

## **URBN Marketplace Seller Agreement**

This Marketplace Seller Agreement is between Urban Outfitters, Inc., a Pennsylvania corporation (“URBN”) and you (“Seller”).

URBN operates e-commerce websites directly and through its subsidiaries. URBN offers unrelated sellers the opportunity to list merchandise for sale directly to Customers on one or more of URBN’s websites (“Marketplaces”).

URBN wants to offer Seller the opportunity to sell goods or services through one or more of its Marketplaces.

Seller wants to sell goods or services to Customers using one or more of the Marketplaces.

The parties therefore agree as follows:

### **Article 1        Statements & Recommendation**

**1.1 Seller Statements.** Seller states that: (a) Seller has authorized the individual executing this agreement or registering Seller for access to a Marketplace to bind Seller, (b) Seller is authorized to enter into and perform its obligations under this agreement, (c) Seller believes that its performance under this agreement will not violate any other agreement, (d) Seller is commercially sophisticated, and (e) Seller is not owned or controlled by any of URBN’s Directors or Section 16 Officers, as defined in 17 CFR 240.16a-2.

**1.2 URBN Statements.** URBN states that: (a) it has the authority to enter into and perform its obligations under this agreement, and (b) it believes that its performance under this agreement will not violate any other agreement.

**1.3 URBN Recommendation.** URBN hereby recommends that Seller obtain counsel of its own choosing in reviewing this agreement and deciding whether to enter into this agreement.

### **Article 2        Registration & Access To Marketplaces**

**2.1 Registration for and Use of the Marketplaces.** Seller may register to sell on one or more Marketplaces. If Seller registers on one or more Marketplaces, Seller will be bound by the terms of this agreement. URBN may accept or reject Seller’s registration for one or more Marketplaces.

**2.2 Amendment of this Agreement.** URBN may modify the terms of this agreement at any time by posting amendments to the Seller Information Page and emailing a notice to Seller at the email address Seller provided in the Mirakl Portal. If Seller registers on a Marketplace or continues to use a Marketplace, Seller will be bound by the then current terms of this agreement.

**2.3 URBN Policies.** URBN may publish or amend policies governing Seller’s access to or use of a Marketplace (“Policies”). If Seller registers on a Marketplace or continues to offer products

for sale on a Marketplace, Seller will be bound by the Marketplace's then current Policies. URBN will post any Policies or amendments to Policies on the Seller Information Page.

**2.4 Marketplace Design and Access.** If URBN accepts Seller's registration for a Marketplace, URBN will provide Seller access to the Marketplace as a platform for Seller to post offers for sale to Product Listings and facilitate the sale of Seller's Products to Customers. URBN may determine or change any aspect of a Marketplace without notice to Seller. URBN may stop providing Seller access to a Marketplace without notice to Seller.

**2.5 Permits and Licenses.** Seller shall obtain all permits and licenses required to operate its business in accordance with Applicable Law at its own expense. Seller shall pay all fees or assessments which may be due for selling or offering for sale its Products on a Marketplace.

### **Article 3 Seller Content & Product Listings**

**3.1 URBN Is Not Seller Of Record.** Sales of Products on a Marketplace are between Seller and Seller's Customers; URBN is not the seller and is not a party to such transactions. Seller's listing of Products on a Marketplace does not imply that URBN endorses or is affiliated with Seller or Seller's Products.

**3.2 Seller Content.** Seller shall ensure that all information and data it provides to URBN is accurate, not misleading, and complies with Applicable Law. Seller shall ensure that all electronic information and data it transmits to URBN or a Customer does not contain any harmful code or other feature designed to obtain unauthorized access to or information from or damage or degrade in any manner any computer system, application, or code.

#### **3.3 Product Listings.**

**a.** Seller shall create Product Listings or offers for sale posted to Product Listings using the Mirakl Portal for all Products it intends to sell on a Marketplace.

**b.** If it creates Product Listings, Seller shall create Product Listings that comply with Applicable Law, the Policies, and any specifications posted in the Mirakl Portal, and that are accurate and appropriate for the Marketplace to which they are posted.

**c.** Seller shall ensure that URBN's use of Seller's Product Listings will not (1) violate any intellectual property rights of non-parties; (b) contain defamatory or discriminatory content; (c) constitute an invasion of a party's rights of privacy or publicity; and/or (d) reflect unfavorably on URBN, the Websites and/or other Sellers on the Websites;

**d.** Seller shall not create Product Listings that:

- (1) offer products that are inauthentic, counterfeit, replicas or knock-off goods;
- (2) offer any Restricted Products;
- (3) offer Products Seller does not currently have in stock;
- (4) promote or engage in any deceptive trade practice (including spoofing, slamming, cramming, phishing, or attempting to scam or defraud a URBN Customer into surrendering private and/or personal information);

- (5) contain nudity or pornographic, obscene, or offensive content; or
- (6) use any URBN trademarks or imply that URBN endorses or approves the Product Listing.
  - e. URBN may modify, reject, remove, or censor any Product Listing for any reason, and may combine two or more Product Listings or elements of two or more Product Listings. If Seller believes a modified Product Listing would violate section 3.3.b, 3.3.c, or 3.3.d, Seller shall promptly notify URBN in the manner set forth in the Policies. If Seller posts offers for sale against a Product Listing, it will be deemed to have accepted any modifications made to that Product Listing.

**3.4 Product Listing Maintenance.** Seller is responsible for its own Product Listings, including updating its Product Listings to ensure that they are accurate and comply with this agreement.

### **3.5 Product Pricing.**

**a. Seller Established.** Seller shall establish prices for its Products in compliance with this agreement. Seller will enter pricing using the Mirakl Portal, unless URBN approves another method in writing.

**b. Pricing Parity.** Seller shall maintain Parity between the Products it offers on a Marketplace and identical Products offered through Seller’s other sales distribution channels.

**c. Seller Pricing Errors.** If Seller provides incorrect pricing information in a Product Listing (a “Seller Pricing Error”), URBN may, at Seller’s expense, take any commercially reasonable action necessary to avoid or repair harm to URBN due to the Seller Pricing Error, including requiring Seller to honor all Product purchases at the erroneous price and compensating Customers for any inconvenience caused by a Seller Pricing Error. Seller shall reimburse URBN for all losses, expenses, or liabilities URBN incurs as a result of Seller Pricing Errors.

## **Article 4 Product Sale, Delivery, Return, and Customer Service**

### **4.1 Customer Orders.**

**a. Processing Customer Orders.** URBN shall process Customer Orders on behalf of Seller and collect all amounts due for Products that Customers order from Seller through a Marketplace. After processing a Customer Order, URBN shall email Seller a notice of the Customer Order at the email address that Seller identified in the Mirakl Portal. If URBN believes a transaction is erroneous, duplicate, contrary to a Marketplace Policy, or fraudulent, it may stop, cancel or prohibit the transaction.

**b. Transfer of Customer Payments.** Seller hereby appoints URBN as an agent of Seller for the sole and express purpose of receiving payments from Customers for Seller’s Products sold on a Marketplace. As between Seller and a Customer who purchases Products from Seller, URBN’s receipt of funds from the Customer will be deemed the receipt of funds by Seller. URBN shall transfer the amount URBN collected from the Customer, less any amounts Seller owes to URBN, to Seller using the processes and under the timing set forth in the Policies.

### **4.2 Taxes.**

**a. Responsibility for Seller Taxes.**

(1) Seller is responsible for:

- A. determining whether Seller Taxes apply to a Customer Order;
- B. collecting, reporting, and remitting the correct Seller Taxes to the appropriate tax authorities;
- C. reviewing, determining, and maintaining the correct product tax codes, calculation settings and all related information for Products; and
- D. reviewing all tax-exempt transactions.

(2) URBN is not responsible for:

- A. determining whether Seller Taxes apply to a Customer Order;
- B. collecting, reporting, or remitting Seller Taxes to any tax authority (except as required by Applicable Law to do so);
- C. Seller's use of or reliance on tax data or services provided by URBN or Tax Services, or for providing tax advice to Seller;
- D. calculating, reporting, collecting or paying any product-based excise taxes or any fees or surcharges;
- E. providing support for tax exemptions based upon the identity of any individual, corporation or other entity, or the intended use of a product by any individual, corporation or other entity;

**b. Tax Jurisdictions.** Seller shall determine the jurisdictions in which it has an obligation to collect and remit Seller Taxes. Seller shall promptly notify URBN of the jurisdictions for which URBN should turn on collection of Seller Taxes on Seller's behalf in tax software by selecting the applicable jurisdictions in the Seller's Account profile in the Mirakl Portal. URBN will not turn on collection of Seller's Taxes on Seller's behalf for jurisdictions outside the United States.

**c. Product Tax Codes.** URBN shall make available to Seller a list of product tax codes and associated product taxability rules. For each of Seller's Products, Seller will provide URBN, in the format and manner required by URBN, a reference to one product tax code and any related information requested by URBN. If Seller does not provide a product tax code for a Product, URBN will not collect any Seller Taxes for any transaction for that Product. It will remain Seller's responsibility to determine, collect, report, and remit Seller Taxes to the appropriate tax authority if URBN does not collect Seller Taxes for a Customer Order or Product Listing.

**d. Collecting Taxes.** If Seller provides product tax codes, URBN shall turn on collection of Seller Taxes for jurisdictions in the United States from Customers who purchase Products on a Marketplace on Seller's behalf for the jurisdictions selected by Seller based on the product tax codes Seller provided. Except as required by Applicable Law, URBN shall

transfer the Seller Taxes collected from Customers to Seller, and Seller shall report and pay any Seller Taxes to the applicable tax authorities.

**e. Seller Reimbursement.** If a tax authority requires URBN to pay any of Seller's Taxes, Seller will promptly reimburse URBN for the amounts URBN paid and for any losses, expenses, or liabilities URBN paid or incurred related to the tax authority's demand to URBN.

**f. Tax Data.** Seller acknowledges that non-parties will provide tax-related data (such as tax rates) to URBN (the "Tax Services") and that URBN will use that data to collect Seller Taxes on Seller's behalf. Seller acknowledges that URBN and the Tax Services do not provide or comprise tax advice, that URBN will not provide Seller tax advice, and that Seller is responsible for determining the applicability and accuracy of any tax data or tax collection.

**g. Seller Is Not Relying On Tax Data.** Seller states that it is not relying and will not rely on the accuracy of tax data provided by URBN or Tax Services. If Seller registers on a Marketplace, or continues to offer Products for sale on a Marketplace, Seller will be deemed to have released any claims against the URBN Parties or the Tax Services arising from Seller's use of or reliance on tax data provided by URBN or Tax Services.

**h. Sales Tax On Payments To URBN.** Seller shall pay sales taxes, if any, pursuant to Applicable Law on any payments Seller owes to URBN.

#### **4.3 Shipping.**

**a. Seller Will Ship Products.** Seller shall handle all aspects of shipping Products to Customers in compliance with Applicable Law and the Policies. Seller shall use reasonable care in packing, packaging, tagging, and labeling Products for shipment.

**b. Process.** When Seller receives notice of a Customer Order from URBN, Seller shall fulfill the Customer Order in compliance with this agreement and make the Purchased Products available for pick up by a common carrier for delivery to the Customer. Seller shall ship Purchased Products within the time period specified in the Policies, and shall promptly upload tracking numbers for each shipment to the Mirakl Portal. Seller shall not substitute any Product for the Purchased Products. Seller shall not include any marketing or promotional materials, or any other solicitations with the Purchased Products shipped to Customers. Title to and risk of loss of or damage to the Purchased Products will remain with Seller until delivery to the Customer. URBN will not have title to, or be deemed the legal owner of, any Products.

**c. Overdue Orders.** URBN may cancel any Customer Order that Seller does not ship within the shipping period specified in the Policies. URBN is not required to compensate Seller for any such cancelled order. It is Seller's responsibility to monitor all orders and ensure all shipments are made within the timeframes specified in the Policies.

**d. Delivery Errors.** Seller is responsible for any non-delivery or delivery error in connection with the delivery of its Products.

#### **4.4 Customer Returns.**

**a. Seller Will Handle Returns.** Seller shall handle any Customer returns of its Products. If Seller accepts a Customer return, it shall provide notice of the return to URBN in

the manner set forth in the Policies. If Seller provides URBN notice of a return, URBN shall refund the Customer for all amounts URBN collected from the Customer for that Customer Order, and Seller shall return to URBN all amounts URBN transferred to Seller for that Customer Order. URBN is not required to accept or process returns of Products. If a Customer attempts to return a Product to URBN or one of its affiliates, URBN may accept that return. If URBN accepts the return, it will ship the Product to Seller, and Seller shall reimburse URBN for any shipping or processing costs, and any other losses, expenses, or liabilities URBN incurred in accepting the return. URBN may determine fees for processing and shipping returns to Seller by posting those fees in the Policies.

**b. Seller Return Policy.** Seller shall submit a return policy (the “Seller Return Policy”) using the form provided on the Mirakl Portal. Seller shall honor all Customer returns of Products in accordance with the Seller Return Policy published at the time a Customer purchased a Product. The Seller Return Policy must:

- (1) apply to all Products;
- (2) outline the process for Customers to return the Products directly to Seller; and
- (3) be at least as accommodating to Customer returns as the applicable Marketplace’s return policy and Seller’s own return policy.

**c. Refunds.** If Seller accepts a Customer return and notifies URBN of the return pursuant to section 4.4.a, URBN may refund Seller a portion of URBN’s commission on that Customer Order as set forth in the Policies.

**4.5 Recalled Products; Defective Products.** Seller shall immediately notify URBN of any recall affecting a Product and shall immediately remove the Product Listing or its offers for sale posted to the Product Listing for that Product from all Marketplaces. Seller is responsible for all defective or recalled Products, including any losses, expenses, or liabilities related to recalls of its Products, and will bear all losses, expenses, or liabilities related to notifying Customers of and handling recalls of its Products.

**4.6 Customer Service Issues.** Seller shall handle all customer service issues related to Seller’s Products. URBN is not responsible for handling customer service issues related to Seller’s Products, and URBN may direct Customers who contact it with service issues related to Products to contact Seller using the contact information Seller has provided in the Mirakl Portal. If Seller does not handle a customer service issue or a request from URBN to handle that issue, URBN may take any actions necessary to ensure Seller’s compliance, and URBN will not be liable to Seller for any results of those actions. If Seller does not handle a customer service issue to URBN’s satisfaction, URBN may contact the Customer and take any action to resolve the issue.

**4.7 Chargebacks.** URBN may charge Seller for losses, expenses, or liabilities URBN incurs related to Customer disputes related to Seller’s marketplace transactions or Products (“Chargebacks”). If URBN wants to charge Seller for a Chargeback, it will send Seller a notice of that Chargeback. If URBN sends Seller a Chargeback notice, Seller will respond and will provide URBN any information requested in the Chargeback notice within five (5) business days of

receiving the notice. If Seller does not respond to the Chargeback notice to URBN's satisfaction, URBN may charge Seller for the Chargeback, and Seller will reimburse URBN for the Chargeback. Seller will not be responsible for Chargebacks due to:

- a. theft or unauthorized use of a Customer's payment card information for which URBN is responsible (except to the extent that theft or unauthorized use is attributable to Seller); or
- b. URBN's failure to send Seller a notice of Customer Order.

**4.8 Customer Reviews and Ratings.** URBN may ask Customers to rate or provide comments regarding Seller or the Products, and may post any resulting ratings or comments on the Marketplace for public display.

## **Article 5 Fees; Commissions; URBN's Right To Recovery**

**5.1 Monthly Subscription Fee.** Seller shall pay URBN the monthly subscription fees specified on the Seller Information Page for access to the Marketplaces (the "Monthly Subscription Fee"). URBN may change the Monthly Subscription Fee by posting the new fee on the Seller Information Page, and any revised Monthly Subscription Fee will be effective from the date it is posted. Seller's failure to pay the Monthly Subscription Fee constitutes a material breach of this agreement.

**5.2 Commissions.** Seller shall pay URBN commissions on all amounts URBN collects on Seller's behalf for sales of Products, less Seller Taxes, according to the "Commission Rate Schedule" specified in the Seller Information Page. URBN may change the Commission Rate Schedule by posting any changes to the Seller Information Page, and those changes will be effective from the date they are posted. Seller's failure to pay Commissions constitutes a material breach of this agreement.

**5.3 Methods For Obtaining Payment.** Upon URBN's demand, Seller shall promptly pay any amounts it owes URBN. Seller hereby authorizes URBN to use any of the following methods for obtaining payment of amounts Seller owes URBN:

- a. recouping or setting-off any payments URBN owes to Seller by any amount Seller owes to URBN;
- b. reversing any credits to Seller's Account;
- c. Deducting amounts owed to URBN from any Seller Holdback Funds URBN requires;
- d. charging Seller's credit card, or deducting funds from Seller's bank account; or
- e. seeking payment from Seller by any other lawful means.

**5.4 Holdback Funds.** URBN may in its reasonable discretion withhold payments to be made to Seller ("Holdback Funds"). If URBN requires Seller to maintain Holdback Funds, it may withhold a reasonable sum from payments to be made to Seller based on Seller's creditworthiness, previous compliance with this agreement and the Policies, or any other reasonable factors. The establishment of Holdback Funds does not create any trust

relationship; URBN may commingle any Holdback Funds with its other funds, and Seller will remain a general creditor of URBN with respect to any Holdback Funds or other amounts URBN owes to Seller.

## **Article 6 Intellectual Property**

**6.1 Grant of License by URBN.** URBN hereby grants Seller a non-exclusive, revocable, non-transferable license to promote and sell Products on or through the Marketplaces to Customers, subject to the terms of this Agreement.

**6.2 Grant of License by Seller.** Seller hereby grants URBN a royalty-free, non-exclusive, irrevocable, perpetual, worldwide, royalty-free, right to use and to reproduce, modify, display, distribute, perform, re-format, merge, create derivative works of or otherwise commercially or non-commercially exploit in any manner Seller Information with the right to sublicense such rights through multiple tiers. URBN shall not alter any Seller Marks from the forms provided by Seller except to the extent necessary for presentation, so long as the relative proportions of the marks remain the same. URBN may also use Seller Information in any way that is allowed without a license from Seller under Applicable Law. "Seller Information" means any document or data that Seller uploads to the Mirakl Portal or provides to URBN.

**6.3 Ownership of Intellectual Property Rights.** URBN will own all right, title and interest in and any IP Rights in the Marketplaces and all data collected or stored in connection with the Marketplaces. Except as expressly provided in this agreement, Seller will not have any ownership in or license to any such rights. If Seller is deemed to have any ownership interest or rights in all or any part of the foregoing, then Seller shall assign all of those interests and rights to URBN. URBN may use any Seller Information to create, develop, or modify the Marketplaces or any other URBN concept, brand, software code, product, or feature ("Improvements"), and URBN will own any Improvement and any IP Rights in an Improvement. If Seller is deemed to have any ownership interest or rights in an Improvement, Seller shall assign all of those interests and rights to URBN.

**6.4 Ownership of Content.** Seller will own all Seller Marks and Seller Information subject to section 6.3 and the License Seller granted URBN in this agreement.

**6.5 Infringement of Non-Party Rights.** Seller shall ensure that its Products and Seller Information do not infringe the intellectual property rights of a non-party. Seller shall immediately notify URBN of any actual or alleged infringement of any intellectual property right of a non-party in connection with the Products or Seller Information. Seller is responsible for any losses, expenses, or liabilities related to any actual or alleged infringement of a non-party's intellectual property rights in connection with Seller's Products or Seller Information.

## **Article 7 Term and Termination**

**7.1 Start and Term.** This Agreement starts when Seller registers on a Marketplace and continues until terminated by a party.



**7.2 Termination.** Seller may terminate this agreement for any reason by notifying URBN as then specified in the Portal. URBN may terminate this agreement for any reason by notifying Seller.

**7.3 Effect of Termination.** Upon termination, any rights or obligations of a party with respect to any outstanding sale transaction (including fulfillment and returns) will survive until completed. Any termination of this agreement will be without prejudice to the rights of either party against the other with respect to any claim, right, or obligation arising before the termination. Any obligations of the Parties relating to limitations on liability, confidentiality and indemnification, as well as any other obligations under this Agreement that by their nature are intended to survive, including any payment or customer service obligations in connection with the sale of Products hereunder, will survive termination of this Agreement. Upon termination, URBN may require Seller to maintain Holdback Funds to cover any amounts Seller does or may owe URBN, including to cover amounts Seller will owe URBN for Customer returns of Products and Chargebacks.

## **Article 8 Disclaimer of Warranties**

**8.1 URBN hereby disclaims all warranties, representations, or guarantees of any kind, arising from any source, related to the Marketplaces or any services, information, or products available through any links on any Marketplaces.**

**8.2 URBN is providing the Marketplaces on an “as is” and “as available” basis, and Seller’s use of the Marketplaces is at Seller’s own risk. URBN does not warrant that Seller’s use of the Marketplaces will be uninterrupted, error-free, or virus-free.**

**8.3 URBN does not warrant or guarantee Seller’s results from using the Marketplaces, the sale of any Products on the Marketplaces, or any services provided by URBN to Seller in connection with the Marketplaces.**

**8.4 Seller states that sections 8.1, 8.2, and 8.3 are conspicuous, that it has read and understood them, and believes that they are reasonable.**

## **Article 9 Limitation of Liability**

**9.1 Regardless of whether URBN is aware or has been advised of the possibility of the following losses, expenses, or liabilities, URBN will not be liable to Seller under any claim or theory for any special, consequential, or punitive damages, or for any lost profits, revenues, business, or data.**

**9.2 URBN’s aggregate liability from any Seller claims related to this agreement will not exceed the total amount Seller paid to URBN under this agreement.**

**9.3 Seller states that sections 9.1 and 9.2 are conspicuous, that it has read and understood them, and believes that they are reasonable.**

## **Article 10 Indemnification**

**10.1 Seller Indemnity.** Seller shall indemnify the URBN Parties from any loss, expense, or liability of any kind incurred in connection with any Covered Claim. “Covered Claim” means a non-party suit, claim, or demand of any kind arising out of:

- a. Seller’s breach of this agreement or Applicable Law;
- b. death, illness, personal injury, or property damage arising out of or resulting in any way from any actual or alleged defect in a Product;
- c. any act or omission of the Seller, its agents, employees, or subcontractors relating to the sale of a Product;
- d. any actual or alleged breach of Seller’s written warranty for a Product;
- e. any actual or alleged infringement of any patent, trademark, copyright, trade secret, trade dress or other intellectual property right of a non-party related to a Product, Seller Information, or Seller Mark;
- f. a Product Listing;
- g. a Product actually or allegedly violating any Applicable Law; or
- h. Seller’s packaging, labeling, or advertising of a Product.

**10.2 Indemnification Process.** If URBN seeks indemnification from a Covered Claim, it may provide Seller reasonably prompt notice of that claim. If URBN sends Seller a notice of a Covered Claim, Seller shall respond reasonably promptly to URBN’s request, and shall select counsel reasonably acceptable to URBN to handle the Covered Claim. A URBN Party may also hire counsel at its own expense to participate in the defense of a Covered Claim. Seller shall not bind a URBN Party in a settlement of a Covered Claim without that URBN Party’s prior written consent.

## **Article 11 Confidentiality; Privacy; Data and System Integrity**

### **11.1 Definition of Confidential Information.**

- a. “Confidential Information” means: (1) any technical or business data or information that a URBN Party provides to Seller regardless of whether marked or identified as “Confidential”, (2) the terms of this agreement, and (3) the operations and technology to be utilized in connection with the Mirakl Portal and Marketplaces.
- b. Confidential Information does not include information that:
  - (1) pertains to goods that are sold or distributed by Seller to other retailers;
  - (2) is already in Seller’s possession and not covered by a confidentiality obligation;
  - (3) becomes publicly available without action or fault on Seller’s part; or
  - (4) Seller obtains from a non-party without that non-party’s breach of an obligation or duty.

## **11.2 Treatment of Confidential Information.**

### **a. Use.**

- (1) Seller shall use Confidential Information only for performing under this agreement. Seller shall preserve the confidentiality of any Confidential Information and any record containing Confidential Information.
- (2) Seller shall not disclose or permit the disclosure of such information or records to any non-party except: (A) to obtain services necessary to perform under this agreement, (B) to obtain legal, tax, or accounting services, or (C) to respond to a valid subpoena or similar process.
- (3) Seller shall not disclose Confidential Information or records containing Confidential Information to a non-party under section 11.2.a.2.A or 11.2.a.B unless the non-party has a legal obligation to maintain the confidentiality of the information and Seller reasonably believes the non-party will in fact maintain the confidentiality of the information.
- (4) If Seller seeks to disclose Confidential Information pursuant to section 11.2.a.2.C, Seller will provide URBN reasonable notice before disclosing the information, and URBN may reasonably respond to the proposed disclosure.

**b. Return or Destruction.** Seller shall promptly return or destroy any Confidential Information or records containing Confidential Information at URBN's request, except to the extent the information or records are: (1) contained in backup media used as such, (2) required to be maintained under Applicable Law, or (3) necessary for purposes of prosecuting or defending a claim related to this agreement.

## **11.3 Customer Personal Information.**

**a. Definition.** "Customer Personal Information" means any data or information related to identified or identifiable Customers or related non-parties (such as non-parties that Customers designate as recipients of shipments).

**b. Use of Customer Personal Information.** URBN will own all Customer Personal Information that it or Seller collects. Seller shall use Customer Personal Information only in accordance with Applicable Law and only to perform Seller's obligations or exercise Seller's rights under this agreement or as necessary for legal compliance. Seller shall not:

- (1) transmit Customer Personal Information to any non-party except for purposes of performing under this agreement;
- (2) use Customer Personal Information to send marketing materials to or contact any person except for purposes of performing under this agreement;
- (3) solicit additional information from a Customer or related individual;

**c. Protection of Customer Personal Information.** Seller shall protect Customer Personal Information from unauthorized access, use, deletion, degradation, encryption, or disclosure (a "Data Breach"). Seller shall maintain industry standard data security measures and

processes. If Seller obtains any Customer credit card data in connection with this agreement, Seller will also comply with Payment Card Industry Data Security Standards. Seller shall not transmit Customer Personal Information in any unsafe manner or to any person unless Seller reasonably believes that person will maintain the confidentiality and security of the information. If Seller learns of any Data Breach, Seller will immediately notify URBN of the breach and will cooperate fully with URBN to respond to the breach.

#### **11.4 Use of Marketplace Systems.**

**a. Seller Credentials.** Seller shall maintain the security of Seller's log-in credentials to Marketplaces. Seller is responsible for any expense, loss, or liability caused by the loss or breach of those credentials.

**b. No Unauthorized Use.** Seller shall not use a Marketplace or any of its systems, code, or APIs:

- (1) to violate the security of, or gain unauthorized access to, any computer, computer network, or other device or system;
- (2) to discover passwords or security encryption codes;
- (3) to use any robot, spider, site search or retrieval application, or other device to retrieve or index any portion of a Marketplace;
- (4) to collect any information about Customers;
- (5) to reformat or frame any portion of the Websites;
- (6) to attempt to duplicate all or any part of the Marketplace or its code, or to attempt to reverse engineer or decompile any code, or to attempt to create a substitute or competing marketplace service;
- (7) in a manner that would be detrimental to the function of the Marketplace or to other sellers' or Customers' use of or access to the Marketplace.

**c. No Archive Use.** Seller acknowledges that URBN is not providing archive services and that the Marketplaces are not intended to function as archives. Seller is responsible for maintaining independent archival and backup copies of Seller's information.

**11.5 Equitable Relief.** Seller acknowledges that a breach of Article 11 would result in harm to URBN that could not be adequately remedied by payment of money damages, and that URBN may seek equitable relief, including an injunction, to prevent such a breach. Seller states that, if URBN seeks equitable relief to prevent a breach of Article 11, Seller will not argue that equitable relief is not appropriate or available to URBN.

#### **Article 12 Governing Law & Disputes**

**12.1 Governing Law.** The laws of the Commonwealth of Pennsylvania, without regard to their conflicts or choice of law rules, govern all matters relating to this agreement. The United Nations Convention on Contracts for the International Sale of Goods do not apply to this agreement.

**12.2 Disputes.** All disputes related to this agreement will be filed and heard exclusively by a court of competent jurisdiction in Philadelphia County, Pennsylvania.

**Article 13 Miscellaneous**

**13.1 Use of Subcontractors.** Seller may use subcontractors in its performance under this agreement. If Seller uses subcontractors, Seller will: (a) be responsible for the acts or omissions of its subcontractors, and (b) require subcontractors to act in compliance with this agreement. URBN may require Seller to stop using any subcontractor for any reason.

**13.2 Invalidity; Waiver.** No finding that any part of this agreement is invalid will affect the remaining portions of this agreement. The waiver by any party of a breach of any provision of this agreement by the other party, will not be construed as a waiver of any subsequent breach of the same or any other provision of this agreement, nor will any delay or omission by either party to exercise or enforce any right or remedy under this agreement operate as a waiver of any right or remedy.

**13.3 Assignment.** Seller shall not assign or transfer any of its rights or obligations under this agreement without URBN's written consent. Any such attempted assignment or transfer will be void.

**13.4 Insurance.** Seller shall maintain insurance coverage and limits as required by Applicable Law and the Policies. Seller shall list URBN and all of its subsidiaries, officers, directors, agents, and employees as an additional insured on these policies. Seller shall include in those policies a waiver of subrogation in favor of URBN, and those policies shall be primary and noncontributory with any insurance that URBN carries.

**13.5 Notice.** Unless otherwise specified in this Agreement, URBN may provide notices to Seller through the Portal, or at the address, email address, or fax number Seller specifies in the Portal. Seller shall send all notices to URBN through the Portal. All notices provided by URBN to Seller through the Portal, or by email, fax, or any other form of electronic communications will be construed as being "in writing".

**13.6 Integration; No Reliance.** This agreement, the Policies, and any Seller specific addenda govern Seller's access to and use of Marketplaces. Seller states that it is not relying on any promises or statements of fact not contained in these documents in deciding whether to enter into this agreement.

**13.7 Construction.** This agreement was drafted based on "*A Manual of Style for Contract Drafting, 3d Ed.*" If the terms of this agreement or a Policy conflict with the terms of a Seller specific addendum, the terms of the Seller specific addendum will control. If the terms of this agreement conflict with the terms of a Policy, the terms of this agreement will control.

**13.8 Relationship of Parties.** The parties enter this agreement intending that Seller will be an independent contractor. This agreement does not create any partnership, joint venture, agency, sales representative, or employment relationship between the parties. This agreement is for the sole benefit of URBN, Customers, and Seller, and there are no other intended non-party beneficiaries of this agreement.

## **Article 14**     **Definitions**

**14.1**        **“Account”** means Seller’s Marketplace account, which is accessible through the Portal.

**14.2**        **“Applicable Law”** means all requirements of federal, state, or other jurisdictional laws, regulations, ordinances, and administration orders and rules of the United States, its territories, and all other countries in which the Products are produced, sold, or delivered.

**14.3**        **“Business Day”** means a day, Monday through Friday (Philadelphia, Pennsylvania, USA local time), on which banks are open and transacting business that is not a U.S. Federal holiday.

**14.4**        **“Customer”** means any customer accessing a Marketplace, or placing or receiving any order for Products via a Marketplace.

**14.5**        **“Customer Order”** means an order of a Product by a Customer.

**14.6**        **“IP Rights”** means all intellectual property rights which now or hereafter exist throughout the universe, whether conferred by operation of law, contract, or license, including rights of authorship, including copyrights, moral rights and mask-works, marks, cosmetic designs, ornamental appearance and trade dress, trade secret rights, inventions, and technology (whether patentable or not and whether or not reduced to practice), Confidential Information (as defined herein), software and databases, rights of publicity, patents, designs, algorithms, and other industrial property rights, and “rental” rights and rights to remuneration;

**14.7**        **“Parity”** means that a Product’s price (including any discount, rebate, or “low price” guarantee), quality (including quality assurances), shipping and handling charges (including any free or discounted shipping and handling), or other benefits are at least as favorable to Customers on the URBN Marketplace as those associated with identical Products offered on Seller’s other sales distribution channels.

**14.8**        **“Mirakl Portal”** means the online interface by which Seller accesses its Marketplace account, communicates with URBN Outfitters, uploads its Product Listings, manages its Customer Orders, and other such activities related to this agreement.

**14.9**        **“Products”** means the goods, offers, or services, including shipping costs, that Seller markets and lists for sale to Customers on the Websites.

**14.10**       **“Product Listings”** means the offers Seller creates for display on the Marketplaces related to the sale of Products.

**14.11**       **“Purchased Products”** means the Products requested in a Customer Order.

**14.12**       **“Restricted Products”** means the items and categories listed in the Seller Restricted Products Policy, available on the Portal.

**14.13**       **“Seller Information Page”** means the page on a Marketplace that contains the Marketplace’s Seller terms and conditions, policies and procedures, and other information for Sellers.

**14.14** “**Seller Marks**” means all of Seller’s domestic and foreign trademarks, service marks, trade names, registrations and applications to register the foregoing, logos, and domain names.

**14.15** “**Seller Taxes**” means any and all sales, goods and services, use, excise, import, export, value added, consumption and other taxes and duties assessed, incurred, or required to be collected or paid for any reason in connection with any advertisement, offer or sale of products by Seller, or otherwise in connection with any action, inaction or omission of Seller, any of affiliate of Seller, or any of Seller’s or its affiliates’ employees, agents, contractors or representatives.

**14.16** “**URBN Marks**” means all URBN domestic and foreign trademarks, service marks, trade names, registrations and applications to register the foregoing, logos, and domain names.

**14.17** “**URBN Parties**” means URBN and all of its past, present and future parents, subsidiaries, affiliates, directors, officers, and employees.

