

Kala Online Retail Marketplace Seller's Agreement

This Seller's agreement is a contract between you ("Seller", "Customer" or "you") and Triliant, LLC (d/b/a Kala), 10704 Deandra Drive, Zionsville, Indiana, 46077, made effective this _____ day of _____, 20____. In this Seller's Agreement, Triliant is referred to as "Triliant", "Kala," "our", "we," or "us."

This Seller's Agreement and all policies and additional terms provided through MyKala.com, applications, tools and services (collectively "Services") provides you with the terms and conditions governing your access to and make use of our Services. By registering for or using Kala's Services, you (or the business you represent) agree to the terms of this agreement, as well as Kala's Policies.

General Terms

Authorized Use and License

Authorized Use and License. Subject to the terms of this Agreement:

Kala shall provide the Seller with access to the Kala Marketplace, for use by Seller as further described herein ("Authorized Use").

Kala hereby grants to Seller a non-exclusive, non-transferable, revocable right and license (the "License") to use certain components of Kala, and to use any related user documentation or materials provided or disclosed to Seller by Triliant in the course of utilizing Kala (the "Documentation"). **SELLER IS GRANTED NO RIGHTS TO THE SOURCE CODE OF KALA OR ANY TRANSLATIONS OR DERIVATIVE WORKS OF KALA.**

Scope of Authorized Use and License. Seller's Authorized Use and License shall permit access to Kala's Marketplace for the duration of this agreement, which may be terminated by Kala without notice in the event of violations of the agreement by the Seller. All such access shall be subject, and pursuant only, to secure authentication as specified by Triliant. This agreement or any terms, conditions, addendums or schedules may be amended from time to time in writing by Triliant.

Password Access. Seller will be provided unique user credentials and passwords to access Kala. Seller will ensure that such passwords are used only by the user assigned to the password and not by any other person. Additional user credentials can be added by Triliant upon request from Seller.

Third Party Licenses. Triliant may include 3rd party licensed applications in the Kala Marketplace. Such 3rd parties may modify or assign additional terms and conditions, as made available to Seller by Triliant, from time to time, which may affect the use of third party applications contained in Kala, including without limitation, changes in rates, use restrictions, guidelines or termination of access to the third party applications contained in Kala. Those terms and conditions will prevail and control use of the relevant content. Seller hereby grants to Triliant and/or its licensors the right to enforce or assert on their own behalf the provisions of this Agreement to the extent they pertain to the third party applications contained in Kala.

Third Party Policies. Triliant may utilize 3rd party applications in Kala, some of which require the Seller to adhere to the 3rd party's terms and conditions. By signing this agreement, the Seller agrees to **Kala's Seller Terms and Conditions**, as well as all other referenced documents, which may change from time to time.

Additional Seller Obligations

Seller Obligations

Seller shall be responsible for the confidentiality and security of the identification password(s) issued to Customer by Triliant, and for compliance with any secure authentication requirements.

Seller will use its best efforts to ensure that Authorized Users comply with the terms and conditions of this Agreement, the terms of access and use for online services as set forth in the terms and conditions for online services available at the Kala website(s), and any and all user guidelines or restrictions provided by Triliant, from time to time.

Seller shall provide full cooperation and assistance to Triliant with any investigation of any Authorized User's potential violation of the terms, conditions, guidelines or restrictions set forth in this Agreement to the extent each such Authorized User may be in violation of such terms, conditions, guidelines or restrictions.

Seller shall have the obligations set forth in **Kala's Seller Terms and Conditions**.

Seller shall agree to **Kala's Trademark Usage Guidelines**.

SECTION 3

Intellectual Property Matters

Definitions.

"Customer Data" means information, data, content and media files provided to Triliant by Customer.

"Third-Party Data" means all data collected, processed and retained by Triliant from third-parties in connection with providing Kala, excluding the Customer Data.

"Confidential Information" means financial and/or business information of the Discloser, regardless of the form or manner in which the information is disclosed or learned, including, but not limited to, marketing and product plans, ideas, concepts, business plans, financial condition, employees and employee information, inventions, algorithms, decision technology and/or models, processes, designs, specifications, drawings, samples, improvements, developments, applications, engineering, manufacturing and marketing data and plans, training materials, terms and pricing, software code (object and source), documentation, and functionality, security procedures and approaches, know-how, customer names and information, experimental work, distribution arrangements and trade secrets, and/or ideas, including derivations of any of the foregoing. Confidential Information shall also include any information or materials clearly

identified in writing at the time of disclosure as confidential or which a party should have reasonably understood to be confidential. Confidential Information also includes all information received from third parties that either party is obligated to treat as confidential and oral information that is identified by either party as confidential.

Data. As between the parties, Customer shall own all Data and Third-Party Data. Customer hereby grants Triliant a non-exclusive, transferable, sub-licensable, royalty-free, worldwide perpetual license to use, copy, perform, display, and distribute Customer Data and to prepare derivative works of Customer Data for the purpose of providing the Kala solution. Customer hereby grants Triliant a non-exclusive, royalty-free, worldwide perpetual license to use copy, perform, display, and distribute Third-Party Data. Customer represents and warrants that no Customer Data provided by it shall infringe on any intellectual property rights of third parties.

No Implied License. Except for the limited Authorized Use rights and Licenses expressly granted hereunder, no other license is granted to Customer, no other use is permitted and Triliant shall retain all right, title and interest in and to Kala (including all intellectual property and proprietary rights embodied therein). Customer shall not take any action inconsistent with such rights.

Restrictions. Any use, reproduction, modification, creation of derivative works from or redistribution of Kala, and/or copying or reproducing of Kala any portion thereof to any other server or location for further reproduction or redistribution is prohibited without the express written consent of Triliant. Customer shall not decompile or disassemble, reverse engineer or otherwise attempt to discover any source code contained in the Kala. Customer shall not, and shall not allow any third party, to: (a) remove any product identification or proprietary rights notices from Kala; (b) lease, lend, rent or sublicense Kala, or allow it to be used by any third party; or (c) use Kala in any way that would infringe any third party intellectual property right or breach the terms of any agreement between Customer and any third party.

Confidential Information. A party's Confidential Information shall not include information that (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party without use of or reference to the other party's Confidential Information. In addition, this Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that the responding party shall first have given prompt notice thereof to the disclosing party and disclosing party shall have had a reasonable opportunity to obtain a protective order requiring that the Confidential Information to be disclosed be used only for the purposes for which the order was issued.

The parties agree, unless required by law, not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than in the performance of this Agreement. Each party agrees to take all reasonable steps to ensure that Confidential Information of the other party is not disclosed or distributed by its employees or agents in breach of this Agreement, but in no event less than the

due care used to protect its own confidential information. The parties agree to hold each other's Confidential Information in confidence during the term of this Agreement and perpetually thereafter.

Privacy and Communicating with Kala Members

Kala respects the privacy of its customers and upholds limits with regard to the types of communications permitted by sellers, when the consumer information is obtained through Kala.

Kala allows sellers to communicate with members who purchased a product or service from the seller through Kala, if the communication is made in order to fulfill an order, resolve a dispute or issue with an order, obtain feedback following a sale, to facilitate the return of a product purchased by the consumer, or to facilitate a refund owed to the customer.

Kala expressly prohibits the use of any customer data obtained through a transaction conducted through Kala to be used for marketing or solicitation purposes by any seller, its affiliates, assigns, or other third party. Any seller found to be using customer data obtained through Kala for the purpose of any kind of marketing, or sold or provided to a third party, may be immediately terminated from the Kala Marketplace.

SECTION 4

Fees

Fees. In consideration of the Authorized Use, License, and Services, the Seller shall agree to the fees described in and/or computed in accordance with the rates set forth in **Kala's Fee Schedule**, which is subject to change upon 60-day advance written notice to Seller (the "Fees").

Payment of Fees. Kala will withhold the Fees from each transaction, submitting the net payment to Seller in accordance with **Kala's Fee Schedule**. Refunds will be provided in accordance with the policy described in **Kala's Seller Terms and Conditions**.

Kala may limit the number of transactions or the total value of orders on your account if it determines there may be a security risk.

SECTION 5

Term and Termination

Term. The term of this Agreement shall commence on the date hereof and, unless terminated earlier as provided herein, shall continue until canceled by one of the parties.

Termination. Either party may terminate this Agreement by written notice for any reason.

Upon termination of this Agreement, Customer shall:

- (a) immediately and permanently discontinue using, in any manner whatsoever, Kala;
- (b) use commercially reasonable efforts to return or destroy all Kala information reasonably requested by Kala, including, without limitation, the Documentation, provided, however, Customer may retain one (1) copy of all Kala information solely for the purposes of verifying compliance with this Agreement and/or maintaining regulatory compliance, subject to the terms of the Agreement;
- (c) remove all product listings from the Kala Marketplace; and
- (d) certify in writing to Kala within thirty (30) days after termination that all actions set forth in this Section have been complied with by Customer.

SECTION 6

Default and Remedies

Events of Default. Each of the following shall constitute an Event of Default under this Agreement:

Either party fails to perform or observe any material obligation, covenant, term, condition or provision of this Agreement, and such failure is not remedied or cured by the defaulting party within thirty (30) days after receipt of written notice thereof by the other party hereto.

Either party fails to protect confidential information or proprietary information regarding customer data, source code, intellectual property or other trade secrets.

Remedies. In the event of any Event of Default, the non-defaulting party may, at its option, pursue any one (1) or more of the following remedies:

- (a) suspend performance of its obligations under this Agreement for so long as the Event of Default continues unremedied;
- (b) terminate this Agreement or any portion hereof;
- (c) seek an injunction for breach or a threatened breach; and
- (d) avail itself of any and all remedies at law or equity. In no case shall the seller's remedy exceed the actual financial damages incurred.

SECTION 7

Representations and Warranties

Each party represents and warrants that it has the power and authority to enter into this Agreement. Triliant represents and warrants that it will provide Kala Services: (i) in a manner consistent with generally accepted industry standards; (ii) in accordance with all applicable rules, laws and regulations, and (iii) in accordance with the terms and conditions this Agreement. Triliant represents and warrants that Kala and shall perform substantially in accordance with the terms of this agreement.

SECTION 8

Disclaimer of Warranties; Limitation of Liability; Indemnification; Insurance

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THERE ARE NO OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS, OR OTHER TERMS CONCERNING KALA, INCLUDING WITHOUT LIMITATION THAT KALA WILL BE ERROR FREE OR WILL OPERATE WITHOUT INTERRUPTION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF GOODWILL, OR TORTIOUS CONDUCT RELATING TO, CAUSED BY, OR ARISING OUT OF ANY BREACH OF ITS OBLIGATIONS OR CUSTOMER'S USE OR INABILITY TO USE KALA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES.

Triliant shall defend and hold Customer harmless with respect to any claim by a third party that Kala infringes any United States patent, trade secret or copyright of that third party, provided: (a) Triliant is promptly notified of the claim; (b) Triliant receives reasonable cooperation from Customer in connection with the defense of the claim; and (c) Triliant has the opportunity to assume sole control over the defense and all negotiations for a settlement or compromise of the claim. Triliant will not be responsible for any settlement it does not approve in writing. The foregoing obligation of Triliant does not apply with respect to Kala or portions or components thereof: (i) used outside the scope or term of this Agreement or in violation of any provision thereof; (ii) not supplied by Triliant; (iii) which are modifications made by Customer, if the alleged infringement would have been avoided but for such modifications; (iv) which, when combined with other products (hardware or software), processes or materials where the alleged infringement would have been avoided but for such combination; or (v) where Customer continues the allegedly infringing activity after being notified thereof.

Should any portion of Kala, or the use thereof become, or in Triliant's opinion be likely to become, the subject of a claim of infringement, Triliant may, at its option, either: (a) procure for Customer the right to continue use of Kala; or (b) provide a modification to the Kala so that its use becomes non-infringing. THIS PARAGRAPH SETS FORTH TRILIANT'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY INFRINGEMENT CLAIMS RELATING TO KALA.

Customer agrees to indemnify and defend Triliant from any and all claims, lawsuits, and damages, including attorneys' fees, ("proceedings") that Triliant may suffer as a result of (i) a breach of any representation or warranty contained in this Agreement by Customer, (ii) the failure of Customer to perform any obligation or comply with any covenant or agreement of Customer contained in this Agreement; or (iii) any use of Kala or any portion thereof outside the scope or term of this Agreement or in violation of any provision thereof. Customer's indemnity hereunder is conditioned on prompt written notice of such claims, lawsuits or damages by Triliant.

The obligations in Section 8 set forth herein shall survive the termination of this Agreement for a period of five (5) years.

SECTION 9

Miscellaneous

Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the fifth (5th) day after mailing if mailed to the party to whom notice is to be given, by certified mail, return receipt requested, first class postage prepaid, or other nationally-recognized express courier service and properly addressed as follows:

If to Triliant:

General Counsel

Triliant, LLC

10704 Deandra Drive

Zionsville, IN 46077

If to Customer:

Any party may change its address for purposes of this Section 9 by giving the other party written notice of the new address in the manner set forth above.

Benefit of Agreement. The terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Entire Agreement; Modification. This Agreement, including Schedules or Links attached hereto, contains the entire agreement between the parties with respect to the subject matter hereof; all representations, promises, proposals and prior or contemporaneous understandings between the parties with respect to this subject matter hereof are merged into and expressed in this Agreement; and any and all prior or contemporaneous agreements between the parties with respect to the subject matter hereof are hereby canceled. Except as otherwise provided herein, this Agreement may not be changed or modified, except by agreement in writing, signed by all of the parties hereto.

Governing Law. This Agreement shall be construed and interpreted in accordance with and governed in all respects by the laws of the State of Indiana, without reference to choice of law principles. Each of the parties: (a) agrees that any action or proceeding brought or initiated in respect of this Agreement may be brought or initiated only in the United States District Court serving the Indianapolis, Indiana area, (b) consents to the exercise of personal jurisdiction and the placement of venue in such court in any such action or proceeding and further consents that service of process may be effected in any such action or proceeding in such manner as may be permitted by law, and (c) agrees that no action shall be brought and prosecuted against any party hereunder except in the court above named.

Headings. Section headings in this Agreement are for convenience of reference only and shall not govern the interpretation of any provision hereof.

Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall be deemed but one and the same instrument.

Incorporation by Reference. All Schedules hereto are incorporated herein by this reference.

Assignment. This Agreement may not be assigned, sublicensed or transferred in any way by Customer without Triliant's prior written consent, provided, however, Customer may assign this Agreement and/or its rights and obligations hereunder without the consent of the Triliant to: i) any affiliate; ii) an assignee or successor in interest (by merger, operation of law or otherwise); or iii) a purchaser of all or substantially all of Customer's business.

No Joint Venture. Nothing in this Agreement shall be construed to constitute a joint venture, partnership, agency, representative or employment relationship between the parties.

Force Majeure. If the performance of this Agreement, or any obligation hereunder (except the making of payments) is prevented, restricted, or interfered with by fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labor disputes, inability to procure or obtain delivery of parts, supplies, power, telecommunication services, or other services from suppliers, war or other violence; any law, order, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable

control of the affected party, the party so affected shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected shall take reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder as quickly as reasonably possible when such causes are removed.

Non-Waiver. Neither the waiver of any breach nor the failure to enforce any term or condition of this Agreement shall operate as a waiver or release of any such term or condition, nor constitute nor be deemed a waiver or release of any other rights, in law or at equity, or claims which either party may have against the other party for any matter arising out of, or connected with, or based upon this Agreement. No waiver shall be enforceable against any party hereto unless set forth in a written instrument or agreement signed by such party.

Costs and Expenses. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the unsuccessful party to such litigation, as determined by the court in a final judgment or decree, shall pay the successful party all reasonable costs, expenses and attorneys' fees incurred by the successful party (including, without limitation, costs, expenses and fees on any appeals), and if the successful party recovers judgment in any such action or proceeding, such costs, expenses or reasonable attorneys' fees shall be included as part of the judgment.

Severability. In the event any term, provision or restriction of this Agreement shall be held to be illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall in no way affect the legality, validity or enforceability of the remaining provisions of this Agreement, all of which shall continue unaffected and unimpaired thereby. The parties agree that any such unenforceable term, provision or restriction shall be deemed modified to the extent necessary to permit its enforcement to the maximum extent permitted by applicable law.

Authorization. Both parties represent and warrant that the individuals signing this Agreement are authorized to do so and all necessary approvals and authorizations have been made prior to the signing of this Agreement.

Survival. The following provisions of the Agreement will survive any termination or expiration: Section 3 (Intellectual Property Matters), Section 5 (Term and Termination), Section 7 (Representations and Warranties), Section 8 (Disclaimer of Warranties; Limitation of Liability; Indemnification; Insurance), and Section 9 (Governing Law and Survival).

Press Releases; Publicity. Either party may issue a press release stating factual information regarding the relationship between Triliant and Customer at the time this Agreement is signed. The issuing party shall first submit the press release to the other party for approval. The parties may issue additional press releases from time to time as mutually agreed by the parties. All press releases or other publicity sought to be issued by either or both parties pursuant to this section must, prior to release, be reviewed and approved by each party, which approval may not be unreasonably withheld or be delayed more than 5 business days. Subject to Customer's prior written consent (which must not be unreasonably or arbitrarily withheld), Triliant may include Customer's name in its marketing and promotional materials regarding the availability of any of its products or services to other clients.

IN WITNESS WHEREOF, each party hereto has duly executed this Agreement as of the Effective Date first listed above.

COMPANY

TRILIAN, LLC

Signature: _____

Name: _____

Date: _____

Seller

Signature: _____

Name: _____

Date: _____