



SELLER AGREEMENT

(Standard Terms and Conditions for Makro Marketplace Program)

by and between

FIRST TECHNOLOGY NATIONAL (PTY) LTD

Registration Number: 2011/142102/07

(hereinafter referred to as "First Technology")

And

[Redacted]

Comment [RM1]: Insert

Registration Number: [Redacted]

Comment [RM2]: Insert

(hereinafter referred to as "the Seller")

INTRODUCTION

This Agreement is entered into by and between the First Technology and the Seller and is made effective as of the Effective Date. This Agreement contains the terms and conditions that govern the Seller's access to and use of the Marketplace Program and is an agreement between the Seller and First Technology. By registering for or using the Marketplace Program, the Seller agrees to be bound by the terms of this Agreement.

1. INTERPRETATION

- 1.1. Captions and clause headings used in this Agreement are used for convenience only and are not to be given any legal effect.
- 1.2. No provision shall be construed against or interpreted to the disadvantage of any Party by reason of such Party having or being deemed to have structured or drafted such provision. The rule of interpretation that an agreement will be interpreted against the Party responsible for the drafting and any similar rules of interpretation shall not apply to this Agreement and the Parties waive any rights they have to rely on such rules.
- 1.3. The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they shall operate after any such expiration or termination or which by necessity must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.
- 1.4. Terms other than those defined within this Agreement will be given their plain English meaning, and those terms, acronyms, and phrases known in the information technology shall be interpreted in accordance with their generally accepted meanings.
- 1.5. If any provision in the definition clause is a substantive provision conferring rights or imposing obligations on a Party, then, notwithstanding that such provision is contained in this clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.
- 1.6. If any conflict exists between the provisions of this Agreement and any Annexures attached hereto, the provisions of the Annexures shall prevail.
- 1.7. When any number of days is prescribed in this Agreement, same shall be reckoned to exclude the first and to include the last day.

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

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

2. DEFINITIONS

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

2.1.1. **"Affiliate"** means ~~any business that directly or indirectly through intermediate controls, is controlled by or is under common control with a wholly owned subsidiary of~~ First Technology;

2.1.2. **"Agreement"** means this Marketplace Supplier Agreement together with any Annexures hereto;

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

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

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

2.1.4.2. all trade secrets;

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

2.1.4.4. Transaction Information, all Payment Card Data and all Tax Codes of First Technology.

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

- 2.1.6. **“Customer”** means a customer purchasing products through the Makro Site;
- 2.1.7. **“Effective Date”** means the date last signed on the signature page of this Agreement;
- 2.1.8. **“Excluded Offers”** means private promotions offered only to all or a subset of Seller’s existing customers by e-mail or regular mail, and Public Promotions that First Technology has indicated in writing that it cannot support and an equivalent offer or promotion cannot be provided.
- 2.1.9. **“Intellectual Property Right”** means any patent, copyright, trademark, service mark, trade dress (including any proprietary “look and feel”), trade name, logo, moral right, trade secret and any other intellectual property right arising under any Law and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing;
- 2.1.10. **“Law”** shall mean any law, ordinance, rule, regulation, order, license, permit, judgment, decision or other requirement, now or hereafter in effect, of any governmental authority of competent jurisdiction, including without limitation the Consumer Protection Act 68 of 2008 and relevant South African National Regulatory of Compulsory Specifications requirements;
- 2.1.11. **“Losses”** shall mean any and all damages (including, without limitation, direct, consequential, economic, exemplary, future, incidental, indirect, noneconomic, past, special and punitive), sanctions, settlement payments, disbursements, judgments, liability, losses (including lost income or profit), costs or expenses of any nature whatsoever, whether accrued, absolute, contingent or otherwise, including, without limitation, attorneys’ fees and costs (whether or not suit is brought);
- 2.1.12. **“First Technology”** means First Technology National (Pty) Ltd, registration number 2011/142102/07, a private company duly registered in accordance with the Laws of South Africa, [and shall include all First Technology Affiliates](#);
- 2.1.13. **“Makro”** means Masstores (Pty) Ltd t/a Makro SA, registration number _____, a private company duly registered in accordance with the Laws of South Africa;
- 2.1.14. **“Makro Site”** means the Makro website and applications;
- 2.1.15. **“Marketplace Program”** means Makro’s Marketplace program;
- 2.1.16. **“On-Time Shipping Standard”** means the time specified for each Product [through the Partner Tool](#);
- 2.1.17. **“Orders”** means orders placed by a customer through the Makro Site for the purchase of products;
- 2.1.18. **“Partner Portal”** shall mean the web based tool provided by First Technology that Seller can use to manage its settings and Content, including all associated product listing requirements;

Comment [RM3]: This won’t be done through the Partner Tool?

- 2.1.19. **“Partner Tool”** shall mean any tool (including without limitation, the Partner Portal or other web services or interfaces) provided by First Technology or Makro or a Service Provider that Seller can use to manage its settings, Content and other information related to the Marketplace Program;
- 2.1.20. **“Party”** or **“Parties”** means, individually, First Technology or the Seller as the context requires and, together, First Technology or the Seller;
- 2.1.21. **“Payment Card”** shall mean a debit or credit type card used for financial transactions;
- 2.1.22. **“Payment Card Data”** means any information located on a Payment Card, such as, but not limited to, debit or credit card number, expiration date, pin number, cardholder name, or cardholder address;
- 2.1.23. **“PII”** means any information that can be used to identify an individual and/or information that constitutes personal identifiable information.
- 2.1.24. **“Products”** means the products that the Seller desires to sell on the Makro Site, and approved by First Technology, as indicated in Annexure B;
- 2.1.25. **“Product Information”** means the product information that First Technology requires as outlined in Annexure A;
- 2.1.26. **“Public Promotions”** means any public promotions generally available to all users of the Seller Site;
- 2.1.27. **“Referral Fee”** means the referral fee that First Technology will receive from each sale of the Seller’s Products made through the Marko Site as outlined in Annexure B;
- 2.1.28. **“Referral Fee Percentage”** means the referral fee equal to a percentage of Sales Proceeds as indicated in Annexure B;
- 2.1.29. **“Sales Proceeds”** means the gross sales proceeds from the sale of the Products, including VAT and excluding all shipping, handling and other charges with respect thereto;
- 2.1.30. **“Seller”** means _____, registration number _____, a private company duly registered in accordance with the Laws of South Africa;
- 2.1.31. **“Seller Customer Information”** shall mean customer information in Seller’s possession that was not received from First Technology as Transaction Information or in any other manner and was not obtained or received by Seller in connection with this Agreement or Seller’s rights and obligations under this Agreement;

Comment [RM4]: Insert details

- 2.1.32. **"Seller Marketplace Policy"** means the Seller's privacy policy that governs Seller's use of Customer information obtained in connection with the Marketplace Program;
- 2.1.33. **"Seller Marks"** means Seller's name, trademarks, service marks and logos;
- 2.1.34. **"Seller Share"** shall mean the total amount collected from the sale of the Products less the Referral Fee earned by First Technology for such Products;
- 2.1.35. **"Seller Site"** means the website set forth on the signature page of this Agreement, or any successor website of the Seller;
- 2.1.36. **"Service Provider"** means a third party that provides management software and services for the Marketplace Program;
- 2.1.37. **"System SLA"** means the system service level agreement, attached hereto as Annexure D-1.
- 2.1.38. **"Transaction Information"** means the Customer's Order information, including but not limited to the Customer's name, email address, shipping address.

Comment [RM5]: Does the Distributors have a website through which they sell?

3. RECITALS

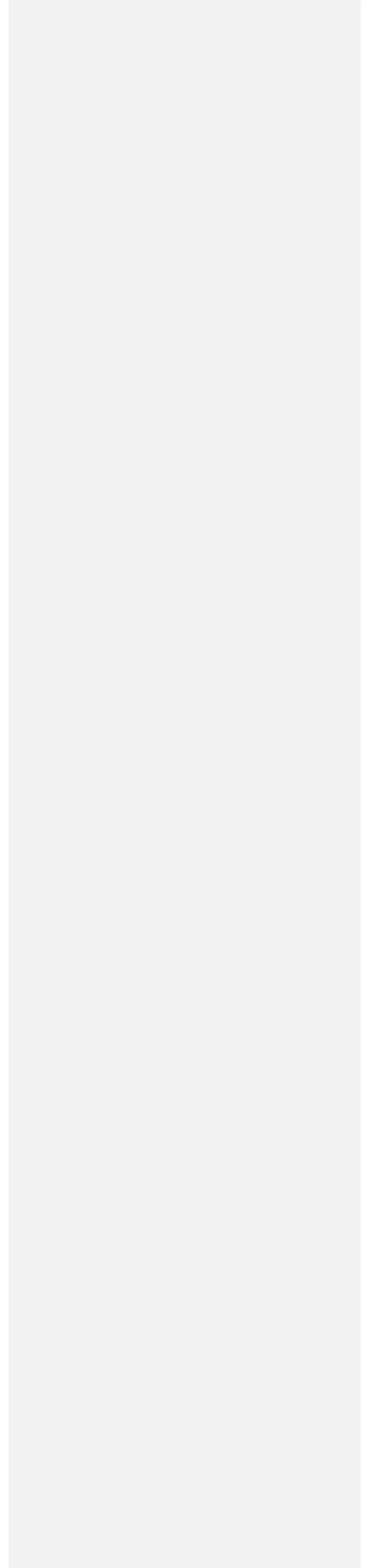
- 3.1. **WHEREAS** First Technology has exclusive rights to sell ICT products on the Makro website pursuant to Makro's Marketplace Program;
- 3.2. **WHEREAS** Seller offers products for sale on the Seller Site;
- 3.3. **WHEREAS** First Technology desires to permit selected third parties, including Seller, to sell their products on the Makro Site pursuant to Makro's Marketplace Program;
- 3.4. **WHEREAS** Seller desires to offer certain products that it sells on the Seller Site for sale through the Makro Site;

NOW, THEREFORE, the Parties agree as follows:

4. THIRD PARTY SERVICE PROVIDERS

- 4.1. Seller acknowledges and agrees that:
- 4.1.1. First Technology may contract a Service Provider to provide management software and services for the Marketplace Program; and

4.1.2. Seller may provide Content to First Technology using the software and/or services of a Service Provider.



5. LICENSE OF SELLER'S CONTENT

License for Content.

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

License for Marks.

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

6. PRODUCT INFORMATION AND OTHER CONTENT

Content for Products

- 6.1. Seller will transmit the Content per First Technology defined parameters and supply inventory counts via the Partner Tool specified by First Technology. Seller will:
- 6.1.1. use commercially reasonable efforts to provide First Technology at least every hour with an error-free updated inventory feed for only those Products where inventory levels have changed since the last inventory feed provided for such Product;
 - 6.1.2. provide First Technology with a daily inventory feed for all Products;
 - 6.1.3. provide First Technology with all Content requested by First Technology, including without limitation, the Product information set forth on Annexure A;
 - 6.1.4. only provide Content for Products that fit into the categories or parameters set forth on Annexure B.
- 6.2. The Seller will be held solely responsible for the accuracy of its Content for Products and will be obliged to honour any order placed by a Customer through the Makro Site as a result of the Content provided.

Comment [RM6]: Will distributors provide us with data feeds?

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Excluded Products.

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

Comment [RM7]: N/A – we determine which products we order from distributors

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Changes to Content.

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

7. PRODUCT AUTHENTICITY AND SAFETY

Authenticity/Authorization.

- 7.1. All Products sold through the Marketplace Program will be received by Seller directly from the brand owner or from an authorized supplier of the brand owner, and Seller must be an authorized reseller of the Products. Seller will maintain adequate processes and procedures for conducting diligence to assure that Products are authentic, authorized for sale, and not stolen, counterfeit, illegal or misbranded. Upon First Technology's request, Seller will promptly provide First Technology with:
- 7.1.1. certificates of authenticity (or similar documentation) for Products; and
 - 7.1.2. documentation (e.g. email verifications from the brand owner or supplier) showing that Seller is permitted to sell specific brands or Products through the Makro Site.

Safety, Testing and Certification.

- 7.2. Seller will comply with, and ensure that all Products comply with, all product safety, testing and certification requirements under applicable Law, including without limitation, the Consumer Protection Act, and all other Law.

8. FEES AND PAYMENTS

Referral Fees.

Comment [RM8]: N/A

- 8.1. First Technology will earn a Referral Fee equal to a percentage of Sales Proceeds from each sale of Seller's Products through the Makro Site. The Referral Fee Percentages for Seller's Products are set forth on Annexure B.

Payment.

- 8.2. First Technology will remit to Seller the Seller Share for Products shipped in each thirty-day period within seven (7) days of the end of such thirty-day period. At First Technology's option, all payments to Seller's bank account will be remitted through an Automated Clearing House system. If First Technology concludes that Seller's actions and/or performance in connection with this Agreement may result in customer disputes, chargebacks or other claims, then First Technology may, in its sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to Seller under this Agreement for the shorter of:

Comment [RM9]: Extend period – Makro pays us within 7 days

- 8.2.1. a period of ninety (90) days following the initial date of suspension; or
- 8.2.2. completion of any investigation(s) regarding Seller's actions and/or performance in connection with this Agreement.
- 8.3. As a security measure, First Technology may, but is not required to, impose transaction limits on Seller or some or all customers relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time.

9. PURCHASE/ORDER PROCESSING, FULFILLMENT AND SHIPPING

Orders

- 9.1. Seller will be the seller of record. Customers purchasing Products through the Makro Site will place Orders using the Makro checkout system and First Technology will collect all proceeds from such transactions. First Technology will electronically transmit to Seller the Transaction Information that First Technology determines Seller needs to fulfill each Order. First Technology will send an automated email message to each Customer confirming receipt of an Order.

Comment [RM10]: Will this be done by Makro or by FT?

Risk of Fraud and Loss

- 9.2. First Technology will bear the risk of credit card fraud occurring in connection with any Order and Seller will bear all other risk of fraud or loss and all costs related thereto. Notwithstanding the foregoing, First Technology will not bear the risk of credit card fraud in connection with any Product that is not shipped by Seller to the shipping address specified in the Transaction Information provided by First Technology, and Seller will be responsible for all costs related to such credit card fraud under these circumstances. For all credit card chargebacks for which Seller bears the risk, First Technology will offset such chargeback amounts against amounts otherwise owed Seller, or send Seller an invoice and Seller will pay such invoice within thirty (30) days of receipt.

Fulfillment of Orders

- 9.3. Once First Technology has transmitted an Order to Seller, Seller will, at its own expense, be solely responsible for, and bear all liability for, the fulfillment of the Order, including without limitation, packaging and shipping Products and customer service. If Seller cannot fulfill the entire quantity of a purchase order line in an Order, then Seller will cancel that purchase order line, fulfill all other lines in the Order and promptly notify First Technology of such cancellation. If the Order consists of one purchase order line that Seller cannot fulfill the entire quantity for, then Seller will cancel the entire Order and promptly notify First Technology. If Seller initiates the cancellation of any Order or c line in any Order, First Technology will promptly provide Customers with email notification of such cancellation. Seller will include information requested by First Technology (e.g., the First Technology Order number) in the cancellation email sent to First Technology.
- 9.4. All Packaging material for Products should not contain any Seller marketing or other materials that are not included as standard with regard to the specific product being sold.

Shipping

- 9.5. Seller is responsible for properly specifying shipping options for all Products through the Partner Tool as requested by First Technology and for properly handling all returns. Seller will provide First Technology through the Partner Tool with the shipping, handling and any other charges for each Product, separate from the purchase price, in accordance with First Technology's shipping calculation functionality. Seller will not enable shipping in the Partner Tool for any Product in any region where the sale of such product violates applicable Law.
- 9.6. Seller will be responsible for shipping all Products purchased by Customers in accordance with First Technology's standard shipping practices. Seller will be responsible for all shipping charges and for any costs or charges related to shipping-related problems, including without limitation, damaged or lost

Comment [RM11]: This will be FT's responsibility in this agreement?

Products, late shipments or misdelivery. Seller will ship each Product within the On-Time Shipping Standard after receipt of the Transaction Information from First Technology. If Seller cannot meet the On-Time Ship Standard for any Product, it will provide First Technology with email notification of such delay. Seller will be fully liable for any fines, costs or expenses assessed on First Technology or Seller by Makro or by a third party resulting from any failure to satisfy the On-Time Ship Standard for any Product and will indemnify and hold harmless First Technology and its Affiliates and their officers, directors, employees and agents for any losses, liabilities, fines, costs or expenses (including reasonable attorneys' fees) resulting from such failure. Seller will be solely liable for all costs related to any duplicate or inaccurate shipments based upon Seller's retransmission of **Order files through any Partner Tool**. Seller may only send a shipment confirmation notice to customers following shipment of an Order.

Comment [RM12]: Will orders be done through a partner tool?

9.7. During the Term, First Technology will provide Seller with reports on the status of Orders placed pursuant to this Agreement. The reports will be issued according to a schedule identified by First Technology to Seller from time to time while this Agreement is in effect. Seller will review each report upon receipt and provide First Technology with written notice of any discrepancies between the report and Seller's fulfillment of any Orders within a commercially reasonable time period after the date of the report, but no more than three **(3) business days** after the date of the report. Seller is solely responsible for monitoring and responding to reports provided by First Technology pursuant to this Agreement.

Comment [RM13]: Make 2 days. We have 3 days to notify Makro

9.8. If First Technology does not receive either:

9.8.1. notice of discrepancy of fulfillment of an Order, as set forth in subsection (c), above; or

9.8.2. a shipment confirmation notice from Seller within thirty **(30) days** of placement of the Order;

Comment [RM14]: See previous comment

then the Order may be automatically cancelled by First Technology and Seller will be solely liable and responsible for all Product costs and shipping costs associated with such cancelled Order and Seller forfeits any claims for any payments of Referral Fee otherwise payable under this Agreement related to such cancelled Orders.

10. CANCELLATIONS, RETURNS AND REFUNDS

Responsibilities

10.1. **Seller** is responsible for processing all Customer cancellations, returns, refunds and/or customer service price adjustments. Seller will stop and/or cancel any Order if requested by First Technology; provided that if Seller has transferred Products to a shipper, Seller will use commercially reasonable efforts to stop and or cancel delivery by the shipper. Seller's return and refund policies for Products sold **through the Makro Site** will be no less favorable to Customers than Seller's most favorable policies offered on the Seller Site for such Products. Seller will notify First Technology of any material changes to Seller's

Comment [RM15]: This will be FT's responsibility.

Comment [RM16]: Seller won't sell through the Makro Site, correct?

customer return, refund or price adjustment policies at least five (5) days prior to Seller's implementation of such changes.

Refunds

10.2. First Technology retains the right to accept or reject all refunds and exchanges by Customers. This will be determined via ~~the Makro's~~ 14-Day Guarantee process. Seller will be responsible for all exchanges, where applicable. If Seller determines a Customer is due a cash refund (e.g., via a refund to the Customer's credit card, debit card or other form of original payment) Seller will notify First Technology via the interface designated by First Technology and include other related information requested by First Technology. For cash refunds First Technology will provide the refund to the Customer via the Customer's original payment method (e.g., credit or debit card) if possible and First Technology will deduct any applicable referrals fees once refund has been accepted and processed. Seller will be responsible for all applicable reverse logistics costs incurred in ensuring that product returned from the buyer or relevant First Technology store is returned back to Seller.

Comment [RM17]: FT will be responsible for exchanges

Comment [RM18]: Referral fee N/A

11. **PARITY WITH SELLER SALES CHANNELS**

Parity

Comment [RM19]: Applicable?

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

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

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

11.1.3. the Content provided by Seller to First Technology for the Makro Site:

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

- 11.1.3.1.2. provides users of the Makro Site with at least as much product information, images and other content as the information provided on the Seller Site.
- 11.2. If Seller becomes aware of any non-compliance with 11.1 above, Seller will promptly notify First Technology and compensate adversely affected Customers by making appropriate refunds to such Customers in accordance with the procedures set forth in Section 10 for providing customers with cash refunds.

Special Offers and Promotions

- 11.3. Seller will notify First Technology by email at specials@ftmarketplace.co.za (or through any Partner Tool specified by First Technology) of all special offers and promotions (i.e., where Seller discounts an item or items by a certain amount for a certain period of time) offered on the Seller Site. Seller will make special offers and promotions available to First Technology Customers in connection with the Marketplace Program, and will use commercially reasonable efforts to allow First Technology to support any such special offer or promotion through the Partner Tool. If Seller makes any Public Promotions generally available to all users of the Seller Site and First Technology cannot support such Public Promotion, then Seller will provide an equivalent offer or promotion to First Technology Customers to the extent possible. For example, if Seller lists a promotion code on the Seller Site that can be used by any customer for 10% off specific Products or all Products sold on the Seller Site and First Technology cannot support the promotion code, Seller will reduce the price of such Product or all Products, as applicable, through the Partner Tool by 10% for the duration of the special offer or promotion on the Seller Site. Seller will work in good faith with First Technology to maximize the number of Seller offers and promotions (including equivalent offers and promotions) made available to First Technology Customers.
- 11.4. First Technology may choose, in its sole discretion, not to permit certain special offers or promotions offered by Seller on the Makro Site (e.g., where First Technology cannot support the special offer or promotion) and may request that Seller filter out any such special offers or promotions. Notwithstanding the foregoing, Seller will not be required to make Excluded Offers available to First Technology Customers, provided that, if First Technology is able to support any Excluded Offer at any time during the Term and desires to do so, it will notify Seller and after receipt of such notification, Seller will make such special offer or promotion available to First Technology in connection with the Marketplace Program.

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12. **RECALLS AND DEFECTS**

- 12.1. Seller is solely responsible for any non-conformity or defect in, or any public or private recall of Seller's Products. First Technology will have no responsibility or liability for any recalls of Products sold through the Makro Site. If Products are subject to a recall, Seller is responsible for all matters, costs and

expenses associated with such recall, including without limitation, notices and refunds to Customers, contact and reporting of the recall to any governmental agency having jurisdiction over the affected Products, and compliance with all applicable Law with respect to such recall. Seller will promptly remove any recalled Products from the Makro Site by unpublishing or retiring the Product through the Partner Tool. Seller will notify First Technology (by both e-mail at ordermanagement@ftmarketplace.co.za and by one of the methods set forth in clause 28.2.) of all Product recalls within 24 hours of becoming aware of the recall. Seller will promptly provide First Technology with all information reasonably requested in connection with the recall of any Product.

13. CONTACT WITH CUSTOMERS AND CUSTOMER SERVICE ESCALATION

Customer Service Provided by Seller

- 13.1. Seller will be responsible for all customer service (including without limitation, warranty claims), except for issues related to payment, and Seller will always represent itself as a separate entity from First Technology in providing customer service for its Products sold through the Makro Site. Neither Party will disparage the other party or its affiliates or its or their products or services when performing obligations under this Agreement. If Seller monitors or records its customer service calls, Seller must give notice of such monitoring or recording to all Customers each time such Customer calls Seller prior to providing any customer service.

Comment [RM20]: FT will be responsible for customer service?

Customer Service Escalation

- 13.2. First Technology reserves the right to provide a customer service adjustment (not to exceed the total amount paid by such Customer in connection with the Products, including without limitation, taxes and gift wrapping and shipping fees) to a Customer that First Technology reasonably determines has not been dealt with correctly by Seller's customer service in accordance with the guidelines set forth in Annexure C, which First Technology may update from time to time, and offset such amounts against amounts otherwise owed Seller or by billing Seller for such amounts.

14. SERVICE LEVELS

- 14.1. Seller will maintain compliance with:

- 14.1.1. The System SLA, attached hereto as Annexure D-1, in connection with Seller's systems that, directly or indirectly, impact the First Technology systems or the Marketplace Program; and

- 14.1.2. the Order and Customer Service Level Agreement, attached hereto as Annexure D-2. If Seller hosts any Content displayed on the Makro Site, Seller will host such Content and any underlying URL containing such Content in compliance with the System SLA.

15. REPORTING AND AUDITS

Reporting

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

Audit Rights

- 15.2. Seller will keep accurate and complete books, records and accounts related to Marketplace Program transactions and this Agreement, and will allow First Technology, or its duly authorized representative, the right, upon not less than five (5) business days prior written notice, during the Term of this Agreement and for two (2) years after its termination or expiration, to conduct, during regular business hours, full and independent audits and investigations of all information, books, records and accounts reasonably required by First Technology to confirm Seller's compliance with the terms of this Agreement and applicable Law.

Certifications

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

16. REPRESENTATIONS AND WARRANTIES

- 16.1. Each Party hereby represents and warrants to the other Party the following:

Authority

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

No Conflicts

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

16.4. Seller hereby represents and warrants to First Technology the following:

Power and Authority

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

Compliance with Laws

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

Principal Place of Business

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

Content

- 16.4.4. All Content will be truthful and accurate. Content will not:
- 16.4.4.1. be misleading or deceptive
 - 16.4.4.2. be defamatory, libelous, threatening or harassing;
 - 16.4.4.3. infringe upon or violate any Intellectual Property Rights or other right of any third party;
 - 16.4.4.4. promote or depict gratuitous violence, the use of alcohol, tobacco or illegal substances or adult-oriented content; or
 - 16.4.4.5. reflect unfavorably on First Technology, its Affiliates, or the Makro Site or be the type of content that could otherwise reasonably adversely impact or damage the reputation or public image of First Technology or its Affiliates. Seller will not use the Content to redirect First Technology Customers to any other sales channels.

Products

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

Personnel

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

Ongoing Warranties

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

Comment [RM21]: N/A – Distributors won't sell through Makro Site

17. **CONTROL OF MAKRO SITE**

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

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

17.1.2. the Marketplace Program.

18. **OWNERSHIP AND USE OF TRANSACTION INFORMATION**

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

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

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

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

18.1.4. target communications of any kind on the basis of the intended recipient being a First Technology user.

18.2. The foregoing does not prevent Seller from using Seller Customer Information, provided that Seller does not target communications on the basis of the intended recipient being a First Technology user.

18.3. Seller will provide First Technology, through the Partner Tool, with the Seller Marketplace Privacy Policy. The Seller Marketplace Privacy Policy will comply with the Privacy Policy Guidelines set forth on Annexure F and any additional guidelines provided by First Technology to Seller in writing.

19. **RATINGS AND REVIEWS**

Comment [RM22]: N/A

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

20. **SUGGESTIONS AND FEEDBACK**

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

21. **CONFIDENTIAL INFORMATION AND INFORMATION SECURITY**

Obligations

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

- 21.1.1.1. use the Disclosing Party's Confidential Information only to perform its obligations and exercise rights under this Agreement; and
- 21.1.1.2. disclose the Disclosing Party's Confidential Information only to the Receiving Party's personnel, contractors and affiliates that:
 - 21.1.1.2.1. have a need to know the information to assist the Receiving Party with fulfilling obligations under this Agreement; and
 - 21.1.1.2.2. have agreed to keep the information confidential in accordance with the terms set forth herein.

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

- 21.2.1.1. any PII at all times and as required by this Agreement and any applicable Law;
- 21.2.1.2. any trade secrets of the Disclosing Party; and
- 21.2.1.3. the terms of this Agreement.

21.3. Seller agrees that First Technology may share Seller's Confidential Information with its Affiliates for internal use only.

Exceptions

- 21.4. The obligations of either Party under this Section will not apply to information that the Receiving Party can demonstrate:
- 21.4.1. was in its possession at the time of disclosure and without restriction as to confidentiality;
 - 21.4.2. at the time of disclosure is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act or failure to act by the Receiving Party; provided, however, PII remains subject to confidentiality obligations regardless of its availability to the public or availability through unauthorized disclosure;
 - 21.4.3. has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by such third party or the Receiving Party; or

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

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

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

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

Information Security

21.6. Seller will comply with the Information Security Addendum attached hereto as Annexure G.

Comment [RM23]: This is not attached.

22. **TERM TERMINATION AND SUSPENSION**

Term

22.1. This Agreement will commence on the Effective Date and will continue until terminated in accordance with the terms and conditions set forth in this Agreement.

Termination or Suspension for Cause

22.2. If a Party materially breaches any provision of this Agreement and fails to remedy the breach within thirty (30) days of receipt of written notice from the nonbreaching Party, the nonbreaching Party may terminate this Agreement or, in the case of First Technology as the nonbreaching Party, suspend any rights of Seller under this Agreement until Seller remedies the breach in a manner acceptable to First Technology. Neither termination nor suspension under this Section 24.2 limits either Party from pursuing any other remedies available to the Party, including, but not limited to, injunctive relief.

Termination in Event of Insolvency or Bankruptcy

22.3. Either Party may terminate this Agreement upon written notice to the other Party in the event:

22.3.1. the other Party files a petition for bankruptcy or is adjudicated a bankrupt;

22.3.2. a petition in bankruptcy is filed against the other Party and such petition is not dismissed within ninety (90) calendar days;

- 22.3.3. the other Party becomes or is declared insolvent or makes an assignment for the benefit of its creditors or an arrangement for its creditors pursuant to any bankruptcy or other similar law;
- 22.3.4. the other Party ceases to do business in the normal course; or
- 22.3.5. a receiver is appointed for the other Party or its business.

Termination for Convenience

- 22.4. Either Party may terminate this Agreement for any reason by giving thirty (30) days' prior written notice to the other Party, provided that Seller may not provide notice of termination pursuant this Section 22.4, under which the effective date of the termination would occur between November 1st and December 31st of any calendar year.

Post-Termination Obligations

- 22.5. Seller will continue to have obligations under this Agreement after termination of the Agreement, including without limitation, the obligation to:
 - 22.5.1. provide customer service to Customers who purchased Products on the Makro Site;
 - 22.5.2. pay any invoices delivered by First Technology in connection with the Agreement;
 - 22.5.3. notify First Technology and Customers of any recalls of its Products;
 - 22.5.4. remit any taxes collected to the proper jurisdiction(s); and
 - 22.5.5. immediately notify First Technology of any security breach that allows a third party to view or access or otherwise compromises any Transaction Information.
- 22.6. First Technology will pay Seller the Seller Share attributable to Orders placed by Customers prior to the termination of the Agreement in accordance with the payment terms set forth in Section 8.2.

Survival

- 22.7. The provisions of this Agreement which by their nature are intended to survive termination of the Agreement (including, without limitation, Sections 5.1, 9, 10, 12, 13, 15.2, 16, 18.1, 20, 21, 22, 23, 24, 25, 26, 27, 28.1 - 28.3, 28.5 - 28.10, and 28.12) will survive its termination.

23. INDEMNIFICATION

Indemnification Obligations

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

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

23.1.2. the Seller Site and other sales channels, the Content or the Products (including, without limitation, the offer, sale, refund, or return of Products) or any violation of Law with respect to the foregoing, or any actual or alleged infringement of any Intellectual Property Right by any of the foregoing, or personal injury, death or property damage related thereto or arising therefrom; and

23.1.3. any and all income, sales, use, ad valorem, and other taxes, surcharges, fees, assessments or charges of any kind whatever, together with any interest, penalties and other additions with respect thereto, imposed by any federal, state, local or foreign government in any way related to the sale of the Products on the Makro Site, specifically excluding, however, any such taxes related to First Technology's net income.

23.2. The term "taxes" is further defined to include and refer to any class action or qui tam legal claims grounded in an allegation or allegations that First Technology bears some civil or criminal liability for over- or under-collection of any tax or fee on sales of Products offered by Seller.

Procedure for Indemnification

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

Conflict

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

Settlement

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

24. WARRANTY DISCLAIMER

24.1. NEITHER FIRST TECHNOLOGY, NOR ITS AFFILIATES, OFFICERS, DIRECTORS, LICENSORS, SUPPLIERS, EMPLOYEES OR AGENTS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, THAT THE FIRST TECHNOLOGY SITE, THE MARKETPLACE PROGRAM, ANY PARTNER TOOL, SERVICES PROVIDED BY FIRST TECHNOLOGY OR ANY SERVICE PROVIDER, OR SOFTWARE USED TO PROVIDE THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE OR ERROR-FREE, AND SELLER AGREES THAT FIRST TECHNOLOGY WILL NOT BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS OR ERRORS, INCLUDING WITHOUT LIMITATION, SYSTEM OR SOFTWARE FAILURES OR OTHER INTERRUPTIONS THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION OR SETTLEMENT OF ANY TRANSACTIONS. NEITHER FIRST TECHNOLOGY NOR ITS AFFILIATES, OFFICERS, DIRECTORS, LICENSORS, SUPPLIERS, EMPLOYEES OR AGENTS MAKE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, TO SELLER WITH RESPECT TO THE SALE OF SELLER'S PRODUCTS THROUGH THE MAKRO SITE PURSUANT TO THIS AGREEMENT, AND ALL SUCH SERVICES PROVIDED BY FIRST TECHNOLOGY ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS. FIRST TECHNOLOGY AND ITS AFFILIATES, EMPLOYEES, DIRECTORS, OFFICERS, AGENTS, LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS AND

THOSE IMPLIED WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

25. LIMITATION OF LIABILITY

No Consequential Damages

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

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

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

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

Monetary Cap

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

26. INSURANCE

Insurance

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

Insurance Procedures

26.2. Seller will provide at least thirty (30) days' written notice prior to any cancellation of any policy of insurance maintained hereunder. Seller's insurance will be considered primary, non-contributory and not excess coverage. All insurance will be written by carriers with a BEST Guide rating of A- VII or better. Certificates of insurance will be furnished to First Technology upon First Technology's request.

27. **CHOICE OF LAW, JURISDICTION AND VENUE**

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

28. **GENERAL**

Assignment

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

Notices

28.2. First Technology will send all notices, requests, demands, waivers and other communications to Seller at the email address set forth herein, or such other email address as provided to First Technology pursuant to the notice procedures set forth herein, or by any other means specified by First Technology. Seller will send all notices, requests, demands, waivers and other communications to First Technology by email at the email addresses set forth below, or by any other means specified by First Technology.

For First Technology:

Masstores (Pty) Ltd trading as First Technology SA

Attention: A Sharp

Email: arnolds@firsttech.co.za; yuraisham@firsttech.co.za

For Seller:

The address set forth on the signature page to this Agreement.

Integrated Agreement

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

Amendments

28.4. First Technology may amend the terms of this Agreement (including without limitation, any Annexures hereto) from time to time and will either post such amendments to the Partner Tool or provide Seller with notice of such amendment as set forth in Section 28.2 (each, an "Amendment Notice"). Amendments will be effective thirty (30) days after such Amendment Notice has been posted or sent to Seller as set forth above. If Seller objects to any amendment to the terms of this Agreement (including any Annexure hereto), Seller should terminate this Agreement in accordance with Section 22.4. IF SELLER CONTINUES TO PARTICIPATE IN THE MARKETPLACE PROGRAM AFTER THE EFFECTIVE DATE OF ANY AMENDMENT, SELLER WILL BE DEEMED TO HAVE AGREED TO AND ACCEPTED ANY MODIFICATIONS SET FORTH IN THE AMENDMENT.

Waiver

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

Severability

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

Independent Contractors

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

Further Assurances

28.8. Each Party agrees that it will, from and after the date of this Agreement, execute and deliver such other documents and take such other actions as may reasonably be requested to effect the transactions contemplated hereunder.

Publicity

28.9. Except as specifically provided herein, neither Party will use the name, logo, trademarks or trade names of the other Party or otherwise, directly or indirectly, refer to the other party in publicity releases,

promotional material, customer lists, advertising, marketing or business-generating efforts, whether written or oral, without obtaining such Party's prior written consent. Notwithstanding the foregoing, First Technology will have the right to refer to Seller as a participant in the Marketplace Program in marketing and promoting the Marketplace Program.

Nonexclusive

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

Force Majeure

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

Partner Tool

28.12. Seller is solely responsible for maintaining the security of its password for any Partner Tool and for all action taken in connection with its account. If Seller has knowledge or suspects that its password has been compromised, Seller will immediately notify First Technology and fully cooperate with First Technology in investigating and preventing any further breach to First Technology's systems.

Counterparts

28.13. This Agreement may be executed in counterparts or duplicate originals, all of which will be regarded as one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representative as of the Effective Date.

SELLER:

FIRST TECHNOLOGY NATIONAL (PTY) LTD:

[_____]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Seller Site: _____

Seller's State of Organization: _____

Address of Seller's Principal Place of Business:

Address for Notices to Seller:

Attention: _____

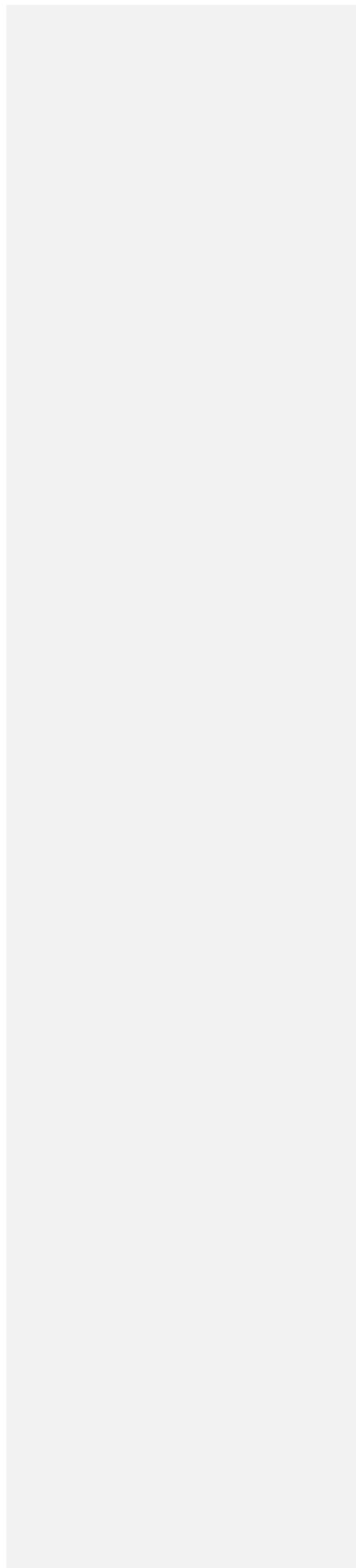
Email: _____

Seller Contact for Data Incident:

Name: _____

Email: _____

Phone: _____



ANNEXURE A

REQUIRED PRODUCT INFORMATION

Required Item Data Elements

The table below outlines the core required data elements that Seller shall include for each Product through the Partner Tool, which First Technology may update from time to time by providing Seller with notice pursuant to Section 26.2 or posting the updates on the Partner Tool. The core data elements are applicable to all types of items. However, some data elements may be conditionally required as set forth below. Seller shall also provide additional data elements required for items in specific categories upon First Technology's written request. Base variant items and associated item relationships will conditionally require additional data elements as set forth in the Partner Tool. Seller shall also provide First Technology with all warnings or disclaimers required to be posted with respect to the Products and Seller will notify First Technology in writing of all such requirements for its Products regardless of whether Seller is then capable of entering such information through the Partner Tool. Any information provided by First Technology to Seller, including without limitation, in this Agreement or through any Partner Tool, regarding product safety Laws and compliance with requirements thereunder is provided for informational purposes only and First Technology makes no representation that such information is accurate or complete and First Technology is under no requirement to provide or update such information.

Group Name	Local Label Name	Definition and Use	Required
Basic - These are attributes that are important to buyers and should be populated for all your items. Some are required to create an offer.			
	GUID	A unique identifier for the product, assigned by the merchant. The SKU must be unique for each product listed. After you have established a SKU for a product, please do not change it without first deleting the original SKU from our systems through a delete feed. The product's unique ID in FT Marketplace platform (GUID)	Required
	Barcode Number	A standard, alphanumeric string that uniquely identifies the product. This could be a GCID	Required

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		(16 alphanumeric characters), UPC or EAN. This is a required field.	
	Barcode Type	The type of standard, unique identifier entered in the Barcode field. This is a required field if Barcode is provided.	Required
	Product Exemption Reason	Please select "CustomProductBundle" to indicate if this product listing is a customized bundle or 2 or more products, or "ReplacementPart" if this product is a replacement part, or part of a set. Leave this blank for all other types of products.	Optional
	Related Product Identifier	Identify a product related to your listing by providing the correct ASIN, UPC, EAN, GCID or GTIN for the related product. For bundles, identify one of the products contained within the bundle. For replacement parts, identify a product the part is compatible with. For parts of a set, identify the set."	Optional
	Related Product Identifier Type	Indicates the type of identifier provided, e.g. ASIN, UPC, EAN, GCID or GTIN.	Optional
	Title	A short title for the product, including the colour and size if applicable. This will be displayed in bold on the product page and in the title bar of the browser window.	Required
	Brand	The brand of the product. By populating this field, your brand name will be displayed on the First Technology.co.za site. If you are not listing a branded product please populate 'Generic' in this field.	Required
	Manufacturer	Specify the manufacturer for your product.	Optional
	Description	A text description of the product. If you see	Preferred

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		#### signs where you should see the text, clear the format of the cell. This can be done by clicking Edit in main menu, select Clear & then Formats.	
	Category	This determines what browse node(s) the item will be assigned to. Please consult the BMC Guide for the best value(s) to use for your product. If no values are provided, your product will not be browsable.	Required
	Mfr Part Number	If applicable, please submit the manufacturer's part number for the product. For most products, this will be identical to the model number; however, some manufacturers distinguish part number from model number.	Preferred
Offer - These attributes are required to make your item buyable for customers on the site			
	National	The product is available for purchase anywhere in South Africa	Optional
	List Price	The previous price for the product	Preferred
	Standard Price	A price greater than 0. Do not include thousands separators or currency symbols. The item will not be displayed on the site without a standard price.	Required
	Promo	The type of pricing. VPK0 is normal pricing, while VPA0 is promotional pricing	Optional
	Promo Number	The name of the promotion (optional)	Optional
	Promo End	The start date for the promotion (optional)	Optional
	Promo Start	The end date for the promotion (optional)	Optional
		The unit price of the product	Yes

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	Quantity	Merchant-fulfilled products: Enter the quantity of the item you are making available for sale. This is your current INVENTORY commitment. Quantity is required for all "child" or stand-alone items. If left blank when first submitting the product information, the item will be displayed as "Out of stock."	Required
Dimension - These attributes specify the size and weight of a product			
	UOM	The unit of measure of the product	Required
	Unit	How many units of products are in the Unit of Measure (UOM)	Required
	PackLength	The length of the product in its shipping packaging	Optional
	PackWidth	The width of the product in its shipping packaging	Optional
	PackHeight	The length of the product in its shipping packaging	Optional
	Length	The product length	Optional
	Width	The product width	Optional
	Height	The product height	Optional
	UnitOfDimension	The unit of dimension used for the dimension fields	Optional
	Volume	The volume of the product	Optional
	VolumeUnit	The unit used to measure the volume	Optional
	Shipping Weight	The weight of the product when packaged to ship. This is displayed on the product page	Preferred

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		and used to calculate shipping costs for weight-based shipping, if available. If you've chosen the weight-based shipping option, you must supply a value in this cell for all of your shippable products.	
	Website Shipping Weight Unit Of Measure	The unit of measure used to describe the weight of the product when packaged to ship, expressed in grams, kilograms, ounces, or pounds.	Optional
Discovery - These attributes have an effect on how customers can find your product on the site using browse or search			
	Bullet Point1 - Bullet Point5	Brief descriptive text, called out via a bullet point, regarding a specific aspect of the product. These display directly under or next to your product photo, it is useful to put interesting information in these fields. Bullet points will be inserted automatically.	Preferred
Image - These attributes provide links to images for a product			
		Product Image fields	Yes
	Main Image URL	The URL where a main image of the product is located. It's important that this is supplied for all products.	Required
Attributes			
		Key attributes of the product, select from the FAB list	Required
		Populate the product page FAB section.	
Other -			
		The file name of the brand image to use	Optional

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		The product's colour (optional)	Optional
		The product's size (optional)	Optional
		The product warrantee or guarantee	Optional
		Base Unit of Measure	Required
		The store the stock level applies to	Optional
		The stock indicator based on the SAP forward stock cover. Options are I for IN stock, L for Low Stock, and O for Out of Stock	Optional

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ANNEXURE B

REFERRAL FEE PERCENTAGES

First Technology shall determine the applicable Referral Fee Percentage for each Product based on such Product's categorization under the Base Merchandise Category (BMC) system. Seller may only offer Products for sale through the Makro Site if such Products are categorized under any BMC authorized in the first column below or are otherwise authorized for sale by First Technology in writing.

Box Checked For Product Types Seller is Permitted to Sell	Product Type	Referral Fee Percentage
<input type="checkbox"/>	Apparel	15%
<input type="checkbox"/>	Apparel Accessories	15%
<input type="checkbox"/>	Automotive	12%
<input type="checkbox"/>	Baby	15%
<input type="checkbox"/>	Beauty	15%
<input type="checkbox"/>	Camera and Photo	8%
<input type="checkbox"/>	Cell phones & Accessories	15%
<input type="checkbox"/>	Computer Accessories	15%
<input type="checkbox"/>	Computer Hardware	6%
<input type="checkbox"/>	Consumer Electronics Accessories	15%
<input type="checkbox"/>	Consumer Electronics Hardware (including video game consoles)	8%

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Box Checked For Product Types Seller is Permitted to Sell	Product Type	Referral Fee Percentage
<input type="checkbox"/>	Fabrics and Crafts	15%
<input type="checkbox"/>	Gourmet Food	15%
<input type="checkbox"/>	Grocery	15%
<input type="checkbox"/>	Health and Personal Care	15%
<input type="checkbox"/>	Home (including Kitchen, Garden, Small and Large Appliances)	15%
<input type="checkbox"/>	Institutional Supply	15%
<input type="checkbox"/>	Jewelry	20%
<input type="checkbox"/>	Media (Video Games, Music, Books, Software)	15%
<input type="checkbox"/>	Musical Instruments	12%
<input checked="" type="checkbox"/>	Office Products	15%
<input type="checkbox"/>	Pets	15%
<input type="checkbox"/>	Plumbing, Heating, Ventilation & Air Conditioning	10%
<input type="checkbox"/>	Shoes	15%
<input type="checkbox"/>	Sporting Goods	15%

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Box Checked For Product Types Seller is Permitted to Sell	Product Type	Referral Fee Percentage
<input type="checkbox"/>	Tools & Hardware	12%
<input type="checkbox"/>	Toys	15%
<input type="checkbox"/>	Watches	15%

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ANNEXURE C

CUSTOMER SERVICE ESCALATIONS

HOW CAN A CUSTOMER SUBMIT AN ESCALATION REQUEST TO FIRST TECHNOLOGY?

Customers can submit a customer service escalation request for a Marketplace transaction (“**CS Escalation Request**”) via the “Contact us” section of the Makro Site or via the Online Customer Support Contact Centre. The “Contact us” section will include the First Technology Marketplace Program Customer Service Policy as well as instructions and a web form for filing a request.

WHEN CAN A CUSTOMER SUBMIT A CS ESCALATION REQUEST TO FIRST TECHNOLOGY?

First Technology expects customers to work directly with Seller for any issues that may arise prior to or after delivery of any Products. However, in situations where a customer feels he or she has not been adequately assisted by Seller, the customer can submit a CS Escalation Request to First Technology’s Customer Service Department.

1. A customer can submit a CS Escalation Request during the 60-day period commencing seven (7) days following the maximum Estimated Delivery Date set forth in the customer’s Order confirmation email for the Product(s) at issue.

WHAT PURCHASES ARE COVERED UNDER THE FIRST TECHNOLOGY MARKETPLACE CUSTOMER SERVICE POLICY?

The First Technology Marketplace Customer Service Policy covers Products purchased from the Makro Site that meet the following criteria:

- Customer did not receive one or more Products from an Order;
- Product(s) received by Customer are materially different from what was shown on the Makro Site, including without limitation, for the reasons set forth below. Please note that this escalation criteria does not extend to cases where a Customer is simply disappointed with a Product. First Technology will determine whether a Product received by a Customer is “materially different” at its sole discretion.

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- Damaged Product
- Defective Product
- Wrong version / edition
- Product condition/details not as described during purchase
- Wrong Product delivered
- Missing parts / components
- Product was returned per Seller's return instructions but no refund or replacement was received by Customer.

HOW WILL FIRST TECHNOLOGY PROCESS A CS ESCALATION REQUEST?

First Technology will process a CS Escalation Request only if the Customer has had at least one prior contact with Seller regarding Customer's issues with the Product prior to escalating to First Technology. Further, this contact should have occurred within Seller's refund / return window.. If these conditions are not met, First Technology will direct the Customer to contact Seller for resolution and any open CS Escalation Request will be closed without any further action from First Technology. The customer service escalation process is set forth in more details as follows:

1. Once a CS Escalation Request is submitted to First Technology by the Customer via the online form or via the Online Customer Support Contact Centre, all relevant details will be sent to the Marketplace Contact Centre who will make contact with the relevant Seller. .
2. Seller will have 2 working week days to respond to the CS Escalation Request.
3. If Seller responds to the CS Escalation Request within the allotted 2 working week days day period then a select group of First Technology customer service agents will evaluate the action taken for completeness and close the CS Escalation Request. First Technology prefers that Seller assist the Customer directly and First Technology will close the CS Escalation Request once Seller has resolved the issue and no further action will be taken by First Technology.
4. If Seller fails to respond to the CS Escalation Request within the allotted 2 working week days day period then First Technology will resolve the issue as appropriate using internal guidelines. In such cases, First Technology reserves the right to deduct from Seller payables any

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compensation given to the Customer up to 100% of the value of the Order including tax, shipping, gift wrap and any other value-added-services that were included in the Order.

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ANNEXURE D-1

SYSTEM SERVICE LEVEL AGREEMENT

Seller shall maintain compliance with the following System Service Level Agreement in connection with Seller's systems that impact the First Technology systems (including without limitation, the Makro Site) or the Marketplace Program (including without limitation, systems related to the delivery of Content (including without limitation, through a Service Provider) to First Technology).

1. **Uptime.** Seller systems shall ensure uptime and availability of 99.0% year round and 99.9% from November 1st – January 10th (the "**Holiday Freeze Period**") Seller systems (defined as one or more connected or unconnected computers, peripheral devices, website(s) software, data, program communications, facilities, and computer networks) 24 hours a day, 7 days a week 365 days a year.
2. **Scalability.** At least once a year First Technology shall provide Seller with the current year's peak capacity numbers for orders per hour. Seller systems shall support at least 35% above projected peak capacity. This capacity should be over and above any other capacity requirements for other systems or customers.
3. **Holiday Freeze Restrictions.** In order to minimize any risk of an unscheduled outage that disrupts customers and sales during the busiest time of year, First Technology imposes a 'freeze' period on system changes. Sellers are NOT to make any changes to their systems that could affect the First Technology systems (including without limitation, the Makro Site) or the Marketplace Program without prior written approval from First Technology.
4. All planned maintenance, security patches, system upgrades, IP address changes, etc. must be completed prior to November 1st. No changes will be made on the First Technology systems (including without limitation, the Makro Site) during the Holiday Freeze Period.

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5. Scheduled Maintenance and Unscheduled Outages. Scheduled maintenance requires at least five (5) days prior written notice, as outlined in Appendix B. Unscheduled outages need to comply with Uptime requirements (set forth in Section 1 above) and be reported within 5 working days using the COE form attached Appendix A.
6. Redundancy. Using economically viable practices, provide system redundancy for any key single point of failure such as main server, database, and networking.
7. Files Transfer. Files will be sent using XML.
8. System Management. Seller shall employ basic system monitoring and control procedures to ensure uptime compliance.
9. Backup. Seller is responsible for making a complete backup of the system weekly, with incremental backups daily.
10. Continuity Management. Seller shall have an adequately tested continuity plan in place which identifies critical IT resources in case of a disaster within or around the geographic location of Seller's main IT source, allowing a return to functionality within twenty-four (24) hours.

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ANNEXURE D-2

ORDER AND CUSTOMER SERVICE LEVEL AGREEMENT

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

- 28.13.1. Seller will maintain an On-Time Ship Standard of at least 99%.
- 28.13.2. Seller will accurately ship the correct Product to the correct Customer at a rate of 99.5% of all Products shipped.
- 28.13.3. Seller will maintain inventory to fulfill Customer Orders that result in a cancel rate (excluding Customer requested cancellations) of 1.5% or less;
- 28.13.4. Returns due to damaged or defective Products shall not exceed 3% of Sales Proceeds for Products sold on the Makro Site.
- 28.13.5. Seller shall limit emergency updates related to product information through any Partner Tool to a rate no greater than .03% of its entire SKU count in First Technology's catalog per month; provided however, that First Technology makes no guarantee that all requests will be granted. First Technology will assess each emergency request on a case by case basis and make updates in situations First Technology deems critical.
- 28.13.6. Ninety-day Seller ratings shall, on average, remain above a seller rating of 90% positive.
- 28.13.7. The number of customer service escalations received through First Technology's escalation guidelines, as set forth in Annexure C, shall not exceed 0.5% of Orders.
- 28.13.8. Seller will within one (1) hour of receipt on a 24/7 basis, confirm every Order file received by First Technology.
- 28.13.9. Seller will, within four (4) hours of receipt on a 24/7 basis, confirm every order line within every Order file received by First Technology.
- 28.13.10. Seller will provide First Technology with electronic notice confirming shipment of each Product shipped and the corresponding shipment tracking information (if available)

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within four (4) hours of the Product/Order actually shipping so that First Technology may charge the Customer and allow the Customer to track shipment of Products.

28.13.11. Seller will send a refund request to First Technology through the data feed specified by First Technology within 24 hours of receiving a Customer refund or adjustment request, unless Seller has refused to accept a Product for return for any reason.

28.13.12. Ninety percent (90%) of emails received from First Technology shall be answered by Seller within twenty four (24) hours of receipt.

First Technology may, at its discretion, work with a Seller to remedy any failure of a service level or performance issue under this Annexure D-2; provided, however, that no waiver by First Technology of any provision of this Annexure D-2 may be deemed or constitute a waiver of any provision of this Agreement, whether or not similar, nor may the waiver constitute a continuing waiver by First Technology unless otherwise expressly so provided in writing. The failure of First Technology to require at any time performance by Seller of any of the provisions herein, may in no way be construed to be a present or future waiver of provisions or in any way affect the ability of First Technology to enforce each and every provision after such event.

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ANNEXURE E

LIST OF PROHIBITED PRODUCTS

“Prohibited Products” means:

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

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17. baby bottles that are not BPA-free;
18. prepaid access products (whether issued in the form of a card, electronic PIN or other device) that provide access to funds (or the value of funds) that have been paid in advance and can be retrieved in the future, including without limitation, gift cards, prepaid phones, or prepaid minutes;
19. caskets or funeral urns;
20. Wireless microphone products that operate on 700 MHz band frequencies (698-805 MHz)¹;
21. specific products or brand names that may not be sold on the Makro Site as are indicated by First Technology to Seller separately in writing (which in this case may include email or through any Partner Tool); and
22. any other types of products that in First Technology's discretion are not appropriate for sale on the Makro Site as indicated by First Technology to Seller separately in writing; provided that a Prohibited Product will cease to be a Prohibited Product when First Technology informs Seller of such change.

¹ Wireless microphone products that operate on the Core TV Bands (i.e., 54-72 MHz; 76-88 MHz; 174-216 MHz; 470-608 MHz; and 614-698 MHz) may be offered on the Makro Site so long as the consumer warning text required under applicable law is placed on the web page directly beneath the image of the product.

ANNEXURE F

SELLER MARKETPLACE PRIVACY POLICY GUIDELINES

Seller shall prepare a separate Seller Marketplace Privacy Policy for posting on the Makro Site in connection with the Marketplace Program. The Seller Marketplace Privacy Policy shall not be more than the number of characters accepted through the Partner Tool. If the Seller Marketplace Privacy Policy exceeds the number of permitted characters, Seller shall host, support and maintain a dedicated URL that provides customers with access to Seller's full Seller Marketplace Privacy Policy through the Makro Site in accordance with specifications provided by First Technology. Seller shall (i) set up the URL through the Partner Tool, (ii) work with First Technology to ensure customers have access to such Seller Marketplace Privacy Policy through such URL, and (iii) comply with the System SLA with respect to uptime of the hosted privacy policy URL. Seller must include the following information in the Seller Marketplace Privacy Policy as well as any information required under applicable Law:

1. The specific PII and other customer information (collectively, the "**Personal Information**") Seller receives with respect to Marketplace Customers.
2. How Seller will use Personal Information of Customers it receives in connection with the Marketplace Program (e.g. to ship orders and to email Customers regarding shipment confirmation or Order cancellation).
3. Who will have access to Customer Personal Information (e.g., contractors for the purpose of fulfilling Customer Orders).
4. In what cases may Personal Information be disclosed to third parties (e.g., as required by law). This section should indicate that Personal Information is shared with First Technology and is subject to First Technology's Privacy Policy.
5. How Customer may update its Personal Information.
6. Seller never sells or rents Customer Personal Information to any third party.
7. Seller will not use Personal Information of Customers received in connection with Marketplace to send marketing communications to Customer or to conduct surveys, contests or sweepstakes.
8. How Seller protects the Personal Information of Customers.

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9. How Seller protects the privacy of children and meets the standards of the Children's Online Privacy Protection Act (i.e., no collection of PII from children under the age of 13).
10. The date on which Seller's Marketplace Privacy Policy was last updated and where Customers can direct questions about the Seller's Marketplace Privacy Policy.

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