply to these Terms and Conditions.
- 1.3. In the event of a conflict, inconsistency or ambiguity between the Agreement and these Terms and Conditions in respect of the Services offered by Makro in accordance with the Makro Fulfilment Services then these Terms and Conditions shall take precedent with respect to the Makro Fulfilment Services. The Agreement will take precedent in respect of all other matters.

2. REPRESENTATIONS AND WARRANTIES

- 2.1. In the event that the Seller is representing a juristic person then the Seller shall have the requisite right, power, and authority to enter into these Terms and Conditions and register for the Makro Fulfilment Services for and on behalf of the juristic person and bind the Seller to these Terms and Conditions. In the event that the Seller is a natural person then the Seller will be over the age of 18 (eighteen) years and has full legal capacity to enter into these Terms and Conditions.
- 2.2. The Seller will provide accurate information and keep all information provided to Makro updated, including contact information, in order to ensure that Makro has the correct and most recent information for the Seller at all times.
- 2.3. In addition to the rights that Makro may have in accordance with the Agreement, the Seller hereby authorises Makro to verify any and all information, whether personal or not provided by the Seller to Makro from time to time.

3. TERM AND TERMINATION

- 3.1. **These Terms and Conditions shall continue until either terminated by Makro or the Seller in accordance with these Terms and Conditions and/or the Agreement.**
- 3.2. **Either Party may terminate these terms, for any reason whatsoever, by providing the other Party with 30 (thirty) days’ prior written notice to the other Party.**
- 3.3. **If the Seller materially breaches the Agreement then Makro may immediately terminate these Terms and Conditions, in whole or in part or immediately suspend all or any portion of the Makro Fulfilment Services, without prior notice.**

- 3.4. These Terms and Conditions shall immediately terminate and/or be suspended in the event that the Agreement is terminated and/or suspended. Furthermore, these Terms and Conditions shall cease to be of any force and effect (save for those provision that remain valid and enforceable post termination) in the event that the Seller is no longer a registered and/or active Seller on Makro Marketplace with an active Seller Account.
- 3.5. If the Seller terminates these Terms and Conditions, then the Seller will be billed for all unpaid expenses and/or any costs associated with the disposition of inventory.
- 3.6. On termination of these Terms and Conditions, the Seller will be obliged to:
 - 3.6.1. Collect, at its own expense, all Products in any Makro Fulfilment Centre at a time specified by Makro;
 - 3.6.2. Comply with all termination assistance as set out in clause 27 of the Agreement;
 - 3.6.3. Fulfill any order deemed in process on the Seller Portal, any orders that have not been processed for dispatch may at Makro's discretion be cancelled;
 - 3.6.4. Honour any and all guarantee and warranty claims in accordance with the specific Product specifications and the Consumer Protection Act.

4. INVENTORY

- 4.1. The Makro Fulfilment Services shall only be performed in respect of inventory that is acquired and owned by the Seller and that is delivered to Makro for storage and processing under these Terms and Conditions and the Agreement (the "Inventory").
- 4.2. Makro shall receive, store and process the Inventory on the Seller's behalf.
- 4.3. Makro will hold the Inventory pursuant to these Terms and Conditions for distribution as directed by the Seller from time to time and for other disposition as set out in these Terms and Conditions and/or the Agreement.
- 4.4. All right, title and interest to such Inventory will, at all times, remain with the Seller, except as set out in Clause 12.6.
- 4.5. Makro will use various premises (known as "Fulfilment Centres") to provide the Makro Fulfilment Services. Makro will, from time to time, specify the addresses of such Fulfilment Centres to the Sellers and reflect the details pertaining to these Fulfilment Centres on the Seller Centre. Makro reserves the right to split a Sellers Inventory across Makro's Fulfilment Centres in its sole and absolute discretion.
- 4.6. The risk in the Inventory will pass to Makro on delivery and acceptance of the Inventory to the Fulfilment Centre by Makro. In the event that any Inventory is stored in a third parties warehouse, including any courier's warehouse, then the risk in the Products will remain with the Seller until such Inventory is delivered and accepted by Makro at the Fulfillment Centre.

5. LIEN ON INVENTORY

- 5.1. Makro shall have a lien on the Inventory to secure payment of any Fees due to Makro by the Seller in accordance with these Terms and Conditions and the Agreement.

6. HAZARDOUS MATERIALS

- 6.1. For the purpose of this clause, "Hazardous Materials" shall mean any product or products that, when combined, could harm human health and/or the environment which will include products that are flammable, explosive, toxic, LFG Gas and other gasses under pressure and/or chemicals. Such Hazardous Materials may be required to be kept in a separate area and/or specific cage and could require specific licence and/or permit in order to hold such Hazardous Materials. Furthermore, holding such Hazardous Materials may require additional insurance to be maintained.
- 6.2. The Seller hereby represents and warrants that no Hazardous Materials will be included in the Inventory unless first approved by Makro in writing and only on condition that Makro, if so required by Law, has the requisite licences and/or permits to hold such Hazardous Materials in the Fulfilment Centre and Makro's insurers and/or its Landlord's insurers have authorised such Hazardous Materials on its premises.
- 6.3. Any Hazardous Materials of the Seller are required to go through a product safety assessment as determined by Makro before Makro will agree to the handling, storage, and shipment of such Hazardous Materials and in accordance with all applicable Law and safety standards.
- 6.4. Makro reserves the right to claim from the Seller, any additional costs associated with holding Hazardous Materials including but not limited to license and permit applications and/or increased insurance premiums.

7. PRODUCT RESTRICTIONS

- 7.1. The Seller will not (and hereby warrants and represents that it will not) deliver to Makro, and Makro may refuse to accept, any shipment or Inventory that is a Prohibited Product as set out in the Safe Products Policy.
- 7.2. Makro may refuse to accept any such Inventory that does not comply with these Terms and Condition and the Safe Products Policy.
- 7.3. Makro reserves the right to dispose of and/or return such non-compliant Inventory to the Seller, at the Seller's costs, restrict all future shipments to any Fulfilment Centres and/or pass on any penalties and/or charges, whether verified or not, as a result of the Seller's non-compliance with the Safe Products Policy.
- 7.4. The Seller must provide Makro with sufficient Product Information and documentation to enable Makro to do an assessment of each shipment of Inventory to the Fulfilment Centre.

8. RETURNS

- 8.1. All Customer returns will be sent back to the Makro Fulfilment Centre and the Products will be evaluated by Makro to determine the condition and whether the Products can be added back into the Inventory or alternatively if the Product is unsellable. If, in Makro's opinion, the Product is considered a highly technical product (including but not limited to electronics or large appliances) then the Products may be sent to the Seller, at the Sellers own cost and expense, for the Seller to perform the technical evaluation.
- 8.2. Makro will perform a high level evaluation of the Product at the Fulfilment Centre. Any highly technical Products, such as electronics, will be sent to the Sellers by Makro for their technical evaluations.
- 8.3. If the Product, in Makro's sole discretion, is sellable then the Product will be added back into the good Inventory. If the Product is unsellable then Makro will require the Seller to determine the reason for the fault. In this regard, the Product will be sent back to the Seller (at the Sellers own cost and expense) for repairs, to be replaced and/or for a full refund to the Customer. The Customer shall, at all times and in accordance with the Consumer Protection Act, be free to elect whether a Product will be repaired, replaced or refunded.
- 8.4. All returns and refunds to Customers will be processed in accordance with the Agreement and any returns policy issued by Makro from time to time.
- 8.5. The Seller will be liable for any removal and/or destruction Fees as may be specified in Annexure "A". In the event that the Seller fails and/or refuses to collect any defective Products from the Fulfilment Centre within 10 (ten) days of notification by Makro then Makro may destroy the Products at the Sellers cost and expense.

9. SERVICE FEES AND PAYMENT TERMS

- 9.1. The Seller shall pay the Fees for the Makro Fulfilment Services as set out in Annexure "A" ("Makro Fulfilment Services Fees") together with any customs duties and/or VAT which may be applicable to the Products being imported into South Africa by the Seller.
- 9.2. Makro may, in its sole discretion, set off amounts owed by the Seller to Makro under these Terms and Condition, from any payments that Makro may owe to the Seller in terms of the Agreement. Alternatively, Makro may invoice the Seller for all amounts due, in which event, the Seller will pay the invoices amount to Makro in accordance with the payment terms specified by Makro from time to time.
- 9.3. The Seller shall be required to provide Makro with a valid credit card as well as bank account information in such form as may be acceptable to Makro. The Seller shall authorize Makro to charge the Sellers credit card and/or debit the Seller's bank account for amounts owing and payable to Makro by the Seller.
- 9.4. The Seller undertakes to sign all forms and do all things as may be necessary to ensure that the Seller's nominated bank permits/authorizes Marko to debit the bank account, including signing a debit order form.

- 9.5. Makro may, from time to time, and in Makro's sole discretion provide the Seller with an incidental credit limit (as defined in terms of section 5 of the National Credit Act 34 of 2005). Makro reserves the right to change and/or revoke the Seller's incidental credit limit for any reason whatsoever, including the non-payment of amounts as and when they become due and payable to Makro.
- 9.6. In the event that there is an incidental credit limit made available to the Seller, then in such event, all amounts will be paid by the Seller to Makro within 30 (thirty) days.
- 9.7. In the event that Makro does withdraws and/or reduces the incidental credit limit, then the Seller will be obliged to pay for all Makro Fulfilment Services in advance and prior to Makro being obliged to provide any such services to the Seller.
- 9.8. The Seller will notify Makro of any changes to the Seller's name, address, payment details or pending sale of substantially all of its assets.
- 9.9. All amounts due in terms of these Terms and Conditions will immediately become due, owing and payable to Makro, notwithstanding any incidental credit limit, in the event the Seller:
 - 9.9.1. is placed in provisional or final liquidations and/or sequestration;
 - 9.9.2. is under debt review;
 - 9.9.3. is in business rescue;
 - 9.9.4. has committed an act of insolvency;
 - 9.9.5. fails to make payment on due date;
 - 9.9.6. is deceased, in the event that Seller is a sole proprietor;
 - 9.9.7. fails to satisfy any judgment against the Seller within 3 (three) days.

10. **COMPLIANCE WITH LAWS AND POLICIES**

- 10.1. Both Parties will be fully compliant with all applicable Laws.
- 10.2. In addition to any warranties provided in the Agreement and in any Seller Policy, the Seller hereby warrants and represents that:
 - 10.2.1. the Seller is duly authorised to sell the Inventory and/or is the legal title holder of any Inventory and has all the necessary rights to perform its obligations under these Terms and Conditions;
 - 10.2.2. all Inventory and its packaging complies with all applicable Laws and is in compliance with any Seller Policy;
 - 10.2.3. the Inventory has been produced, imported, distributed in compliance with all applicable Laws, regulations and standards applicable in South Africa;
 - 10.2.4. the Inventory complies with the Safe Products Policy and the Seller Performance Standards and Service Levels;
 - 10.2.5. it is solely responsible for disclosing all relevant information regarding its Inventory and each Product to Makro so that Makro can properly and legally handle, ship and dispose of such Products;

10.2.6. none of the Inventory will originated from any Sanctioned Country and the Seller is fully compliant with clause 25 of the Agreement and the Safe Products Policy.

11. **RECALLS OF PRODUCTS IN MAKRO FULFILMENT CENTRES**

11.1. If any Product is subject to a Recall, whether such recall is initiated by the Seller, Makro and/or a government entity, the Seller will be responsible for any costs associated with the Recall, including but not limited to:

11.1.1. Customer notifications and contact, which Customer notifications and contact will be managed by Makro for an on behalf of the Seller;

11.1.2. Any expenses and losses incurred by Makro in connection with such Recall (and were applicable, any Product with which the Recalled Inventory has been packaged, and/or consolidated) which will include all costs pertaining to refunds to Customers, loss of profits, transportation costs, quarantined warehousing costs and any other costs associated therewith;

11.1.3. Initial contact and report of the Recall to any government agency having jurisdiction over the affected Products. If a government agency initiates any inquiry or investigation relating to the products or similar good manufactured or supplied by a Seller, then the Seller shall notify Makro immediately in writing thereof and take all such reasonable steps to resolve the matter without exposing Makro to any liability and/or risk.

11.2. The Seller will collect all Products that are returned to the Fulfilment Centre within the timeframe as specified by Makro. In the event that the Seller fails and/or refuses to collect the Products then Makro will be entitled to destroy and/or dispose of the Products at the Sellers expense. The Seller will further be liable for all storage costs associated with the storage of the Products until they are destroyed and/or removed from the Fulfilment Centre.

12. **TERMINATION OF STORAGE, REMOVAL OF INVENTORY, DISPOSITION OF INVENTORY**

12.1. Makro may, from time to time, provide 10 (ten) days' notice to the Seller requiring the removal of any Inventory from any Fulfilment Centre, for any reason whatsoever, including on termination of the Agreement, these Terms and Conditions and/or in the event that the Seller's participation in the Makro Marketplace is suspended or terminated.

12.2. In the event that the Inventory is not removed by the Seller at the end of the notice period, then Makro may dispose of the Inventory in accordance with these Terms and Conditions. The Seller will be liable for the cost of such disposal and Makro will not be liable for any loss or damage as a result of the Products being disposed of by Makro.

12.3. Makro may provide 10 (ten) days' notice to the Seller that Makro will be returning the Inventory to the Seller at the Seller's own cost and expense. The Inventory will be returned to the Seller's shipping address as recorded on the Seller Centre. If the address is not captured or is incorrect and Makro

cannot make the arrangement for the delivery to the Seller, then the Seller will pay for the return of such Inventory to Makro's Fulfilment Centre. In such event, the Inventory will be deemed to have been abandoned by the Seller and Makro may dispose of such Inventory in any form or manner and without recourse to the Seller. The Seller will be liable for all such costs associated with the disposal of the Inventory.

- 12.4. Makro may immediately dispose of inventory if:
 - 12.4.1. the quality or condition of the Inventory is a hazard to other product, property, the Fulfilment Centre or any person; or
 - 12.4.2. the Inventory is not in compliance with the Safe Products Policy, including any Prohibited Products.
- 12.5. Makro's right to dispose of the Inventory shall include the sale or liquidation, donation, recycling, destruction or other disposition of such Inventory that Makro, in its sole discretion and as it deems fit.
- 12.6. All such right and title to any Inventory to be destroyed by Makro will transfer to Makro.
- 12.7. The Seller will be liable of all costs and expense of the removal and destruction of such Inventory.
- 12.8. Makro may keep all proceeds of any Inventory that it disposes of or which title has transferred including the proceeds of the disposal of any returned, damaged or abandoned Inventory.
- 12.9. The Seller will have no security interest, lien or other claim to the proceeds that Makro receives in connection with the disposal of any Inventory.

13. **INDEMNIFICATION BY SELLER**

- 13.1. **Nothing in these Terms and Conditions shall limit the Sellers liability in any manner whatsoever.**
- 13.2. **In addition to any indemnification that the Seller may provide Makro in the Agreement and/or any Seller Policy, the Seller hereby indemnifies and keeps Makro, Massmart and/or its Affiliates, indemnified against any loss, damage, destruction of property, death or injury to persons (including any employee of Makro, Massmart or its Affiliates) as a result of the Seller, its employees, agents, representatives failure to comply with the Agreement, these Terms and Conditions and any Seller Policy and/or as a result of such loss, damage, destruction of property, death or injury to person arising from, whether directly, indirectly or consequentially, any Products and/or Inventory.**
- 13.3. **The Seller further indemnifies and keeps Makro, Massmart and/or its Affiliates, indemnified against any and all liabilities, losses, damages, judgements, fines, penalties, interests, costs, and expenses (including reasonable attorneys' fees and disbursements of counsel, court costs, and cost of any investigation, defense, and settlement) resulting from any and all claims resulting (whether directly, indirectly or consequentially) from the Inventory or Products.**

14. **LIMITATION OF LIABILITY**

- 14.1. In the event that Makro is liable to settle a Seller's claim in respect of any Product then such claim shall be limited to the proven cost price of the Product. Makro shall not be liable for any mark up, margin and/or incidental Fees added to such Product value.
- 14.2. Makro shall not be liable to the Seller for any incidental, special, indirect, punitive and/or consequential damages arising from or related to the performance or failure to perform any of its obligations under these Terms and Conditions. The limitation of liability shall not apply to limit damages recovery arises from or is related to Makro's proven fault.
- 14.3. Makro shall not be liable for any loss and/or damage which the Seller may suffer as a result of any loss and/or damage to the Inventory as a result of looting, rioting, terrorism. It is recommended that the Seller obtain its own insurance in this regard.