

Master Services Agreement

Version: 20240718

This Master Services Agreement (“MSA”) is made between **eCommerce Africa (Pty) Ltd.**, a South African limited company with company number **2023/819958/07** (hereinafter “eCommerceAfrica”),

AND

the Customer identified on the Order Form (“**Customer**”), together referred to as the “**Parties**” and each individually as a “**Party**.”

The Parties hereby agree to the terms and conditions of this MSA, Order Form(s) and SOW(s), each of which become binding on the Parties and are incorporated into this MSA upon provisioning of any eCommerceAfrica Services to Customer.

Customer’s use of the eCommerceAfrica Services is governed by and incorporates the following documents in effect as of the date of last update of such documents, collectively referred to as the “**Agreement**” that consists of:

- i. the Order Form and/or Statement of Work;
- ii. Service Schedule(s); and
- iii. Addendum(s) to the Agreement; and
- iv. this MSA.

The applicable Service Schedule(s) is determined by the eCommerceAfrica Service(s) purchased on the Order Form and/or SOW. In the event of a conflict, the order of precedence is as set out above in descending order of control.

Each Party agrees that the following terms and conditions govern each Order Form and/or SOW that references this MSA:

1. Definitions

“**Account**” means a unique account established by Customer to enable its Authorised Users to access and use an eCommerceAfrica Service.

“**Account Administrator**” is an Authorised User who is assigned and expressly authorised by Customer as its agent to manage Customer’s Account, including, without limitation, to configure administration settings, assign access and use authorisations, request different or additional services, provide usage and performance reports, manage templates, execute approved campaigns and events, assist in third-party product integrations, and to receive privacy disclosures. Customer may appoint an employee or a third-party business partner or contractor to act as its Account Administrator and may change its designation at any time through its Account.



“Affiliate” of a Party means any entity that the Party directly or indirectly owns or controls more than fifty percent (50%) of the voting interests of the subject entity. Any legal entity will be considered a Party’s Affiliate as long as that interest is maintained.

“Authorised User” means one individual natural person, whether an employee, business partner, contractor, or agent of Customer or its Affiliates who is registered by Customer in Customer’s Account to use the eCommerceAfrica Services. An Authorised User must be identified by a unique email address and/or username, and two or more persons may not use the eCommerceAfrica Services as the same Authorised User. If the Authorised User is not an employee of Customer, use of the eCommerceAfrica Services will be allowed only if the user is under confidentiality obligations with Customer at least as restrictive as those in the Agreement and is accessing or using the eCommerceAfrica Services solely to support Customer’s internal business purposes.

“Confidential Information” means all information of whatever medium or format (written, oral, visual or electronic) relating to a Party disclosing it or to any of its customers, suppliers, employees or providers: (a) for eCommerceAfrica and its Affiliates, the eCommerceAfrica Services, Documentation and other related technical information, security policies and processes, product roadmaps, and pricing; (b) for Customer and its Affiliates, Customer Data; (c) any other information of a Party or its Affiliates that is disclosed in writing or orally and is designated as confidential or proprietary at the time of disclosure to the Party, including its Affiliates, receiving Confidential Information (“Recipient”) (and, in the case of oral disclosures, summarised in writing and delivered to the Recipient within thirty (30) days of the initial disclosure), or that due to the nature of the information the Recipient should reasonably understand it to be confidential information of the disclosing Party; and (d) the terms and conditions of the Agreement between the Parties. Confidential Information does not include any information that: (i) was or becomes generally known to the public through no fault or breach of the Agreement by the Recipient; (ii) was rightfully in the Recipient’s possession at the time of disclosure without restriction on use or disclosure; (iii) was independently developed by the Recipient without use of or reference to the disclosing Party’s Confidential Information; or (iv) was rightfully obtained by the Recipient from a third party not under a duty of confidentiality and without restriction on use or disclosure.

“Customer Data” means any content, materials, data, and information that Customer or its Authorised Users enter into the eCommerceAfrica Services, including, but not limited to, any Personal Information. Customer Data does not include any component of the eCommerceAfrica Services or material provided by or on behalf of eCommerceAfrica.

“Documentation” means eCommerceAfrica’s then-current technical and functional documentation for the eCommerceAfrica Services as made generally available by eCommerceAfrica.

“eCommerceAfrica Service(s)” means the services provided by eCommerceAfrica under an Order Form or SOW, and may include software, source code, integrations or other technology licensed to eCommerceAfrica from third parties and embedded into the services that



eCommerceAfrica provides to Customer. Notwithstanding the foregoing, eCommerceAfrica Services do not include Third-Party Services (defined below).

“Indemnified Party(ies)” means the Party (whether eCommerceAfrica or Customer) being indemnified under Section 9 (Third-Party Claims), including its employees, directors, agents, and representatives.

“Indemnifying Party(ies)” means the Party (whether eCommerceAfrica or Customer) that is providing indemnification under Section 9 (Third-Party Claims).

“Order End Date” means the end date for provision of a respective eCommerceAfrica Service specified in a corresponding Order Form or SOW.

“Order Form” means the order form provided by eCommerceAfrica that sets forth the pricing and the eCommerceAfrica Services selected by Customer.

“Order Start Date” means the start date for provision of a respective eCommerceAfrica Service specified in a corresponding Order Form or SOW.

“Personal Information” means as defined in terms of the POPI Act and includes, but is not limited to any information provided by the Customer to eCommerceAfrica that is an identifying number, symbol, e-mail address, physical address, telephone number or similar assignment relating to any natural or juristic person, which is subject to protection in terms of the POPI Act.

“POPI Act” or **“POPIA”** means the Protection of Personal Information Act 4 of 2013 (as amended).

“Process Customer Data” means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, and is the automated or non-automated activity of collecting, recording, organising, storing, updating, distributing and even the act of deleting personal information.

“Professional Services” means any integration, consulting, architecture, training, transition, configuration, administration, and similar ancillary eCommerceAfrica Services that are set forth in an Order Form or SOW.

“Service Schedule” means the service-specific terms and conditions applicable to the eCommerceAfrica Service(s).

“System” means the software systems and programs, the communication and network facilities, and the hardware and equipment used by eCommerceAfrica or its agents to make available the eCommerceAfrica Services via the Internet.

“Third-Party Services” means services, software, products, applications, integrations, and other features or offerings that are provided by Customer or obtained by Customer from a third party.



2. Usage and Access Rights

2.1. **Right to Use.** In consideration of the performance of the Customer's obligations under this Agreement, eCommerceAfrica will provide the eCommerceAfrica Services to Customer as set forth in the Order Form and/or SOW. Subject to the terms and conditions of the Agreement, eCommerceAfrica grants to Customer a worldwide, limited, non-exclusive, non-transferable right and license during the Term, solely for its and its Affiliates' internal business purposes, and in accordance with the Documentation, to: (a) access and use the eCommerceAfrica Services; (b) implement, configure, and through its Account Administrator, permit its Authorised Users to access and use the eCommerceAfrica Services; and (c) access and use the Documentation. Customer will ensure that its Affiliates and all Authorised Users using the eCommerceAfrica Services under its Account comply with all of Customer's obligations under the Agreement, and Customer is responsible for their acts and omissions relating to the Agreement as though they were those of Customer.

2.2. **Restrictions.** Customer shall not, and shall not permit its Authorised Users or others under its control to, do the following with respect to the eCommerceAfrica Services:

(a) use the eCommerceAfrica Services, or allow access to it, in a manner that circumvents contractual usage restrictions or that exceeds Customer's authorised use set forth in the Agreement, including the applicable Order Form or SOW;

(b) license, sub-license, sell, re-sell, rent, lease, transfer, distribute, time share or otherwise make any portion of the eCommerceAfrica Services or Documentation available for access by third parties except as otherwise expressly provided in the Agreement;

(c) access or use the eCommerceAfrica Services or Documentation for the purpose of: (i) developing or operating products or services intended to be offered to third parties in competition with the eCommerceAfrica Services, or (ii) allowing access to its Account by a direct competitor of eCommerceAfrica;

(d) reverse engineer, decompile, disassemble, or copy any of the eCommerceAfrica Services or technologies, or otherwise attempt to derive source code or other trade secrets or about any of the eCommerceAfrica Services or technologies, except pursuant to Customer's non-waivable rights under applicable law, without eCommerceAfrica's written consent;

(e) use the eCommerceAfrica Services or Documentation in a way that: (i) violates or infringes upon the rights of a third party, including those pertaining to: contract, intellectual property, privacy, or publicity; or (ii) effects or facilitates the storage or transmission of libellous, tortious, or otherwise unlawful material including, but not limited to, material that is harassing, threatening, or obscene;



(f) use the eCommerceAfrica Services to create, use, send, store, or run viruses or other harmful computer code, files, scripts, agents, or other programs, or circumvent or disclose the user authentication or security of the eCommerceAfrica Services or any host, network, or account related thereto or use any aspect of the eCommerceAfrica Services components other than those specifically identified in an Order Form or SOW, even if technically possible.

2.3. Suspension of Access. eCommerceAfrica may suspend any use of the eCommerceAfrica Services or remove or disable any Account or content that eCommerceAfrica reasonably and in good faith believes violates Section 2.2 above. eCommerceAfrica will use commercially reasonable efforts to notify Customer prior to any such suspension or disablement, unless eCommerceAfrica reasonably believes that: (a) it is prohibited from doing so under applicable law or under legal process (such as court or government administrative agency processes, orders, mandates, and the like); or (b) it is necessary to delay notice in order to prevent imminent harm to the eCommerceAfrica Services or a third party. Under circumstances where notice is delayed, eCommerceAfrica will provide notice if and when the related restrictions in the previous sentence no longer apply.

2.4. Third-Party Services. Customer may choose to obtain Third-Party Services from third parties and/or eCommerceAfrica (for example, through a reseller arrangement or otherwise). Any acquisition by Customer of Third-Party Services is solely between Customer and the applicable Third-Party Service provider and eCommerceAfrica does not warrant, support, or assume any liability or other obligation with respect to such Third-Party Services, unless expressly provided otherwise in the Order Form or the Agreement. In the event Customer chooses to integrate or interoperate Third-Party Services with eCommerceAfrica Services in a manner that requires eCommerceAfrica or the eCommerceAfrica Services to exchange Customer Data with such Third-Party Service or Third-Party Service provider, Customer: (a) grants eCommerceAfrica permission to allow the Third-Party Service and Third-Party Service provider to access Customer Data and information about Customer's usage of the Third-Party Services as appropriate and necessary to enable the interoperation of that Third-Party Service with the eCommerceAfrica Services; (b) acknowledges that any exchange of data between Customer and any Third-Party Service is solely between Customer and the Third-Party Service provider and is subject to the Third-Party Service provider's terms and conditions governing the use and provision of such Third-Party Service (the presentation and manner of acceptance of which is controlled solely by the Third-Party Service provider); and (c) agrees that eCommerceAfrica is not responsible for any disclosure, modification or deletion of Customer Data resulting from access to such data by Third-Party Services and Third-Party Service providers.

3. Ownership

3.1. Customer Data. Customer Data processed using the eCommerceAfrica Services is and will remain, as between Customer and eCommerceAfrica, owned by Customer. Customer hereby grants eCommerceAfrica the right to process, transmit, store, and disclose



Customer Data in order to provide the eCommerceAfrica Services to Customer, solely in accordance with the terms of the Agreement and subject to the terms of Section 11.2 (Required Disclosure) below.

- 3.2. **eCommerceAfrica Services.** eCommerceAfrica, its Affiliates, or its licensors own all right, title, and interest in and to any and all copyrights, trademark rights, patent rights, database rights, and other intellectual property or other rights in and to the eCommerceAfrica Services and Documentation, any improvements, design contributions, or derivative works thereto, and any knowledge or processes related thereto (including any machine learning algorithms output from the eCommerceAfrica Services) and/or provided hereunder.
- 3.3. **Professional Services.** Unless otherwise specified in the applicable SOW, all deliverables provided by or for eCommerceAfrica in the performance of Professional Services, excluding Customer Data and Customer Confidential Information, are owned by eCommerceAfrica and constitute part of the Professional Service(s) under the Agreement. Effective only as of final payment by Customer to eCommerceAfrica of all amounts required by an Order Form or SOW, and subject to the terms and conditions of the Agreement, eCommerceAfrica grants to Customer a nonexclusive, for the duration of legal protection, worldwide, royalty-free license to use deliverables created for Customer during performance of Professional Services (“Work Product”) provided to Customer under the Order Form or SOW, solely for purposes of Customer’s internal business operations only. This license includes permission to make copies of the provided Work Product for such internal use but not permission to distribute the Work Product or any copies of them.
- 3.4. **Feedback.** eCommerceAfrica encourages Customer to provide suggestions, proposals, ideas, recommendations, or other feedback regarding improvements to eCommerceAfrica Services and related resources (“Feedback”). To the extent Customer provides Feedback, Customer grants to eCommerceAfrica and its Affiliates a royalty-free, fully paid, sub-licensable, transferable (notwithstanding Section 13.2 (Assignability)), non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import, and otherwise exploit Feedback (including by incorporation of such feedback into the eCommerceAfrica Services) without restriction. Customer shall ensure that: (a) Feedback does not identify Customer, its Affiliates, or Authorised Users, or include any Customer Data; and (b) Customer has obtained requisite authorisation from any Authorised User or other third party to grant the license described herein. For the avoidance of doubt, Feedback does not constitute Customer Confidential Information.

4. Security and Customer Data

- 4.1. **Security.** eCommerceAfrica will use commercially reasonable industry standard security technologies in providing the eCommerceAfrica Services. eCommerceAfrica has implemented and will maintain appropriate technical and organisational measures, including information security policies and safeguards, designed to preserve the security, integrity, and confidentiality of Customer Data and Personal Information and to protect



against unauthorised or unlawful disclosure or corruption of or access to such data. Additional or differing security obligations, if any, will be expressly set forth in the applicable Service Schedule, Order Form, or separate written agreement between the Parties.

- 4.2. **Customer Data.** Customer is responsible for Customer Data (including Personal Information) as entered into, supplied, or used by Customer and its Authorised Users in the eCommerceAfrica Services. Further, Customer is solely responsible for determining the suitability of the eCommerceAfrica Services for Customer's business and complying with any applicable data privacy and protection regulations, laws, or conventions applicable to Customer Data and Customer's use of the eCommerceAfrica Services. Customer grants to eCommerceAfrica the non-exclusive right to Process Customer Data (including Personal Information) for the sole purpose of and only to the extent necessary for eCommerceAfrica: (a) to provide the eCommerceAfrica Services; (b) to verify Customer's compliance with the restrictions set forth in Section 2.2 (Restrictions) if eCommerceAfrica has a reasonable belief of Customer's non-compliance; and (c) as otherwise set forth in the Agreement.
- 4.3. **Usage Data.** eCommerceAfrica may collect and use data, information, or insights generated or derived from the use of the eCommerceAfrica Services ("Usage Data") for its business purposes, including industry analysis, benchmarking, analytics, marketing, and developing, training, and improving its products and services. Before doing so, eCommerceAfrica will deidentify and anonymise all Usage Data in such manner that does not allow for the identification of Customer Data, or Customer's Confidential Information, and will disclose such Usage Data in aggregate form only.

5. Payment of Fees

- 5.1. **Fees.** Except as expressly set forth in the applicable Order Form or SOW, Customer will pay all fees set forth in the Order Form or SOW in accordance with the following: (a) eCommerceAfrica Services fees are invoiced in advance; (b) the first invoice will coincide with the Order Start Date of an Order Form or the effective date of a SOW; (c) payment will be due within thirty (30) days from the date of the invoice; and (d) all amounts will be denominated and payable in the currency specified in the Order Form and/or SOW. Unless otherwise agreed to by the Parties and expressly noted in the Order Form and/or SOW, invoices will be sent to Customer via email. Upon execution by Customer and eCommerceAfrica, each Order Form and/or SOW is non-cancellable and non-refundable except as provided in the Agreement, and the Term as set forth in the Order Form for eCommerceAfrica Services is a continuous and non-divisible commitment for the full duration of the Term regardless of any invoice schedule. Customer may withhold from payment any charge or amount disputed by Customer in good faith pending resolution of such dispute, provided that Customer: (i) notifies eCommerceAfrica of the dispute prior to the date such payment is due, specifying in such notice (A) the amount in dispute, and (B) the reason for the dispute set out in sufficient detail to facilitate investigation by eCommerceAfrica and resolution by the Parties; (ii) makes timely payment of all



undisputed charges and amounts; (iii) works diligently with eCommerceAfrica to resolve the dispute promptly; and (iv) pays all amounts that are determined to be payable by resolution of the dispute (by adversarial proceedings, agreement or otherwise) within thirty (30) days following such resolution.

5.2. **Purchase Orders.** If Customer issues a purchase order, then it shall be for the full amount set forth in the applicable Order Form or SOW, and eCommerceAfrica hereby rejects any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by Customer, and conditions assent solely based on the terms and conditions of the Agreement as offered by eCommerceAfrica. Upon request, eCommerceAfrica shall reference the purchase order number on its invoices, provided, however, that Customer acknowledges that it is Customer's responsibility to provide the corresponding purchase order information (including a purchase order number) to eCommerceAfrica upon the signing of any Order Form. Customer agrees that a failure to provide eCommerceAfrica with the corresponding purchase order shall not relieve Customer of its obligations to provide payment to eCommerceAfrica pursuant to Section 5.1 (Fees) above or Section 5.4 (Travel) below.

5.3. **Offsets; Late Charges; Attorneys' Fees.** If eCommerceAfrica owes any amounts to Customer that are not derived from the Agreement, such amounts will not be withheld or offset against any invoice issued under the Agreement. eCommerceAfrica may assess late charges equal to the lesser of the annual prime lending rate of the eCommerceAfrica's primary banker or the highest rate permitted by applicable law. Customer will be responsible for any reasonable attorneys' fees, costs, and expenses incurred by eCommerceAfrica to collect any amounts that are not paid when due. If Customer fails to timely pay any amounts due under the Agreement, then without limitation of any of its other rights or remedies, eCommerceAfrica may, upon prior 14 (Fourteen) days written notice to Customer, suspend performance of those eCommerceAfrica Services until eCommerceAfrica receives all past due amounts from Customer.

5.4. **Travel.** Unless otherwise specified in the applicable Order Form and/or SOW, all reasonable travel, accommodation, and subsistence expenses properly incurred by eCommerceAfrica in the performance of eCommerceAfrica Services shall be charged and paid by the Customer.

6. Taxes

6.1. **Tax Responsibility.** All payments required by the Agreement are stated exclusive of all taxes, duties, levies, imposts, fines, or similar governmental assessments, including sales and use taxes, value-added taxes ("VAT"), goods and services taxes ("GST"), excise, business, service, and similar transactional taxes imposed by any jurisdiction and the interest and penalties thereon (collectively, "Taxes"). Without limiting the foregoing, Customer shall be responsible for, and bear Taxes associated with its purchase of, payment for, access to or use of the eCommerceAfrica Services. Taxes shall not be deducted from the payments to eCommerceAfrica, except as required by law, in which



case Customer shall increase the amount payable as necessary so that after making all required deductions and withholdings, eCommerceAfrica receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made. If Customer claims tax exempt status for amounts due under the Agreement, it shall provide eCommerceAfrica with a valid tax exemption certificate (authorised by the applicable governmental authority) to avoid application of Taxes to Customer's invoice. Each Party is responsible for and shall bear Taxes imposed on its net income. Customer hereby confirms that eCommerceAfrica can rely on the deliver to name and address set forth in the Order Form(s) or SOW Customer places directly with eCommerceAfrica as being the place of supply for Tax purposes. The Parties' obligations under this Section 6.1 (Tax Responsibility) shall survive the termination or expiration of the Agreement.

6.2. **Invoicing Taxes.** If eCommerceAfrica is required to invoice or collect Taxes associated with Customer's purchase of, payment for, access to or use of the eCommerceAfrica Services, eCommerceAfrica will issue an invoice to Customer including the amount of those Taxes, itemised where required by law. If applicable, Customer shall provide to eCommerceAfrica its VAT, GST or similar tax identification number(s) on the Order Form or SOW. Customer shall use the ordered eCommerceAfrica Services for Customer's business use in the locations set forth on the Order Form or SOW in accordance with the provided VAT or GST identification number(s).

7. Term and Termination

7.1. **Term.** The term of an Order Form and any associated Service Schedule(s) is the period that begins on the Order Start Date and, unless terminated sooner as provided herein, will continue until the Order End Date, both dates as specified on the Order Form (the "Term"). In the case of a SOW for Professional Services, if no end date is specified in the SOW, then the SOW shall expire upon completion of Professional Services or early termination as permitted by the Agreement. The term of this MSA and the Agreement shall continue as long as an Order Form or SOW referencing or incorporated into this MSA remains valid and in effect. Termination or expiration of any Order Form or SOW shall leave other Order Forms or SOWs unaffected.

7.2. **Termination for Breach; Termination for Insolvency.** If either Party commits a material breach or default in the performance of any of its obligations under the Agreement, then the other Party may terminate the Agreement in its entirety by giving the defaulting Party written notice of termination, unless the material breach or default in performance is cured within thirty (30) days after the defaulting Party receives notice thereof. Either Party may terminate the Agreement in its entirety upon written notice if the other Party becomes the subject of a petition in bankruptcy or any proceeding related to its insolvency, receivership, or liquidation, in any jurisdiction, that is not dismissed within sixty (60) days of its commencement, or an assignment for the benefit of creditors. If Customer terminates the Agreement for eCommerceAfrica's breach, pursuant to this Section 7.2, that is incapable of cure, eCommerceAfrica will provide a prorated refund to Customer for any prepaid fees



received by eCommerceAfrica under the Agreement that correspond to the unused portion of the Term.

- 7.3. **Post-Termination Obligations.** If the Agreement expires or is terminated for any reason: (a) Customer will pay to eCommerceAfrica any amounts that have accrued before, and remain unpaid as of, the effective date of the expiration or termination; (b) any and all liabilities of either Party to the other Party that have accrued before the effective date of the expiration or termination will survive; (c) licenses and use rights granted to Customer with respect to the eCommerceAfrica Services and related intellectual property will immediately terminate; (d) eCommerceAfrica's obligation to provide any further eCommerceAfrica Services to Customer under the Agreement will immediately terminate, except any such eCommerceAfrica Services that are expressly to be provided following the expiration or termination of the Agreement; and (e) the Parties' rights and obligations under Sections 4.3, 6.1, 7.3, 7.4, 8.5, and 10 through 13 will survive.
- 7.4. **Retrieval of Customer Data and Transition Services.** During the Term, Customer may extract Customer Data from the eCommerceAfrica Services as described in the Documentation and the applicable Service Schedule. If, upon termination or expiration of the Agreement, Customer has failed to retrieve its Customer Data and/or if Customer otherwise requires further support from eCommerceAfrica in relation to such termination or expiration, Customer may request and eCommerceAfrica will provide: (a) assistance in retrieving Customer Data still remaining in the eCommerceAfrica Services, and/or (b) other reasonable transition assistance, the details of which will be set forth in a mutually agreed upon Statement of Work between the Parties at eCommerceAfrica's then-current rates for such services.

8. Warranties and Disclaimers

- 8.1. **eCommerceAfrica Service Warranties.** eCommerceAfrica warrants that: (a) during the applicable Term, the eCommerceAfrica Services, when used as authorised under the Agreement, will perform substantially in conformance with the Documentation associated with the applicable eCommerceAfrica Services; (b) eCommerceAfrica will use commercially reasonable efforts to ensure that the eCommerceAfrica Services do not introduce files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time bombs, and Trojan horses into Customer's system; and (c) the operation of its business as it relates to the eCommerceAfrica Services will comply with all applicable laws and regulations. Customer's sole and exclusive remedy for any breach of the warranties in 8.1 (a) and (b) above by eCommerceAfrica is for eCommerceAfrica to repair or replace the affected eCommerceAfrica Services to make them conform, or, if eCommerceAfrica determines that the foregoing remedy is not commercially reasonable, then either Party may terminate the Agreement, and, in such event, eCommerceAfrica will provide a prorated refund to Customer for any prepaid fees received by eCommerceAfrica under the Agreement that correspond to nonconforming eCommerceAfrica Services and the unused portion of the Term.



8.2. eCommerceAfrica Professional Services Warranties. If Customer has purchased Professional Services in an Order Form and/or SOW, eCommerceAfrica warrants to Customer that the Professional Services will be performed in a competent and workmanlike manner. Customer's exclusive remedy for breach of this warranty is to notify eCommerceAfrica in writing within thirty (30) days of the non-conforming Professional Services. Upon receipt of such notice, eCommerceAfrica will use commercially reasonable efforts to re-perform the Professional Services in conformance with these warranty requirements. This Section 8.2 (eCommerceAfrica Professional Services Warranties) sets forth Customer's exclusive rights and remedies and eCommerceAfrica's sole liability in connection with the warranty related to the performance of the Professional Services.

8.3. Mutual Warranties. Each Party represents and warrants that: (a) the Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against it in accordance with the terms of the Agreement; (b) no authorisation or approval from any third party is required in connection with its execution of the Agreement; and (c) it is duly organised and validly existing under the laws of the state of its incorporation or formation and has full power and authority to enter into the Agreement and to carry out the provisions hereto.

8.4. Third-Party Services. THE REFERENCE TO, OR AVAILABILITY OF, THIRD-PARTY SERVICES IN CONNECTION WITH ECOMMERCEAFRICA SERVICES DOES NOT CONSTITUTE, AND WILL NOT BE CONSTRUED AS CONSTITUTING, AN ENDORSEMENT, AUTHORISATION, SPONSORSHIP, OR AFFILIATION BY OR WITH ECOMMERCEAFRICA WITH RESPECT TO SUCH THIRD-PARTY SERVICES.

8.5. DISCLAIMER. EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES STATED IN THE AGREEMENT: (A) NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED IN FACT OR BY OPERATION OF LAW, OR STATUTORY, AS TO ANY MATTER WHATSOEVER; AND (B) EACH PARTY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND TITLE.

9. Third-Party Claims

9.1. By eCommerceAfrica. eCommerceAfrica will defend and, in accordance with Section 9.3 (Procedures), indemnify Customer's Indemnified Parties from and against, any: (a) third-party claim; (b) third-party legal action; or (c) administrative agency action or proceeding (each, a "Claim") to the extent arising from: (i) any actual breach by eCommerceAfrica of its confidentiality obligations in the Agreement; and (ii) any alleged infringement of any third-party intellectual property right occurring from Customer's use of the eCommerceAfrica Services as authorised under the Agreement. Notwithstanding the foregoing, eCommerceAfrica will not be responsible for any Claim due to Customer's or its Authorised User's combination of eCommerceAfrica Services with goods or services



provided by third parties, including any Third-Party Services; adherence to specifications, designs, or instructions furnished by Customer; or Customer's modification of the eCommerceAfrica Services not described in the Documentation or otherwise expressly authorised by eCommerceAfrica in writing.

9.2. **By Customer.** Customer will defend and, in accordance with Section 9.3 (Procedures), indemnify eCommerceAfrica's Indemnified Parties from and against, any Claim to the extent arising from any breach by Customer of its obligations under Section 2.2 (e) through (f) (Restrictions).

9.3. **Procedures.** The Parties' respective obligations in this Section 9 (Third-Party Claims) are conditioned on: (a) the Indemnified Parties giving the Indemnifying Party prompt written notice of the Claim, except that the failure to provide prompt notice will only limit the indemnification obligations to the extent the Indemnifying Party is prejudiced by the delay or failure; (b) the Indemnifying Party being given full and complete control over the defence and settlement of the Claim; and (c) the relevant Indemnified Parties providing assistance in connection with the defence and settlement of the Claim, as the Indemnifying Party may reasonably request. The Indemnifying Party will indemnify the Indemnified Parties against: (i) all damages, costs, and attorneys' fees finally awarded against any of them with respect to any Claim; (ii) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by any of them in connection with the defence of the Claim (other than attorneys' fees and costs incurred without the Indemnifying Party's consent after it has accepted defence of such Claim); and (iii) all amounts that the Indemnifying Party agreed to pay to any third party in settlement of any Claims arising under this Section 9 (Third-Party Claims) and settled by the Indemnifying Party or with its approval. The Indemnifying Party shall not, without the relevant applicable Indemnified Parties' prior written consent, agree to any settlement on behalf of such Indemnified Parties which includes either the obligation to pay any amounts, or any admissions of liability, whether civil or criminal, on the part of any of the Indemnified Parties.

9.4. **Infringement Remedy.** If Customer is enjoined or otherwise prohibited from using any of the eCommerceAfrica Services or a portion thereof based on a Claim covered by eCommerceAfrica's indemnification obligations under Section 9.1 (By eCommerceAfrica) above, then eCommerceAfrica will, at its sole expense and option, either: (a) obtain for Customer the right to use the affected portions of the eCommerceAfrica Services; (b) modify the allegedly infringing portions of the eCommerceAfrica Services so as to avoid the Claim without substantially diminishing or impairing their functionality; or (c) replace the allegedly infringing portions of the eCommerceAfrica Services with items of substantially similar functionality so as to avoid the Claim. If eCommerceAfrica determines that the foregoing remedies are not commercially reasonable and notifies Customer of such determination in writing, then either Party may terminate the Agreement, and in such case, eCommerceAfrica will provide a prorated refund to Customer for any prepaid fees for the infringing eCommerceAfrica Services received by eCommerceAfrica under the Agreement that correspond to the unused portion of the Term. The remedies set out in this Section 9 (Third-Party Claims) are Customer's sole and exclusive remedies for any



actual or alleged infringement by the eCommerceAfrica Services of any third-party intellectual property right.

10. Limitation of Liability

10.1. **Exclusion of Damages.** EXCEPT FOR THE PARTIES' EXPRESS OBLIGATIONS UNDER SECTION 9 (THIRD-PARTY CLAIMS), UNDER NO CIRCUMSTANCES, AND REGARDLESS OF THE NATURE OF THE CLAIM, SHALL EITHER PARTY (OR THEIR RESPECTIVE AFFILIATES) BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, COVER, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE AGREEMENT, EVEN IF APPRISED OF THE LIKELIHOOD OF SUCH LOSSES.

10.2. **Limitation of Liability.** EXCEPT FOR: (A) THE PARTIES' EXPRESS OBLIGATIONS UNDER SECTION 9 (THIRD-PARTY CLAIMS); (B) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER THE AGREEMENT; (C) DAMAGES RESULTING FROM DEATH OR BODILY INJURY, OR PHYSICAL DAMAGE TO TANGIBLE REAL OR PERSONAL PROPERTY, CAUSED BY EITHER PARTY'S NEGLIGENCE; (D) DAMAGES RESULTING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; AND (E) ECOMMERCEAFRICA'S RIGHT TO COLLECT UNPAID FEES DUE HEREUNDER, TO THE EXTENT PERMITTED BY LAW, THE TOTAL, CUMULATIVE LIABILITY OF EACH PARTY (AND THEIR RESPECTIVE AFFILIATES) ARISING OUT OF OR RELATED TO THE AGREEMENT WILL BE LIMITED TO THE AMOUNTS PAID BY CUSTOMER FOR THE ECOMMERCEAFRICA SERVICE(S) DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR ANY OTHER LEGAL OR EQUITABLE THEORY.

10.3. **Independent Allocations of Risk.** Each provision of the Agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks of the Agreement between the Parties. This allocation is reflected in the pricing offered by eCommerceAfrica to Customer and is an essential element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of the Agreement, and each of these provisions will apply even if the warranties in the Agreement have failed of their essential purpose.

11. Confidentiality

11.1. **Restricted Use and Nondisclosure.** During and after the Term, Recipient will: (a) use the Confidential Information of the disclosing Party solely for the purpose for which it is provided; (b) not disclose such Confidential Information to a third party, except on a need-to-know basis to its Affiliates, attorneys, auditors, consultants, and service providers



who are under confidentiality obligations at least as restrictive as those contained herein; and (c) protect such Confidential Information from unauthorised use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.

11.2. **Required Disclosure.** If Recipient is required by law to disclose Confidential Information of the disclosing Party, Recipient will give 14 (Fourteen) days written notice to the disclosing Party before making the disclosure, unless prohibited from doing so by legal or administrative process, and cooperate with the disclosing Party to obtain where reasonably available an order protecting the Confidential Information from public disclosure.

11.3. **Ownership.** Recipient acknowledges that, as between the Parties, all Confidential Information it receives from the disclosing Party, including all copies thereof in Recipient's possession or control, in any media, is proprietary to and exclusively owned by the disclosing Party. Nothing in the Agreement grants Recipient any right, title, or interest in or to any of the disclosing Party's Confidential Information. Recipient's incorporation of the disclosing Party's Confidential Information into any of its own materials will not render Confidential Information non-confidential.

11.4. **Remedies.** Recipient acknowledges that any actual or threatened breach of this Section 11 (Confidentiality) may cause irreparable, non-monetary injury to the disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the disclosing Party is entitled to (but not required to) seek injunctive relief in addition to all remedies available to the disclosing Party at law and/or in equity, to prevent or mitigate any breaches of the Agreement or damages that may otherwise result from those breaches. Absent written consent of the disclosing Party to the disclosure, the Recipient, in the case of a breach of this Section 11 (Confidentiality), has the burden of proving that the disclosing Party's Confidential Information is not, or is no longer, confidential or a trade secret and that the disclosure does not otherwise violate this Section 11 (Confidentiality).

12. Governing Law and Jurisdiction

12.1. **Governing Law.** The Parties agree that this Agreement shall be construed and controlled by the laws of South Africa. Any dispute arising from, or related to, this Agreement shall be subject to the non-exclusive jurisdiction of the courts of South Africa.

13. General

13.1. **Relationship.** The Parties are independent contractors. The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Except as set forth in the Agreement, nothing in the Agreement, expressed or implied is intended to give rise to any third-party beneficiary.



13.2. **Assignability.** Neither Party may assign its rights or obligations under the Agreement without the other Party's prior written consent, such consent not to be unreasonably withheld. Notwithstanding the foregoing, either Party may assign its rights and obligations under the Agreement to an Affiliate as part of a reorganisation, or to a purchaser of its business entity or substantially all of its assets or business to which rights and obligations pertain without the other Party's consent, provided that: (a) the purchaser is not insolvent or otherwise unable to pay its debts as they become due; (b) the purchaser is not a competitor of the other Party; and (c) any assignee is bound hereby. Other than the foregoing, any attempt by either Party to transfer its rights or obligations under the Agreement will be void.

13.3. **Notices.** Any notice required or permitted to be given in accordance with the Agreement will be effective only if it is in writing and sent using:

- (a) certified or registered mail; or
- (b) a nationally recognised courier, to the appropriate Party at the address set forth on the Order Form;
- (c) electronic email, and in the case of eCommerceAfrica a copy is sent to legal@ecommerceafrica.com.

Each Party hereto expressly consents to service of process by registered mail, courier and electronic mail. Either Party may change its address for receipt of notice by notice to the other Party through a notice provided in accordance with this Section 13.3 (Notices). Notices are deemed given upon receipt if delivered one (1) business day following delivery by a courier. If delivered by electronic mail, the notice shall be deemed to be received upon confirmation that the message was successfully sent/delivered, provided that, if the stated time of deemed receipt is not within business hours, then the time of deemed receipt shall be when Business Hours next begin after the stated time.

13.4. **Force Majeure.** In the event that either Party is prevented from performing, or is unable to perform, any of its obligations under the Agreement due to any cause beyond the reasonable control of the Party invoking this provision (including, without limitation, for causes due to war, fire, earthquake, flood, hurricane, riots, acts of God, telecommunications outage not caused by the obligated Party, or other similar causes) ("Force Majeure Event"), the affected Party's performance will be excused and the time for performance will be extended for the period of delay or inability to perform due to such occurrence; provided that the affected Party: (a) provides the other Party with prompt notice of the nature and expected duration of the Force Majeure Event; (b) uses commercially reasonable efforts to address and mitigate the cause and effect of such Force Majeure Event; (c) provides periodic notice of relevant developments; and (d) provides prompt notice of the end of such Force Majeure Event. Delays in fulfilling the obligations to pay hereunder are excused only to the extent that payments are entirely prevented by the Force Majeure Event. If eCommerceAfrica Services are not restored within thirty (30) days of the Force Majeure Event, Customer may terminate the Agreement upon providing written notice to eCommerceAfrica, and in such case, eCommerceAfrica will provide a prorated refund to Customer for any prepaid fees



received by eCommerceAfrica under the Agreement that correspond to the unused portion of the Term.

- 13.5. **Anti-Corruption.** In connection with the eCommerceAfrica Services performed under the Agreement and Customer's use of the eCommerceAfrica Services, the Parties agree to comply with all applicable anti-corruption and anti-bribery related laws, statutes, and regulations.
- 13.6. **Publicity.** Except as specified on an Order Form or as otherwise expressly agreed to by the Parties in writing, neither Party shall refer to the identity of the other Party in promotional material, publications, or press releases or other forms of publicity relating to the eCommerceAfrica Services unless the prior written consent of the other Party has been obtained.
- 13.7. **Waiver.** The waiver by either Party of any breach of any provision of the Agreement does not waive any other breach. The failure of any Party to insist on strict performance of any covenant or obligation in accordance with the Agreement will not be a waiver of such Party's right to demand strict compliance in the future, nor will the same be construed as a novation of the Agreement.
- 13.8. **Severability.** If any part of the Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of the Agreement will remain in full force and effect.
- 13.9. **Insurance.** eCommerceAfrica will maintain, at its sole expense, insurance in such amounts and with such types of coverage as is usual and customary with coverage limits that are appropriate for the eCommerceAfrica Services supplied under the Agreement. At a minimum, eCommerceAfrica shall maintain: (i) commercial general liability insurance; (ii) errors and omissions insurance; and (iii) insurance for claims under workers compensation laws or other similar laws or regulations. Upon Customer's prior written request eCommerceAfrica shall provide Customer with a certificate of insurance evidencing such insurance coverages.
- 13.10. **Third-Party Service Integration.** Certain Third-Party Services may be integrated with eCommerceAfrica Services. eCommerceAfrica may, in its discretion and without liability to you, decide to no longer support such integration and migrate your eCommerceAfrica Services to a different integration. eCommerceAfrica may from time to time recommend, provide access to, link to, or enable Third-Party Services. Such Third-Party Products are owned and controlled by a third-party entity whom eCommerceAfrica has no ownership or control over ("Third-Party Service Provider"). Third-Party Services are made available for your convenience and any purchase, use of, or access to such Third-Party Services is solely between you and the Third-Party Service Provider. When accessing, enabling, or otherwise engaging Third-Party Services you are agreeing to be bound by the additional terms provided by the Third-Party Service Provider with whom you are engaging. It is your responsibility to understand the terms and conditions and/ or privacy policy of any Third-Party Services you are accessing, linking to, or otherwise engaging prior to any engagement with that Third-Party Product Provider.



13.11. **Hosting and/or Cloud Services.** eCommerceAfrica has entered into arrangements with one or more third-parties for hosting and/or cloud services that are essential to the eCommerceAfrica Services, incorporated within the eCommerceAfrica Services and without which the eCommerceAfrica Services could not be provided to you.

13.12. **Entire Agreement.** The Agreement is the final, complete, and exclusive expression of the agreement between the Parties regarding the eCommerceAfrica Services provided under the Agreement. The Agreement supersedes and replaces, and the Parties disclaim any reliance on, all previous oral and written communications (including any confidentiality agreements pertaining to the eCommerceAfrica Services under the Agreement), representations, proposals, understandings, undertakings, and negotiations with respect to the subject matter hereof and apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing. The Agreement may be changed only by a written agreement signed by an authorised agent of both Parties. The Agreement will prevail over terms and conditions of any Customer-issued purchase order or other ordering documents, which will have no force and effect, even if eCommerceAfrica accepts or does not otherwise reject the purchase order or other ordering document.

