
RETAILER AGREEMENT

This RETAILER AGREEMENT (hereinafter “Agreement”) governs and defines the arrangement under which access and/or use of the Exchange Collective Platform (defined below) and any related content or services made available by Exchange Collective, Inc. or any of its representatives, affiliates, officers and directors (collectively “Exchange Collective”) is provided to you, the “Retailer.” Please read these terms carefully, as they constitute a legal agreement between the Retailer and Exchange Collective. By agreeing to be bound to the terms of this Agreement you represent and warrant that you are duly authorized to enter into this Agreement in its entirety on behalf of the Retailer.

Additionally, by accessing or using the Exchange Collective Platform, Retailer confirms its agreement to be bound by this Agreement. If the Retailer does not agree to the terms of the Agreement, Retailer may not access or use the Exchange Collective Platform.

Exchange Collective may immediately terminate this Agreement or Retailer’s use of the Exchange Collective Platform, or generally cease offering or deny access to the Exchange Collective Platform or any portion thereof, at any time for any reason.

Subject to the following terms and conditions of this Agreement, Exchange Collective will provide access to the Exchange Collective Platform to Retailer:

DEFINITION

“Exchange Collective Platform” – a short term name reference for the proprietary software product developed and owned by Exchange Collective which is a subject of this agreement. The Exchange Collective Platform provides retailers with access to the inventory of other brands and wholesalers to offer to the retailer’s in-store and online customers. The Exchange Collective Platform allows a retailer to display the inventory of another brand or wholesaler to customers for purchase via their website or smartphone application. The Exchange Collective Platform further facilitates the placement of an order with the brand or wholesaler and may facilitate the distribution of payment to the appropriate parties.

1. License Grant and Limitations

- a. Exchange Collective grants to Retailer, and Retailer hereby accepts, during the term of this Agreement and subject to all terms and conditions of this Agreement, a non-exclusive, non-transferable and non-sub-licensable license to use the Exchange Collective Platform.
- b. Exchange Collective does not grant to Retailer a license to copy, use, display, transmit, market, distribute, sub-license or make derivative works of any brand and marketing

materials, trade names, trademarks, service marks and other intellectual property necessary hereunder, packaging materials, literature, and images of the products of a brand or wholesaler in order to market, distribute, solicit, place, sell, import, export these products. As such, Exchange Collective, shall not be liable for any violations by Retailer of the rights of a brand or wholesaler or for Retailer's compliance with Retailer's agreement with the brand or wholesaler.

- c. Exchange Collective shall maintain the Exchange Collective Platform during the Term and provide updates, patches, or upgrades as necessary to address any glitches or malfunctions in the Exchange Collective Platform, and abide by the Minimum Service Levels in Schedule I attached hereto

2. **Retailer's Obligations**

- a. Retailer may use Exchange Collective Platform to facilitate the incorporation of products and inventory of a brand or wholesaler into the Retailer's website, webpage, smartphone application, and/or other interface used to offer for sale or sell products to customers. Retailer may offer for sale and/or sell any and all products in inventory from a brand or wholesale supplier as provided under the terms of Retailer's agreement with the brand or wholesaler. Retailer shall be solely responsible for ensuring the Retailer has the right to list, display, and sell products of a brand or wholesale supplier. Retailer shall be solely responsible for complying with the brand guidelines of any such brand or wholesaler, and for properly listing or displaying products to customers.
- b. Retailer agrees to use the Exchange Collective Platform as provided by Exchange Collective. Retailer agrees not to modify, edit, revise or reverse engineer the Exchange Collective Platform without the express written consent of Exchange Collective. Retailer further agrees not to copy, sell, transfer, or otherwise provide access to the Exchange Collective Platform to another entity that is not a party to this Agreement.
- d. Retailer acknowledges and understands that the Exchange Collective Platform facilitates provision of additional inventory information of one or more wholesale suppliers or brands to the Retailer and serves to facilitate purchase of inventory with the brand or wholesale supplier. Retailer acknowledges that Exchange Collective is not liable or in any way responsible for defects in the products provided to the Retailer or Retailer's customer was a result of a purchase facilitated by the Exchange Collective Platform. and Retailer further acknowledges that Exchange Collective's sole role in any offer for sale or sale of good is to facilitate the transfer of information between a brand or wholesaler and the Retailer, so that the Retailer may offer and sell goods to Retailer's customers and so that Retailer can request fulfillment of orders by a brand or wholesaler to Retailer's customer. Retailer further acknowledges that Exchange Collective is not responsible or liable for any product purchased by a customer in a transaction facilitated via the Exchange Collective Platform that is in transit including, as examples, in transit from the wholesale supplier to the customer or from the wholesale supplier to the Retailer. And Retailer acknowledges that Exchange

Collective is not responsible for fulfilling customer orders or processing customer returns or refunds.

- e. Retailer shall include a label, marking, or indicia on any website, webpage, smartphone application, and/or other sales interface that uses the Exchange Collective Platform to provide information to Retailer's customers that indicates that the sales interface uses or incorporates information of a brand or wholesaler facilitated by the Exchange Collective Platform. For instance, where the Retailer website includes product listings including information of the brand or wholesaler facilitated by the Exchange Collective Platform, the website may include a label or attribution "Powered by Exchange Collective" or a similar label referencing the use of the Exchange Collective Platform. All use of the brands of Exchange Collective shall be consistent with Exchange Collective's branding guidelines as provided to Retailer from time to time.
- f. Retailer shall not use the Exchange Collective Platform to access information of a brand or wholesaler without first entering an agreement with the brand or wholesaler (a) for the use of such information and (b) for the fulfillment by the brand or wholesaler of purchases made by customers of Retailer of goods of the brand or wholesaler. Retailer shall not use such information in a manner that violates such agreement.
- g. Retailer acknowledges that Retailer shall remain solely responsible for providing customer service regarding the products sold to the customer and that in no event shall Exchange Collective be responsible for providing customer service regarding the products. Customer service as used herein includes dealing with customer that purchase items from the Retailer, determining a status of a product order, and otherwise providing assistance and advice to those people who buy or use the Retailer's products or services.
- h. **In order to use the payment functionality of Exchange Collective application**, you must open a "Dwolla Account" provided by Dwolla, Inc. and you must accept the Dwolla Terms of Service and Privacy Policy. Any funds held in or transferred through your Dwolla Account are held or transferred by Dwolla's financial institution partners. You must be at least 18 years old to create a Dwolla Account. You authorize Exchange Collective to collect and share with Dwolla your personal information including full name, **[date of birth, social security number, physical address,]** email address and financial information, and you are responsible for the accuracy and completeness of that data. You understand that you will access and manage your Dwolla Account through Exchange Collective application, and Dwolla account notifications will be sent by Exchange Collective, not Dwolla. Exchange Collective will provide customer support for your Dwolla Account activity, and can be reached at www.exchangecollective.com and/or hello@exchagnecollective.com and/or 855-762-7625
- i. **Retailer License Grant.** Retailer hereby grants to Exchange Collective, during the **Term, a non-exclusive, limited, revocable, worldwide, non-sublicensable license to (i)**

use and reproduce Retailer's name and trademarks, in the form expressly pre-approved by Retailer in writing in each instance, for the sole purpose of performing Exchange Collective obligations under this Agreement and (ii) operate the Exchange Collective Platform in the E-Commerce Store.

3. **Exchange Collective' Obligations**

- a. Exchange Collective shall provide Retailer with access to the Exchange Collective Platform for incorporation of a brand or wholesaler's information into the Retailer's website, webpage, smartphone application, or other sales interface. Exchange Collective shall maintain the Exchange Collective Platform during the term of this Agreement and provide updates, patches, or upgrades as necessary to address any glitches or malfunctions in the Exchange Collective Platform. Exchange Collective shall not be responsible in any way for the accuracy of information of a brand or wholesaler received by Retailer via the Exchange Collective Platform, and Retailer shall have sole responsibility for ensuring that Retailer's use of such information is permitted under Retailer's agreement with the brand or wholesaler.
- b. Exchange Collective shall work to correct any errors in the Exchange Collective Platform of which Retailer provides notice to Exchange Collective. Exchange Collective will request additional information from Retailer where necessary or helpful to assist Exchange Collective in correcting such errors.
- c. Exchange Collective shall not be responsible for fulfilling product purchases to the Retailer or to the customer. Retailer acknowledges that Exchange Collective is not a part of the product supply chain, but instead facilitates access to information of a brand or wholesale supplier and may facilitate payment for the purchase of such inventory by Retailer or Retailer's customer. In no event shall Exchange Collective transport, store, distribute, or otherwise handle a product purchased by the Retailer or a customer.

5. **Payment**

During the term of this Agreement, Exchange Collective shall receive ten percent (10%)(see appendix b for volume discount) of the retail price set by a brand or wholesaler in the Exchange Collective Platform at the time of sale from Retailer's sales of products of brands or wholesalers using the Exchange Collective Platform. Retailer shall not sell any products of a brand or wholesaler where the brand or wholesaler has not set a retail price within the Exchange Collective Platform. The payment of applicable sales and use tax is solely the responsibility of the Retailer. Any discount given by the Retailer to a customer is solely the responsibility of Retailer and shall not affect the amount owed to Exchange Collective or the brand or wholesaler unless otherwise agreed to in writing by Exchange Collective and the Retailer. The Parties agree that shipping costs shall be paid by the brand and wholesaler unless otherwise agreed to by the Retailer and the brand or wholesaler. Retailer acknowledges that Exchange Collective shall not be responsible for the payment of shipping costs from the brand or wholesaler to the Retailer.

- d. (i) Retailer shall enter into an ACH agreement with Exchange Collective to enable payments to Exchange Collective; and (ii) Exchange Collective shall debit amounts from the account designated in the ACH agreement [within fifteen (15) days after the end of each month] to pay the wholesaler or brand their wholesale price plus any shipping cost collected from the customer for the brand or wholesaler in the event shipping cost is paid by the brand or wholesaler, plus Exchange Collective's percent of the retail price indicated in the Service Schedule, for sales made by Retailer in the previous month. The payment of applicable sales and use tax is the responsibility of the Retailer. Any discount given by Retailer to a customer is the responsibility of Retailer and shall not affect the amount owed to Exchange Collective or the brand or wholesaler unless otherwise agreed to in writing by Exchange Collective and Retailer. The Parties agree that shipping costs shall be paid by the brand and wholesaler unless otherwise agreed to by Retailer and the brand or wholesaler.
- e.

6. **Proprietary Rights**

- a. Neither Party will acquire any ownership interest in the other's intellectual property owned prior to this Agreement beyond the licenses granted herein and for the term specified herein. Retailer agrees and acknowledges that Exchange Collective is and shall remain the sole owner of the Exchange Collective Platform.
- b.** Retailer further agrees and acknowledges that Retailer acquires no rights whatsoever under this Agreement to any of Exchange Collective's existing or future intellectual property. Retailer further acknowledges that Exchange Collective is under no obligation under this Agreement to disclose or license any improvement, update, or upgrade to the Exchange Collective Platform that Exchange Collective develops or has developed to Retailer.
- c.** To the extent Retailer conceives of, develops, and/or suggests an improvement to the Exchange Collective Platform, Retailer agrees that such rights are assigned to Exchange Collective and that Retailer has no ownership right whatsoever to such improvement. Retailer agrees to cooperate and to have its employees cooperate with Exchange Collective as necessary to procure intellectual property rights covering such improvement should Exchange Collective elect to, within its sole discretion, pursue intellectual property protection of such improvement.

7. **Confidentiality**

Retailer agrees that aspects of the Exchange Collective Platform are confidential and proprietary, and as such agrees to use reasonable efforts to maintain confidentiality of and prevent unauthorized access to all screen displays, code, and functions of the Exchange Collective Platform except as necessary to utilize the Exchange Collective Platform for its intended function. Retailer agrees not to permit access to the Exchange Collective Platform by persons outside of Retailer, by persons who do not require access in order to utilize the Exchange

Collective Platform for its intended function, or for purposes other than in order to utilize the Exchange Collective Platform for its intended function.

8. **Term of Agreement and Termination**

a. Term: This Agreement shall commence on the Effective Date and shall continue for a period of one (2) year (the “Initial Term”), unless earlier terminated as permitted in Section 8(b). Upon the expiration of the Initial Term, this Agreement will automatically renew for successive one (2) year terms (each a “Renewal Term” and together with the Initial Term, the “Term”), unless earlier terminated as permitted in Section 8.

b. Termination: This Agreement may be terminated by either Party:

i. *Due to non-renewal*: Either Party may terminate this Agreement upon providing the other Party with notice of non-renewal at least seven (7) days prior to the next scheduled renewal date.

ii. *Due to material breach*: Either Party may terminate this Agreement before its expiration with 30 days’ prior notice and only after any cure period has expired, if the other Party materially breaches the Agreement. The Parties agree that a material breach by Exchange Collective shall occur if: Exchange Collective undertakes action that injures Retailer, customer or potential customer relations with Retailer; Exchange Collective defaults or breaches any other material obligations; or Exchange Collective violates local, state, federal or international law, or the law of any country or jurisdiction in which Exchange Collective is engaged in business pursuant to this Agreement. The Parties agree that a material breach by Retailer shall occur if: Retailer undertakes action that injures Exchange Collective, customer or potential customer relations with Exchange Collective; Retailer defaults or breaches any other material obligations; Retailer begins selling, licensing, or distributing the Exchange Collective Platform or a similar product to any other company outside the scope of the license granted to Retailer under this Agreement; Retailer develops or begins selling or distributing a product or brand that competes with the Exchange Collective Platform; or Retailer violates local, state, federal or international law. The Parties agree to notify each other of any alleged breach in writing within ten (10) days of the discovery of an alleged breach and the alleged breaching Party shall have thirty (30) days to cure said breach with this time period being calculated from the date the last information needed to confirm the alleged breach is provided to the alleged breaching Party.

iii. *Performance of obligations are not reasonably practicable*: Either Party may terminate this Agreement before its expiration with 30 days’ prior notice if performance of a Party’s obligations under this Agreement are no longer reasonably practicable.

iv. *By mutual agreement*: Either Party may terminate this Agreement by mutual written agreement signed by both Parties provided it gives the other Party ninety (90) days written notice; or

v. *Bankruptcy*: Either Party may terminate this Agreement after thirty (30) days' written notice if either Party has filed or has filed against it a petition in bankruptcy (which is not dismissed within thirty (30) days of its filing).

9. **Obligations and Rights Upon Termination**

In the event of termination of this Agreement for any reason and subject to Paragraph 6 *supra*:

a. The License granted to Retailer shall be immediately revoked and Retailer shall have no right to use the Exchange Collective Platform. Retailer shall immediately transfer to Exchange Collective, delete, and/or destroy any and all confidential and/or proprietary information of Exchange Collective pursuant to this Agreement.

b. Retailer shall remit to Exchange Collective any balance or amount owed to Exchange Collective by Retailer within thirty (30) days of termination.

10. **Remedies**

Retailer acknowledges that any breach by Retailer of the covenants set forth herein would result in irreparable harm to Exchange Collective for which monetary damages alone would be an insufficient remedy. Thus, although nothing in this Paragraph will prohibit Exchange Collective from pursuing any remedies available to it against any party under applicable law (which shall be cumulative with those remedies set forth herein), Retailer specifically agrees that, in the event of any threatened or actual breach of this Agreement by Retailer, Exchange Collective shall be entitled to an injunction and other equitable relief including, without limitation, an equitable accounting of earnings, profits, and other benefits, from a court of competent jurisdiction, as well as reimbursement from Retailer for any attorneys' fees and other costs incurred by Exchange Collective in obtaining such relief.

11. **Miscellaneous**

a. **Successors and Assigns**: This Agreement shall be binding upon and inure to the benefit of the Parties and to their respective successors and permitted assigns. No Party shall assign this Agreement in contravention of any clause herein. Notwithstanding the foregoing, either Party shall have the right to assign its rights under this Agreement to any affiliate company or any entity purchasing all or substantially all of its assets without the consent of the other Party.

b. Amendments, Waivers, and Consents: This Agreement shall not be amended or otherwise modified except in a writing signed by the Parties. No waiver or consent shall be binding except in a writing signed by the Party making the waiver or giving the consent. No waiver of any provision or consent to any action shall constitute a waiver of any provision or consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent except to the extent specifically set forth in writing.

c. Notices: All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (ii) one (1) business day, as defined below, after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

Retailer: Any address connected or associated with the Retailer's account.

Exchange Collective:

Exchange Collective Inc.

Attn: Dan Pankratz

1543 Canyon Creek

Santa Maria, CA 93455

Exchange Collective may also provide the Retailer with notice by means of a general notice on or through the Exchange Collective Platform or electronic mail to the email address associated with the Retailer's account.

d. Governing Law: This Agreement shall be governed by, and construed in accordance with, the laws of the State of California without regard to its choice of law provisions. In the event of any dispute or controversy regarding the terms of this Agreement or the breach thereof, the Parties agree that the first recourse will be to attempt to resolve such issue amicably with a sufficiently authorized member of each Party's management. In any action brought under or arising out of this Agreement, the Parties hereby consent to the jurisdiction of any federal or state court within Santa Barbara County, California (USA) and to any lawful service of process in California (USA). The Parties further agree no other federal or state court may entertain any suit, action or proceeding relating to or arising out of this Agreement.

e. Attorneys' Fees: If either Party brings any suit, action, counterclaim, or arbitration to enforce the provisions of this Agreement (including without limitation enforcement of

any award or judgment obtained with respect to this Agreement), the prevailing party shall be entitled to recover reasonable attorneys' fees, litigation costs, and the cost of arbitration in addition to court costs.

f. Entire Agreement: This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof. This Agreement supersedes all previous or contemporaneous agreements between or among the Parties. There are now no agreements, representations, or warranties between the Parties other than those set forth in this Agreement or the documents and agreements contemplated in this Agreement. This Agreement may not be amended except by a written agreement executed by each Party.

g. Severability: If any provision of this Agreement, or the application of such provision to any person or circumstances, is held invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby. To the extent blue penciling is allowed to amend a provision to prevent it being deemed invalid or unenforceable and still in keeping with the Parties initial intent, the Parties agree to such blue penciling.

h. Assignment: Retailer shall not directly or indirectly assign or transfer this Agreement or any rights and/or obligations hereunder to any other party, including a subsidiary or affiliate of Retailer, in whole or in part, without the prior written consent of Exchange Collective and any such assignment without Exchange Collective' consent shall be void and of no effect. In the event of any assignment or transfer which is approved by Exchange Collective, Retailer agrees to remain liable for, and guarantee performance of, the assignee's obligations under this Agreement unless Exchange Collective consents to release of said liability in writing. Exchange Collective may assign or transfer this Agreement or any of its rights and/or obligations hereunder to any subsidiary, parent or affiliate, or any company of which Exchange Collective or its parent owns or controls at least 50% of any such assignee without the consent of Retailer. Any other assignment by Exchange Collective shall be subject to the prior written consent of Retailer.

By checking this box, you agree to enter a contract with Exchange Collective and confirm your understanding of the terms and conditions of the Agreement.