



# Terms of service

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Last Updated: December 27th, 2023



## TERMS OF USE

### IMPORTANT – PLEASE READ EVERYTHING BELOW CAREFULLY BEFORE ACCEPTING

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#### 1. Introduction

Welcome to the [www.sellercloud.com](http://www.sellercloud.com) website, online portal and our various browser based and mobile applications or apps (collectively the “**Site**”) of Sellercloud, LLC, a Delaware limited liability company doing business as Sellercloud (“**Sellercloud**,” also referred to herein as “**us**,” “**we**” or “**our**”). For purposes of this Agreement, “Sellercloud,” “us,” “we” or “our” shall include any of our affiliate organizations or entities wherever located.

Thank you also for your interest in using the products and services offered by Sellercloud on the Site (collectively, “**Offerings**”). Our services may include online use of our proprietary software, equipment, and support, and other cloud based platform services (collectively, “**Services**”). Our products may include limited licenses to use our proprietary software and other products, also made available to you through a cloud based platform (collectively, “**Products**”).

#### 2. Binding Agreement

We provide to you, whether personally or as an authorized agent on behalf of a separate entity (“**you**,” “**your**” or “**Customer**”), access to our Site and Offerings, subject to these Terms of Use and our Privacy Policy, as amended from time to time (collectively, this or the “**Agreement**”). By using our Site or any of our Offerings, you agree to comply with all of the terms of this Agreement without limitation or qualification. PLEASE THEREFORE CAREFULLY READ THIS AGREEMENT BEFORE YOU REGISTER OR USE ANY OFFERINGS. IF YOU DO NOT AGREE WITH THIS AGREEMENT IN ITS ENTIRETY, YOU MAY NOT REGISTER WITH SELLERCLOUD OR USE ANY OF OUR OFFERINGS.

Sellercloud and Customer may be referred to herein as each a “party” or collectively as “parties.”

#### 3. Changes to this Agreement

We reserve the right, in our sole discretion, to change this Agreement at any time with or without notice, immediately upon the posting of the revised Agreement on the Site. Your continued use of the Site or any Offerings after such posting or notification means you are deemed to have accepted the changes.

#### 4. Account Registration, Reservation of Rights and Acknowledgements

To use or gain access to the restricted portions of the Site or to gain access to the requested Offerings, you will need to create and register an online account which you will then log into whenever you require use or access to the Site and/or Offerings. To create an account, you must provide us with a unique email address and username, along with other accurate and complete registration information, as prompted by the Site. You shall be solely responsible for maintaining the accuracy and completeness of your account information, including the security of your log in credentials, and you agree not to disclose your log in or account credentials to any unauthorized third party. You also represent that each person registered or named on your account is your authorized agent who has full authority to act on your behalf with respect to access to and use of the Site and Offerings and that all such persons shall use the Site and Offerings in accordance with the permissions granted to you. Your administrative contact for your account also has the legal authority, without limitation, to subscribe to all Offerings ordered, and to terminate and modify any such orders, including making any updates or changes to your account information.

When you click on the “I Accept” button, register or create an account, or use the Site or any of our Offerings, you represent and warrant that (a) you have the authority to bind all users whom you allow to use the Site or Offerings; (b) the registration and account information you provide is complete, accurate and up to date; and (c) all users consent to be legally bound by the terms of this Agreement. If you or any of your users do not agree to comply with the terms of this Agreement, you are required to click the “I Decline” button and cease all use of the Site and Offerings, as you and your users are not granted authorization to access the restricted portions of the Site or use any Offerings.

We reserve the right to immediately and without notice deny you and others access to the Site and/or any Offerings, including without limitation, suspending or terminating your account, revealing personal information, removing or editing content at any time, either temporarily or permanently, for any reason in our sole discretion, when you or any of your account users fail to abide by the terms of this Agreement, commit acts likely to cause harm to Sellercloud, our Site or Offerings, other account holders or customers or in order to comply with applicable law, a court order or subpoena or in order to respond to a legitimate inquiry or request made by law enforcement officials.

You acknowledge that we have no obligation to maintain or upgrade the Site or any Offering in any form or version, and we expressly reserve the right to modify, suspend, or terminate your access privileges or the access privileges of any of your users. You also acknowledge that we may, in our sole discretion at any time and with thirty (30) days’ prior notice, close or discontinue the Site or any Offering, including deleting any files or content that you may maintain at or posted to the Site or through any Offering. You agree to separately maintain on your own systems your own archival copy of any material or information that you post to or maintain at the Site as we will not undertake to retain copies of any material or information that we or others may delete from the Site. Except as otherwise stated herein, we will use commercially reasonable efforts to provide you with at least thirty (30) days’ prior notice before terminating or suspending access to the Site or any Offering (other than for regularly scheduled maintenance), terminating or suspending your account, or before removing or editing content that you may have posted to the Site.

#### 5. The Portal, Customer Data, Service Levels.

If the Sellercloud Services, corresponding order and registration information provide for Sellercloud to host your Portal (defined below) during the applicable agreement period, Sellercloud agrees to configure, install, house, maintain, modify and operate the computer equipment, server software, network equipment and components and high-speed bandwidth/connectivity necessary to host your Portal. “Portal” means the internet site or network of sites created and hosted by Sellercloud for you and for which Sellercloud’s Service Fees (defined in Section 7, below) and any customization fees have been paid.

You acknowledge and understand that from time to time the Portal, the Site and/or Offerings may be inaccessible or

inoperable for any reason, including, without limitation due to: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs that Sellercloud may undertake from time to time; or (iii) causes beyond the control of Sellercloud or that are not reasonably foreseeable by Sellercloud, including, without limitation, a Force Majeure event, interruption or failure of telecommunication or digital transmission links, hostile network attacks, network congestion or other failures. You acknowledge and understand that Sellercloud has no control that the Portal, the Site and/or Offerings will always be available and/or operate on a continuous, error-free or uninterrupted basis.

You acknowledge and agree that you are solely responsible for all acts, omissions and use of your Portal including charges incurred with your account and the use and security of your own password. You are also solely responsible for migrating your own existing documents into your Portal and while Sellercloud may provide document migration and/or upgrade services for a fee, You are solely responsible for any data conversion, entry and verification.

AT ALL TIMES, YOU SHALL BEAR THE RISK OF LOSS AND OR DAMAGE TO ANY OR ALL OF YOUR PORTAL DATA, INFORMATION, IMAGES, DOCUMENTS, AND OTHER CONTENT THAT YOU HAVE SUBMITTED TO SELLERCLOUD AND THAT IS BEING USED IN CONNECTION WITH YOUR PORTAL (COLLECTIVELY “**PORTAL DATA**” or “**CUSTOMER DATA**”). “Customer Data” shall also be deemed to include any Customer’s data and any data of Customer’s clients or other third party data that is submitted to Sellercloud by Customer. You hereby grant Sellercloud a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual, irrevocable, sub-licensable and transferable license and right to access, store, use, reproduce, distribute to other qualified users, make derivative works of, perform and display, and delete (consistent with our data deletion policy), the Customer Data and Portal Data that is submitted to Sellercloud for the purposes of providing you the Site and the Offerings.

Without making any representations or warranties or assuming any obligations, Sellercloud provides an information security program that is intended (for the term of the Agreement): (i) to provide a measure of confidentiality for your Customer Data; and (ii) to protect against anticipated threats or hazards to the security or integrity of your Customer Data. However, you acknowledge and agree that you shall be solely responsible for undertaking appropriate measures to: (i) prevent any loss or damage to your Customer Data; (ii) maintain independent archival and backup copies of your Customer Data; and (iii) ensure the security, confidentiality and integrity of your Customer Data transmitted through or stored on Sellercloud’s servers. Sellercloud’s servers and the Offerings that we provide are not intended to serve as an archive for the maintenance or storage of your Customer Data and Sellercloud shall have no liability to you or any other person for loss, damage or destruction of any of your Customer Data unless such loss, damage or destruction was caused by Sellercloud’s intentional misconduct. Upon the termination or expiration of this Agreement or upon the termination of your access to the Portal, moving your Customer Data off of Sellercloud’s servers is your sole responsibility.

Sellercloud’s service level objective is to provide the Services without Service Level Failures (defined below) on a twenty-four (24) hours a day, seven (7) days a week basis throughout the term of the Agreement (“**Service Level Objective**”). Should you experience an interruption, suspension or unavailability in a subscribed to Service due to an Error (as defined below) and not as a result of a scheduled maintenance or other non-qualifying cause or event (“**Service Level Failure**”), you should provide us with notification by email that includes a detailed report of the incident. Once we have verified the incident, we shall endeavor to achieve an Error Correction (as defined below) provided your account remains current and in good standing. For customer account holders whose accounts are in good standing, the Service Level Failure period does not begin until after we have first verified that the reported incident to which you have provided us with notification results from an Error. The period of Service Level Failure ends when the affected subscribed to Service is made operational again by way of an Error Correction or by deploying a reasonable acceptable workaround solution. A Service Level Failure does not include, and no Service Level Credits (as defined below) will be awarded for any failure in Services that results from or is related to:

- actions taken or not taken by Customer or its authorized users;
- events that are beyond the control of Sellercloud or that were not reasonably foreseeable by Sellercloud, including, without limitation, a Force Majeure event, interruption or failure of telecommunication or digital transmission links, hostile network attacks, a failure of hardware or software or services or products by one of our suppliers or licensors, network congestion or other third party causes; or

- a planned, scheduled or emergency maintenance procedure.

Provided that you agree to provide us with notice of any suspected Service Level Failure in accordance with the Error reporting procedure described in Section 6, below, we will apply to your account a credit in an amount equal to five percent (5%) of the net Services Fees for the applicable Services for each full hour of Service Level Failure (“**Service Level Credit**”). An applicable Service Level Credit will appear on your invoice following processing. Service Level Credits will not have any cash value either at the end of your Services subscription or upon the expiration or termination of this Agreement. Service Level Credits will be calculated as a credit to the Services Fees only for the applicable Services that experienced the Service Level Failure(s). The maximum total credit for all Service Level Failures to meet our Service Level Objective is limited to the total Services Fees for such Services for the month in which the Service Level Failure(s) occur. You must be a Sellercloud Customer in good standing to receive any Service Level Credits. No Service Level Credits will be applied to accounts that are past-due or for cancelled accounts. Upon cancellation of your account, any outstanding or previously accrued Service Level Credits will be forfeited. Service Level Credits will not be applied against any past due balances.

THE FOREGOING OFFER FOR SERVICE LEVEL CREDITS REPRESENTS SELLERCLOUD’S TOTAL LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY SERVICE LEVEL FAILURES, ERRORS OR BREACHES OF WARRANTY ASSOCIATED WITH ANY SERVICE LEVEL FAILURE. Customer waives its rights to all other remedies or recourse for any deficiency or failure by us to meet our SERVICE LEVEL OBJECTIVE.

## 6. Technical Support and Disaster Recovery

The following provisions of this Section 6 shall apply during any period for which we have agreed to provide hosting Services and you have paid the required hosting fee and are not in breach of the Agreement. During such time, Sellercloud shall provide to you: (i) all upgrades, modifications, improvements, enhancements, extensions, and other changes to the Services which are generally made available at no cost to other customers of those Services; (ii) any needed Error Corrections as described herein; (iii) email support as described herein; and (iii) access to the Site for registered users containing various features, technical tips, and techniques.

Subject to the requirements set forth in Section 5, above, your designated site administrator may email Sellercloud’s technical support team at the email support address provided by Sellercloud with questions or problems on a particular topic related to the Services. In our sole discretion, each separate inquiry relating to one specific feature, function, action, or facet of the Services, or one aspect of its operation or performance shall be considered as a separate technical support incident with an assigned separate reference number. We shall also determine in our sole discretion what technical support, if any, will be provided in response to any particular incident.

Sellercloud shall provide up to one-hundred fifty (150) email technical support incidents/tickets to you annually. Check the Site for additional fees charged for processing reported technical support incidents/tickets that exceed your annual maximum amount. By opening a support case, you agree to allow a Sellercloud Representative to log in and access your account. Sellercloud’s technical support team shall deploy commercially reasonable efforts to respond to technical support incidents promptly (within 24 hours) after having received your email support request, and our response will likely consist of doing at least one of the following:

- Answer the question(s) posed
- Provide an Error Correction
- Provide a reasonable work-around or other solution to the reported incident
- Determine if the reported incident is an enhancement request and forward the request to Sellercloud Product Management for future consideration
- Accessing your account
- Escalate to Sellercloud Engineering for review.

Sellercloud’s technical support will deploy commercially reasonable efforts to resolve the reported incident but Sellercloud cannot guarantee that every incident will be resolved. When you report a suspected Error (defined below),

you must provide Sellercloud with sufficient information to be able to diagnose and/or reproduce or recreate the suspected Error on Sellercloud 's equipment, and you agree to cooperate and provide us with whatever additional information we may reasonably request. An **“Error”** is defined to be a material failure of the Sellercloud Services to operate substantially in accordance with the applicable user guides and reference manuals. Errors do not include your inability to fully use the Sellercloud Services due to features, functionality or limitations of other software or hardware that Sellercloud Services are not designed or not optimized to operate with such as using hardware or software that do not meet our system requirements. If we confirm a suspected Error, Sellercloud shall use commercially reasonable efforts to provide an Error Correction. An **“Error Correction”** includes, without limitation, workarounds, support releases, updates, component replacements, patches and/or documentation changes, as Sellercloud deems appropriate.

At Sellercloud, for the term of the Agreement, we store and back-up Customer Data as part of our disaster recovery planning. Sellercloud has a data replication goal of every 30 minutes. We currently store Customer Data onsite at multiple recovery points throughout the day. Those snapshots are also locked and archived offsite at another location in the United States. To reduce inaccessibility due to internet interruptions, an alternate internet gateway is available in the event that there is an internet outage to the datacenter. By navigating to [www.sellercloud.co](http://www.sellercloud.co) instead of [www.sellercloud.com](http://www.sellercloud.com), the user can utilize that alternate gateway. If the domain hosting fails for [sellercloud.com](http://sellercloud.com), you should also generally still be able to navigate to [www.sellercloud.net](http://www.sellercloud.net), which is registered with another domain registrar.

Sellercloud shall use commercially reasonable efforts to provide support services via the support Portal. Under no circumstances however is Sellercloud obligated to provide support services not expressly agreed to herein or otherwise provide telephone assistance or consulting time relating to any problems, errors or malfunctions that are caused by (a) malfunction of the computer system and communications network on which you have installed and are using the Services, (b) your use of third-party software or other software not licensed pursuant to this Agreement, (c) your use of the Services in disregard of any known adverse consequences, including without limitation the failure of a Customer to make appropriate backups, heed warning messages or other written instructions received from Sellercloud, or (d) actions, events or incidents that are not otherwise attributable to the actions of Sellercloud . You agree to pay Sellercloud at its standard hourly rates for any time that we spend assisting or consulting with you in connection with seeking to correct a problem, error or malfunction that is not otherwise covered by the scope of this Agreement.

You agree that we may collect and use any technical information gathered as part of delivering the technical support services to you under this Agreement and you agree that notwithstanding the termination or expiration of this Agreement, Sellercloud shall always have the irrevocable and perpetual right to use such information to improve and customize its Offerings; provided however, that we do disclose this information in a form that personally identifies you.

## 7. Fees and Payment

You must have Internet access and a valid Payment Method (defined below) to subscribe to, license or purchase any Offerings. All Offerings are subject to change or discontinuance at any time with thirty (30) days' prior notice. All fees for Services and Products, including prices for Product purchases are listed in U.S. dollars and are valid until such prices are superseded by us with another price listing. We may also charge you a non-refundable setup fee which may vary according to the Offerings that are purchased.

We currently accept Visa®, MasterCard® and American Express® credit cards, including ACH payment, cashier's and business checks (each a **“Payment Method”** or collectively **“Payment Methods”**). We reserve the right to change the Payment Methods we accept at any time without notice. We may terminate or suspend your Services or your order for Products, withhold the release of upgrades to you, and take such other action as we may deem appropriate in our sole and absolute discretion if we are unable to process any of your proposed Payment Methods.

By accepting any of our Services, you expressly agree that we are authorized to charge your proposed or your alternative proposed Payment Method for all applicable Services fee(s) in accordance with and at the then current

rates quoted in the applicable pricing plan for which you have subscribed (“**Pricing Plan**”), plus any applicable taxes and other charges that you may incur in connection with your use of the Sellercloud Services (collectively, “**Service Fees**”).

We currently offer a number of Pricing Plans, including flat fee, revenue sharing, and per transaction fee, as described on the Site. We may offer special promotional plans, bundled plans, premium services, and subscriptions with different limitations. WE RESERVE THE RIGHT TO MODIFY, TERMINATE OR OTHERWISE AMEND OUR OFFERED PRICING PLANS BEGINNING WITH THE NEXT BILLING CYCLE WITHOUT SPECIAL NOTICE. Except for prices for subscriptions, which shall not be changed during the then current applicable agreement period (i.e., not including subsequent renewals), we may have to change the fees, applicable state sales taxes and charges in effect, or add new fees, state sales taxes and charges from time to time, but we will use commercially reasonable efforts to provide you with reasonable advance notice of these changes by email. Such notices to you shall be deemed to have been given upon transmission using the most recent email address that we have for you on file. Please note, however, that we may not be able to provide you with thirty (30) days’ advance notice of all such changes. By way of illustration only, certain state sales taxes will automatically be applied under applicable state law without any prior notice once certain order volume thresholds are met but even in such cases, we will use commercially reasonable efforts to provide you with thirty (30) days’ prior notice.

We will bill your Payment Method for Service Fees corresponding to your order at the time of your order. For non-flat fee Pricing Plans, we will continue to bill your Payment Method on an applicable periodic basis (generally monthly) during the term of subscription and thereafter, including any renewal periods, unless and until you cancel your subscription. If you wish to cancel your subscription, click the “your account” link at the top of the Site for cancellation instructions. SERVICE FEES ARE FULLY EARNED WHEN DUE AND ANY UNUSED SUBSCRIPTION FEES ARE NON-REFUNDABLE.

We may offer only certain Products or Services featured on the Site only in certain countries depending upon applicable law and where your Payment Method is accepted. The Site is displayed solely for purposes of providing Offerings entirely from or to such countries.

## Services

These Terms of Use and the supplemental terms set forth in **Schedule A** shall form a part of this Agreement applicable to your purchases of any Services from the Site (“**Service Terms**”). Your License (defined in Section 1 of Schedule A, below) to use the Sellercloud Services is expressly conditioned upon timely payment of all Service Fees. Other than as specifically provided in any separate written (non-electronic) agreement between you and Sellercloud physically signed by us, neither these Terms of Use nor Service Terms set forth in Schedule A may be altered, supplemented, or amended by the use of any document of yours, such as purchase orders, and all sales of Services are also expressly conditioned upon your agreement to the Service Terms. In the event of a conflict between the Service Terms and the other provisions of this Agreement, the Service Terms shall control with respect to the conflicting term that is at issue.

## Products

These Terms of Use and the supplemental terms set forth in **Schedule B** hereto shall form a part of this Agreement applicable to your purchases of any Products from the Site (“**Terms of Sale**”). Other than as specifically provided in any separate written (non-electronic) agreement between you and Sellercloud physically signed by us, neither these Terms of Use nor Terms of Sale set forth in Schedule B may not be altered, supplemented, or amended by the use of any document of yours, such as purchase orders, and all sales of Products are expressly conditioned upon your agreement to these Terms of Sale. In the event of a conflict between these Terms of Sale and the other provisions of this Agreement, these Terms of Sale shall control with respect to the conflicting term that is at issue.

## 8. IP Ownership, Use of Customer Marks and Brands

You agree that all right, title and interest in the: (i) Offerings, including Portal applications and plug-ins; (ii) the Site; (iii) patentable ideas, inventions, and improvements; (iv) works of authorship, forms, images, audiovisual displays, text, software, graphics, designs, (v) trademarks, service marks, trade names, logos and trade dress, and (vi) trade secrets, know-how and Sellercloud confidential and proprietary information, including all related patent rights, trademarks, copyrights and trade secret rights, moral rights, *sui generis* database rights and all other intellectual property, proprietary rights or other rights related to intangible property that are used, developed, comprising, embodied or practiced in connection with the Site or any of the Offerings (collectively, “**Sellercloud IP**”) are solely and exclusively owned by Sellercloud or its suppliers or licensors, and you agree to make no claim of interest in or ownership to any Sellercloud IP. You also acknowledge and agree that no title to any Sellercloud IP is transferred to you, and that you do not obtain any rights, express or implied, in the Sellercloud Offerings, Portal applications and plug-ins or the Site, whether provided by Sellercloud or any of its suppliers or licensors. To the extent that you create any work that is based upon one or more preexisting versions of an Offering provided to you, such as an enhancement, modification, revision, translation, abridgement, condensation, expansion, collection, compilation or any other form that such preexisting works may be recast, transformed or adapted (collectively “**Derivative Works**”), you agree that such Derivative Works are owned exclusively by Sellercloud and that any rights that you may have in such Derivative Works and its related Sellercloud IP are hereby irrevocably assigned to Sellercloud .

Unless you notify us otherwise in a signed writing, you agree that Sellercloud may display your mark, logo or brand on the Site, identify you as a client or customer of ours and publish any quotation, feedback or testimonial from you or any your directors, partners, officers or employees that relate to the use of Sellercloud .

You agree not to remove, obscure or alter any Sellercloud copyright or patent notices, trade or service marks, logos or other proprietary notices appearing on any Offering. You shall not use any Sellercloud name, logo or marks in any press release or communication without obtaining the signed written permission of Sellercloud . Nothing in this Agreement grants to you an express, implied or other license to use any Sellercloud mark, logo or brand name but any use of such marks, logos or brands by you in connection with your use of the Site and any Offering shall inure to the sole benefit of Sellercloud .

## 9. DISCLAIMER OF WARRANTIES

THE SITE AND OFFERINGS ARE PROVIDED TO YOU “AS IS” AND ON AN “AS AVAILABLE” BASIS WITHOUT ANY WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, CAPACITY, OR TITLE, AND ANY EXPRESS WARRANTIES BY DESCRIPTION, REPRESENTATION OR OTHER AFFIRMATION OF FACT, SAMPLE, OR ILLUSTRATION, WHETHER ORAL, WRITTEN, OR CONTAINED IN ANY LETTER, BROCHURE, WEBSITE, PHOTOGRAPH OR OTHER MEDIUM. YOU AGREE TO ASSUME ALL RISK WITH RESPECT TO THE QUALITY AND PERFORMANCE OF THE SITE AND ANY OFFERINGS. SELLERCLOUD, ITS SUPPLIERS AND LICENSORS MAKE NO WARRANTY THAT THE SITE OR THE OFFERINGS WILL BE UNINTERRUPTED OR ERROR-FREE, WILL MEET ALL OF YOUR NEEDS, REQUIREMENTS OR SATISFACTION, OR WILL CAUSE YOU OR ANY THIRD PARTY TO BE IN COMPLIANCE WITH APPLICABLE LAWS OR REGULATIONS. SELLERCLOUD DOES NOT MAKE ANY WARRANTIES CONCERNING YOUR USE OF THE SITE OR OFFERINGS OR FOR THE PERFORMANCE OR RESULTS THAT MAY BE ACHIEVED FROM YOUR USE OF THE SITE OR OFFERINGS.

## 10. LIMITATION OF LIABILITY; TIME LIMITATION ON FILING ANY CLAIM

YOU AGREE THAT OUR ENTIRE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY, IN LAW, EQUITY OR OTHERWISE, WITH RESPECT TO THE SITE AND ANY OFFERINGS PROVIDED UNDER THIS AGREEMENT



AND/OR FOR ANY BREACH OF THIS AGREEMENT IS SOLELY LIMITED TO THE AMOUNT YOU PAID UNDER THIS AGREEMENT WITHIN THE PRECEDING TWELVE MONTHS. IN NO EVENT SHALL SELLERCLOUD, ITS SUPPLIERS OR LICENSORS BE LIABLE FOR ANY LOST REVENUE, LOST PROFITS, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF PURPOSE OF ANY LIMITED REMEDY. ADDITIONALLY, IN NO EVENT SHALL SELLERCLOUD, ITS SUPPLIERS OR LICENSORS BE RESPONSIBLE FOR ANY LOSS, DESTRUCTION OR ALTERATION OF CUSTOMER DATA OR RECORDS (WHETHER YOURS, YOUR CLIENTS' DATA, OR DATA OF OTHER THIRD PARTIES) UNLESS DIRECTLY CAUSED BY THE INTENTIONAL MISCONDUCT OF SELLERCLOUD, IT BEING FURTHER UNDERSTOOD THAT YOU SHALL BE SOLELY RESPONSIBLE FOR ENSURING THE PROPER AND ADEQUATE BACK-UP AND STORAGE OF ALL SUCH DATA AT ALL TIMES. YOU FURTHER AGREE THAT REGARDLESS OF ANY STATUTE OR LAW TO THE CONTRARY, ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SITE OR ANY OF OUR OFFERINGS MUST BE FILED WITHIN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION AROSE OR SUCH CLAIM SHALL BE FOREVER BARRED. THE TERMS OF ANY OF THESE LIMITATIONS DO NOT LIMIT OR EXCLUDE ANY LIABILITY FOR INTENTIONAL MISCONDUCT, OR TO THE EXTENT NOT OTHERWISE PERMITTED BY APPLICABLE LAW.

## 11. Indemnification

You agree to defend, release, indemnify, and hold harmless Sellercloud, our licensors, suppliers, contractors, agents, employees, officers, directors, members, affiliates, assigns and successors (collectively "**Indemnified Persons**") from all liabilities, claims, demands, damages, losses, costs and expenses, including costs and reasonable attorneys' fees, relating to or arising out of (i) your breach of this Agreement or the breach of your warranties, representations or obligations under this Agreement, (ii) any third party or unauthorized access to your account or unauthorized use of the Site or Offerings, (iii) any infringement, legal violation or other violation of third party rights involving our use of any Customer Data or Portal Data, (iv) your violation of any applicable law or a violation of any of our operating rules or policies relating to the Site or Offerings, (v) your failure to implement changes recommended by Sellercloud if a third party claim would have been avoided by the implementation of the change, or (vi) any information or data you supply to Sellercloud, including, without limitation, any misrepresentation that you may have made in your account application or registration, if applicable (collectively, "**Claim**"). You shall have sole responsibility to defend, hold harmless and indemnify all Indemnified Persons regarding the Claim and the Indemnified Persons shall have the right to select which counsel shall defend them in connection with the defense of the Claim. You further agree that you may not settle, compromise, or in any other manner dispose of any Claim without the consent of the Indemnified Persons.

Sellercloud agrees to defend, indemnify, and hold You harmless from and against any third-party suits and judgments against You for damages, including costs and reasonable attorneys' fees, to the extent solely caused by (i) our breach of this Agreement or the breach of our representations, warranties or obligations under this Agreement, (ii) the infringement of any third party U.S. intellectual property right resulting from your authorized use of the Site or Offerings, or (iii) our violation of any of our own operating rules or policies relating to the Site or Offerings (collectively, "**Claim**"). Sellercloud's defense, hold harmless and indemnification obligation under this Section 11 is contingent upon (i) you promptly notifying us of any Claim for which defense and indemnification is sought, (ii) not admitting liability; (iii) not taking any position that is adverse or contrary to the position of Sellercloud ; (iv) permitting Sellercloud to maintain sole control over the defense and settlement of the Claim, including selection of counsel; and (v) making no attempt to settle the Claim without the express written consent of Sellercloud . Also, should you be sued for infringement or be threatened with a suit of infringement as a result of your authorized use of the Site or Offerings, Sellercloud shall be afforded full and sole discretion to settle the Claim alleging infringement by modifying the alleged offending portion of the Site or alleged offending Offering to make the Site or Offering non-infringing, procuring any necessary license or directing that all use and display of the offending Site or Offering cease. Such actions by Sellercloud states our entire liability and Your sole and exclusive remedy for Claims of infringement against you that involve your authorized use of the Site or Offerings.

## 12. Consent to Electronic Communications

You consent to receive communications from us electronically, either by email or through the Site, and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically will satisfy any legal requirement that such communications be in writing. You also agree that the use of your user name and password or email address, and any other use by you of the Site constitutes your electronic signature and authenticates your communications to us or third-parties using the Site, and otherwise satisfies any legal requirement that such communications be in writing.

### 13. Termination, Effect Upon Termination, Survivability

You may terminate this Agreement or any Services upon written notice to Sellercloud for any reason. You may cancel any Product purchases or licenses at any time prior to checkout; all Product purchases and licenses are non-refundable. We may terminate this Agreement or any Offerings at any time for any reason. Notice of cancellation will be sent 30 days prior to account termination. Except as otherwise expressly set forth herein or on our Site, we will not charge you for any monthly Service Fees after the effective termination date, but may make appropriate adjustments, and may charge for Products purchased or licensed prior to but not shipped until, after the termination date. Unless otherwise specified in writing by us, you will not receive any refund for payments already made by you as of the date of termination. If termination of this Agreement is due to your default hereunder, you shall bear all costs of such termination, including all reasonable costs Sellercloud incurs in closing your account.

Upon termination, you shall immediately return or destroy any copy of Products licensed to you hereunder and referenced herein. You agree that upon termination or discontinuance for any reason, we may delete all information and data related to you in connection with your use of the Site or any Sellercloud Offerings, as applicable. In addition to the terms set forth herein, certain Sellercloud Offerings may have additional terms regarding termination, which are set forth in the applicable Schedule. Any unsatisfied payment obligation of yours and Sections 2-3, and 7-16 of these Terms of Use shall survive any termination or expiration of this Agreement.

In addition to the terms set forth above, if you subscribe to Services which are sold together as part of a “bundled” package of services, any termination of Services relating to such bundle may terminate all Services included in such bundle. Upon the effective date of termination, Sellercloud will no longer provide the bundled services to you, any licenses granted you shall immediately terminate, and you shall cease using such Services immediately; provided, however, that we may, in our sole discretion and subject to your agreeing to be bound by the applicable agreement(s) and to pay the applicable fees (possibly at a higher, unbundled pricing), allow you to convert certain services included in the bundled services to stand alone services.

### 14. Representations, Warranties and Covenants; Data Privacy and Data Breach

You represent, warrant, and covenant that: (i) none of the Customer Data or Portal Data will directly or indirectly infringe, misappropriate or violate the legal rights or property of a third party or otherwise violate any applicable law; (ii) you have all requisite power and authority to execute this Agreement and to perform your obligations hereunder; (iii) you are at least eighteen years of age; (iv) you shall comply with all applicable laws and regulations; (v) you will provide and keep current complete and accurate registration information for you and your users; (vi) you will be responsible for the compliance at all times of all of your users' with this Agreement and any Sellercloud usage policy posted on the Site, as amended from time to time (the “**Policy**”); (vii) you will not use the Site or Offerings in ways that are not authorized or recommended by us; (viii) the Customer Data and Portal Data that are submitted to Sellercloud are true and complete copies of what the data purports to show, you are not aware of any defects, compromises or inaccuracies in such data and the submission of such data to Sellercloud complies with all applicable laws and regulations; (ix) you will maintain and preserve written books and records demonstrating compliance with this Agreement and provide Sellercloud with access to such records upon Sellercloud 's reasonable request; (x) you have implemented appropriate technical and organizational measures to maintain the security and integrity of the Customer Data and Portal Data while under your control or possession; (xi) your performance under this Agreement will not violate or breach any other agreement that you may have entered into with a third party; and (xi) you will use commercially reasonable efforts to prevent any unauthorized access to or unauthorized use of the Site or Offerings,

and notify Sellercloud promptly of any suspected or known unauthorized access or use, including any breaches or suspected breaches of any of your representations and warranties under this Agreement.

You further represent, warrant and covenant that you will not use the Site or any Offerings: (i) in ways that you suspect may infringe, misappropriate or violate any patent, trademark, trade secret, copyright, right of publicity or other right of any party; (ii) to attempt to or actually disrupt, interfere with, or damage the Site or Offerings or any web-sites linked to the Site, including, without limitation, using viruses, cancel bots, Trojan horses, harmful code, flood pings, denial of service attacks, packet or IP spoofing, forged routing or electronic mail address information or other methods or technology; (iii) to attempt to use another user's account, impersonate another person or entity (e.g., pretexting or spoofing); (iv) to attempt to obtain unauthorized access to the Site or portions of the Site that are restricted from general access or otherwise restricted to you; (v) to engage, directly or indirectly, in transmission of "spam," chain letters, junk mail or any other type of unsolicited solicitation; (vi) to collect, manually or through automated processes, information about other users (without their express consent) or other information relating to the Site or the Offerings; (vii) to use any meta tags or other "hidden text" utilizing our name, trademarks, service marks, or trade dress, or those of permitted suppliers or other sponsors of web pages or Offerings on the Site; (viii) to link (including "deep linking") to the Site without our prior express written permission specifying you by name; (ix) to engage in any activity that interferes with a third party's ability to use or enjoy the Site or Offerings; (x) to place or attempt to place unreasonable or disproportionately large loads on the Site or system infrastructure; (xi) to assist any third party in engaging in an activity prohibited by this Agreement; (xii) to make any Offerings available to anyone other than authorized users; (xiii) to sell, resell, rent or lease any Offerings; or (xiv) to store or transmit libelous or otherwise unlawful or tortious material, or to store, use or transmit material in violation of third-party privacy rights.

You acknowledge and agree that your violation of any of your representations and warranties will permit Sellercloud, in its sole and exclusive discretion, to immediately take corrective action, including, but not limited to, suspension and/or termination of your access to your account and and/or your use of any Offerings. You further acknowledge and agree that Sellercloud will have no liability to you or any of your customers, clients or end users for any corrective action that we may take and you will not be entitled to a refund of any fees that were paid prior to the implementation of the corrective action.

It is the intent of the parties to comply with all applicable data privacy and protection laws with respect to the collection, use, storage, processing and sharing of personal information and personal data of individuals and also of businesses, as may be applicable under these laws. The privacy policy of Sellercloud can be found on the Site which privacy policy may be amended from time to time. Any additional contract provisions of this Agreement relating to Sellercloud's processing of personal information of California consumers under the California Consumer Privacy Protection Act, effective January 1, 2020, and as amended by the California Privacy Rights Act (CPRA), effective January 1, 2023 (collectively "the CCPA") are displayed in **Schedule C** incorporated by reference into this Agreement (**CCPA/CPRA Addendum**). The additional contract provisions of this Agreement relating to the processing by Sellercloud of personal data of individuals who are located in a member country of the European Union, the UK, Iceland, Liechtenstein, Norway or Switzerland under the General Data Protection Regulation, effective May 25, 2018 ("the GDPR") are referenced in **Schedule D** also incorporated by reference into this Agreement (**GDPR Data Protection Addendum**).

Should there be a security breach of or unauthorized access to any Customer Data or Portal Data, each party shall notify the other without undue delay of any actual or suspected breach of confidentiality or data security involving the Customer Data or Portal Data as soon as a party becomes aware. Each party shall also cooperate with the other party in promptly investigating such breach, hack or unauthorized access (collectively "Data Breach"), deploy diligent efforts to remedy the Data Breach, preserve all evidence and records relating to the Data Breach and develop a root cause and impact assessment and future mitigation plan as soon as possible. The parties agree to work together to determine the best timing, content and method for Data Breach notification under applicable law to government authorities and/or Customers, and each party shall bear its own costs and expenses incurred in investigating or reporting the breach, including notification costs and costs to obtain credit monitoring services and identity theft insurance for affected individuals, unless it can be established that the Data Breach was the result of the fault, negligence or intentional misconduct of a particular party in which case that party shall remain liable for all such costs.

## 15. General

During the term of this Agreement and for a period of at least three (3) years after termination of the Agreement for any reason, you shall maintain complete and accurate business and accounting records in accordance with generally accepted accounting principles to substantiate your performance and compliance under the terms of this Agreement, including without limitation, your compliance with respect to payments, number of licenses purchased and other Agreement and legal requirements. Not more than once per year during the term of the agreement and for three (3) years after termination of the Agreement for any reason, Sellercloud itself, or through its agent selected by Sellercloud, shall be permitted access to your records related to this Agreement in order to determine your compliance with its obligations, responsibilities, representations and warranties under this Agreement. Notwithstanding the above, Sellercloud may conduct such audit or review more frequently than once per year upon any reasonably suspected breach of this Agreement by you. Any such audit or review may be conducted during your normal business hours upon providing reasonable advance written notice to you. Sellercloud agrees to exercise commercially reasonable efforts to minimize any disruption to your business during the course of such audit or review. You agree to cooperate with Sellercloud and its agent with respect to requests for information and documentation, including requests to correct any deficiencies in compliance that were revealed as a result of conducting the audit or review. Sellercloud reserves the right to suspend or terminate access to or use of any Offering until the deficiencies have been corrected to Sellercloud's reasonable satisfaction. Sellercloud's right to audit and review under this Section are without prejudice to Sellercloud's right to exercise any other rights or remedies under this Agreement. In the event that any such audit or review by Sellercloud or its agent discloses an underpayment, such underpayment shall be promptly paid and, if the amount of such underpayment is greater than 5% of the amount that was due, you shall be responsible for paying the cost of such audit or review.

You may not assign or transfer your rights or obligations under this Agreement without the prior written signed consent of Sellercloud. Any such attempted assignment or transfer shall be void and without effect. Sellercloud is permitted the right to freely assign this Agreement without having to receive your permission and without having to provide any special notification.

Except for the duty to make payment, Sellercloud shall be excused from any responsibility of performance caused by any delay, interruption, error, or malfunction resulting from natural disaster; transportation problems; defects, or malfeasance of third-party software, hardware, communications, or power supplies; interruption or failure of telecommunication or digital transmission links; hostile network attacks; network congestion or other failures; acts of government; flood, fire, earthquakes, and other Acts of God; pandemics, epidemics, stay at home or shelter in place orders; strikes or other labor problems; Internet service provider failures or delays; actual or threatened war (whether or not declared); civil unrest; riots; actual or threatened or suspected terrorist acts; acts or omissions of persons not hired, retained, or supervised by Sellercloud; and other acts, events, or circumstances beyond our reasonable control, whether or not foreseeable or identified (collectively, "**Force Majeure**" events).

No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by an authorized representative of Sellercloud. The remedies of Sellercloud under this Agreement shall be cumulative and the election of one remedy for a breach shall not preclude pursuit of other remedies. The failure of Sellercloud, at any time or from time to time, to require performance of your obligations shall not affect our right to enforce any provision of this Agreement at a subsequent time. Sellercloud's express waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any prior or subsequent breach.

There are no intended third party beneficiaries under this Agreement. Section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such section. This Agreement shall also be interpreted fairly in accordance with its terms and without any construction in favor of or against either party. If any provision of this Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity of such provision shall not affect the other provisions of this Agreement, and all provisions not affected by such invalidity shall remain in full force and effect to the fullest extent

possible consistent with the intent of the parties.

This Agreement shall be governed and construed in all respects in accordance with the substantive laws of the United States and the State of Delaware without regard to the Uniform Computer Information Transactions Act (UCITA) or the United Nations Convention on Contracts for the International Sale of Goods, both of which are expressly excluded from this Agreement. We do not submit to personal jurisdiction anywhere else and you irrevocably waive any claim to the contrary. Unless otherwise elected by Sellercloud in writing for a particular instance (which we may do at our option in our sole discretion), the exclusive jurisdiction and forum for actions related to the subject matter of this Agreement shall be as stated in the following mandatory arbitration provision or the appropriate state and U.S. federal courts having located in New Castle County, Delaware USA.

**THIS AGREEMENT INCLUDES THE FOLLOWING MANDATORY INDIVIDUAL ARBITRATION AND CLASS ACTION/JURY TRIAL WAIVER PROVISION THAT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE CONSUMER DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, WHICH LIMITS YOUR REMEDIES IN THE EVENT OF A DISPUTE ARISING FROM THIS AGREEMENT.**

**MANDATORY ARBITRATION AND NO CLASS ACTION AGREEMENT:**

**YOU AND SELLERCLOUD EACH WAIVE THEIR RIGHT TO A JURY TRIAL OR TO PARTICIPATE IN A CLASS ACTION PURSUANT TO THE FOLLOWING TERMS. YOU AND SELLERCLOUD AGREE TO ARBITRATE ANY AND ALL CLAIMS, CONTROVERSIES OR DISPUTES OF ANY KIND (“CLAIMS”) AGAINST EACH OTHER, INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR INVOLVING THE SITE OR ANY OFFERINGS OF SELLERCLOUD. YOU AND SELLERCLOUD AGREE THAT NO CLAIMS WILL BE ASSERTED IN ANY REPRESENTATIVE CAPACITY ON A CLASS-WIDE OR COLLECTIVE BASIS, THAT NO ARBITRATION FORUM WILL HAVE JURISDICTION TO DECIDE ANY CLAIMS ON A CLASS-WIDE OR COLLECTIVE BASIS, AND THAT NO RULES FOR CLASS-WIDE OR COLLECTIVE ARBITRATION WILL APPLY. This Arbitration Agreement is to be broadly interpreted and applies to (i) all claims based in contract, tort, statute, or any other legal theory; (ii) all claims You may bring against Sellercloud, its employees, officers, directors, agents, members, affiliates or representatives; and all claims that Sellercloud may bring against You. However, the parties agree that either party may bring an individual action in a small claims court with valid jurisdiction. IF YOU DO NOT WISH TO AGREE TO THIS ARBITRATION PROVISION, YOU MUST NOTIFY US IN WRITING WITHIN 30 DAYS OF YOUR ACCEPTANCE OF THIS AGREEMENT BY REGISTERED MAIL RETURN RECEIPT REQUESTED TO SELLERCLOUD at 8 South River Road, Cranbury, New Jersey, 08512, United States of America Attn: Jeremy Greenberg. Include your name, address, and a clear statement that you do not agree to this Mandatory Arbitration Agreement.**

a. **Procedure:** A party must send a written Notice of Dispute (“Notice”) describing 1. the nature and basis of the claim; and 2. the relief sought, to the other party. The notice to Sellercloud should be addressed to: Jeremy Greenberg, Sellercloud 8 South River Road, Cranbury, New Jersey, 08512, United States of America (“Notice Address”). If Sellercloud and You do not resolve the claim within thirty (30) days after the Notice is received, a party may commence an arbitration by filing a demand for arbitration with the American Arbitration Association (“AAA”) pursuant to its Consumer Arbitration Rules. Claims will be resolved pursuant to the AAA’s Consumer Arbitration Rules in effect at the time of the demand, as modified by this Arbitration Agreement, however, a single arbitrator will be selected according to AAA’s Commercial Arbitration Rules. The AAA rules are available online at [www.adr.org](http://www.adr.org) (<https://www.adr.org/Rules>). The arbitration will be confidential and hearings will take place in the federal judicial district of where Sellercloud maintains its principal place of business.

b. **Arbitrator’s Authority:** The arbitrator is bound by this Agreement, the Federal Arbitration Act (“FAA”) and AAA’s Consumer Arbitration Rules. The arbitrator has no authority to join or consolidate claims, or

adjudicate joined and consolidated claims. The arbitrator has exclusive authority to resolve any dispute relating to the scope, interpretation, applicability, enforceability or formation of this Agreement, including whether it is void. You and Sellercloud agree that the arbitrator's decision and award will be final and binding and may be confirmed or challenged in any court with jurisdiction as permitted under the FAA. The arbitrator can award the same damages and relief as a court, but only in favor of an individual party and for a party's individual claim.

c. **Arbitration Costs:** You will be responsible for Your share of any arbitration fees (e.g., filing, administrative, etc.), but only up to the amount of filing fees You would incur if the claims were filed in court. You are responsible for all other costs/fees that You incur in arbitration, e.g., fees for attorneys, expert witnesses, etc. You will not be required to reimburse Sellercloud for any fees unless the arbitrator finds that the substance of Your claim(s) or the relief sought is frivolous. If the arbitrator makes such a finding, AAA Rules will govern the payment of all fees, and Sellercloud may seek reasonable attorney's fees. Sellercloud will pay all fees and costs it is required by law to pay.

d. **Governing Law and Enforcement:** This Arbitration Agreement is governed by the Federal Arbitration Act, 91 U.S.C. §§ 1 et seq. ("FAA"). In any arbitration under this Arbitration Agreement, all issues are for the arbitrator to decide, including his or her own jurisdiction, and any objection with respect to the existence, scope or validity of this Arbitration Agreement. If any portion of this Arbitration Agreement is deemed to be invalid or unenforceable or is found not to apply to a claim, the remainder of the Arbitration Agreement shall remain in full force and effect except that if the class or collective action waiver provision is deemed unenforceable, any class or collective action claim(s) must proceed in a court of competent jurisdiction.

e. **Exception to Arbitration for Injunctive Relief:** Notwithstanding the above, you agree that Sellercloud shall have the right to bring any claim against You, including without limitation a claim for injunctive relief to prevent or limit irreparable injury to Sellercloud, a claim for breach or threatened breach by You of the provisions of this Agreement, including a breach or threatened breach of Section 8 and Section 7 of Schedule A of the Agreement or involving a claim for infringement or threatened infringement by you of the intellectual property rights of Sellercloud or a third-party, in a court of competent jurisdiction located in New Castle County, Delaware USA. You consent to the personal jurisdiction of and agree that venue is proper over you in such courts for all such claims, and you forever waive any challenge to said court's exclusive jurisdiction or venue. In the event of any claim by Sellercloud against you, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and other expenses.

In connection with this Agreement, each party will comply with all applicable import, re-import, sanctions, anti-boycott, export, and re-export control laws and regulations, including all such laws and regulations that apply to a U.S. company, such as the Export Administration Regulations, the International Traffic in Arms Regulations, and economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, you are solely responsible for compliance related to the manner in which you choose to use the any of the Offerings, including your submission of Customer Data and Portal Data to Sellercloud . You represent and warrant that you are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including but not limited to the lists maintained by the United Nations Security Council, the U.S. Government, the European Union or its Member States, or other applicable government authority.

The parties to this Agreement are deemed to be independent contractors of one another and neither party nor their employees, consultants, contractors or agents shall be construed to be agents, employees or joint ventures of the other party, and none of them shall have the authority to bind the other party by contract or otherwise to any obligation. Each party shall also ensure that the foregoing persons shall not represent themselves to the contrary, either expressly, implicitly, by appearance or otherwise.

These Terms of Use, including the Schedules referenced herein contain the entire understanding and agreement between the parties concerning the subject matter thereof, and these Terms supersede all prior and contemporaneous agreements and understandings between the parties regarding such subject matter.

## **16. Offering Specific Terms**

The Schedules that follow apply in addition to Sections 1 through 14 to the extent you have subscribed to or licensed the particular Offerings described (Schedule A) or purchased the Sellercloud Products described (Schedule B).

## **17. Contact Us**

In the event of any dispute or for any other information concerning these Terms of Use or our Privacy Policy – please contact us via US mail or email at:

Sellercloud

8 South River Road

Cranbury, NJ 08512

United States of America

Email Address: [info@sellercloud.com](mailto:info@sellercloud.com)

## **Copyright Policy and Copyright Agent**

We respect the intellectual property rights of others, and we expect our users to do the same. In appropriate circumstances, and in our sole discretion, we may but are not required to terminate the rights of any user to use the Site (or any part thereof) who infringes the intellectual property rights of others. Subject to the foregoing, it is our policy to terminate in appropriate circumstances users who are repeat infringers. If you believe that a user of the Site or Offerings has infringed the intellectual property rights of another, please provide the following information to the Copyright Agent specified below.

- An electronic or physical signature of the person authorized to act on behalf of the owner of the intellectual property interest;
- A description of the intellectual property interest that you claim has been infringed upon;
- A detailed description of where the material that you claim is infringing is located on the Site, including the URL where the infringing material appears or is evident;
- Your address, telephone number and email address;
- A statement that you have a good faith belief that the disputed use is not authorized by the intellectual property rights owner, its agent, and or the law;
- A statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the owner of the intellectual property rights involved, or are authorized to act on behalf of such

owner.

You may send any notices, including notices of copyright infringement under the Digital Millennium Copyright Act, to Sellercloud 's designated agent for notice of claims of copyright infringement on the Site at the following addresses:

Copyright Agent

8 South River Road

Cranbury, NJ 08512

Tel: +1 (888) 315-6652

E-Mail: info@sellercloud.com

Courier Address:

Copyright Agent

8 South River Road

Cranbury, New Jersey 08512

United States of America

Please note that this procedure is exclusively for notifying us that intellectual property rights have been infringed. This policy is intended to comply fully with the requirements of the Online Copyright Infringement Liability Limitation Act.

Please type your name to show you have read, understand and agree to the foregoing Agreement, including all Schedules referenced in this Agreement:

I ACCEPT: \_\_\_\_\_



## SCHEDULE A

TO

## TERMS OF USE

### SUPPLEMENTAL TERMS APPLICABLE TO SELLERCLOUD'S SERVICES

#### 1. License

Subject to all the terms of the Agreement (including this Schedule), when you subscribe to any of our Services, Sellercloud grants to Customer only during the applicable term of your subscription for such Services a limited non-exclusive, personal, revocable, non-assignable, non-sublicensable right ("**License**") to use such Services solely for your internal business purposes only in the United States and Canada ("**Territory**") and, if applicable, solely for the number of users for which you have properly registered and for which payment has been received or you have agreed to pay (each a "**User**"). Sellercloud grants no license, by implication or otherwise, except for the License. By way of example and not limitation, the License includes no right to sublicense, transfer, or create derivative works of, any Sellercloud Services or any part of them.

#### 2. Payment Terms

Service Fees for the Sellercloud Services are set forth in your online order form (or a linked page) or invoice, and are exclusive of shipping, taxes, duties and the like, which you shall pay either in advance or, if agreed to by us, within fifteen (15) days of the invoice date. You authorize us to bill your Payment Method accordingly.

Subject to the conditions and terms of this Agreement, unless otherwise specified on your order or by us, the initial term for the Sellercloud Services shall be twelve months, commencing as of the specified commencement date and shall automatically renew on each anniversary of such date for a period of twelve months. We may cancel the initial or any renewal subscription period at any time for any reason upon written notice, or if the License or Agreement is terminated or cancelled in accordance with this Agreement.

#### 3. Customer Responsibilities and Restrictions

You, your employees, and your authorized agents and authorized contractors, may be authorized users for purposes of this Agreement; provided that each such user abides by the terms of the Agreement and this Schedule and You remain responsible for your employees, authorized agents and authorized contractors. As between the parties, you are solely responsible for, among other things: (i) being familiar with the features of the Offerings, and your use of them in accordance with any applicable documentation; (ii) all interactions (or lack thereof) between you and your licensors, suppliers, distributors, and customers; (iii) keeping yourself informed and updated on transactions that are reported or handled through any Offerings; and (iv) your own performance ratings and reviews. Sellercloud's servers and Services are not an archive for any Customer Data. In the event this Agreement or Sellercloud Services are terminated, moving Customer Data off of Sellercloud's servers is Customer's sole responsibility. Unless expressly

assumed in writing for separate additional consideration or as otherwise required by applicable law, Sellercloud has no obligation to transfer or FTP Customer's content to another provider.

You shall not, and shall not allow any of your Users or third parties to: (i) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas or algorithms of any Offerings by any means whatsoever; (ii) remove any product identification, copyright or other notices of Sellercloud or any of its licensors from any Offerings; (iii) provide, sell, license, transfer, lease, lend, use for timesharing or outsourcing or hosting or service bureau purposes or otherwise similarly use or allow others to use the Offerings to or for the benefit of third parties; (iv) interfere, or attempt to interfere, with the Offerings in any way; (v) knowingly introduce into or transmit through the Offerings or the Site any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design; or (vi) except as may be specified in the applicable user documentation provided by us, modify, incorporate into or with other software or create a derivative work of any part of any software or documentation which is included in or part of the Sellercloud Offerings. You agree not to transfer, transmit, or distribute the Offerings or any part of them to others who are not your authorized users. Your License to use the Offerings shall automatically terminate in the event of such a transfer, transmission, or distribution.

#### **4. Term**

The License to the Sellercloud Services for you and each Customer shall be effective until the earlier of: the end of the applicable period for which you have paid or have agreed to pay the applicable Service Fee, or until the License or Agreement is terminated. All Licenses will terminate automatically without notice from us if you or any of your users breach any material term of the Agreement or this Schedule. Upon termination of this Agreement or the License for any reason, you and each of your users shall cease all use of the Sellercloud Services, return to us or destroy all copies of any software or documentation which is included in or part of the Sellercloud Services, and certify to us that you have done so. Except for the License and except as otherwise expressly provided herein, the terms of this Schedule shall survive termination. Termination is not our exclusive remedy and all of our other remedies will be available whether or not the License is terminated.

#### **5. DISCLAIMER OF WARRANTIES**

IN ADDITION TO THE DISCLAIMER OF WARRANTIES IN THE TERMS OF USE, SINCE THE INTERNET IS NEITHER OWNED NOR CONTROLLED BY ANY ONE ENTITY, SELLERCLOUD MAKES NO GUARANTEES THAT ANY GIVEN CUSTOMER WILL BE ABLE TO ACCESS THE SELLERCLOUD SERVICES AT ANY GIVEN TIME. SELLERCLOUD SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY FOR FAILURE OF ACCESSIBILITY TO THE SELLERCLOUD SERVICES OR ANY POTENTIAL OR ACTUAL LOSSES THAT YOU OR ANY THIRD PARTY MAY SUFFER FROM YOUR INABILITY TO ACCESS OR USE THE SELLERCLOUD SERVICES.

YOU AGREE THAT SELLERCLOUD IS NOT RESPONSIBLE IN ANY WAY FOR ANY MALFUNCTION OR DOWNTIME IN THE SELLERCLOUD SERVICES OR RELATED SOFTWARE OR ANY DAMAGE, INJURY OR LOST PROFITS THAT MAY ARISE FROM SUCH MALFUNCTION OR DOWNTIME. SELLERCLOUD MAKES NO GUARANTEE THAT THE SELLERCLOUD SERVICES WILL OPERATE SEAMLESSLY AND WITHOUT ERROR WITH ANY CUSTOMER HARDWARE, SOFTWARE OR OTHER SERVICES (INCLUDING THIRD PARTY PRODUCTS) THAT WE OR THE CUSTOMER USES. SELLERCLOUD MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING SELLERCLOUD SERVICES OR SYSTEM UPTIME. FROM TIME TO TIME, AND AS MAY BE NECESSARY TO MAINTAIN SUCH SYSTEMS AND SELLERCLOUD HARDWARE, SELLERCLOUD RESERVES THE RIGHT TO TAKE ITS SERVERS AND OTHER HARDWARE OFFLINE FOR REPAIRS, UPGRADES OR ROUTINE MAINTENANCE. CUSTOMER AGREES AND UNDERSTANDS THAT THE SELLERCLOUD SERVICES MAY BE DEPENDANT ON THIRD PARTY SERVICES THAT SELLERCLOUD CANNOT CONTROL. CUSTOMER EXPRESSLY AGREES THAT THE AVAILABILITY OF THOSE THIRD PARTY SERVICES MAY IMPACT CUSTOMER'S USE OF ANY SELLERCLOUD SERVICES AND THEREFORE SHALL NOT SEEK TO HOLD SELLERCLOUD LIA-

BLE FOR ANY ACTIONS OF A THIRD PARTY THAT MAY ADVERSELY IMPACT SUCH USE. ANY UPTIME CALCULATION OR PERCENTAGE THAT IS PROVIDED AS A PART OF THE SELLERCLOUD SERVICES DOES NOT INCLUDE ROUTINE MAINTENANCE, UNEXPECTED DOWNTIME CAUSED BY NETWORK ISSUES OR THIRD PARTY VENDORS, AND OCCURRENCES THAT ARE OUTSIDE THE CONTROL OF SELLERCLOUD, INCLUDING BUT NOT LIMITED TO FORCE MAJEURE EVENTS.

## 6. Indemnity

Without limiting the indemnity in the Terms of Use, Customer is solely responsible for, and shall defend, indemnify and hold harmless the Sellercloud Indemnified Persons with respect to Customer: (i) establishing and maintaining its Internet connections necessary to access and use the Sellercloud Services; (ii) obtaining and maintaining all of its own domain name registrations (Sellercloud is not an accredited registrar with the Internet Corporation for Assigned Names and Numbers, and does not act as Customer's agent for purposes of acquiring, registering or administering Customer's domain names); (iii) maintaining the confidentiality of Customer's password and account information; (iv) all acts, omissions and use under and charges incurred with Customer's account or password or in connection with Customer's use of the Portal; (v) migrating Customer's Data and documents to Customer's Portal (Sellercloud may provide professional services to migrate and/or upgrade hosting Services for a fee based on time and materials at Sellercloud 's then current standard hourly rates or fees); (vi) the accuracy, quality, integrity and legality of all of Customer's (and Customer's client's or other third party's) electronic data or information submitted by Customer to Sellercloud (collectively "**Customer Data**") and of the means by which it acquired Customer Data; (vii) maintaining independent archives of Customer Data; and (viii) all other hardware (including computers, servers, personal digital assistants, storage devices, network equipment, mobile devices or other devices which can access or use the Sellercloud Services) and software, including but not limited to that identified in Sellercloud 's system requirements.

## 7. Confidential Information

Each party acknowledges it may receive confidential or proprietary data and information of the other and/or of the other's affiliates, suppliers, customers, or business partners) in connection with this Agreement ("**Proprietary Information**") and agrees it has no interest in or, except as expressly provided herein, no right to use such Proprietary Information of the other party. Each party shall keep strictly confidential and not use, except to provide the Services or as provided herein, all Proprietary Information of the other party; provided, however, that the foregoing obligations of confidentiality and non-use shall not apply to the extent that any Proprietary Information is reasonably shown to be (i) already known to the receiving party or its affiliates at the time of disclosure hereunder (provided such receiving party and its affiliates comply with any restrictions imposed by third parties); or (ii) hereafter developed by the receiving party or its affiliates in the course of work entirely independent of any disclosure hereunder; or (iii) publicly known prior to or after disclosure hereunder other than through acts or omissions of the receiving party or its affiliates; or (iv) disclosed by a third party in good faith to the receiving party or its affiliates under a reasonable claim of right with respect to which the receiving party and its affiliates is not aware of any dispute. The receiving party may also disclose Proprietary Information to the minimum extent required by law, provided that the receiving party provides prompt notice to the disclosing party and seeks confidential treatment and a protective order.

The parties hereby agree that any breach of any provision hereof regarding Proprietary Information or protection of Proprietary Rights would constitute irreparable harm, and that the aggrieved party shall be entitled to specific performance and/or injunctive relief in addition to other remedies at law or in equity. Upon termination of the License or the Agreement, and as otherwise requested by the disclosing party of its Proprietary Information, the receiving party will promptly return to the disclosing party upon written request all items and copies containing or embodying such Proprietary Information.

## 8. Terms and Conditions of Sellercloud 's Suppliers and Licensors

You and each of your users acknowledges and agrees that the Services are provided, in some cases, by third party

suppliers and/or licensors to Sellercloud (hereinafter “Third Party Licensors”). By way of example and not limitation, the Sellercloud Services include computer software developed by Sellercloud and computer software licensed from Microsoft Corporation or one of its affiliates or distributors (collectively, “Microsoft”), and/or other companies. For all Sellercloud Services that are provided by Third Party Licensors to Sellercloud, you and each Customer agrees with and shall abide by all Third Party Licensor terms and conditions, if any (“**Additional Terms and Conditions**”). Any Additional Terms and Conditions are in addition to and supplement the terms and conditions provided in this Agreement. Customer acknowledges and agrees that it will be subject to all Additional Terms and Conditions and that all such Additional Terms and Conditions shall be incorporated into this Agreement, to the extent those Additional Terms and Conditions do not conflict with the terms and conditions of this Agreement, as if set forth fully herein.

Customer acknowledges that Sellercloud may, at its sole discretion, change any Third Party Licensors that provide services under this Agreement, or add or delete discrete services from the Sellercloud Services. In the event that Sellercloud changes Third Party Licensors, Sellercloud may provide Customer with notification of changes in Third Party Licensors and refer Customer to information posted on Sellercloud’s Site relative to that change which shall become Additional Terms and Conditions for the purposes of this Agreement.

YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS SCHEDULE, AND AGREE TO BE BOUND BY ITS TERMS.

## SCHEDULE B

TO

## TERMS OF USE

### SUPPLEMENTAL TERMS APPLICABLE TO SELLERCLOUD PRODUCTS

#### 1. Pricing; Payment Terms

Payment is due when you place your order for Products. We will bill your Payment Method for Products purchased, plus shipping and handling, and any applicable tax when we receive and process your order through the Site or offline. If we agree to process your order offline, we will invoice you. All invoiced amounts will be due and payable within two weeks of the invoice date.

#### 2. License to Software Products; Ownership

Subject to all the terms of the Agreement and this Schedule, when you license any downloadable Sellercloud software Products (“**Software**”), Sellercloud grants to you during the applicable term of the license for such Software in object code only (not source code) a limited non-exclusive, personal, revocable, non-assignable, non-sublicensable right (“**License**”) to Use (defined below) the Software solely for your internal business purposes only in the Territory (defined below). For purposes of the License, “**Use**” means downloading or copying the Software from the Site or tangible media sent by us to you on your equipment in the Territory and/or accessing the Software solely for the purpose of processing in the Territory the instructions or statements contained in the Software for your internal operations; and “**Territory**” means only the United States and Canada.

Sellercloud grants no license, by implication or otherwise, except for the License. By way of example and not limitation, the License includes no right to sublicense, transfer, or create derivative works of, the Software or any part of it. The License does not grant any rights to any trademarks, trade dress, or service marks of Sellercloud .

As between you and us, we and our licensors retain all title to and, except as expressly and unambiguously licensed herein, all rights in and to the Software and all derivative works thereof, including, but not limited to, patents, trademarks, copyrights and trade secret rights, moral rights, and all other intellectual and industrial property rights in the Software. The License does not constitute a sale of the Software or any portion or copy of it.

You and your Users shall not transfer or distribute the Software or any part of it to others, and the License shall automatically terminate in the event of such a transfer or distribution. You and your Users shall not copy or modify the Software, except that you may copy the Software for the sole purposes of operating it within the scope of the License and making a single backup copy as long as all copyright and other notices are reproduced on the backup copy.

We have no obligation to provide support or maintenance or updates, modifications or new releases of software Products under the Agreement or any related document unless you separately purchase support or development Services. Any update, modification, or release provided by us to you will be subject to all limitations, restrictions, and qualifications relating to the Software as set forth herein, as well as your obligations with respect to the Software.

If you are provided with a modification, upgrade or new release to any Product, you shall use commercially reasonable efforts to install or otherwise adopt use of the modification, upgrade or new release consistent with our instructions.

### **3. DISCLAIMER OF WARRANTIES**

ALL PRODUCTS ARE PROVIDED "AS IS," AND WE EXPRESSLY DISCLAIM AND EXCLUDE ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE NON-INFRINGEMENT, CAPACITY, AND TITLE. EXCEPT AS MAY BE EXPRESSLY STATED IN THE IMMEDIATELY PRECEDING SENTENCE, THE DISCLAIMER OF WARRANTIES SET FORTH IN THE WARRANTY DISCLAIMERS, LIMITATIONS, AND EXCLUSIONS PROVISIONS IN THE TERMS OF USE SHALL APPLY. WE DO NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, WILL MEET ALL OF YOUR OR YOUR USERS' NEEDS, OR WILL CAUSE YOU OR ANY USERS TO BE IN COMPLIANCE WITH ALL LAWS OR REGULATIONS. WE DO NOT MAKE ANY WARRANTIES CONCERNING YOUR USE OF THE SITE OR OFFERINGS OR FOR THE PERFORMANCE OR RESULTS THAT MAY BE ACHIEVED FROM YOUR USE OF THE SITE OR OFFERINGS.

CERTAIN FEDERAL OR STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES IN CERTAIN CIRCUMSTANCES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MIGHT HAVE ADDITIONAL RIGHTS.

YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS SCHEDULE, AND AGREE TO BE BOUND BY ITS TERMS.

## SCHEDULE C

### CCPA/CPRA ADDENDUM

*Unless otherwise defined by this Agreement, all capitalized terms contained in this Addendum shall have their meanings as set forth in the CCPA/CPRA.*

**Applicability.** This CCPA/CPRA Addendum shall only apply and bind the Parties if one or both Parties are deemed to be a covered Business under the CCPA/CPRA and this Addendum shall only apply to the Personal Information of California residents whose information may be processed by Sellercloud under this Agreement.

**Relations of the Parties.** To the extent that Customer Data or Portal includes any Personal Information of a user who is a California resident (hereinafter a “California User”), You appoint Sellercloud as its Service Provider to process the Personal Information on Your behalf and other users involved in any currently designated transaction. You are solely responsible for establishing policies for, and ensuring Your own compliance with, the CCPA/CPRA and its implementing regulations as they relate to the Personal Information that may be contained in Your Customer Data or Portal Data.

#### 1. Definitions.

(a) “Affiliates” shall have the meaning set forth in the Agreement. If no definition of Affiliates was set forth in the Agreement, Affiliates means any corporation, company or other entity (hereinafter “Entity”) that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, such party, where “control” means for any Entity, ownership of fifty percent (50%) or more of the capital stock or other ownership interest of the Entity carrying the right to vote for or appoint directors or their equivalent (if not a corporation), or otherwise direct or cause the direction of the management policies of the Entity.

(b) “Business,” “Business Purpose,” “Collects” (and “collected” and “collection”), “Contractor,” “Sell” (and “selling,” “sale,” and “sold”) and “Service Provider” shall have the meanings given to them under the CCPA/CPRA.

(c) “Business Purpose” has the meaning given in Section 5.2 of this Addendum.

(d) “California Consumer Privacy Act” or “CCPA” means Title 1.81.5 California Consumer Privacy Act of 2018 (California Civil Code §§ 1798.100-1798.199), as amended or superseded from time to time.

(e) “California Privacy Rights Act” or “CPRA” means the California Privacy Rights Act of 2020 (2020 Cal. Legis. Serv. Proposition 24, codified at Cal. Civ. Code §§ 1798.100 et seq.) and its implementing regulations, as amended or superseded from time to time.

(f) “Personal Information” means the personal information and/or sensitive personal information of California residents, further defined under the CCPA/CPRA, which is being collected or processed by Service Provider on behalf of Customer and/or received or made available to and/or handled by Service Provider for a specific purpose under the Agreement.

(g) “Security Incident” means accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access of or to

the personal information.

## **2. Interpretations.**

Capitalized terms used but not defined in this Addendum shall have the meaning given to them in the Agreement. If and to the extent Service Provider is deemed a Contractor instead of a Service Provider under the definitions afforded to these terms under the CCPA/CPRA, all references to Service Provider under this Addendum shall instead be interpreted as being a Contractor. Also, to the extent that Service Provider serves as a Service Provider on behalf of Customer's Affiliates, Customer enters into this Addendum on behalf of itself and such Affiliates and under such circumstance, all references to Customer under this Addendum shall refer to Customer and such Affiliates, provided however that Customer shall be the sole entity under which a claim against Customer may be brought under this Addendum.

## **3. Relationship to the Agreement.**

3.1 This Addendum supersedes any conflicting or inconsistent term contained in the Agreement related to the protection of California resident personal information that is being processed, received, made available to and/or handled by Service Provider under the Agreement and in the event of any ambiguity in the Agreement with respect to the protection of such information above, the terms of this Addendum shall govern. Except as otherwise amended by this Addendum, the Agreement remains in full force and effect.

3.2 Any claims or actions brought under or in connection with this Addendum shall be subject to the terms and conditions, exclusions and/or limitations contained in the Agreement.

3.3 There are no intended third party beneficiaries to this Addendum and no one other than a party to this Addendum, its successors and permitted assignees shall have any right to enforce any of its terms.

3.4 This Addendum shall be governed by and construed in accordance with the governing law and jurisdiction provisions set forth under the Agreement, unless otherwise required by law by either the CCPA or CPRA.

3.5 This Addendum will automatically terminate with the termination or expiration of the Agreement.

3.6 The parties agree that this Addendum is entered into so that the parties can comply with the restrictions and other obligations set forth in the CCPA/CPRA and any ambiguity reflected herein shall be resolved in favor of such compliance.

## **4. Scope of Addendum.**

This Addendum applies only to any Personal Information that is the subject of the Agreement.

## **5. Data Protection for California residents.**



5.1 Service Provider Appointment. Customer acknowledges that it is a Business and under the Agreement has appointed Service Provider as its Service Provider to Collect and process Personal Information on its behalf and/or to receive, have access to and handle Personal Information for a specific Business Purpose. Each party, whether a Business, Service Provider or Contractor, shall be responsible for its own compliance with its own respective obligations under this Addendum and the CCPA/CPRA.

5.2 Business Purpose. Service Provider shall only Collect, process and/or handle the Personal Information as a Service Provider in accordance with the laws of the CCPA/CPRA and upon the lawful documented instructions from Customer, including those specified in the Agreement, this Addendum or as otherwise necessary to provide the services to Customer under the Agreement (the “Business Purpose”). Service Provider agrees not to process and/or handle the Personal Information for any other purpose other than for the Business Purpose, except as otherwise permitted by the CCPA/CPRA.

5.3 Certification. Service Provider agrees that it shall not: (a) Sell the Personal Information; (b) retain, use or disclose the Personal Information for any purpose other than for the Business Purpose, including retain, use or disclose the Personal Information for a commercial purpose other than providing its services to Customer under the Agreement; (c) retain, use or disclose the Personal Information outside of the direct business relationship between Service Provider and Customer; (d) process the Personal Information for targeted and/or cross context behavioral advertising; (e) combine the Personal Information with any other data if this would be inconsistent with the limitations imposed on service providers under the CCPA/CPRA. Service Provider certifies that it understands the restrictions set forth in this Section 5.3 and will comply with them. Service Provider shall also remain responsible for the errors, acts or omissions of its subcontractors in connection with their handling of any Personal Information under the Agreement or this Addendum. In addition, Service Provider grants to Customer the right to monitor Service Provider’s compliance with this Section 5.3 which monitoring may include a right to audit, no more than once per year and during normal business hours, the relevant records of Service Provider upon reasonable advance written notice to Service Provider. The responsibility of Service Provider for its subcontractors and Customer’s right to monitor Service Provider’s compliance with this Addendum shall survive any termination of this Addendum.

5.4 Assisting with Legitimate CCPA/CPRA Right Requests and California State Inquiries. Upon Customer’s instructions, Service Provider agrees to use commercially reasonable efforts to assist Customer in deleting, correcting, transferring or limiting the use of any Personal Information that is in the care, custody, control or possession of Service Provider and its subcontractors in accordance with a request made by a California resident to have such Personal Information deleted, corrected, transferred to another or limit the use thereof under the terms and conditions of the CCPA/CPRA, except where such request in Customer’s judgment is not legitimate and/or to the extent the parties are nonetheless permitted to retain the Personal Information pursuant to a CCPA/CPRA exemption. Upon Customer’s instructions, Service Provider further agrees to use commercially reasonable efforts (i) to assist Customer in responding to and/or verifying a California resident’s right to know or other right request under the CCPA/CPRA, or (ii) to assist Customer in responding to any communication, inquiry or complaint received from a California resident or California state authority that relates to the handling of Personal Information under the Agreement or this Addendum.

5.5 Inability to Comply with CCPA/CPRA. Service Provider will promptly notify Customer in writing if Service Provider determines that it can no longer meet its obligations under the CCPA/CPRA or this Addendum. Upon the receipt of such notice, Customer shall have the right (without incurring any liability to Service Provider) to take all reasonable and appropriate steps and measures to stop all future use of Personal Information by Service Provider under the Agreement or to otherwise terminate the Agreement in its entirety. \_

**6. Security**. Service Provider shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Personal Information in order to protect the Personal Information from and against a Security Incident in line with its security policies.

**7. Security Incident.** Service Provider shall notify Customer without undue delay (and in time to fulfill any Security Incident reporting obligations) after becoming aware of a Security Incident and Service Provider shall provide to Customer timely information relating to the Security Incident as it becomes known or as reasonably requested by Customer.

**8. Miscellaneous.** Upon receipt of Customer's written request, Service Provider shall return the Personal Information or close Customer's account and delete all of the Personal Information that is in the care, custody, control or possession of Service Provider or its subcontractors, within ninety (90) days of the termination of the Addendum, except that this requirement shall not be applicable to the extent that Service Provider is required under applicable law to retain some or all of the Personal Information.

YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS SCHEDULE, AND AGREE TO BE BOUND BY ITS TERMS.

## SCHEDULE D

### GDPR DATA PROCESSING ADDENDUM

This Data Processing Addendum (“**DPA**”) supplements the Terms of Use or “**Agreement**” governing Your use of SELLERCLOUD services, products, platform, portal and applications (the “**SELLERCLOUD Services**”) when the GDPR applies to Your use of the Agreement and transmission of User Data to SELLERCLOUD for processing. This DPA is an agreement between You and SELLERCLOUD. Unless otherwise defined in this DPA, the Agreement or GDPR, all capitalized terms used in this DPA will have the meanings given to them in Section 17 of this DPA.

#### 1. Data Processing.

1.1 Scope and Roles. This DPA applies when User Data that is transmitted to and then processed by SELLERCLOUD includes “Personal Data” of individuals who are located in the European Union, the UK, Iceland, Liechtenstein, Norway or Switzerland (hereinafter “EU User Data” or “EU Users”). In this context, SELLERCLOUD will act as “Processor” to You who may act either as “Controller” or “Processor” with respect to EU User Data. Each of the quoted terms above are defined in the GDPR.

#### 1.2 Details of Data Processing.

1. 1.2.1 Subject matter. The subject matter of the data processing under this DPA is the EU User Data.
2. 1.2.2 Duration. As between SELLERCLOUD and You, the duration of the data processing under this DPA is determined by You.
3. 1.2.3 Purpose. The purpose of the data processing under this DPA is the provision of the SELLERCLOUD Services initiated by You from time to time.
4. 1.2.4 Nature of the processing: Compute, storage and such other SELLERCLOUD Services as described in the Documentation and initiated by You from time to time.
5. 1.2.5 Type of EU User Data: EU User Data uploaded to the SELLERCLOUD Services utilizing Your application programming interface or other means.
6. 1.2.6 Categories of Data Subjects: The Data Subjects may include Your EU Users.

2. Your Instructions. The Parties agree that this DPA and the Agreement (including but not limited to the API, customized user interfaces and Specifications made available to You by SELLERCLOUD for the provision of SELLERCLOUD Services) constitutes Your documented instructions regarding SELLERCLOUD’s processing of User Data (“Documented Instructions”). SELLERCLOUD will process EU User Data only in accordance with the Documented Instructions. Additional instructions outside the scope of the Documented Instructions (if any) require prior written agreement between SELLERCLOUD and You, including agreement on any additional fees payable by You to SELLERCLOUD for carrying out such instructions. You are entitled to terminate this DPA and the Agreement if SELLERCLOUD declines to follow instructions requested by You that are outside the scope of, or changed from, those given or agreed to be given in this DPA.

3. Confidentiality of EU User Data. SELLERCLOUD will not access or use, or disclose to any third party, any User Data, except, in each case, as necessary to maintain or provide the Services, or as necessary to comply with the law or a valid and binding order of a governmental body (such as a subpoena or court order). If a governmental body sends SELLERCLOUD a demand for User Data, SELLERCLOUD will attempt to redirect the governmental body to request that data directly from You. As part of this effort, SELLERCLOUD may provide You basic contact information to the governmental body. If compelled to disclose User Data to a governmental body, then SELLERCLOUD will give You reasonable notice of the demand to allow You to seek a protective order or other appropriate remedy unless SELLERCLOUD is legally prohibited from doing so. If the Standard Contractual Clauses apply, nothing in this Section 3 varies or modifies the Standard Contractual Clauses.
  
4. Confidentiality Obligations of SELLERCLOUD Personnel. SELLERCLOUD restricts its personnel from processing EU User Data without authorization by SELLERCLOUD as described in the SELLERCLOUD Security Standards. SELLERCLOUD imposes appropriate contractual obligations upon its personnel, including relevant obligations regarding confidentiality, data protection and data security.

## 5. Security of Data Processing

5.1 SELLERCLOUD has implemented and will maintain the technical and organizational measures for the SELLERCLOUD Network as described in the SELLERCLOUD Security Standards and this Section. In particular, SELLERCLOUD has implemented and will maintain the following technical and organizational measures:

1. (a) security of the SELLERCLOUD Network as set out in Section 1.1 of the SELLERCLOUD Security Standards;
2. (b) physical security of the facilities as set out in Section 1.2 of the SELLERCLOUD Security Standards;
3. (c) measures to control access rights for SELLERCLOUD employees and contractors in relation to the SELLERCLOUD Network as set out in Section 1.1 of the SELLERCLOUD Security Standards; and
4. (d) processes for regularly testing, assessing and evaluating the effectiveness of the technical and organizational measures implemented by SELLERCLOUD as described in Section 2 of the SELLERCLOUD Security Standards.

5.2 You may elect to implement technical and organizational measures in relation to EU User Data. Such technical and organizational measures include the following which may be obtained by Building Partner from SELLERCLOUD as described in the Documentation, or directly from a third party supplier:

- (a) pseudo-anonymization and encryption to ensure an appropriate level of security;
- (b) measures to ensure the ongoing confidentiality, integrity, availability and resilience of the processing systems and services that are being operated by You; (c) measures to allow You to backup and archive appropriately in order to restore availability and access to User Data in a timely manner in the event of a physical or technical incident; and (d) processes for regularly testing, assessing and evaluating the effectiveness of the technical and organizational measures implemented by You.

## 6. Sub-processing.

6.1 Authorized Sub-processors. You agree that SELLERCLOUD may use sub-processors to fulfill its contractual obligations under this DPA or to provide certain SELLERCLOUD Services on its behalf, such as providing support services. The SELLERCLOUD website lists sub-processors that are currently engaged by SELLERCLOUD to carry out processing activities on EU User Data on behalf of You. At least 30 days before SELLERCLOUD engages any new sub-processor to carry out processing activities on EU User Data on behalf of You, SELLERCLOUD will update the applicable website and provide You with a mechanism to obtain notice of that update. You consent to SELLERCLOUD's use of sub-processors as described in this Section. Except as set forth in this Section, or as You may otherwise authorize, SELLERCLOUD will not permit any sub-processor to carry out processing activities on EU User Data on Your behalf.

6.2 Sub-processor Obligations. Where SELLERCLOUD authorizes any sub-processor as described in Section 6.1:

- (i) SELLERCLOUD will restrict the sub-processor's access to User Data only to what is necessary to maintain the SELLERCLOUD Services or to provide the SELLERCLOUD Services to You and any other Users in accordance with the Documentation or Agreement, and SELLERCLOUD will prohibit the sub-processor from accessing the EU User Data for any other purpose;
- (ii) SELLERCLOUD will enter into a written agreement with the sub-processor and, to the extent that the sub-processor is performing the same data processing services that are being provided by SELLERCLOUD under this DPA, SELLERCLOUD will impose on the sub-processor the same contractual obligations that SELLERCLOUD has under this DPA; and
- (iii) SELLERCLOUD will remain responsible for its compliance with the obligations of this DPA and for any acts or omissions of the sub-processors that cause SELLERCLOUD to breach any of SELLERCLOUD's obligations under this DPA.

## 7. Data Subject Rights.

Taking into account the nature of the SELLERCLOUD Services, SELLERCLOUD may offer You certain controls as described in Sections 1.2 and 5.2 that You may elect to use to comply with Your obligations towards data subjects. Should a data subject contact SELLERCLOUD with regard to correction or deletion of his/her personal data, SELLERCLOUD will use commercially reasonable efforts to also forward such requests to You.

8. Optional Security Features. SELLERCLOUD may make available a number of security features and functionalities that You may elect to use. You are responsible for (a) implementing the measures described in Section 5.2, as appropriate, (b) properly configuring the SELLERCLOUD Services, (c) using the controls available in connection with the SELLERCLOUD Services (including the security controls) to allow You to restore the availability and access to EU User Data in a timely manner in the event of a physical or technical incident (e.g. backups and routine archiving of EU User Data), and (d) taking such steps as You consider adequate to maintain appropriate security, protection, and deletion of EU User Data, which includes use of encryption technology to protect EU User Data from unauthorized access and measures to control access rights to EU User Data.

## 9. Security Breach Notification.

9.1 Security Incident. SELLERCLOUD will (a) notify You of a Security Incident without undue delay after becoming aware of the Security Incident, and b) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

9.2 SELLERCLOUD Assistance. To assist You in relation to any personal data breach notifications You

are required to make under the GDPR, SELLERCLOUD will include in the notification under section 9.1(a) such information about the Security Incident as SELLERCLOUD is reasonably able to disclose to You, taking into account the nature of the SELLERCLOUD Services, the information available to SELLERCLOUD, and any restrictions on disclosing the information, such as confidentiality.

9.3 Unsuccessful Security Incidents. You agree that:

1. (i) an unsuccessful Security Incident will not be subject to this Section 9. An unsuccessful Security Incident is one that results in no unauthorized access to EU User Data or to any of SELLERCLOUD's equipment or facilities storing EU User Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond headers) or similar incidents; and
2. (ii) SELLERCLOUD's obligation to report or respond to a Security Incident under this Section 9 is not and will not be construed as an acknowledgement by SELLERCLOUD of any fault or liability of SELLERCLOUD with respect to the Security Incident.

9.4 Communication. Notification(s) of Security Incidents, if any, will be delivered to one or more of Your administrators by any means SELLERCLOUD selects, including via email. It is Your sole responsibility to ensure Your administrators maintain accurate contact information on the user interface with SELLERCLOUD Services and secure transmission at all times.

## 10. SELLERCLOUD Certifications and Audits.

10.1 SELLERCLOUD Certifications. In addition to the information contained in this DPA, upon Your request, and provided that the parties have an applicable NDA in place, SELLERCLOUD will make available the following documents and information: Any certificates and/or system and organization controls that SELLERCLOUD maintains for information system security.

10.2 SELLERCLOUD Audits. Should SELLERCLOUD periodically use external auditors to verify the adequacy of its security measures, including the security of the physical data centers from which SELLERCLOUD provides the Services. This audit when conducted: (a) will be performed periodically; (b) will be performed according to standards that are substantially equivalent to ISO 27001; (c) will be performed by independent third party security professionals at SELLERCLOUD's selection and expense; and (d) will result in the generation of an audit report ("Report"), which will be SELLERCLOUD's Confidential Information.

10.3 Audit Reports. At Your written request, and provided that the parties have an applicable NDA in place, SELLERCLOUD will provide You with a copy of the Report so that You can reasonably verify SELLERCLOUD's compliance with its obligations under this DPA.

10.4 Privacy Impact Assessment and Prior Consultation. Taking into account the nature of the SELLERCLOUD Services and the information available to SELLERCLOUD, SELLERCLOUD will assist You in complying with Your obligations in respect of data protection impact assessments and prior consultation pursuant to Articles 35 and 36 of the GDPR, by providing the information SELLERCLOUD makes available under this Section 10.

11. Your Audits. You agree to exercise any right You may have to conduct an audit or inspection, including under the Standard Contractual Clauses if they apply, by instructing SELLERCLOUD to carry out the audit described in Section 10. If You wish to change this instruction regarding the audit, then You have the right to request a change to this instruction by sending SELLERCLOUD written notice as provided for in the Agreement. If SELLERCLOUD declines to follow any instruction requested by You regarding audits or inspections, You are entitled to terminate this DPA and the Agreement. If the Standard Contractual

Clauses apply, nothing in this Section varies or modifies the Standard Contractual Clauses nor affects any supervisory authority's or data subject's rights under the Standard Contractual Clauses.

12. **Transfers of Personal Data.** Application of the Standard Contractual Clauses (Annex 2). The Standard Contractual Clauses (Annex 2) will apply to EU User Data that is transferred outside the EEA, either directly or via onward transfer, to any country not recognized by the European Commission as providing an adequate level of protection for personal data (as described in the GDPR). The Standard Contractual Clauses will not apply to EU User Data that is not transferred, either directly or via onward transfer, outside the EEA. Notwithstanding the foregoing, the Standard Contractual Clauses (or obligations the same as those under the Standard Contractual Clauses) will not apply if SELLERCLOUD has adopted Binding Corporate Rules for Processors or an alternative recognized compliance standard for the lawful transfer of personal data (as defined in the GDPR) outside the EEA.
13. **Termination of the DPA.** This DPA shall continue in force until the termination of the Agreement (the "Termination Date").
14. **Return or Deletion of User Data.** The SELLERCLOUD Services may provide You with controls that You may use to retrieve or delete EU User Data as described in the Documentation. Up to the Termination Date, You will continue to have the ability to retrieve or delete EU User Data in accordance with this Section. For 90 days following the Termination Date, You may retrieve or delete any remaining EU User Data from the SELLERCLOUD Services, subject to the terms and conditions set out in the Agreement, unless prohibited by law or the order of a governmental or regulatory body or it could subject SELLERCLOUD or its Affiliates to liability. No later than the end of this 90 day period, You will close all SELLERCLOUD accounts. SELLERCLOUD will delete EU User Data when requested by You by using any SELLERCLOUD Service controls provided for this purpose by SELLERCLOUD.
15. **Duties to Inform.** Where EU User Data becomes subject to confiscation during bankruptcy or insolvency proceedings, or similar measures by third parties while being processed by SELLERCLOUD, SELLERCLOUD will inform You without undue delay. SELLERCLOUD will, without undue delay, notify all relevant parties in such action (e.g. creditors, bankruptcy trustee) that any EU User Data subjected to those proceedings is Your property and area of responsibility and that EU User Data is at Your sole disposition.
16. **Entire Agreement; Conflict.** Except as amended by this DPA, the Agreement will remain in full force and effect. If there is a conflict between any other agreement between the Parties including the Agreement and this DPA, the terms of this DPA will control with respect to EU User Data.
17. **Definitions.** Unless otherwise defined in the Agreement, all capitalized terms used in this DPA will have the meanings given to them below:
  - "SELLERCLOUD Network" means SELLERCLOUD's and/or SELLERCLOUD's third party cloud computing service provider's data center facilities, servers, networking equipment, and host software systems (e.g., virtual firewalls) that are within SELLERCLOUD's control or the control of its third party cloud computing service provider and are used to provide the SELLERCLOUD Services.
  - "SELLERCLOUD Security Standards" means the security standards attached to the Agreement, or if none are attached to the Agreement, attached to this DPA as Annex 1.

“You” or “Your” means You and the entity You represent.

“EU User Data” means the “Personal Data” (as defined in the GDPR) of individuals located in a member country of the European Union, the UK, Iceland, Liechtenstein, Norway or Switzerland that is uploaded to the SELLERCLOUD Services using Your API or through other means.

“EEA” means the European Economic Area.

“GDPR” means Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

“Processing” has the meaning given to it in the GDPR and “process”, “processes” and “processed” will be interpreted accordingly.

“Security Incident” means a breach of SELLERCLOUD’s security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, EU User Data.

“Standard Contractual Clauses” means Annex 2, attached to and forming part of this DPA pursuant to the European Commission Decision of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC.

YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS SCHEDULE, AND AGREE TO BE BOUND BY ITS TERMS.