

# ZING® MARKETPLACE PARTICIPANT AGREEMENT

This Zing Marketplace Participant Agreement (“**Agreement**”) constitutes a legal agreement between You (“**Participant**” or “**You**”) and JM Facets, LLC, a Jewelers Mutual Group company (“**JM,**” “**We,**” or “**Us**”). By checking the box indicating “I agree” (or a similar box or button), You agree to be bound by this Agreement. You can review the current version of the Agreement at any time at <https://zing.jewelersmutual.com/legal/participant-agreement>. Any reference to the Agreement includes any and all terms and conditions incorporated by reference.

This Agreement includes important provisions such as limitations and waivers of liability, disclaimers of warranty, indemnities, ownership of intellectual property and exclusive dispute resolution procedures. You are encouraged to scroll through the entire Agreement and read it thoroughly before accepting its terms. You should print and retain a copy of this Agreement for your records by using the print functionality in your browser.

You must read, agree with and accept all of the terms and conditions contained in this Agreement applicable to the Zing Offerings you choose to utilize, including any ancillary terms, such as the Privacy Policy, Zing API Terms and any applicable Policies and Procedures, which are incorporated by reference herein, before You may become a Participant. If You are not willing to accept this Agreement (as it applies to the Zing Offerings you choose to utilize) and the terms and conditions incorporated herein by reference, then You may not proceed with registration as a Participant or otherwise access the Zing Platform as a Participant.

**1. Zing Platform.** JM operates a proprietary online digital marketplace referred to in this Agreement as the Zing Platform. The Zing Platform makes available a broad array of fine jewelry and related services to its users through an online ecosystem of leading merchants and service providers in the jewelry industry. Participants who enter into this Agreement and abide by its terms may make their products and services available for sale to Customers through their own Market(s) on the Zing Platform or may purchase products or services from third party Markets in connection with the operation of Participant’s business. Because the Zing Platform is dynamic in nature and evolves with new technology, functionality, and offerings, the terms and conditions of this Agreement similarly may be modified and updated from time to time in JM’s discretion. JM reserves the right to modify and update this Agreement by posting the updates and changes online at <https://zing.jewelersmutual.com/legal/participant-agreement>. You are advised to check this Agreement online from time to time for any updates or changes that may impact You. Your continued use of the Zing Platform constitutes Your acceptance of any updates or other changes to this Agreement.

**2. Zing API & Content.** JM desires to make the Zing APIs, Content, and related services and information available to You through the Zing Platform (referred to hereafter more specifically as the Zing Offerings) to assist in Your (a) purchase of products or services from third party Markets in the operation of Your business and (b) creation of Your own Markets designed to (i) facilitate commerce and/or other important transactional aspects of Your and JM’s respective businesses and (ii) obtain access to Customer Data arising from or involving Market

activity. To obtain access to the Zing Offerings for such purposes, You must accept this Agreement and register for a Participant Account.

**3. Access Rights & Enrollment.** JM reviews Your information in order to safeguard the integrity of the Zing Platform and reduce the risk of fraud, money laundering, terrorist financing, violations of Sanctions, and other criminal activities. Accordingly, depending on which Zing Offerings You use, JM may obtain, verify, and record information that identifies You, including but not limited to name, address, date of birth, and other identifying information. JM may use public records to verify information and documentation. JM may also request from You identifying documents, such as a driver's license or organizational documents for entities or JM may request in writing from You the right to obtain credit, employment, income, and other information about You from reporting agencies or other third parties to verify information and documentation You provide to JM and subsequently for any future lawful purposes. Credit reports or consumer reports may be requested from any reporting agencies. If such report was requested, You may request the name and address of the reporting agency that furnished the report. If You fail to provide any information that JM may request, or if JM is unable to verify the information You provided, JM may remove your access to the Zing Platform or refuse to provide You with access to the Zing Platform or a particular Zing Offering. Subject to Your full compliance with the terms and conditions of this Agreement, JM grants to You a personal, non-exclusive, non-transferable, non-assignable, non-sublicensable, limited, terminable, and revocable right during the term of this Agreement to access the Zing Platform and Zing APIs (subject to the additional Zing API Terms) for the sole purposes of (a) creating and operating Markets through the Zing Platform or (b) accessing third party Markets to purchase goods and services in the operation of Your business. JM further grants the additional rights as set forth in Section 15 below entitled "Proprietary Rights" solely for Your use in connection with the foregoing. This grant of rights is expressly conditioned upon and subject to Your confirmed acceptance as a Participant by JM and compliance with the terms of this Agreement, all referenced terms incorporated herein.

**4. Restrictions.** In connection with Your participation in the Zing Platform, You may not, and shall not permit or authorize any person to, directly or indirectly, engage in any of the following activities: (a) reverse engineer, disassemble, reconstruct, or decompile any object code furnished as part of the Zing Offerings; (b) gain unauthorized access to or use of JM's services or systems, including but not limited to, the Zing Offerings; (c) damage, disrupt, or impede the operation of JM's services or systems, including but not limited to the Zing Offerings; (d) engage in fraudulent or illegal conduct of any kind; (e) restrict, inhibit, or engage in any activity that prevents any other person from using the Zing Offerings; (f) request, collect, solicit, or otherwise obtain access to Credentials (as defined in Section 9: Registration; Developer Credentials; Certification) through fraudulent or deceptive means; (g) circumvent or modify any Credentials or other security mechanism used by JM; (h) use the Zing Offerings for purposes other than in connection with the Zing Platform; (i) use any robot, spider, site search/retrieval application or other device to retrieve, scrape or index any portion of JM's services or systems, including but not limited to, the Zing Offerings; (j) create user accounts by automated means or under false or fraudulent pretenses; (k) transmit any viruses, worms, defects, Trojan horses, or any programming of a destructive nature; or (l) use the Zing Offerings to create Markets that offer or

promote services that may be damaging to, disparaging of, or otherwise detrimental to JM or its licensors, licensees, affiliates, or partners.

**5. Standard Market.** You are not required to create Your own Market by entering into this Agreement. You may still use the Zing Platform to purchase goods and services from third party Markets in connection with Your business operations even if You do not operate a Market on the Zing Platform. If You do elect to create a Market, each Market will be provided with standard layout and functionality. To preserve a common look and feel of the Zing Platform, any customization of a Market must be approved in writing by JM, in advance. You acknowledge that changes to requested functionality, or requests for non-standard functionality, layouts or integrations, shall affect the actual fees charged. The Market shall be implemented utilizing a single site ID and JM standard layouts and page flows. JM shall provide You self-service configuration options allowing some personalization of Your Market's layout.

A. Pages. JM shall be responsible for hosting the Market, including the cart portions of the Market. The Market may include the following pages as mutually agreed upon by the parties: home page, category page, payment page, bid/buy page, product detail page, category product list, search results, product detail page, a "my account" page, and certain interstitial cross-sell/up-sell pages as agreed to by JM. The cart portions of the Market may include the following pages: a shopping cart or quick buy checkout page, order confirmation page, thank you page, invoice page, and "my account" page. JM shall have the right, in its sole discretion, to include additional pages within the Market.

B. Theme and Templates. JM shall implement the Market using one (1) theme across all JM hosted pages. The font used in the Market shall be either: Arial, Verdana, Helvetica or Sans-Serif, provided that JM may use alternative fonts in its sole discretion. JM shall use commercially reasonable efforts to match Your header, footer and gutter color palette within the JM standard style sheet and layout. You agree and acknowledge that the headers, footers and gutters may not be a perfect pixel match and may contain some differences. You shall provide JM with a company logo image for use in connection with any of Your company-branded pages of the Market. The company logo must be provided to JM in a resolution(s) and format as specified by JM.

C. Catalog. The catalog of products and services offered by You which may be offered for sale through the Market may be limited by JM from time to time in its sole discretion in order to maintain optimal system performance and responsiveness, and You agree to be bound by any such limitations. You shall be responsible, via the Zing API to upload Your products and services, as well as to maintain Your inventory.

D. Notifications. In connection with the operation of the Market, JM shall provide certain standard notifications to Customers and You. A list of JM's standard notifications is available upon request. JM reserves the right, in its sole discretion, to add, remove or change the standard notifications at any time.

**6. Fees.** To use certain Zing Offerings on the Zing Platform, we may require You to provide us with valid bank account information for a bank account in Your name ("Your Bank Account"). You shall use only a name You are authorized to use in connection with the Zing Platform and shall update all of the preceding information as necessary to ensure that it at all times remains accurate and complete. You authorize us (and shall provide us additional

documentation evidencing Your authorization upon our request) to verify Your information (including any updated information) and to debit Your Bank Account for any sums payable by You to us (in reimbursement or otherwise). At JM's option, all payments to You shall be remitted to Your Bank Account or through an Automated Clearing House ("ACH") or similar system. With respect to any ACH transactions between You and JM, You agree to be bound by and comply with the then-current NACHA Operating Rules & Guidelines. For any amounts You owe us, we may (a) offset any amounts that are payable by You to us (in reimbursement or otherwise) against any payments we may make to You; (b) invoice You for amounts due to us under this Agreement, in which case You shall pay the invoiced amounts upon receipt; (c) reverse any credits to Your Bank Account; or (d) seek such payment or reimbursement from You by any other lawful means. All amounts contemplated in this Agreement shall be expressed and displayed in U.S. dollars. If we discover erroneous or duplicate transactions, then we reserve the right to seek reimbursement from You by deducting from future payments owed to You or seeking such reimbursement from You by any other lawful means. This authority will remain in effect until (i) this Agreement is terminated and You have no outstanding liabilities or obligations to us or (ii) You notify us of any new financial institution or account for automatic debit at least fifteen (15) days before Your next automated payment is due, whichever occurs earlier. In the event that any ACH entry originated by us pursuant to Your instructions is returned unpaid for any reason or there are insufficient funds in Your Bank Account to pay all sums You owe us, then You agree to reimburse us for any fees or charges incurred by us as a result of any transaction that is refused by Your financial institution for insufficient funds and we may suspend or terminate your access and use of the Zing Platform until such time as You provide us true, complete and accurate instructions to initiate ACH entries with respect to another account.

If we reasonably conclude based on information available to us that Your actions and/or performance in connection with the Agreement may result in Customer disputes, chargebacks or other claims, then we may, in our sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to You under this Agreement for the shorter of: (a) a period of ninety (90) days following the initial date of suspension; or (b) completion of any investigation(s) regarding any seller actions and/or performance in connection with the Agreement.

As a security measure, we may, but are not required to, impose transaction limits on some or all Customers and Participants relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time. We shall not be liable to You: (a) if we do not proceed with a transaction or disbursement that would exceed any limit established by us for a security reason, or (b) if we permit a Customer to withdraw from a transaction because the Market or the Zing Platform are unavailable following the commencement of a transaction.

The fees due from You in connection with this Agreement shall be set forth in an order form between You and JM or, if no order form exists, then depending on your interactions with certain Zing Offerings, You may be charged the following fees, which include, without limitation:

A. Transaction Fee. A monthly fee for matters including, but not limited to, Your use of and access to certain Zing Offerings and the associated infrastructure services costs incurred by JM, including Zing Platform operational hosting and support fees. We will notify You before we start charging You a monthly Transaction Fee. The foregoing transaction fees shall be

determined based on transactions and/or revenue generated and shall be deducted by JM before You are paid the amounts due You under this Agreement for transactions.

B. Premium Services Fees. JM reserves the right to a fee if You elect to receive any premium services developed by JM for the Zing Platform. The foregoing premium services fee will be determined based upon JM's then-current rates.

C. Professional Service Fee. Use of professional services is not required to use the Zing Platform. If applicable, any professional services provided pursuant to this Agreement shall be charged on a time and materials basis at JM's then-current rates based upon the actual number of hours used in accordance with the applicable statement of work. These services mean all professional services provided by JM to You, including without limitation, any custom or expanded implementation or technology services, including modifications in features or functions, or other customizations to Your Market. Examples include but are not limited to: requests for web development and enhancements to Your Market or the Zing Platform to add support for non-standard features, functionality or integrations. JM and You shall mutually negotiate and execute a statement of work, which shall be incorporated by reference into and governed by the terms of this Agreement, specifying the scope of the professional services and estimated fees/rates for such professional services. JM shall use commercially reasonable efforts to meet any performance dates specified in a statement of work, provided that any such dates shall be estimates only. JM has the right, upon provision of not less than 30 days' written notice to You, to terminate the professional services, with or without cause, provided that JM shall refund any unused amounts pre-paid by You.

D. Your Obligations and Responsibilities related to Professional Services. Without limiting any of Your obligations and responsibilities stated in this Agreement or incorporated by reference herein, You agree to timely comply with the terms and conditions contained in this Agreement and any applicable statement of work related to the provision of any professional services. You shall provide JM any information, items and other materials reasonably required by JM to enable it to perform any requested professional services in a timely manner. You further agree to respond promptly to any JM request for direction, information, approval, authorization or decisions that are reasonably necessary for JM to perform the professional services in accordance with the terms of this Agreement. JM shall not be liable for any delay related to professional services arising directly or indirectly from Your failure to timely comply with the terms of this Agreement.

E. Representations and Warranties related to Professional Services. JM shall perform any professional services in a workmanlike manner. JM shall re-perform any professional services not performed in accordance with the warranty in this Section provided that JM receives written notice from You within thirty (30) days after such professional services were performed. Re-performance of the professional services shall be Your sole and exclusive remedy and JM's entire liability for any breach of the warranty contained in this Section 6.

F. Method of Payment. All payments are to be made in U.S. dollars.

G. Taxes. You are responsible for all Taxes. Unless expressly stated, amounts shown do not include Taxes. You shall make all payments required without deduction of any Taxes, except as required by Law, in which case the amount payable shall be increased as necessary so that after making any required deductions and withholdings, JM receives and retains (free from

any liability for payment of Taxes) an amount equal to the amount it would have received had no such deductions or withholdings been made.

H. Taxes On Sale of Products and Services to Customers. As between the parties, You shall be responsible for the collection and payment of any and all Taxes, except to the extent that (1) JM automatically calculates, collects, or remits taxes on Your behalf according to applicable law; or (2) JM expressly agrees to receive taxes or other transaction-based charges on Your behalf in connection with tax calculation services made available by JM and used by You. Any and all fees payable by You pursuant to this Agreement are exclusive of all sales, use, and similar taxes, and You shall pay any taxes that are imposed and payable on such amounts. All payments made by You to JM under this Agreement shall be made free and clear of any deduction or withholding (including but not limited to cross-border withholding taxes), as may be required by law. If any such deduction or withholding is required on any payment, You shall pay such additional amounts as are necessary so that the net amount received by JM is equal to the amount then due and payable under this Agreement. JM or a third-party provider may report to the Internal Revenue Service on Form 1099-K the total amount of payments for goods and services remitted to You each calendar year if (a) You receive more than \$20,000 in payments for products or services obtained through the Zing Platform and (b) Customers engage in more than 200 transactions with You in the same calendar year. JM does not provide tax or legal advice, and You are encouraged to seek the advice of your own legal counsel or tax advisors regarding your use of the Zing Platform.

I. Late Payment. If any fee due hereunder is not received by JM by the due date and remains unpaid for five (5) business days following notice, a late fee may be charged at the rate of prime plus two (2%) percent per annum or the highest rate allowed by law, whichever is less, calculated and payable monthly, with interest on overdue interest at the same rate upon the amount until paid. Prime is rate published in the Wall Street Journal on the last day in the applicable month. In addition to any other suspension or termination rights of JM under the Agreement, JM reserves the right to suspend or terminate Your Market for failure to make any payments in a timely manner.

## **7. Payment Solutions.**

A. Overview. The Zing Platform allows Customers to make payments and Participants to accept payments by such methods that JM may make available from time to time. Such payment methods may include credit and debit card transactions or ACH entries. JM reserves the right to add, remove, or modify payment methods accepted on the Zing Platform in JM's sole discretion.

B. Third-Party Payment Processing. The Zing Platform may, from time to time, make payment processing and related services offered by third-party providers available to You. In such instances, receiving, holding, and settling payments on the Zing Platform will be handled by the applicable third party and not by JM. You acknowledge that Your ability to use or obtain payment processing services through the Zing Platform, and JM's performance of its obligations or exercise of its rights, privileges, or remedies hereunder, do not establish JM as a payment processor, payment facilitator, money transmitter, seller of checks, or other money service business accepting payment from Customers for transmittal to Participants. To the fullest extent permitted by applicable law, as between You and JM, we shall not be

responsible or liable to You for any act or omission by a third-party provider in connection with payments initiated through or in connection with the Zing Platform. You acknowledge that the access to and use of payment-related functionalities offered by third-party providers are subject to and governed by the applicable third party's terms and conditions. You are solely responsible for complying with all applicable third party's terms and conditions. If JM receives notice or otherwise learns that You have violated or breached a third party's terms and conditions, JM shall have the right to take such actions that we deem appropriate, in JM's sole discretion, for purposes of compliance and performance of such terms and conditions. Such actions may include, but are not limited to, disabling certain or all transactions from Your Market, removing certain payment methods, or terminating Your access or use privileges with respect to the Zing Platform. JM may share Your personal or transactional information with third-party providers for purposes relating to offering payment processing services to You.

C. Limited Collection Agent. If and to the extent JM is deemed to be processing payments between Customers and Participants through or in connection with the Zing Platform, JM shall be appointed and shall act as Your agent for the limited purpose of receiving, holding, and settling payments received from Customers through the Zing Platform, and all such payments shall be received by JM in such capacity for and on behalf of Participant. All such payments made by a Customer attributable to a transaction with a Participant shall be the property of such Participant, and a Customer's payment in full received by us on behalf of a Participant satisfies such Customer's obligations to make payment to such Participant regardless of whether JM actually settles such payment to the Participant. No Participant or Customer will be entitled to interest or other income, if any, earned in connection with such funds. JM's duties with respect to such funds will be determined only with reference to this Agreement and any Policies and Procedures, and JM is not charged with any duties or responsibilities in connection with any other document or agreement. Without limiting the generality of the foregoing, JM is under no obligation to manage payments transmitted on the Zing Platform in any manner, including but not limited to generating income from such amounts; maximizing the amount by which the funds are expected to be insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, as applicable; or seeking protection from creditors or other claimants. To the fullest extent allowed by applicable law, You acknowledge and agree that JM is not responsible for and will not be liable for any diminution in the value of such funds.

D. Risk Management. JM reserves the right to instruct third-party providers to (a) decline or refund any transaction that JM believes to be high risk, fraudulent, in violation of applicable law, or otherwise in violation of any agreement; (b) establish reserves out of funds otherwise payable to You; (c) place a hold on any funds to which You may be entitled; or (d) delay settling payment to You at such times and in such amounts as JM may reasonably determine in order to protect JM or a third-party provider from incurring a pecuniary loss in connection with any transactions conducted on or through the Zing Platform, including any actual or anticipated fees, liabilities, chargebacks, returns, or other assessments. JM will not be liable to You if we exercise any of our rights, privileges, or remedies hereunder.

E. Transaction Reporting. JM may provide You with reports and invoices summarizing Your payment obligations and payment transactions conducted with respect to Your access to and

use of the Zing Platform. You expressly agree that Your failure to notify JM that you have not received settled funds with respect to Your transactions or any error on any report or invoice within sixty (60) calendar days from the date the report or invoice was made available to You shall constitute Your acceptance of such report or invoice, and such report or invoice shall be deemed to be final, conclusive, and binding upon You.

F. Disputes. You acknowledge that JM is not a party to the relationship between or any transactions involving you and any Customer or other Participant on or through the Zing Platform. To the fullest extent permitted under applicable law, You agree that the Indemnified Parties shall have no liability or obligation with respect to, and You shall indemnify and hold the Indemnified Parties harmless from and against, any claims arising out of or otherwise relating to any Customer's failure to make payments to You on or in connection with the Zing Platform. Notwithstanding the foregoing, JM reserves the right to issue refunds to Customers for any reason (including, but not limited to, fraud, unauthorized use, billing error, disputes as to quality of goods or services purchased through the Zing Platform, providing good customer service, and to protect JM's goodwill and reputation) for any charge which was made to You, and You agree to reimburse JM for the amount of the refund. JM may decide, in its reasonable discretion, whether or not to issue such a refund, and You will be obligated to reimburse JM hereunder even though JM may not have been legally obligated to issue the refund.

G. Compliance with Laws. Without limiting the generality of this Agreement with respect to compliance with applicable law, it shall be Your responsibility that payment transactions You initiate or accept comply with Sanctions. It shall further be Your responsibility to obtain information regarding such Sanctions. This information may be obtained directly from the OFAC Compliance Hotline at (800) 540-OFAC. JM will charge You for any fines or penalties imposed by OFAC or any other organization, including but not limited to any payment processor, payment facilitator, payment network, card brand association, clearing house, or intermediary depository institution, which are incurred as a result of Your non-compliance, and You agree to fully reimburse and/or indemnify the Indemnified Parties for such charges or fines. Your specific duties provided in this Agreement in no way limit the foregoing undertaking. You acknowledge and agree that JM has no obligation to monitor use of the Zing Platform for transactions and activity that are impermissible or prohibited under the terms of this Agreement or all applicable laws, regulations, guidance, operating circulars, and payment processor, payment facilitator, payment network, card brand association, and clearing house rules.

**8. Customer Data.** Your Market may be used to access and use Customer Data. In connection with that activity, You shall: (a) obtain all necessary consents and authorizations from the relevant Customers sufficient to permit JM to furnish the Customer Data to You and for all uses contemplated by Your Market; (b) make clear to the Customers that You are not acting as JM's employee, agent, joint venturer or partner; and (c) comply with all privacy, information security, consumer protection, and other laws and regulations, existing now and in the future, regarding Your use of the Customer Data. JM shall not be responsible or have any liability for any transmission errors, corruption, or loss of integrity of Customer Data or for the confidentiality and/or security of Customer Data once the data leaves JM's systems or for errors resulting from Your handling of the Customer Data.



## 9. Registration; Credentials; Certification; SLAs.

A. Registration and Credentials. In connection with the Zing Platform and Your Market, You shall be issued one or more Credentials for identifying Your Market, authentication, user account management, and other purposes. You are solely responsible for securing a public and private key pair. The Credentials do not include Your public and private keys, but refer only to the security certificates, tokens, passwords, and other credentials provided by JM. You shall furnish Your public key to JM for certification by JM as part of Credentials issued to You in connection with the Zing Platform. As a condition to receiving Credentials, JM may require You to submit certain information to authenticate Your identity. The Credentials are, and shall remain, the property of JM. JM grants You a personal, non-exclusive, non-transferable, non-assignable, non-sublicensable, limited, terminable, and revocable right during the term of this Agreement to use the Credentials for the purpose of operating Your Market or as otherwise directed by JM. You may not sell, transfer, sublicense, or otherwise disclose Your Credentials or use Credentials with any other Market or for any other purpose. You are responsible for maintaining the confidentiality and security of Your Credentials and Your Participant Account and for immediately notifying JM if You believe the confidentiality or security of the Credentials or Participant Account has been compromised. You are responsible for all activities that occur using Your Credentials or under Your Participant Account, regardless of whether the activities are undertaken by You or someone else. You are responsible for maintaining up-to-date and accurate information (including a current e-mail address and other required contact information) for Your Participant Account. From time-to-time, JM may, in its sole discretion, require You to renew Your Participant Account or the Credentials. JM may, in its sole discretion, refuse to issue Credentials, revoke Your Credentials, discontinue Your Participant Account, and terminate this Agreement at any time if: (1) Your contact information is not up-to-date or You do not respond to communications directed to You; (2) JM determines, in its sole discretion, that Your Market fails to comply with the requirements of the Zing Platform including, without limitation any Certification requirements, as defined below; (3) Your Market interferes with, degrades, or otherwise adversely affects any JM services or systems or Zing Offerings; (4) the information You have provided to obtain the Credentials or create Your Participant Account is false, inaccurate, not current, or incomplete; (5) You or Your Market is engaged in illegal activity; (6) You have breached, or JM has a reasonable apprehension of Your imminent breach of, this Agreement or any other agreement between You and JM; or (7) JM, in its sole discretion, elects to terminate the Zing Platform. In any of the foregoing events, Your license to use the Credentials and Zing Platform as a Participant shall immediately terminate and You must cease all use of Your Credentials.

B. Zing Platform Modifications. JM reserves the right to discontinue, modify, or change the Zing Offerings and its systems and services at any time and from time-to-time, with or without notice to You, but shall endeavor to provide advance notice of material changes whenever practicable. You may be required to obtain and use the most recent version of the Zing Offerings in order to retain functionality of Your Market. Modifications and changes to the Zing Offerings and JM's services and systems may affect Your Market and may require You to make changes to Your Market at Your own cost so that Your Market remains compatible with, and interfaces accurately with, the Zing Offerings or its services and systems. JM shall

have no liability or obligation to You with regard to any modifications or changes it makes to the Zing Offerings or its services or systems.

C. Access to Market. You agree that JM, through operating the Zing Platform, has access to Your Market and all information flowing through Your Market regarding use and operation of the Market in order to verify Your compliance with this Agreement and ensure the requirements of the Zing Platform are met, including compatibility testing of the Market. This access is free of charge to JM. Further, You grant JM a non-exclusive, royalty-free, perpetual license to use Your Market for JM's internal business purposes, including compatibility and security testing.

D. Certification. JM may, in its sole discretion, require or offer certification for certain Markets ("Certification"). In these instances, You are solely responsible for obtaining Certification for Your Market. Certification shall consist of confirmation by JM or its designee that Your Market complies with the applicable JM specifications, including the Market's compatibility and safe operation with JM's services and systems. Depending on the nature of the Market, multiple levels of Certification may be required. You are responsible for all costs associated with Certification and any modifications to Your Market that are required in order for it to meet any Certification criteria JM may establish. You may not be permitted to access JM's services or systems until any required Certification is achieved. Future modifications of Your Market may be subject to re-Certification, if applicable. Certification shall not constitute an endorsement, representation, guarantee, covenant, or warranty by JM with respect to Your Market or Your Market's compatibility with the JM services or systems, and You may not represent it as such to any other person.

E. Rejection of Markets. Without incurring any liability or obligation, JM may, in its sole discretion, reject any Market. Unless JM states otherwise, rejection shall not terminate this Agreement with respect to any other Market.

F. Service Level Assurances. Participant shall ensure that: (i) its Market is available and operational with 99.9% uptime as measured on a monthly basis (excluding any downtime caused by the Zing Platform); (ii) Participant operates a help desk / call center during normal business hours for Customers for any questions regarding use of or access to the Market and goods and service available through it; (iii) the help desk / call center is sufficiently staffed with properly trained and qualified attendants; and (iv) Participant responds to and fills any orders or responds to and resolves any other inquiries from Customers on a same day basis (or as soon as possible thereafter). JM reserves the right to require additional or different service level assurances from Participants from time to time and may publish them in the Policies & Procedures or other similar document. Furthermore, JM reserves the right to impose specific additional or different service level requirements on Participant alone if Participant has evidenced an ongoing lack of compliance with the general service level requirements in JM's sole discretion or if JM believes the specific Participant Market or goods or services available through it warrant the additional requirements in JM's sole discretion to protect the image, reputation and operation of the Zing Platform. Participant agrees to adhere to all such service level requirements, and its continued use of the Zing Platform shall be deemed its acceptance of the additional or different service level requirements.

**10. Limitations on Usage; Limited Access.** JM may, in its sole discretion and with or without notice to You, limit Your Market's interactions with the Zing Offerings, JM, its services or systems. Additionally, JM may require usage limitations as part of the Zing Platform, which JM may change at any time and from time to time, without notice. From time to time, JM may in its sole discretion limit access to certain portions or elements of the Zing Offerings to subsets of participants.

**11. Promotion and Marketing of Your Market.** You may promote Your Market, including advertising in traditional and online media and communicating with Your users about Your Market; provided however, except as expressly provided in Section 15 (Proprietary Rights), You may not use any of the Zing Trademarks or Content and You may not claim or in any way imply in any advertising that Your Market is created, certified, sponsored, or endorsed in any manner by JM or JM Related Entities. You shall bear all costs and expenses related to Your marketing activities and shall conduct all marketing activities in a manner that does not cause liability, damage or harm to JM, JM Related Entities, other Participants, Technology Providers, or Customers. JM may require that You cease any marketing activities that JM believes in its sole discretion violate or threaten to violate the requirements of this Agreement. Furthermore, JM reserves the right to require that You first obtain JM's prior written consent to any marketing activities that reference any of the Zing Offerings, JM or JM Related Entities. In conducting all marketing activities, You shall comply with all applicable laws, rules, regulations and directives, including but not limited to those relating to telemarketing, texting, email marketing and "spamming." Unless You have secured the applicable Customer's consent first, You shall not email, text or telephone any Customer whose contact information You have received via any Zing Offering. Without limiting the generality of the foregoing, You shall (a) not send any email, text or other marketing message regarding any Zing Offering, or JM or JM- Related Entities, to any individual or entity that has not requested such information; (b) always include Your contact information and "unsubscribe" information in any email or text; and (c) not imply that such emails, texts or other communications are being sent on behalf of JM or JM Related Entities.

## **12. Customers; Market Transactions.**

A. **End User Agreements.** You are solely responsible for providing the right to access and use Your Market to Customers, including any terms that Customers are bound by. JM has no liability or obligations to Your Customers. Your agreement with each Customer must, at a minimum, (1) explicitly disclaim all warranties and liability of Your "vendors, licensors, and processors," (2) not use or refer to JM or refer to any JM Related Entity in any manner except as required to comply with Your obligations under this Agreement, (3) specify that You are solely responsible to each Customer with respect to claims, liability, and damages that may arise out of the Customer's use of the Markets, and any support or maintenance with respect to the Markets, including maintaining at all times a customer support telephone or e-mail contact for the Customers; (4) make Your vendors, licensors, and processors third-party beneficiaries of the agreement, capable of directly enforcing its provisions; and (5) require that Your vendors, licensors, and processors are indemnified from any and all third party claims with respect to Your Market. As the seller and merchant of record, You shall control the text and placement of pages, policies, seller disclosures, auto-renewal and subscription terms, and other terms utilized in connection with Your Market (including without limitation the right to include those disclosures necessary to comply with the terms of its agreements

with its transaction and payment processors, payment providers, and/or with applicable credit card network rules, requirements, and recommendations). You shall (1) ensure that the pricing for any products and services displayed on the Market matches the price for such products and services at all times, and (2) provide on the Market "who we are" disclosures as may be required by JM.

B. Transactions. The Zing Platform includes various product and service offerings that permit You to enter into online transactions with Customers or users of the Zing Platform upon terms and conditions mutually agreed upon by the respective parties. While this Agreement establishes the general rules and procedures for interactions between You and the Customer or Zing Platform's users, the specific terms and conditions of transactions (such as pricing, delivery, warranties, refunds and confidentiality) entered into between such transacting parties must be established and mutually agreed upon separately between You and the Customer or user.

C. JM Responsibilities. You acknowledge and agree that JM does not set, control or endorse the price, contract terms, quality, safety, conformance or legality of the products or services advertised or offered for sale via the Zing Platform, the ability to sell products and services, or the ability to buy such products and services. Notwithstanding anything to the contrary, in order to enhance the Zing Platform and ensure that users can find the products and services they are seeking, JM reserves the right to modify listings and descriptions of the products and services in the event JM believes, in its sole discretion, that such listing or description, including without limitation any categorization, location or type of such products and services does not accurately reflect the nature of the products or services offered. JM cannot be held responsible for the failure of any user of the Zing Platform to comply with laws or regulations with respect to their use. Instead, the Zing Platform acts as a technology service that allows You to solicit and market products or services. JM cannot, and does not, control whether users complete the purchase or sale of products or services offered to purchase or sell. JM does not represent or warrant the effectiveness or validity of any transaction in Your or the participating Customer's jurisdiction and does not endorse any contracts or agreements arising or resulting from any transaction via the Zing Platform.

D. Disputes with Customers & Others; Waiver; Indemnity. If You have a dispute with a Customer, Supplier, Technology Provider or other Zing Platform user, or suffer any harm arising out of or connected with any Customer, Supplier, Technology Provider or other Zing Platform user, You hereby waive all claims against and release JM (including JM Related Entities, and their employees, officers, directors, shareholders, suppliers, joint venturers and agents) from any and all liability for claims, demands, damages (actual and consequential), costs and expenses (including litigation costs and attorneys' fees) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with the Zing Platform, Your Market, any Customer, Supplier, Technology Provider or other Zing Platform user or with regards to such dispute. You shall indemnify, defend and hold JM and any JM Related Entities harmless for any liability, claims and damages arising from any dispute as set forth in this paragraph. JM's sole obligation in the event of such dispute between You and a Customer, Supplier, Technology Provider or other Zing Platform user is to provide information as necessary to reasonably assist in

resolving the dispute, provided the information is not subject to confidentially provisions restricting its disclosure.

E. Suppliers. The Zing Offerings may provide You and Your Customers with access to goods and services offered, provided or otherwise made available through various Suppliers. While JM operates certain technical components of the Zing Platform, JM is not responsible or liable for the acts and omissions of Suppliers nor is Zing responsible or liable for the quality, integrity, accuracy, authenticity, or performance of goods and services offered by Suppliers. You and Your Customers are responsible for pursuing any claims directly against the responsible Supplier only and waive all such claims against JM consistent with Section 12(D) above. Your relationship with a Supplier may be governed by additional terms and conditions imposed by the Supplier (or by JM on behalf of the Supplier), and You agree to be bound by those terms and conditions in engaging in transactions with the Supplier or for the Supplier's goods or services. The Supplier terms and conditions may be presented to You as part of this Agreement from time to time in the form of an exhibit, attachment, supplement or other such document. Or the Supplier terms and conditions may be presented to You within the Zing Platform in electronic fashion by URL, hyper link, text box or similar mechanism. You are encouraged to scroll through the Supplier terms and conditions and read them thoroughly before accepting them. You should print and retain a copy of the Supplier terms and conditions for your records by using the print functionality in your browser.

**13. Service and Support.** Unless we agree otherwise in writing, You are solely responsible for fulfilling, operating and providing each of the products and services offered by You. You represent and warrant that You shall not subcontract Customer service or support to a third party without JM's express prior written approval to do so, such approval not to be unreasonably withheld, delayed or conditioned. You are solely responsible for (a) the terms of, and compliance with, any and all terms of use, End User Agreements and Customer license agreements applicable to Your products and services, and (b) warranty obligations relating to products and services in accordance with Your warranty policy but in no event inconsistent with the terms and conditions of such terms of use, End User Agreement and/or license agreements. If You do not use a toll-free number for Customer support, You shall not charge a Customer more than the local calling rate for such call (*i.e.*, no international calling rates).

**14. Directory and Demonstrations.**

A. Directory. JM may in its sole discretion establish a directory of Markets, Participants and Technology Providers participating in the Zing Platform. As provided below, JM may include Your information in a directory. However, Your inclusion in any directory is not guaranteed.

B. Submission Requirements. JM may establish certain requirements to be included within its directory, including that (1) You must provide to JM a copy of Your Market for use within the directory, in full, demonstration or evaluation format; (2) You must provide to JM an approved Market description; and (3) JM or portal users may provide reviews about Your Market, and JM shall be the sole owner of any such reviews. No fees or charges shall be paid by JM for these uses or otherwise in connection with this Agreement.

C. Demonstrations and Marketing. You grant JM a non-exclusive, world-wide, royalty-free, transferable, sublicensable, fully paid right and license to use and display Your Market for purposes of identifying You and Your Market in any directory that JM creates and for purposes

of featuring, demonstrating, or otherwise marketing the Market in connection with the Zing Platform.

## 15. Proprietary Rights.

A. Zing Offerings. The Zing Offerings and all related software, documentation, hardware, equipment, devices, templates, tools, documents, processes, methodologies, know-how, websites, and any additional intellectual or other property used by or on behalf of JM or JM Related Entities or otherwise related to the Zing Offerings, together with all copyrights, trademarks, patents, trade secrets and any other proprietary rights inherent therein are and shall remain the sole and exclusive property of JM, the JM Related Entities, and their licensors. Participant hereby transfers and assigns to JM any rights that Participant possesses or may possess in the Zing Offerings, and Participant agrees to execute such documentation as JM may request from time to time to evidence the transfer, assignment, and vesting of such rights in JM. Except as otherwise expressly granted under this Agreement, JM, the JM Related Entities and their licensors reserve all other rights and interest in and to the Zing Offerings. You may not use any information provided by JM to dispute or contest the validity of JM's intellectual property rights in the Zing Offerings. Doing so shall constitute a material, non-curable breach of this Agreement.

B. Content. Subject to Your full compliance with the terms and conditions of this Agreement, JM grants to You a personal, non-exclusive, non-transferable, non-assignable, non-sublicensable, limited, terminable, and revocable right during the term of this Agreement to use Content for the sole purpose of creating and operating Markets through the Zing Platform in accordance with the terms of this Agreement and for no other purposes. Other than this limited license, JM reserves all rights and interests in and to Content. Content is provided "as is" and without warranty of any kind. Nothing contained in any Content shall in any way be deemed a representation or warranty of JM or of any JM Related Entity. Participant represents and warrants that: (1) it shall use Content only as permitted under this Agreement and may not alter, amend, adapt or translate the Content without JM's prior written consent; (2) it shall use the Content in a lawful manner and in strict compliance with all format(s), guidelines, standards, updates, and other requirements required by JM in writing as adopted from time to time; (3) the Content and all of its derivatives are and shall remain the sole property of JM, even in such instances where Participant has been authorized by JM to make changes or modifications to the Content; and (4) nothing in this Agreement shall confer in You any right of ownership in the Content or its derivatives and all use thereof by You shall inure to the benefit of JM. Participant shall be responsible for using the most current versions of Zing Content and implementing updates of the Zing Content as made available from time to time by JM.

C. Zing Trademarks. Except as expressly provided below in this provision, You may not use the Zing Trademarks including, without limitation, any use that in any way would: (1) imply a relationship or affiliation with JM; (2) imply that JM sponsors or endorses You or Your Market; (3) be reasonably interpreted to suggest Your Market has been authorized, certified, or in any way approved by JM; (4) disparage JM, its products or services; or (5) tarnish, dilute, or otherwise impair JM or any of the Zing Trademarks. You may not attempt to register any trademarks or service marks or other brand identifiers (including domain names) that are confusingly similar in any way (including, but not limited to, sound, appearance, and spelling)

to any of the Zing Trademarks. In its sole discretion, JM may grant You a personal, non-exclusive, non-transferable, non-assignable, non-sublicensable, limited, terminable, and revocable right during the term of this Agreement to use certain Zing Trademarks, as may be designated by JM from time-to-time, solely for those uses expressly identified and pre-approved by JM in its sole discretion. For the avoidance of doubt, You may make no use of any Zing Trademarks without first obtaining JM's written authorization, in JM's sole discretion. You may not create a unitary composite mark involving the Zing Trademarks. You must display symbols and notices clearly and sufficiently indicating the trademark status and ownership of the Zing Trademarks in accordance with applicable trademark law. All use of the Zing Trademarks is subject to Your strict accordance with any other direction as JM may provide You from time-to-time. You acknowledge and agree that (1) all use of the Zing Trademarks, or goodwill associated with them, shall inure to the benefit, and be on behalf, of JM; and (2) use of the Zing Trademarks shall not create in You, nor shall You represent You have, any right, title, or interest in or to the Zing Trademarks other than the limited license expressly granted herein. JM may at any time, in its sole discretion and without cause, immediately terminate the license to the Zing Trademarks on written or electronic notice to You. On receipt of the notice, You shall immediately cease all use of the Zing Trademarks. You represent and warrant that: (1) You shall use Zing Trademarks only as permitted under this Agreement; (2) You shall use the Zing Trademarks in a lawful manner and in strict compliance with all format(s), guidelines, standards, and other requirements required by JM in writing as adopted from time to time; (3) the Zing Trademarks are and shall remain the sole property of JM; (4) nothing in this Agreement shall confer in You any right of ownership in the Zing Trademarks and all use thereof by You shall inure to the benefit of JM; (5) You shall not, now or in the future, apply for or use any term or mark confusingly similar to any Zing Trademarks; (6) You shall not use any Zing Trademarks without first obtaining JM's written authorization (notwithstanding the grant of rights above); (7) You shall display all symbols and notices clearly and sufficiently indicating the trademark status and ownership of the Zing Trademarks in accordance with applicable trademark law; and (8) on receipt of notice, You shall cease all use of the Zing Trademarks as instructed by JM.

D. Zing Data. To the extent that You obtain access to Zing Data as made available through the Zing Platform or otherwise, You are granted a personal, non-exclusive, non-transferable, non-assignable, non-sublicensable, limited, terminable, and revocable right during the term of this Agreement to access the Zing Data solely for the purpose of operating Your Market through the Zing Platform in compliance with this Agreement and for no other purposes. JM reserves all other rights and interests in and to the Zing Data.

E. Participant Data. You grant to JM and the JM Related Entities a non-exclusive, perpetual, world-wide, royalty free, fully paid, assignable, transferable, sublicensable right and license in and to any Participant Data shared with, made available to, or otherwise accessible by JM and the JM Related Entities in connection with their operation and management of the Zing Offerings. The foregoing right and license include, without limitation, the right to access, store, transmit, use, reproduce, copy, publish, distribute, display, perform, and create derivative works of the Participant Data including, without limit, data statistics and aggregated data findings from the Participant Data. You are responsible for complying with any applicable data subject request to the extent required by applicable law or contract

obligation of Participant, such as requests to delete or rectify Customer Data within Participant's possession or control. If JM receives any such notice or request in accordance with applicable law or contract obligation, Participant agrees to provide assistance to JM as needed for compliance with the same at no cost to JM.

F. Feedback. You may provide Feedback regarding the Zing Offerings. Feedback is voluntary, and JM is not required to hold it in confidence. JM may use Feedback for any purpose without obligation of any kind. You assign to JM all right, title, and interest in and to any Feedback that You provide related to the Zing Platform, and JM may use, implement, and exploit any Feedback in any manner without restriction and without any obligation of confidentiality, attribution, accounting, compensation, or other duty to account. To the extent a license is required under Your intellectual property rights to make use of the Feedback, You grant JM an irrevocable, non-exclusive, perpetual, world-wide, transferable, sublicensable, royalty-free, fully paid-up license to use the Feedback. You forever waive and agree never to assert against JM and its business partners, employees, representatives, affiliates, successors and licensees any and all moral rights, as defined below, that You may have in the Feedback, even after expiration or termination of this Agreement, to the extent permitted by applicable law.

G. JM Market Development / Patents. You acknowledge and agree that JM or any of the JM Related Entities may develop, acquire, license, market, promote, or distribute products, software, or technologies that perform the same or similar functions as, or otherwise compete with, any other Apps, Markets, products, software or technologies that Participant may develop, produce, market, or distribute in connection with the Zing Offerings. You may not apply for or obtain any patents based on derivative works or modifications You create of the Zing Offerings or any other Confidential Information of JM. To the extent You obtain any patents in connection with a Market, You grant JM an irrevocable, royalty-free, fully paid-up, perpetual, world-wide, transferable, sublicensable, non-exclusive license to those patents for use in its business, including, but not limited to, the offering of products and services to its Customers. Participant and its affiliates covenant not to assert patent infringement claims against JM, JM Related Entities, or the Zing Offerings. Similarly, You and Your affiliates covenant not to assert any intellectual property rights in the Zing Offerings. Without limiting the foregoing, You and Your affiliates shall not apply for or obtain any patents based on derivative works or modifications that You or Your affiliates (or their agents) create from the Zing Offerings.

**16. Disclaimer of Warranties; No Warranties.** JM AND THE JM RELATED ENTITIES, THEIR AFFILIATES, SUBSIDIARIES, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, AND LICENSORS DO NOT PROMISE THAT THE ZING OFFERINGS (INCLUDING FUNCTIONALITY OR FEATURES OF THE ZING OFFERINGS), OR ANY OTHER INFORMATION OR MATERIALS THAT YOU RECEIVE HEREUNDER AS A PARTICIPANT WILL BE ACCURATE, RELIABLE, TIMELY, SECURE, ERROR FREE OR UNINTERRUPTED, FREE FROM SPYWARE, MALWARE, ADWARE, VIRUSES, WORMS, OR OTHER MALICIOUS CODE, OR WILL FUNCTION TO MEET YOUR REQUIREMENTS OR THAT ANY DEFECTS WILL BE CORRECTED. THE ZING OFFERINGS (INCLUDING FUNCTIONALITY OR FEATURES OF THE ZING OFFERINGS) OR ANY OTHER INFORMATION OR MATERIALS THAT YOU RECEIVE HEREUNDER AS A PARTICIPANT ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS AND ARE SUBJECT TO CHANGE WITHOUT NOTICE. JM EXPRESSLY



DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, INTEGRATION, NONINFRINGEMENT, MERCHANTABILITY, COURSE OF DEALING, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. JM DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS, AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE ZING OFFERINGS (INCLUDING, FUNCTIONALITY OR FEATURES OF THE ZING OFFERINGS AND ANY THIRD PARTY APPS), OR ANY OTHER INFORMATION, GOODS, SERVICES OR MATERIALS THAT YOU RECEIVE HEREUNDER AS A PARTICIPANT FROM OR THROUGH THIRD PARTIES (INCLUDING, WITHOUT LIMITATION, OTHER PARTICIPANTS, SUPPLIERS OR TECHNOLOGY PROVIDERS). YOU ASSUME TOTAL RESPONSIBILITY AND ALL RISKS FOR YOUR USE OF THE ZING OFFERINGS, INCLUDING, BUT NOT LIMITED TO, ANY INFORMATION, GOODS, SERVICES, OR MATERIALS OBTAINED THROUGH THE ZING OFFERINGS. YOU ASSUME ALL RISKS ASSOCIATED WITH YOUR USE OF THE ZING OFFERINGS AND USE OF YOUR MARKET. IT IS YOUR SOLE RESPONSIBILITY TO DETERMINE THE SUITABILITY AND ADEQUACY OF THE ZING OFFERINGS. YOUR SOLE REMEDY AGAINST JM FOR DISSATISFACTION WITH THE ZING OFFERINGS IS TO STOP USING THE ZING PLATFORM AND TO PURSUE ANY PROVEN DIRECT DAMAGES THAT YOU HAVE NOT WAIVED UP TO AN AMOUNT NOT TO EXCEED THE DAMAGES CAP SET FORTH IN SECTION 17.A BELOW. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES, AND PARTICIPANT ACKNOWLEDGES THAT JM WOULD NOT ACCEPT PARTICIPANT'S REGISTRATION FOR A PARTICIPANT ACCOUNT WITHOUT THESE LIMITATIONS AND WAIVERS OF LIABILITY.

**17. Limitation of Liability.**

A. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, JM AND THE JM RELATED ENTITIES, THEIR AFFILIATES, SUBSIDIARIES, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, AND LICENSORS SHALL HAVE NO LIABILITY WITH RESPECT TO THE ZING OFFERINGS, JM'S OBLIGATIONS UNDER THIS AGREEMENT, OR OTHERWISE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSSES OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES RESULTING IN ANY WAY FROM THE ZING OFFERINGS OR JM'S OBLIGATIONS UNDER THIS AGREEMENT EVEN IF JM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT, JM'S, THE JM RELATED ENTITIES', THEIR AFFILIATES', SUBSIDIARIES', AND THEIR RESPECTIVE OWNERS', OFFICERS', DIRECTORS', EMPLOYEES', AGENTS', PARTNERS', AND LICENSORS' TOTAL LIABILITY TO PARTICIPANT FOR ALL CLAIMS RELATED TO OR ARISING FROM THE ZING OFFERINGS OR THIS AGREEMENT FOR ANY REASON SHALL BE LIMITED TO \$100. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS.

B. THE RELATIONSHIP BETWEEN A PARTICIPANT AND CUSTOMERS IS STRICTLY BETWEEN THE PARTICIPANT AND EACH CUSTOMER. NEITHER JM NOR THE JM RELATED ENTITIES ARE OBLIGATED TO INTERVENE IN ANY DISPUTE ARISING BETWEEN THE PARTICIPANT AND ANY CUSTOMER. UNDER NO CIRCUMSTANCES SHALL JM, THE JM RELATED ENTITIES, OR THEIR AFFILIATES, SUBSIDIARIES, AND THEIR RESPECTIVE

OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXTRAORDINARY, EXEMPLARY, OR OTHER DAMAGES WHATSOEVER THAT RESULT FROM OR RELATE TO THE PARTICIPANT'S RELATIONSHIP WITH ANY CUSTOMER. THESE LIMITATIONS SHALL APPLY EVEN IF JM OR THE JM RELATED ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

C. THE RELATIONSHIP BETWEEN A PARTICIPANT AND SUPPLIERS IS STRICTLY BETWEEN THE PARTICIPANT AND EACH SUPPLIER. NEITHER JM NOR THE JM RELATED ENTITIES ARE OBLIGATED TO INTERVENE IN ANY DISPUTE ARISING BETWEEN THE PARTICIPANT AND ANY SUPPLIER. UNDER NO CIRCUMSTANCES SHALL JM, THE JM RELATED ENTITIES, OR THEIR AFFILIATES, SUBSIDIARIES, AND THEIR RESPECTIVE OWNERS, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, OR LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXTRAORDINARY, EXEMPLARY, OR OTHER DAMAGES WHATSOEVER THAT RESULT FROM OR RELATE TO THE PARTICIPANT'S RELATIONSHIP WITH ANY SUPPLIER. THESE LIMITATIONS SHALL APPLY EVEN IF JM OR THE JM RELATED ENTITIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**18. Your Warranties.** You represent and warrant to JM that (a) the information You provide to JM in connection with Your registration with and use of the Zing Platform, including but not limited to, Your Participant Account, and application for Credentials is true and correct; (b) You own or have properly licensed all rights necessary to develop, distribute, and use Your Market; (c) use of Your Market shall not infringe the intellectual property rights of any third party; (d) You, Your Market and all goods or services offered through Your Market shall comply with all applicable local, state, federal, and international laws, rules, and regulations; (e) You have the right to sell or distribute all goods or services offered through Your Market; (f) You have independently evaluated the desirability of using the Zing Offerings and are not relying on any representation, guarantee, or statement other than as expressly set forth in this Agreement; (g) You are lawfully able to enter into contracts, and if this Agreement is being agreed to by a company or other legal entity, then the person agreeing to this Agreement on behalf of that company or entity represents and warrants that he or she is authorized and lawfully able to bind that company or entity to this Agreement; (h) You; any person or entity controlled by or controlling You; any of Your or their respective partners, members, shareholders or other equity owners; and any of Your or their respective employees, officers, directors, representatives or agents (i) are not, and will not become, the target of economic or financial sanctions or other restrictions on doing business with You and them imposed, administered, or enforced by the U.S. federal government, including, but not limited to, being listed on Specially Designated Nationals and Blocked Persons List maintained by the U.S. Department of the Treasury Office of Foreign Assets Control ("OFAC") or on any other similar list maintained by OFAC (collectively, "Sanctions," and any person or entity that is the subject of such Sanctions or majority-owned or controlled by a person or entity that is the subject of such Sanctions, a "Sanctioned Person"); (ii) are or have engaged, or will engage, in activities that could result in being designated a Sanctioned Person or on any list of restricted parties maintained by the U.S. federal government; and (iii) will not engage in any business or other activities that could cause us to be in violation of applicable Sanctions, anti-money laundering, anti-bribery or anti-boycott laws or regulations,

including the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 and the Foreign Corrupt Practices Act, and no payment by You and no payment to You will cause us or any third-party providers to be in violation of any applicable U.S. federal or state laws or regulations, including Sanctions, anti-money laundering, anti-bribery or anti-boycott laws or regulations; and (i) You are entering into this Agreement and using the Zing Platform for purposes of carrying on a business activity and not for any personal, household, or family purpose.

**19. Indemnity.** You agree to indemnify, defend, and hold harmless JM and any JM Related Entities, their affiliates, subsidiaries, and their respective owners, directors, officers, employees, subcontractors, partners, licensors, and agents thereof (each, an "Indemnified Party," and collectively, the "Indemnified Parties") with respect to any claim, allegation, demand, cause of action, debt, or liability, including reasonable attorneys' fees (collectively, "claims"), if such claim is based upon, is connected with, or arises out of in whole or in part: (a) Your use or inability to use the Zing Offerings, (b) Your Market, including any goods or services offered through Your Market, (c) any breach of this Agreement, (d) use of Your Market by any Customer, (e) trademarks, service marks, names, logos, avatars and similar identifiers, and all other intellectual property provided by You in connection with the Zing Platform, Your Market, or this Agreement, including claims of intellectual property infringement relating to the foregoing; (f) Your negligence, recklessness, or willful misconduct; (g) Your breach of any term of an End User Agreement; (h) performance, non-performance, or improper performance of Your Market; or (i) Your relationship with any Technology Provider, Customer, Supplier or other Participant or user of the Zing Platform. You may not enter into any stipulated judgment or settlement that purports to bind JM without JM's prior express written authorization, which shall not be unreasonably withheld or delayed.

**20. Confidential Information.** "Confidential Information of JM" includes the Zing Offerings and any other information which (a) gives JM some competitive business advantage, gives JM the opportunity to obtain some competitive business advantage, or the disclosure of which could be detrimental to the interests of JM, or (b) which is either (1) marked "Confidential," "Restricted," "Proprietary Information," or other similar marking, (2) known to be considered confidential and proprietary, or (3) is received under circumstances reasonably interpreted as imposing an obligation of confidentiality. You shall treat all Confidential Information of JM as strictly confidential and use the same degree of care to prevent disclosure of Confidential Information of JM as You would use with respect to Your own most confidential and proprietary information, which, under no circumstances, shall be less than the standard of care imposed by state and federal laws and regulations relating to the protection of the information and, in the absence of any legally imposed standard of care, the standard is that of a reasonable person under the circumstances. All Confidential Information of JM is and shall remain the property of JM, and except as expressly provided in this Agreement, no license or other right in any Confidential Information of JM is granted to You. Except as expressly provided in this Agreement, You may not use or disclose any Confidential Information of JM without JM's prior written consent, except disclosure to and subsequent uses by Your employees and agents on a need-to-know basis in order to fulfill Your obligations under this Agreement, provided that those employees or agents have executed written agreements restricting use or disclosure of the Confidential Information of JM that are at least as protective of JM's rights to the Confidential

Information of JM as those contained in this Agreement. On termination of this Agreement or on JM's written request at any time, You shall destroy or return to JM all Confidential Information of JM in Your custody or control. This provision shall survive any termination of this Agreement for so long as You have in Your possession any Confidential Information of JM.

You shall employ and maintain best industry practices and standards and internal security operating protocols (including, without limitation, administrative, organizational, physical, and technical security safeguards) to protect Confidential Information of JM. If You have access to Customer Data, You: (a) shall only use or store such information for the purpose of providing Your services to the Customer to whom it relates, and shall not share, sell, disclose, or otherwise provide such information to any third party, except as provided for in this Agreement; (b) shall only store such information for as long as reasonably necessary to deliver Your services to the Customer to whom the information relates; (c) shall use industry standard measures to protect against unauthorized access to, disclosure or use of such information; (d) shall comply with all applicable laws and regulations relating to the protection and privacy of personally identifiable information in the provision of Your Services; and (e) shall notify JM in writing of any actual or suspected Data Breach within twenty-four (24) hours of becoming aware of such occurrence.

Upon learning of the Data Breach, at Your own cost, You shall: (a) promptly remedy and remediate the Data Breach to prevent any further loss of information; (b) investigate the incident; (c) take reasonable actions to mitigate any future anticipated harm to JM, the JM Related Entities, and any third parties; (d) regularly communicate the progress of Your investigation to JM and cooperate to provide JM with any additional requested information in a timely manner; (e) coordinate with JM on the timing and delivery of any notices of the Data Breach to affected individuals, with such notice to be a form reasonably acceptable to JM; and (f) indemnify, defend, and hold harmless JM and the JM Related Entities from and against all damages, costs, and expenses (including, without limit, reasonable attorneys' fees and costs) incurred by JM and the JM Related Entities arising out of or in connection with the Data Breach.

In addition, You shall also notify JM immediately if You become aware of any security vulnerability concerning the Zing Platform including the Zing API or Your Market. You shall maintain confidentiality with JM concerning any incident or vulnerability. You shall furnish JM reasonable documentation and cooperate with JM in investigating and mitigating security incidents and vulnerabilities. You shall follow any additional reporting requirements or procedures concerning incident and vulnerability reporting provided by the Zing Platform web site.

## **21. Term and Termination.**

A. To the extent that there is an order form in place between JM and Participant setting forth the duration of the term of this Agreement, Participant may not terminate the Agreement in whole or in part prior to expiration of the term. In the event that there is no order form in place or the order form does not specify a term, then the initial term of this Agreement shall be for two (2) years from the Effective Date and shall automatically renew for additional one (1) year terms thereafter unless either Party provides no less than ninety (90) days' written notice of non-renewal to the other Party.

B. Notwithstanding the foregoing, JM may suspend and/or terminate Your access to and use of any of the Zing Offerings or otherwise terminate this Agreement, with or without cause, at

any time in JM's sole discretion effective immediately upon notice to Participant. In addition, fraudulent or other unacceptable behavior by You as determined by JM in its sole discretion may result in one or more of the following actions being taken by JM: (1) termination of Your access to Markets and to Customers; (2) suspension or termination of some or all of Your licenses, rights, or privileges under this Agreement; and (3) termination of your registration, Credentials, and right to participate in the Zing Platform as a Participant entirely without notice to, or recourse for, You. The Zing Platform may contain functionality or devices that enable JM to suspend or terminate Your access to the Zing Platform and Your Market automatically and remotely, and You consent to JM's implementation and use of such functionality or devices.

C. JM reserves the right to cancel or modify the JM program for Participants in its entirety at any time. If a significant change is made to the JM program for Participant that materially diminishes Participant's rights in JM's reasonable determination, JM shall provide reasonable notice of the change.

D. Consequences of Termination. Upon termination of this Agreement: (1) You shall return or destroy all Confidential Information of JM in Your possession; (2) You shall immediately cease using or displaying any Content or any Zing Trademarks; and (3) all rights and licenses granted to You under this Agreement shall immediately cease, including but not limited to Your right to access Your Participant Account and Your Markets. Upon JM's request, You agree to provide a written certification from an officer of Your organization confirming compliance with the terms of this provision.

E. Failure to Go Live. In the event the Market does not go live on the Zing Platform within three (3) months of the Effective Date, and such failure is not due to JM, then JM may terminate this Agreement upon written notice to You, in which event JM shall be entitled to recover, for termination pursuant to this paragraph, an amount equal to the number of hours spent by JM personnel in the set-up, build out, and configuration of the Market multiplied by JM's standard hourly rate set for professional services and such amount to be paid by You immediately upon the receipt of invoice from JM.

F. Effect of Termination. On termination of this Agreement for any reason the rights and licenses granted to You shall immediately terminate. You shall, however, remain responsible for providing support to Customers (as described in Section 12.A (End User Agreements)) and notifying them of the termination. Notwithstanding the foregoing, JM may, in its sole discretion, provide a termination notice period to You for certain Markets as may be required by applicable laws.

G. If You attempt to terminate this Agreement prior to expiration of its term, JM shall be entitled to payment of the Preparation Charges incurred during the most recent term and You shall be required to pay such amount immediately upon the receipt of invoice from JM. JM shall also be entitled to recover such additional damages as may be available at law or equity, with all remedies hereunder being cumulative and not exclusive.

H. Remedies. You acknowledge and agree that Your breach of this Agreement relating to the licenses and rights granted herein and Your use of Confidential Information of JM may result in irreparable harm and permanent injury to JM for which monetary damages would be an inadequate remedy. Consequently, You acknowledge and agree that, in such circumstances,

JM shall be entitled to seek and obtain, without the posting of a bond, in addition to all other remedies available to JM, at law or in equity, immediate injunctive relief to prevent or stop any breach of those provisions.

## 22. Miscellaneous.

A. Force Majeure. If the performance of any part of this Agreement by either Party is prevented, hindered, delayed, or otherwise made impracticable by reason of any flood, riot, fire, judicial or governmental action (including, but not limited to, any law, regulation, or embargo prohibiting the performance contemplated under this Agreement or the failure or refusal of a government agency to issue a license required for any performance pursuant to this Agreement), labor disputes, technology failures or delays, act of God, acts or omissions of third parties (including, without limitation, Suppliers), or any cause beyond the reasonable control of that Party, the Party shall be excused from such performance to the extent that it is prevented, hindered, or delayed by such cause. Notwithstanding anything in this Agreement to the contrary, the Party prevented from performing under this Agreement by a force majeure event shall nevertheless use its reasonable efforts to recommence its performance under this Agreement as soon as reasonably practicable and to mitigate any damages resulting from its non-performance under this Agreement; provided that JM may also opt to terminate this Agreement in whole or in part in response to an event of force majeure. This provision shall not apply to any payment obligations of Participant.

B. Independent Contractors. The Parties to this Agreement are independent contractors. Neither JM nor the Participant shall have any right, power, or authority to enter into any agreement for, on behalf of, incur any obligation or liability of, or otherwise bind the other Party, except where the Participant expressly authorizes JM to act on its behalf in this Agreement. For the avoidance of doubt, Participant expressly authorizes JM to act on its behalf for the purposes of collecting and remitting payment, credits, or refunds between if JM so elects to act in that capacity. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the Parties or to impose any liability attributable to such a relationship upon either Party.

C. Non-Exclusivity. Nothing in this Agreement is intended to create, nor shall it be construed as creating, any exclusive arrangement between the Parties to this Agreement. This Agreement shall not restrict either Party from entering into similar arrangements with others, provided it does not breach its obligations under this Agreement by doing so, including, without limitation, any confidentiality obligations or intellectual property rights. Notwithstanding the foregoing, JM reserves the right in the future to require that Participant agree to certain exclusive arrangements or similar restrictions in connection with use of certain elements of the Zing Offerings and will provide notice of those exclusive arrangements or similar restrictions at the time in which they are to become effective. If Participant does not wish to accept those exclusive arrangements or restrictions, Participant's sole and exclusive remedy shall be to cease use of those elements of the Zing Offerings that are subject to the exclusive arrangements or restrictions.

D. Notice. Any notice, approval, request, authorization, direction, or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered

and given for all purposes (1) on the delivery date if delivered personally, or by email to Participant's email address as maintained by JM in its records and to JM's email address at Legal@jminsure.com; (2) two (2) business days after deposit with an internationally recognized commercial overnight courier service, with written verification of receipt; or (3) five (5) business days after deposit in certified or registered mail, return receipt requested, postage and charges prepaid. Notice will be sent to the Participant at the address as maintained by JM in its records, and to JM at JM at 24 Jewelers Park Drive, Neenah, WI 54956.

E. No Waiver. The failure of any Party to insist upon or enforce strict performance by another Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in that or any other instance; rather, the same shall be and remain in full force and effect. Each waiver shall be set forth in a written instrument signed by the waiving Party. The remedies that may be exercised or pursued by JM are non-exclusive and are cumulative.

F. Entire Agreement. This Agreement, including any completed application form, electronic terms presented by JM within the Zing Platform, and all guidelines and other documents linked or otherwise incorporated or referenced in this Agreement, sets forth the entire agreement and supersedes any and all prior agreements, written or oral, of the Parties with respect to the subject matter hereof (including, but not limited to, any prior version of this Agreement). Neither JM nor the Participant shall be bound by, and each Party specifically objects to, any term, condition, or other provision that is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is made by another Party in any correspondence or other document, unless the Party to be bound thereby specifically agrees to such provision in writing.

G. Assignment. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties to this Agreement and to their respective heirs, successors, permitted assigns, and legal representatives. JM shall be permitted to assign this Agreement in whole or in part or subcontract its obligations hereunder without notice to or consent from Participant. Participant shall have no right to assign or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement, to any third party without JM's prior written consent, to be given or withheld in JM's sole discretion.

H. Applicable Laws / Dispute Resolution. This Agreement shall be construed, interpreted, and performed exclusively according to the laws of the State of Wisconsin, United States of America, without giving effect to any principles of conflicts of law. Any action at law or in equity arising out of or directly or indirectly relating to this Agreement may be instituted only in the Federal or state courts located in Winnebago County, Wisconsin. You and JM consent and submit to the personal jurisdiction of those courts for the purposes of any action related to this Agreement, and to extra-territorial service of process. You agree that regardless of any statute or law to the contrary, any claim or cause of action that you may have arising out of or related to this Agreement must be filed within one (1) year after the claim or cause of action arose. JM shall be entitled to recovery of its costs and expenses (including, without limit, reasonable attorneys' fees and expenses) incurred in connection with enforcing its rights under this Agreement.

I. Severability. If any provision of this Agreement is for any reason held to be invalid, illegal, or unenforceable in any respect, then such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained within the Agreement.

J. Pilot Test. From time to time, JM may, in its sole discretion, invite Participant to use potential new services or features on a trial basis that are in development and not yet available to all Participants ("Pilot Services"). Pilot Services may be subject to additional terms and conditions. Such Pilot Services and all associated conversations and materials relating thereto shall be considered Confidential Information of JM and subject to the confidentiality provisions of this Agreement. JM makes no representations or warranties that the Pilot Services shall function. JM may discontinue the Pilot Services at any time in its sole discretion. JM shall have no liability for any harm or damage arising out of or in connection with a Pilot Service.

K. Regulators/Audit. Participant shall cooperate with JM in connection with any regulatory inquiries, filings, inspections, audits, or investigations related to JM's business operations. Without limiting the foregoing, Participant shall provide JM with access to such documents and records as JM may reasonably require in connection with JM's regulatory compliance activities. On reasonable prior notice, JM and its agents may audit your facilities, systems, and records to confirm your compliance with this Agreement. In connection with the audits, you shall make all relevant personnel and records available to JM and otherwise cooperate in the review.

L. Technology and/or Service Provider. In addition to its role as a Participant under this Agreement, Participant may also register to access and use the Zing Platform in the capacity of a "Technology Provider" (i.e., develops functionality to be integrated with the Zing Platform) or "Service Provider" (i.e., provides services or products in support of the operation of the Zing Platform), both which would be made available for use by other users of the Zing Platform. When acting as a Technology or Service Provider, Participant agrees to be bound by and subject to the terms and conditions of any Technology or Service Provider Agreement that all such Providers must accept as a condition to their use of the Zing Platform. To the extent that there is a conflict or inconsistency between the terms of this Agreement and any Provider Agreement, those terms that are more restrictive of a Provider's rights and more protective of JM's interests shall govern and control.

M. Third Party Software. Third-party software provided by JM to You through the Zing Offerings may be accompanied by its own licensing terms, in which case such licensing terms shall govern your use of that particular third-party software. Mention of third parties and third-party products in any materials, documentation, advertising, or promotions provided to You as a Participant is for informational purposes only and constitutes neither an endorsement nor a recommendation. All third-party product specifications and descriptions are supplied by the respective vendor or supplier, and JM shall have no responsibility with regard to the selection, performance, or use of these vendors or products. All understandings, agreements, or warranties, if any, take place directly between You and the third-party provider.

N. Export Control. The Confidential Information of JM may be subject to U.S. export jurisdiction and the import jurisdiction of other countries. In connection with your use of



Confidential Information of JM, you are solely responsible for complying with all applicable export, re-export, and import control laws and regulations of all applicable jurisdictions, including, but not limited to, those of the U.S. Department of Commerce, Export Administration Regulations, 15 CFR Parts 730-774, the International Traffic in Arms Regulations, country-specific economic sanctions programs implemented by the Office of Foreign Assets Control and export and import control laws and regulations of any other countries. You may not, directly or indirectly, use, distribute, transfer or transmit Confidential Information of JM, whether by way of a direct product of such materials or products, software, or other technical information into which Confidential Information of JM has been incorporated, except in compliance with this Agreement and all applicable export and import laws and regulations of all relevant jurisdictions.

O. Government Restrictions. Any software or other programming provided by JM in connection with this Agreement is commercial computer software as described in DFARS 252.227-7014(a)(1) and FAR 2.101. If acquired by or on behalf of the United States Department of Defense or any component thereof, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in DFARS 227.7202-3, Rights in Commercial Computer Software or Commercial Computer Software Documentation. If acquired by or on behalf of any civilian agency, the United States Government acquires this commercial computer software and commercial computer software documentation subject to the terms of this Agreement as specified in FAR 12.212, Computer Software.

P. Additional Terms. In addition to the terms and conditions in this Agreement, your participation in the Zing Participant program and use of the Zing Platform are subject to the following, which are incorporated into this Agreement by reference: (1) the Privacy Policy; (2) the Zing API Terms; (3) any Policies & Procedures; (4) electronic terms presented by JM within the Zing Platform and (5) any other terms and conditions incorporated by reference herein or the documents in the foregoing (1) through (5). JM may make additional material, services or products available for download or use which may have additional terms and conditions. All additional terms and conditions are incorporated into and are a part of this Agreement. In the event of a conflict between this Agreement and any additional terms and conditions, the additional terms and conditions shall control only with respect to their specific subject matter.

Q. Electronic Signatures. This Agreement and any related documents may be accepted in electronic form (e.g., by an electronic or other means of demonstrating assent) and your acceptance shall be deemed binding between You and JM. Neither You or JM shall contest the validity or enforceability of this Agreement and any related documents, including under any applicable statute of frauds, because they were accepted or signed in electronic form. Electronically maintained records when produced in hard copy form shall constitute business records and have the same validity as any other generally recognized business records.

R. JM Third Party Beneficiaries. You acknowledge and agree that each JM Related Entity is a third-party beneficiary to this Agreement and that they are each entitled to directly enforce, and rely upon, any provision of this Agreement which confers a benefit on (or provides rights in favor of) them. No other person or company is a third-party beneficiary to this Agreement.

S. Legal Process and Regulators. Notwithstanding any other provision of this Agreement to the contrary, if required by law, JM may without notice furnish any regulator or other governmental authority, both foreign and domestic, with information about Your Market and Your use of the Zing Offerings, services and systems.

T. Geographic Scope. The Zing Offerings are made available under this Agreement for use and operation in the United States and Canada only. As such, You agree to limit Your use of the Zing Offerings to the offering of goods and services to Customers located in the United States and Canada only. Participant may not use the Zing Offerings to target, solicit or serve Customers outside of the United States or Canada.

U. Insurance. Participant shall maintain in effect at all times the minimum insurance coverages designated by JM from time to time. The minimum insurance coverages and related insurance requirements will be as set forth in the Policies & Procedures or such other document as JM may make available to Participant.

V. Privacy Laws. Notwithstanding anything else contained in this Agreement, Participant shall not retain, use, or disclose any personal information, as that term is defined under the California Consumer Privacy Act of 2018, Cal. Civ. Code § 1798.100 et seq. ("CCPA") as amended or other applicable privacy laws, obtained through the Zing Offerings or otherwise pursuant to this Agreement for any purpose other than for the specific purpose of furnishing services in its Market as described in this Agreement. Without limit, Participant may not further collect or use personal information for any other commercial purpose or purpose outside the direct relationship between Participant and JM under this Agreement whatsoever, including improvement of the services or retention, use, or disclosure of aggregate or de-identified consumer records, unless said consumer records constitute "aggregate consumer information" as that term is defined in CCPA. Under no circumstances shall Participant be permitted to transfer any personal information for anything of value. Participant shall comply with any written request from JM to permanently and securely delete personal information in Participant's, its affiliates' and their respective subcontractors' possession, custody or control, pursuant to a consumer request for deletion received by JM and shall provide JM with confirmation of deletion within ten (10) days of receipt. Participant shall comply with CCPA and similar laws and shall reasonably assist JM with its obligations under CCPA and similar laws. JM may require in its sole determination that Participant also enter into a Data Protection Agreement with additional terms related to protection and use of personal information and other Zing Data in general to address evolving privacy laws and related obligations. Participant agrees to enter into the Data Protection Agreement in good faith and its continued use of the Zing Offerings shall be deemed acceptance of the terms of the Data Protection Agreement.

W. Survival. The terms, conditions, and warranties contained in this Agreement that by their nature and context are intended to survive the expiration or termination of this Agreement shall survive, including, but not limited to Sections 4, 7, 8, 12, 15, 16, 17, 18, 19, 20 and 22.

## **Definitions.**

Unless defined elsewhere in the Agreement, capitalized terms set out in the Agreement are defined as follows:

**"App(s)"** means software applications or related functionality developed by JM or third-party Technology Providers that are made available for Customers or Participants through the Zing Platform.

**"Content"** means elements or other components accompanying or embedded within the Zing Platform including, without limitation websites, materials, content, blogs, discussion areas, forums, programming, Customer Data, hypertext links, domains names, icons, buttons, banners, graphic files, images, and other information, whether existing now or in the future.

**"Credentials"** mean unique security certificates, tokens, passwords, and other credentials for identifying Your Market, authentication, user account management, and other purposes.

**"Customer"** means any individual, customer, end user, merchant or other participant that visits, interacts with or transacts via Your Market.

**"Customer Data"** means information, materials, content, and data relating to Customers, including, but not limited to, order information, payment information, personal information, account information, and all derivatives of such information.

**"Data Breach"** means any accidental, unlawful, or unauthorized destruction, alteration, disclosure, misuse, loss, acquisition, compromise of, or access to Confidential Information of JM, Zing Data, Participant Data, Customer Data, Your Market or any act or omission that compromises any of the administrative, organizational, physical, or technical safeguards put in place by Participant or its contractors that relate to the protection of the security, confidentiality, or integrity of Confidential Information of JM, Zing Data, Participant Data, Customer Data or Your Market.

**"End User Agreement"** means the agreement to be entered into between Participant and a Customer governing the Customer's use of Your Market.

**"Feedback"** means suggestions comments, improvements, ideas, etc. regarding the Zing Offerings.

**"JM Related Entities"** means any entity that directly or indirectly controls, is controlled by, or is under common control with JM, where **"control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of another, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise.

**"Market"** means the Participant storefronts, websites, or similar pages configured and created on the Zing Platform by Participant through use of the Zing APIs. Participants may have more than one (1) Market, in which reference to the singular "Your Market" herein includes the plural "Your Market." Markets shall be limited to the offering of goods and services to Customers located in the United States and Canada only. Participant may not use a Market to target, solicit or serve Customers outside of the United States or Canada.

**"Participant"** or **"You"** means the individual or entity that has been approved by JM to access the Zing Platform as a merchant for purposes of (a) selling their products and services to Customers through a Market on the Zing Platform or (b) buying products or services from others as made

available through the Zing Platform for the purpose of reselling those products or services through a Market on the Zing Platform.

**“Participant Account”** means a Participant’s account with the JM Participant program. All Participants must register for a Participant Account.

**“Participant Data”** means information, materials, content, and data collected by Participant or its contractors in the course of their administration and operation of Markets, including, but not limited to, order information, payment information, personal information, and account information related to transactions occurring through Markets, but excluding Zing Data.

**“Policies & Procedures”** means additional terms, conditions, policies, procedures, instructions and documentation regarding operation, use of, and participation in the JM Participant program as JM may implement in a manner generally applicable to all Participants engaged in the Zing Platform from time to time as are made available online or provided to you by JM and incorporated herein by reference.

**“Preparation Charges”** means an amount equal to the number of hours spent by JM personnel in the set-up, build out, and configuration of the Zing Platform for Your Participant Account and Market(s) multiplied by JM’s standard hourly rate set for professional services, together with any out of pocket costs incurred by JM.

**“Privacy Policy”** means the JM privacy policy that is applicable to all users of and participants in the Zing Platform from time to time, which is available online at <https://zing.jewelersmutual.com/privacypolicy> and incorporated herein by reference.

**“Supplier”** means a third party who offers, provides or otherwise makes available goods or services for purchase or use by You, Customers, Participants or other users of the Zing Platform. In some instances, a Supplier may be another Participant or a Technology Provider with a presence on the Zing Platform. In other instances, a Supplier may be a third party source of goods or services without being an actual Participant or Technology Provider (i.e., through a white-labeled offering or other such indirect arrangement). Though JM may authorize a Supplier to offer, provide or otherwise make available its goods or services through the Zing Platform, JM itself is not the Supplier and is not responsible for the acts, omissions, goods or services of Suppliers.

**“Taxes”** means all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by You to JM hereunder.

**“Technology Provider”** means a third party developer who has entered into an agreement with JM to provide new functionality to be integrated with the Zing Platform and made available for use by other users of the Zing Platform.

**“Your Marks”** means the trade names, trademarks, service marks, logos and other similar identifiers, and domain names associated with operation of Your Market.

**“Zing API”** means all software, including routines, data structures, object classes, protocols, programs, templates, libraries and interfaces, programming interfaces, software development kits, developer tools, technical documentation, and other related materials, in whatever form or medium provided by JM to Participant for use in connection with the Zing Platform.

**“Zing API Terms”** means the terms and conditions related to Participant’s use of the Zing API, with the most recent version of the Zing API Terms available online at <https://zing.jewelersmutual.com/legal/terms-of-use> and incorporated herein by reference.

**“Zing Data”** means information, materials, content, and data collected by JM, the JM Related Entities, their licensors or contractors in the course of their administration and operation of the Zing Offerings, the JM Participant program, or any Apps, including, but not limited to, Customer Data, other Participants and any other order information, payment information, personal information, and account information related to transactions occurring through the Zing Platform or Apps, as well as any system, security, technical, or other administrative or operational data that may be collected by JM, the JM Related Entities, or their contractors from time to time.

**“Zing Offerings”** means the Zing Platform, Zing APIs, Markets, Zing Trademarks, Apps, Content, Zing Data, Feedback, Credentials, and related elements, and all derivatives and compilations based on the foregoing, whether existing now or in the future as furnished or made available by JM through the Zing Platform.

**“Zing Platform”** means the JM hosted online marketplace available via <https://zing.jewelersmutual.com> as offered from time to time by JM including the stand-alone e-commerce website, Gem + Jewel, available at <https://www.gemandjewel.com>.

**“Zing Trademarks”** means the trademarks, logos, service marks, and trade names of JM Facets, LLC, Jewelers Mutual Insurance Company, SI and any JM Related Entities, whether registered or unregistered.