# AGREEMENT BETWEEN VENDOR AND THE INDIAN BAZAAR

This Agreement between Vendor and THE INDIAN BAZAAR, The Trustee for Acquarius Trust (“**Agreement**”) is made on 18th day of September, 2020 (“**Effective date**”)

**By and between**

THE INDIAN BAZAAR ([www.theindianbazaar.com](http://www.theindianbazaar.com)), The Trustee of Acquarius Trust, (“**Company**”, “**we**”, “**our**”) and You (“**Vendor**”), with respect to the licensing of certain rights in and to Vendor’s Service(s), product(s) or design(s) (“**Product**”).

The domain name www.theindianbazaar.com (hereinafter referred to as “Platform” or “Website") is owned by The Trustee for Acquarius Trust and operates as an online e-commerce marketplace for the display, advertising and sale of products and services by various vendors to the end customers (“**Customers**”) and provides related services to the vendors and to the Customers / users of the Platform on behalf of the vendors (as the vendor’s service provider).

BY USING THIS WEBSITE AS A SERVICE (“SERVICE”), YOU DE-FACTO ARE LEGALLY BOUND BY THE FOLLOWING AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT USE THE SERVICE AND CONTACT THE COMPANY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS NOTICE, USING THE SERVICE INDICATES YOUR ACCEPTANCE OF THE TERMS OF THE AGREEMENT.

# Background:

The Company shall act as Vendor’s service provider for providing various services in relation to the sale of its Products and Services as agreed under this Agreement, and the use of the Platform for enabling promotion / advertisement of the its Products and Services (“**Services**”).

**“Product(s) and Service(s)”** shall mean any and all goods and services provided by the Vendor for which Company makes available Company’s Platform to the Vendor.

# Products and Services:

* 1. The Vendor shall offer its Products and Services to the Company for advertising for the purpose of sale by the Vendor (Company or Vendor) on the Platform.

# Services to be provided by the Company:

As part of the Services, the Company shall carry out the following functions for and on behalf of the Vendor for consideration as agreed under the Vendor Agreement.

* 1. Facilitation of Sale of Products and Services through the Platform:
     1. Information and assistance in relation to the listed Products and sales thereof,

1. Information in relation to status of the order placed by Customers, and
2. Operating a customer helpdesk for other inquiries in relation to Products, and orders, customer complaints and grievances.
3. The Vendor agrees and undertakes to fully co-operate with the Company as reasonably required, in connection with any customer-service functions undertaken by the Company. Such services can be provided by the Vendor either on its own or through the Suppliers, as the case may be.
4. The Vendor authorizes the Company to place;
   1. A description of the Vendor (including but not limited to description of product Suppliers, where so directed by the Vendor) and
   2. description of each of its Products and Services (including but not limited to the technical description of the Products, Services, brand name of the Product, the price of the Product & Services and any applicable warranty terms) on the Platform.
   3. The Vendor rating based on vendor performance and customer reviews.

# Advertising

* 1. The Company shall advertise / display, on behalf of the Vendor, the Products on the Platform based on the preference opted for by the Vendor in the Vendor Agreement.

# Quality and Quantity Assurance:

* 1. Prior to the Product(s) being displayed / advertised on the Platform, the Vendor shall, within 2 (two) business days, ensure the availability of the Products for servicing customer orders, and provide the product summary to be uploaded on the site (“**Stock Statement**”).
  2. Further provided that in the event that due to any reason the Product(s) in respect of which the product Statement has been furnished become unavailable in the stated quantities, the Vendor shall immediately, from such Product(s) or stated quantities thereof becoming unavailable, update the inventory on site.

# Ordering, Packaging and Delivery:

* 1. The Platform will enable Customers to place orders for the Product(s) and Service(s) they wish to purchase on the Website.
  2. Upon receiving the confirmation of the order by the Customer, the Company will update the details of the confirmation of the order on the internal Platform which the Company shall maintain for the Vendor. The Vendor hereby irrevocably confirms that upon receiving the confirmation of the order by the Customer in respect of any Product and Service, the Vendor shall borne product delivery expenses, including shipping, return shipping and external packaging to any location within Vendor’s country, within 24 hours of the confirmed order being received on the Platform. The Vendor consent the Company to use packing material mutually agreed with the Company to package the Product and keep it ready for collection. The materials and collaterals to be used for outermost package layer shall be provided by the Company.
  3. The Vendor shall ensure to provide all relevant authorisations in favour of the Company to facilitate aforesaid shipping of the relevant Products from the Vendor to the Customers within 2 working days and 5 working days if Vendor is overseas based.
  4. The Company may verify, on behalf of the Vendor as a service provider, the consignment against the confirmed order placed by the relevant Customer, and such other Quality Parameters as may be reasonably required or specifically instructed. Company may also use their own packaging for all final delivery to customers.
  5. For the avoidance of doubt, it is hereby clarified and the Parties agree that by carrying out the quality assessment exercise on behalf of the Vendor of the Products envisaged as above, the Company is not assuming any liability or responsibility for such exercise or arising in connection therewith.
  6. The Vendor shall ensure that the products dispatched are of the specifications ordered and there is no variation whatsoever. The necessary guarantee/warranty shall be provided by the Vendor to the customer.
  7. The Vendor agrees to replace the defective products supplied to the customer at its own cost and shall not hold the Company responsible in any manner whatsoever.
  8. The Company shall take all commercially reasonable steps to keep the Customer informed of any delays which may take place in the delivery of any Product.

# Invoicing and Collection and Payments:

* 1. The Vendor will generate, print and issue an invoice for the purchased Product and Service to the Customers from the Platform provided by the Company. At times, the Invoice may contain some additional product shipping or any other charges charged to the Customer based on the Company’s policy from time to time. The Vendor agrees to book the same in their books against which the Company will raise the debit note to the Vendor for equivalent amount resulting in no gain/ loss to the Vendor.
  2. The Vendors will bear the freight charges to location within the Vendors’ country as designated by the Company.

# Payment Terms.

* 1. The Customers shall be given the choice to make payments for the purchase of the Product and Service by way of online payments, or any other legal methods of payment as may be available on the Platform from time to time.
  2. The payment of sale proceeds of the Products and Services received by the Company to the Vendor shall be on a fortnightly basis. At the expiry of every two (2) weeks from a fortnight (each a “**relevant fortnight**”), the Company shall remit to the Vendor the sale proceeds of the Products and Services which have been duly delivered to the Customers during a relevant fortnight after deducting there from (i) the Company’s Margin on the Products and Services sold and delivered to the Customers as agreed in the Vendor Agreement ("**Margin**”); (ii) any other costs incurred by the Company in relation to provision of other Services, as agreed under the Vendor Agreement (including without limitation the shipping charges, advertisement costs etc.) and; (iii) all other amounts due and payable by the Vendor to the Company on accordance with these Terms & Conditions and/or the Vendor Agreement.
  3. The Margin retained by the Company shall be subject to applicable withholding taxes (wherever applicable).

# Commercial Terms

# For providing the Services mentioned above the Vendor will pay to Company a fee of 5% plus applicable taxes on the sales made by Vendor through the Website calculated on monthly basis.

# Company reserves the rights to amend the said fee over the time upon notifying to the vendors registered with Website.

# License to Make Use of Intellectual Property.

* 1. The Vendor hereby grants to the Company for the Term a royalty free irrevocable license to use its Intellectual Property for the purposes of providing the Services by the Company as contemplated hereunder.
  2. In the event, the Vendor sources the Products from any Supplier, the Vendor shall obtain all applicable licenses and consents for the use of such Supplier’s Intellectual Property in connection with the Product being sourced from such Supplier for the purposes of providing the Services by the Company, prior to the display / advertising of such Products on the Platform.
  3. The term “Intellectual Property” shall mean and include logos, trade names, brand names, trademarks, copyrights and other relevant intellectual property rights relevant to the advertisement and sale of the Products.

# Confidentiality.

* 1. The Parties shall keep all negotiations confidential and maintain the contents of these Terms & Conditions together with Vendor Agreement in strict confidence and shall make no announcement or disclosure without the prior written approval of the other Party save in respect of (i) disclosures necessary to be made to each Party’s consultants, advisors, employees / directors on a need-to-know basis and provided that such third parties are bound by obligations of confidentiality; and (ii) disclosures required by law.

# Termination.

* 1. These Terms & Conditions shall become effective on the Effective Date as mentioned in the Vendor Agreement and shall remain in force unless Vendor Agreement is terminated between the Parties in accordance with the terms hereof (“Term”).
  2. The Vendor Agreement may be terminated by either Party in accordance with the following:
     1. Upon material breach of these Terms & Conditions or Vendor Agreement by either Party which is not cured within thirty (30) days of receipt of notification from the non- breaching Party, the non-breaching Party shall be free to terminate the Vendor Agreement forthwith;
     2. Where any Party commits a material breach of the Terms & Conditions and in the reasonable opinion of the non-breaching Party, such breach is not capable of cure, the non-breaching Party shall not be obliged to provide a chance to cure the breach but shall be entitled to terminate the Vendor Agreement forthwith.

Upon the date of termination of this Agreement, all legal obligations, rights and duties arising out of this Agreement shall terminate except for such legal obligations, rights and duties as shall have accrued prior to the effective date of termination and except as otherwise expressly provided in this Agreement.

# Intellectual Property Rights.

* 1. The Company shall own all rights in any intellectual property created by the Company under these Terms & Conditions, including material, designs, graphics created and / or developed by the Company.
  2. Subject to the provision of contained herein, the Company owns and shall exclusively own all rights (including all intellectual property rights), title and interest in respect of the Platform / Website.

# Vendor’s Obligation

1. The vendor takes full responsibility for all information that he provides on the www.theindianbazaar.com Website and must indemnify THE INDIAN BAZAAR, The Trustee for Acquarius Trust, about any liability incurred by THE INDIAN BAZAAR as a result of such information.
2. The vendor shall be required to provide an actual business name for registration on the website.
3. Vendor shall indemnify THE INDIAN BAZAAR, The Trustee for Acquarius Trust, for all claims and liabilities arising out of any use by the Vendor of the www.theindianbazaar.com Website, including costs and expenses incurred.
4. The vendor is not an employee of THE INDIAN BAZAAR, The Trustee for Acquarius Trust, and accepts full responsibility for all Income Tax, National Insurance, and other liabilities arising from the use of the www.theindianbazaar.com Website.
5. The Vendor shall be liable and responsible for any claim or legal proceeding arising out of the use /sale of fake products by the Vendor
6. The Vendors agrees to comply with THE INDIAN BAZAAR, The Trustee for Acquarius Trust, safety protocols which can change from time to time by THE INDIAN BAZAAR at its sole discretion e.g.
   1. The use of stickers on the products to validate our delivery procedure.
7. The Vendor and THE INDIAN BAZAAR, The Trustee for Acquarius Trust, have the option to discontinue or terminate this contract at any time with or without cause upon 3 months written notice. In case of termination, the contract can only be cancelled upon closing of the final payment and settlement of dues.
8. The Vendor hereby grants to THE INDIAN BAZAAR, The Trustee for Acquarius Trust, to use its Name, address, Tax details on THE INDIAN BAZAAR’s billing page.
9. All information provided by a Vendor on the www.theindianbazaar.com Website must be accurate and kept up-to-date. This includes the correct name, address, telephone number, and product details. Details entered by the Vendor on the www.theindianbazaar.com Website will be publicly visible and may appear in search engine results.
10. The use of the www.theindianbazaar.com Website is entirely at a customer/Vendor's own risk. A customer must exercise complete caution when using the www.theindianbazaar.com Website.

# Representation and Warranties of the Vendor.

* 1. The Vendor has all rights (including all Intellectual Property rights), approvals and consents from any third parties (including Suppliers) required to enter into and perform the Vendor Agreement together with Terms & Conditions and to supply and sell the Products as contemplated hereunder.
  2. The Vendor has procured all necessary registrations/permits as required under applicable laws for sale of Products and Services through the Platform (including without limitation registration under applicable laws pertaining to any tax of the relevant states). The Vendor further represents that the Vendor shall be solely responsible for collection and payment of applicable taxes with respect to the sale of the Products to the relevant government authorities in a timely manner and the Company shall not be responsible nor held liable for any non- compliance/contravention of applicable tax laws by the Vendor. The Vendor hereby agrees to keep the Company harmless and indemnified in this regard. The indemnity obligations of the Vendor contained herein shall survive the termination of the Vendor Agreement together with these Terms & Conditions.
  3. The Vendor has a valid, clear and marketable title to all the Products being displayed, advertised and sold through the Platform under the terms of the Vendor Agreement.
  4. All the Products and Services are genuine, saleable, marketable and of the quality and nature as described by the Vendor to the Company and displayed on the Platform. The Products are genuine, new and are not counterfeit products.
  5. The Vendor has valid, clear and full rights / entitlement to use the trademarks, designs, copyrights of or related to the Products or its packaging used in connection with display and advertising of the Products by the Company. The Company has valid clear and full rights / entitlement to use the trademarks, designs, copyrights of or related to the Products on Company packaging during delivery to customers.
  6. The Vendor shall not provide any Product or Service that is ambiguous or misleading or likely to deceive or mislead or that is defamatory or indecent or which otherwise offends the ethical and moral standards of society. Further, the Product and Service does not infringes a copyright, trademark or otherwise infringes any intellectual property rights; that breaches any provision of any statute, regulation, bye law or any other rule or law, as may be applicable in force from time to time;
  7. The Product and Service of Vendor will not give rise to any claim or action against Company (www.theindianbazaar.com) any of its employees, directors, representatives etc.
  8. The Company prohibits the listing/sale of the following products and Services for any reason, including but not limited to any product or service that is illegal to sell under any applicable law, statute, ordinance or regulation including the following: any controlled substance, dangerous, counterfeit or stolen goods, goods which do not actually exist, any good that infringes or violates anyone's rights, any item which in our's sole discretion is inflammatory, offensive or otherwise inconsistent with our's standards of business ethics, any messages, data, or images that might be considered by a reasonable person to be obscene or which contain racial, ethnic, religious slurs or derogatory epithets, or advocating violence, hate or other language that is deeply or widely offensive.
  9. The decision of the Company will be final in all matters.
  10. Every Vendor acknowledges having read our terms and Conditions

# Indemnity.

* 1. The Vendor indemnifies and shall hold indemnified the Company, its partners, officers, employees, representatives, agents from and against all losses, damages, claims, suits, legal proceedings and otherwise howsoever arising from or in connection with any claim including but not limited to claim for any infringement of any intellectual property rights or any other rights of any third party or of law, concerning quality, quantity and any claim in relation to the Vendor’s product, the breach of any of the Vendor’s warranties, representations or undertakings or in relation to the non-fulfillment of any of its obligations under this Agreement or arising out of the Vendor infringing any applicable laws, regulations including but not limited to Intellectual Property Rights, state and federal taxes. The Standards of Weights & Measures legislation, Excise and Import duties, etc. For the purpose of this clause reference to the Company shall also include the Mobile Operators and such other agencies through whom the Company shall make the Platform available to the Customers.
  2. This article shall survive the termination or expiration of this Agreement.

# Limitation of Liability.

* 1. In no event shall Company be liable to the Vendor or customer for any incidental, indirect, remote special, consequential or punitive damages, loss of goodwill or business profits, regardless of the nature of the claim, even if Company knew or should have known of the possibility of such damages or claims. Company’s total liability (including for its indemnity obligations), whether in contract, tort, or otherwise, arising out of or in connection with the Vendor Agreement or Terms & Conditions shall not exceed the total Margin received by the Company in the preceding 3 months under the Vendor Agreement.

# General Clauses.

* 1. The Parties hereby agree that for the purposes of providing the Services and carrying out related functions in accordance with the provisions of Terms & Conditions, the Company is hereby authorized as the agent of the Vendor to act in accordance with the terms herein and other instructions of the Vendor.
  2. These Terms & Conditions together with Vendor Agreement is the complete and binding agreement of the Parties with respect to the subject matter hereof.
  3. These Terms & Conditions are applicable for all Vendors and may be modified by the Company from time to time with prior intimation to the Vendors. Vendors hereby agree to be bound by such amended Terms & Conditions, as may be notified by the Company.
  4. The Vendor shall not assign or sub-contract any of its rights, obligations, or responsibilities under the Vendor Agreement or Terms & Conditions without the prior written consent of the Company.
  5. The Parties agree that, having regard to all the circumstances, the covenants contained herein are reasonable and necessary for the protection of the Parties. If any such covenant is held to be void as going beyond what is reasonable in all the circumstances, but would be valid if amended as to scope or duration or both, the covenant shall apply with such minimum modifications regarding its scope and duration as may be necessary to make it valid and effective.
  6. If any provision of these Terms & Conditions is held to be invalid or unenforceable in any respect, such provision shall be modified to the extent necessary to render it, as modified, valid and enforceable under applicable laws and such invalidity or unenforceability shall not affect the other provisions contained herein.
  7. Except as expressly provided in this Terms & Conditions, no waiver of any provision shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Terms & Conditions shall operate as a waiver thereof.
  8. Each Party shall co-operate with the other Party and execute and deliver to the other Party such instruments and documents and take such other actions as may be reasonably requested from time to time in order to carry out, evidence and confirm their rights hereunder and the intended purpose of these Terms & Conditions and to ensure the complete and prompt fulfilment, observance and performance of the provisions contained herein and generally that full effect is given to the provisions of the Vendor Agreement together with the Terms & Conditions.

# Governing Law and Jurisdiction.

* 1. These Terms and Conditions together with the Vendor Agreement shall be read and construed in accordance with the laws of Australia. All disputes arising out of or in relation to these Terms and Conditions and/or the Vendor Agreement shall be subject to the exclusive jurisdiction of applicable courts of Australia.