

## DIGIECO Seller Agreement

This Seller Agreement is between **Mudoh Cloud Limited**, a Hong Kong SAR company (“MCL”) and you (“Seller”).

MCL is the commerce operator who offers unrelated sellers the opportunity to list merchandise for sale directly to Buyers in “MUDOH.SHOP” website at [shop.mudohcloud.com](http://shop.mudohcloud.com) or <https://template1.digieco.systems> (“eMarketplace/eShops”).

MCL wants to offer Seller the opportunity to sell goods or services through one or more of its eMarketplace/eShops.

Seller wants to sell goods or services to Buyers using one or more of the eMarketplace/eShops.

The parties therefore agree as follows:

### 1. Statements & Recommendation

#### 1.1. **Seller Statements.** Seller states that:

- 1.1.1. Seller has authorized the individual executing this agreement or registering Seller for access to an eMarketplace/eShop to bind Seller,
- 1.1.2. Seller is authorized to enter into and perform its obligations under this agreement,
- 1.1.3. Seller believes that its performance under this agreement will not violate any other agreement,
- 1.1.4. Seller is commercially sophisticated, and
- 1.1.5. Seller is not owned or controlled by any of MCL’s Directors.

#### 1.2. **MCL Statements.** MCL states that:

- 1.2.1. it has the authority to enter into and perform its obligations under this agreement, and
- 1.2.2. it believes that its performance under this agreement will not violate any other agreement.

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

### 2. Registration & Access To eMarketplace/eShops

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

#### 2.2. **Amendment of this Agreement.** MCL 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 MCL eNetwork. If Seller registers on an

eMarketplace/eShop or continues to use an eMarketplace/eShop, Seller will be bound by the then current terms of this agreement.

- 2.3. **MCL Policies.** MCL may publish or amend policies governing Seller's access to or use of an eMarketplace/eShop ("Policies"). If Seller registers on an eMarketplace/eShop or continues to offer products for sale on an eMarketplace/eShop, Seller will be bound by the eMarketplace/eShop's current Policies. MCL will post any Policies or amendments to Policies on the Seller Information Page.
- 2.4. **eMarketplace/eShop Design and Access.** If MCL accepts Seller's registration for an eMarketplace/eShop, MCL will provide Seller access to the eMarketplace/eShop as a platform for Seller to post offers for sale to Product Listings and facilitate the sale of Seller's Products to Buyers. MCL may determine or change any aspect of an eMarketplace/eShop without notice to Seller. MCL may stop providing Seller access to an eMarketplace/eShop 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 an eMarketplace/eShop.

### 3. Seller Content & Product Listings

- 3.1. **MCL Is Not Seller Of Record.** Sales of Products on an eMarketplace/eShop are between Seller and Seller's Buyers; MCL is not the seller and is not a party to such transactions. Seller's listing of Products on an eMarketplace/eShop does not imply that MCL 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 MCL is accurate, not misleading, and complies with Applicable Law. Seller shall ensure that all electronic information and data it transmits to MCL 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.**
- 3.3.1. Seller shall create Product Listings or offers for sale posted to Product Listings using the MCL eNetwork for all Products it intends to sell on an eMarketplace/eShop.
  - 3.3.2. If it creates Product Listings, Seller shall create Product Listings that comply with Applicable Law, the Policies, and any specifications posted in the MCL eNetwork, and that are accurate and appropriate for the eMarketplace/eShop to which they are posted.
  - 3.3.3. Seller shall ensure that MCL's use of Seller's Product Listings will not
    - 3.3.3.1. violate any intellectual property rights of non-parties;
    - 3.3.3.2. contain defamatory or discriminatory content;
    - 3.3.3.3. constitute an invasion of a party's rights of privacy or publicity; and/or
    - 3.3.3.4. reflect unfavorably on MCL, the Websites and/or other Sellers on the Websites;
  - 3.3.4. Seller shall not create Product Listings that:
    - 3.3.4.1. offer products that are inauthentic, counterfeit, replicas or knock-off goods;
    - 3.3.4.2. offer any Restricted Products;
    - 3.3.4.3. offer Products Seller does not currently have in stock;

- 3.3.4.4.promote or engage in any deceptive trade practice (including spoofing, slamming, cramming, phishing, or attempting to scam or defraud a MCL Customer into surrendering private and/or personal information);
- 3.3.4.5.contain nudity or pornographic, obscene, or offensive content; or
- 3.3.4.6.use any MCL trademarks or imply that MCL endorses or approves the Product Listing.
- 3.3.5.MCL 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 MCL 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.**
  - 3.5.1.**Seller Established.** Seller shall establish prices for its Products in compliance with this agreement. Seller will enter pricing using the MCL eNetwork, unless MCL approves another method in writing.
  - 3.5.2.**Pricing Parity.** Seller shall maintain Parity between the Products it offers on an eMarketplace/eShop and identical Products offered through Seller's other sales distribution channels.
  - 3.5.3.**Seller Pricing Errors.** If Seller provides incorrect pricing information in a Product Listing (a "Seller Pricing Error"), MCL may, at Seller's expense, take any commercially reasonable action necessary to avoid or repair harm to MCL due to the Seller Pricing Error, including requiring Seller to honor all Product purchases at the erroneous price and compensating Buyers for any inconvenience caused by a Seller Pricing Error. Seller shall reimburse MCL for all losses, expenses, or liabilities MCL incurs as a result of Seller Pricing Errors.

## 4. Product Sale, Delivery, Return, and Customer Service

### 4.1. Customer Orders.

- 4.1.1.**Processing Customer Orders.** MCL shall process Customer Orders on behalf of Seller and collect all amounts due for Products that Buyers order from Seller through an eMarketplace/eShop. After processing a Customer Order, MCL shall email Seller a notice of the Customer Order at the email address that Seller identified in the MCL eNetwork. If MCL believes a transaction is erroneous, duplicate, contrary to an eMarketplace/eShop Policy, or fraudulent, it may stop, cancel or prohibit the transaction.
- 4.1.2.**Transfer of Customer Payments.** Seller hereby appoints MCL as an agent of Seller for the sole and express purpose of receiving payments from Buyers for Seller's Products sold on an eMarketplace/eShop. As between Seller and a Customer who purchases Products from Seller, MCL's receipt of funds from the Customer will be deemed the receipt of funds by Seller. MCL shall transfer the amount MCL collected

from the Customer, less any amounts Seller owes to MCL, to Seller using the processes and under the timing set forth in the Policies.

## **4.2. Taxes.**

### **4.2.1. Responsibility for Seller Taxes.**

#### **4.2.1.1. Seller is responsible for:**

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

#### **4.2.1.2. MCL is not responsible for:**

- 4.2.1.2.1. determining whether Seller Taxes apply to a Customer Order;
- 4.2.1.2.2. collecting, reporting, or remitting Seller Taxes to any tax authority (except as required by Applicable Law to do so);
- 4.2.1.2.3. Seller's use of or reliance on tax data or services provided by MCL or Tax Services, or for providing tax advice to Seller;
- 4.2.1.2.4. calculating, reporting, collecting or paying any product-based excise taxes or any fees or surcharges;
- 4.2.1.2.5. 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;

**4.2.2. Tax Jurisdictions.** Seller shall determine the jurisdictions in which it has an obligation to collect and remit Seller Taxes. Seller shall promptly notify MCL of the jurisdictions for which MCL 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 MCL eNetwork. MCL will not turn on collection of Seller's Taxes on Seller's behalf for jurisdictions outside the United States.

**4.2.3. Product Tax Codes.** MCL 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 MCL, in the format and manner required by MCL, a reference to one product tax code and any related information requested by MCL. If Seller does not provide a product tax code for a Product, MCL 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 MCL does not collect Seller Taxes for a Customer Order or Product Listing.

**4.2.4. Collecting Taxes.** If Seller provides product tax codes, MCL shall turn on collection of Seller Taxes for jurisdictions in the Hong Kong SAR from Buyers who purchase Products on an eMarketplace/eShop on Seller's behalf for the jurisdictions selected by Seller based on the product tax codes Seller provided. Except as required by Applicable Law, MCL shall transfer the Seller Taxes collected from Buyers to Seller, and Seller shall report and pay any Seller Taxes to the applicable tax authorities.

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

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

4.2.7. **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 MCL or Tax Services. If Seller registers on an eMarketplace/eShop, or continues to offer Products for sale on an eMarketplace/eShop, Seller will be deemed to have released any claims against the MCL Parties or the Tax Services arising from Seller’s use of or reliance on tax data provided by MCL or Tax Services.

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

#### 4.3. Shipping.

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

4.3.2. **Process.** When Seller receives notice of a Customer Order from MCL, Seller shall fulfil 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 MCL eNetwork. 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 Buyers. Title to and risk of loss of or damage to the Purchased Products will remain with Seller until delivery to the Customer. MCL will not have title to, or be deemed the legal owner of, any Products.

4.3.3. **Overdue Orders.** MCL may cancel any Customer Order that Seller does not ship within the shipping period specified in the Policies. MCL 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.

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

#### 4.4. Customer Returns.

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

- 4.4.2. **Seller Return Policy.** Seller shall submit a return policy (the “Seller Return Policy”) using the form provided on the MCL eNetwork. 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:
- 4.4.2.1. apply to all Products;
  - 4.4.2.2. outline the process for Buyers to return the Products directly to Seller; and
  - 4.4.2.3. be at least as accommodating to Customer returns as the applicable eMarketplace/eShop’s return policy and Seller’s own return policy.
- 4.4.3. **Refunds.** If Seller accepts a Customer return and notifies MCL of the return pursuant to section 4.4.1, MCL may refund Seller a portion of MCL’s commission on that Customer Order as set forth in the Policies.
- 4.5. **Recalled Products; Defective Products.** Seller shall immediately notify MCL 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 eMarketplace/eShops. 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 Buyers of and handling recalls of its Products.
- 4.6. **Customer Service Issues.** Seller shall handle all customer service issues related to Seller’s Products. MCL is not responsible for handling customer service issues related to Seller’s Products, and MCL may direct Buyers who contact it with service issues related to Products to contact Seller using the contact information Seller has provided in the MCL eNetwork. If Seller does not handle a customer service issue or a request from MCL to handle that issue, MCL may take any actions necessary to ensure Seller’s compliance, and MCL will not be liable to Seller for any results of those actions. If Seller does not handle a customer service issue to MCL’s satisfaction, MCL may contact the Customer and take any action to resolve the issue.
- 4.7. **Chargebacks.** MCL may charge Seller for losses, expenses, or liabilities MCL incurs related to Customer disputes related to Seller’s eMarketplace/eShop transactions or Products (“Chargebacks”). If MCL wants to charge Seller for a Chargeback, it will send Seller a notice of that Chargeback. If MCL sends Seller a Chargeback notice, Seller will respond and will provide MCL 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 MCL’s satisfaction, MCL may charge Seller for the Chargeback, and Seller will reimburse MCL for the Chargeback. Seller will not be responsible for Chargebacks due to:
- 4.7.1. theft or unauthorized use of a Customer’s payment card information for which MCL is responsible (except to the extent that theft or unauthorized use is attributable to Seller); or
  - 4.7.2. MCL’s failure to send Seller a notice of Customer Order.
- 4.8. **Customer Reviews and Ratings.** MCL may ask Buyers to rate or provide comments regarding Seller or the Products, and may post any resulting ratings or comments on the eMarketplace/eShop for public display.

## 5. Fees; Commissions; MCL’s Right To Recovery

- 5.1. **Monthly Subscription Fee.** Seller shall pay MCL the monthly subscription fees specified on the Seller Information Page for access to the eMarketplace/eShops (the “Monthly Subscription Fee”). MCL 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 MCL commissions on all amounts MCL collects on Seller’s behalf for sales of Products, less Seller Taxes, according to the “Commission Rate Schedule” specified in the Seller Information Page. MCL 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 MCL’s demand, Seller shall promptly pay any amounts it owes MCL. Seller hereby authorizes MCL to use any of the following methods for obtaining payment of amounts Seller owes MCL:
- 5.3.1. recouping or setting-off any payments MCL owes to Seller by any amount Seller owes to MCL;
  - 5.3.2. reversing any credits to Seller’s Account;
  - 5.3.3. Deducting amounts owed to MCL from any Seller Holdback Funds MCL requires;
  - 5.3.4. charging Seller’s credit card, or deducting funds from Seller’s bank account; or
  - 5.3.5. seeking payment from Seller by any other lawful means.
- 5.4. **Holdback Funds.** MCL may in its reasonable discretion withhold payments to be made to Seller (“Holdback Funds”). If MCL 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; MCL may commingle any Holdback Funds with its other funds, and Seller will remain a general creditor of MCL with respect to any Holdback Funds or other amounts MCL owes to Seller.

## 6. Intellectual Property

- 6.1. **Grant of License by MCL.** MCL hereby grants Seller a non-exclusive, revocable, non-transferable license to promote and sell Products on or through the eMarketplace/eShops to Buyers, subject to the terms of this Agreement.
- 6.2. **Grant of License by Seller.** Seller hereby grants MCL 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. MCL 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. MCL 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 MCL eNetwork or provides to MCL.

- 6.3. Ownership of Intellectual Property Rights.** MCL will own all right, title and interest in and any IP Rights in the eMarketplace/eShops and all data collected or stored in connection with the eMarketplace/eShops. 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 MCL. MCL may use any Seller Information to create, develop, or modify the eMarketplace/eShops or any other MCL concept, brand, software code, product, or feature (“Improvements”), and MCL 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 MCL.
- 6.4. Ownership of Content.** Seller will own all Seller Marks and Seller Information subject to section 6.3 and the License Seller granted MCL 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 MCL 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.

## **7. Term and Termination**

- 7.1. Start and Term.** This Agreement starts when Seller registers on an eMarketplace/eShop and continues until terminated by a party.
- 7.2. Termination.** Seller may terminate this agreement for any reason by notifying MCL as then specified in the MCL eNetwork. MCL 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, MCL may require Seller to maintain Holdback Funds to cover any amounts Seller does or may owe MCL, including to cover amounts Seller will owe MCL for Customer returns of Products and Chargebacks.

## **8. Disclaimer of Warranties**

- 8.1.** MCL hereby disclaims all warranties, representations, or guarantees of any kind, arising from any source, related to the eMarketplace/eShops or any services, information, or products available through any links on any eMarketplace/eShops.

- 8.2. MCL is providing the eMarketplace/eShops on an “as is” and “as available” basis, and Seller’s use of the eMarketplace/eShops is at Seller’s own risk. MCL does not warrant that Seller’s use of the eMarketplace/eShops will be uninterrupted, error-free, or virus-free.
- 8.3. MCL does not warrant or guarantee Seller’s results from using the eMarketplace/eShops, the sale of any Products on the eMarketplace/eShops, or any services provided by MCL to Seller in connection with the eMarketplace/eShops.
- 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.

## **9. Limitation of Liability**

- 9.1. Regardless of whether MCL is aware or has been advised of the possibility of the following losses, expenses, or liabilities, MCL 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. MCL’s aggregate liability from any Seller claims related to this agreement will not exceed the total amount Seller paid to MCL 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.

## **10. Indemnification**

- 10.1. **Seller Indemnity.** Seller shall indemnify the MCL 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:
- 10.1.1. Seller’s breach of this agreement or Applicable Law;
  - 10.1.2. death, illness, personal injury, or property damage arising out of or resulting in any way from any actual or alleged defect in a Product;
  - 10.1.3. any act or omission of the Seller, its agents, employees, or subcontractors relating to the sale of a Product;
  - 10.1.4. any actual or alleged breach of Seller’s written warranty for a Product;
  - 10.1.5. 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;
  - 10.1.6. a Product Listing;
  - 10.1.7. a Product actually or allegedly violating any Applicable Law; or
  - 10.1.8. Seller’s packaging, labeling, or advertising of a Product.
- 10.2. **Indemnification Process.** If MCL seeks indemnification from a Covered Claim, it may provide Seller reasonably prompt notice of that claim. If MCL sends Seller a notice of a Covered Claim, Seller shall respond reasonably promptly to MCL’s request, and shall select counsel reasonably acceptable to MCL to handle the Covered Claim. A MCL Party may also hire counsel at its own expense to participate in the defense of a Covered Claim. Seller shall

not bind a MCL Party in a settlement of a Covered Claim without that MCL Party's prior written consent.

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

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

11.1.1. "Confidential Information" means:

- 11.1.1.1. any technical or business data or information that a MCL Party provides to Seller regardless of whether marked or identified as "Confidential",
- 11.1.1.2. the terms of this agreement, and
- 11.1.1.3. the operations and technology to be utilized in connection with the MCL eNetwork and eMarketplace/eShops.

11.1.2. Confidential Information does not include information that:

- 11.1.2.1. pertains to goods that are sold or distributed by Seller to other retailers;
- 11.1.2.2. is already in Seller's possession and not covered by a confidentiality obligation;
- 11.1.2.3. becomes publicly available without action or fault on Seller's part; or
- 11.1.2.4. Seller obtains from a non-party without that non-party's breach of an obligation or duty.

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

11.2.1. Use.

- 11.2.1.1. 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.
- 11.2.1.2. Seller shall not disclose or permit the disclosure of such information or records to any non-party except:
  - 11.2.1.2.1. to obtain services necessary to perform under this agreement,
  - 11.2.1.2.2. to obtain legal, tax, or accounting services, or
  - 11.2.1.2.3. to respond to a valid subpoena or similar process.
- 11.2.1.3. Seller shall not disclose Confidential Information or records containing Confidential Information to a non-party under section 11.2.1.2.1 or 11.2.1.2 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.
- 11.2.1.4. If Seller seeks to disclose Confidential Information pursuant to section 11.2.1.2.3, Seller will provide MCL reasonable notice before disclosing the information, and MCL may reasonably respond to the proposed disclosure.

11.2.2. **Return or Destruction.** Seller shall promptly return or destroy any Confidential Information or records containing Confidential Information at MCL's request, except to the extent the information or records are:

- 11.2.3. contained in backup media used as such,
- 11.2.4. required to be maintained under Applicable Law, or
- 11.2.5. necessary for purposes of prosecuting or defending a claim related to this agreement.

### **11.3. Customer Personal Information.**

11.3.1.**Definition.** “Customer Personal Information” means any data or information related to identified or identifiable Buyers or related non-parties (such as non-parties that Buyers designate as recipients of shipments).

11.3.2.**Use of Customer Personal Information.** MCL 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:

11.3.2.1.transmit Customer Personal Information to any non-party except for purposes of performing under this agreement;

11.3.2.2.use Customer Personal Information to send marketing materials to or contact any person except for purposes of performing under this agreement;

11.3.2.3.solicit additional information from a Customer or related individual;

11.3.3.**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 MCL of the breach and will cooperate fully with MCL to respond to the breach.

#### 11.4.**Use of eMarketplace/eShop Systems.**

11.4.1.**Seller Credentials.** Seller shall maintain the security of Seller’s log-in credentials to eMarketplace/eShops. Seller is responsible for any expense, loss, or liability caused by the loss or breach of those credentials.

11.4.2.**No Unauthorized Use.** Seller shall not use an eMarketplace/eShop or any of its systems, code, or APIs:

11.4.2.1.to violate the security of, or gain unauthorized access to, any computer, computer network, or other device or system;

11.4.2.2.to discover passwords or security encryption codes;

11.4.2.3.to use any robot, spider, site search or retrieval application, or other device to retrieve or index any portion of an eMarketplace/eShop;

11.4.2.4.to collect any information about Buyers;

11.4.2.5.to reformat or frame any portion of the Websites;

11.4.2.6.to attempt to duplicate all or any part of the eMarketplace/eShop or its code, or to attempt to reverse engineer or decompile any code, or to attempt to create a substitute or competing eMarketplace/eShop service;

11.4.2.7.in a manner that would be detrimental to the function of the eMarketplace/eShop or to other sellers’ or Buyers’ use of or access to the eMarketplace/eShop.

11.4.3.**No Archive Use.** Seller acknowledges that MCL is not providing archive services and that the eMarketplace/eShops 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 MCL that could not be adequately remedied by payment of money damages, and that MCL may seek equitable relief, including an injunction, to prevent such a breach. Seller states that, if MCL seeks equitable relief to prevent a breach of section 11, Seller will not argue that equitable relief is not appropriate or available to MCL.

## 12. Governing Law & Disputes

12.1.**Governing Law.** The laws of Hong Kong SAR, without regard to their conflicts or choice of law rules, govern all matters relating 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 Hong Kong SAR.

## 13. Miscellaneous

13.1.**Use of Subcontractors.** Seller may use subcontractors in its performance under this agreement. If Seller uses subcontractors, Seller will:

13.1.1.be responsible for the acts or omissions of its subcontractors, and

13.1.2.require subcontractors to act in compliance with this agreement. MCL 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 MCL'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 MCL 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 MCL, and those policies shall be primary and noncontributory with any insurance that MCL carries.

13.5.**Notice.** Unless otherwise specified in this Agreement, MCL may provide notices to Seller through MCL eNetwork, or at the email address Seller specifies in MCL eNetwork. Seller shall send all notices to MCL through MCL eNetwork. All notices provided by MCL to Seller through MCL eNetwork, 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 eMarketplace/eShops. 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 MCL, Buyers, and Seller, and there are no other intended non-party beneficiaries of this agreement.

## 14. Definitions

- 14.1.“**Account**” means Seller’s eMarketplace/eShop account, which is accessible through MCL eNetwork.
- 14.2.“**Applicable Law**” means all requirements of jurisdictional laws, regulations, ordinances, and administration orders and rules of Hong Kong SAR, and all other countries in which the Products are produced, sold, or delivered.
- 14.3.“**Business Day**” means a day, Monday through Friday (Hong Kong SAR local time), on which banks are open and transacting business that is not a Hong Kong SAR public holiday.
- 14.4.“**Customer**” means any customer accessing an eMarketplace/eShop, or placing or receiving any order for Products via an eMarketplace/eShop.
- 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 Buyers on the DigiEco eCommerce as those associated with identical Products offered on Seller’s other sales distribution channels.
- 14.8.“**MCL eNetwork**” means the online interface by which Seller accesses its eMarketplace/eShop account, communicates with MCL, 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 Buyers on the Websites.
- 14.10.“**Product Listings**” means the offers Seller creates for display on the eMarketplace/eShops 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 MCL eNetwork.
- 14.13. “**Seller Information Page**” means the page on an eMarketplace/eShop that contains the eMarketplace/eShop’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. “**MCL Marks**” means all MCL domestic and foreign trademarks, service marks, trade names, registrations and applications to register the foregoing, logos, and domain names.
- 14.17. “**MCL Parties**” means MCL and all of its past, present and future parents, subsidiaries, affiliates, directors, officers, and employees.