

If you are on an Enterprise plan, the Production Designer Agreement applies, otherwise, the Designer Agreement applies.

Production Designer Agreement

This Production Designer Agreement (this “**Agreement**”) is entered into by Mercer Design Studio, Inc., a Delaware corporation (“**Company**”), and you, the Designer (hereafter referred to as “**Designer**”, “**you**”, “**your**” or “**yours**”); with the foregoing also referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

In consideration of the covenants and conditions described below, Company and Designer agree as follows:

By clicking on the “accept” or similar button, (1) you are consenting and expressly agree to be bound by and are becoming a party to (a) the terms of this Agreement, and (b) the terms of the Terms of Use located at <https://mercer.design/terms> (the “Terms of Use”); and (2) you represent and acknowledge that you have read and reviewed this Agreement and the Terms of Use (“Acceptance”).

Please note that to be a Designer with Company and to use the Platform (as defined herein) and the associated Software (as defined herein), you must agree to the terms and conditions set forth in this Agreement and the Terms of Use. We may modify this Agreement at any time, and such modification shall be effective immediately upon either posting of the modified agreement or notifying you. You agree to review this Agreement periodically to ensure that you are aware of any modifications. Your continued access or use of the Platform shall be deemed your conclusive acceptance of the modified agreement. If you do not agree to the terms of this Agreement and/or the Terms of Use, you do not have our authorization to use any of the Services and you may not access or use any portion of the Site (as defined herein), Platform, or Software.

Terms not defined herein shall have the meaning as provided in our Terms of Use and incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and the Terms of Use, the terms of this Agreement shall supersede and control to the extent of any such conflict. This Agreement is effective as of the date of Acceptance.

Agreement

1. Services

- (a) *General.* Through Company’s technology platform (the “**Platform**”), which includes Company’s proprietary software and content (the “**Software**”) on Company’s online website (including all content and functionality available through the <https://mercer.design/> domain name, “**Site**”), Company will provide Designer with certain services, including (i) connection of Designer with Company’s design, production and other partners (each, a “**Partner**” and collectively, “**Partners**”) for the provision of the foregoing in furtherance of the

production of custom apparel, garments and accessories (collectively, “**Garments**”) in Designer’s design project(s) (each such design project, a “**Design Project**”) and (ii) if expressly agreed pursuant to *Section 1(e)*, as applicable, Other Services (such services, the “**Services**”). In connection with the Services, Company and/or its Partners shall provide Designer with certain production services (including fabric manufacturing, trim vendors and sample making and production of the Garments) and access to consultants (including technical designers, pattern makers, and other sourcing services) (collectively, the “**Production Services**”). For avoidance of doubt, the specific Services and Production Services provided to Designer will be consistent with the subscription model selected by Designer, as more fully described on the subscription pricing page (the “**Subscription Pricing Page**”) located at <https://mercer.design/access> (“**Subscription**”).

(b) *Production Services.*

- (i) *Production Fee Approval Process.* Following design and submission by Designer of a proposed Design Project via the Platform, Company will review such Design Project to determine the estimated costs of the Production Services in connection with the applicable Design Project. Company will provide Designer with a quote for all costs and fees in connection with the Production Services for such Design Project, including without limitation, costs and fees for any of pattern-making, material sourcing, prototypes, product development, custom labels, samples for final approval, bulk units, a keep sample for Company and packaging (collectively, a “**Quote**”).
- (ii) Upon review by Designer of a Quote, Designer shall either (x) approve such Quote (such approved Quote, a “**Production Fee**”) or (y) submit proposed revisions to the Design Project to Company in writing (email sufficient), which will again be subject to the process set forth in *Section 1(b)(i)* (the process described in *Sections 1(b)(i)* and *(ii)*, the “**Production Fee Approval Process**”). For the avoidance of doubt, any Production Fee (and all information used to create such Production Fee) is considered Company’s Confidential Information (as defined herein) subject to all obligations and restrictions in *Section 4* hereof.
- (iii) *Checkout.* Upon obtaining a mutually agreed to Production Fee via the Production Fee Approval Process for a given Design Project, Company shall communicate to Designer, in its sole and absolute discretion the Quote Percentage Fee (as defined below) and whether (1) Company shall require payment of such Quote Percentage Fee and Production Fee (or any portion thereof) and in accordance with *Section 2(b)* and *Section 2(c)*, respectively or (2) such Quote Percentage Fee and Production Fee (or any portion thereof) may be financed in accordance with *Section 2(d)*. At “Checkout” for a Design Project in the Platform (the “**Checkout**”), Designer will confirm the following order details with respect to each Design Project

(a) the Production Fee, which Production Fee is equal to the “Total Costs” set forth on the Checkout page on the Platform (the “**Checkout Page**”), (b) the Financing Amount, which Financing Amount is equal to the “Credit Applied” set forth on the Checkout Page, (c) the amount, if any, of the Production Fee to be paid at Checkout in accordance with *Section 2(b)* and *Section 2(c)* respectively, which amount is equal to the “Total Costs” minus the “Credit Applied” set forth on the Checkout Page (the “**Checkout Payment**”) and (d) the estimated time to completion of production of the Garments, described as “Est. Time” on the Checkout Page (the “**Estimated Production Time**”). The initial delivery location of the Garments provided for in the Design Project shall be confirmed via email or any other method of communication mutually agreeable to the Parties.

- (iv) *Production*. Designer understands and agrees that with respect to each Design Project (1) Company may, in its sole discretion, match and connect Designer with a Partner (any such Partner, a “**Production Partner**”) based on the compatibility of the Production Services offered by such Production Partner to a Design Project; (2) Designer agrees to pay or finance the Production Fee and Quote Percentage Fee as provided for in *Section 2* of this Agreement prior to the commencement of the Production Services; and (3) no Production Services will begin until the Checkout Payment is successfully processed. Company’s employment of commercially reasonable efforts to locate a Production Partner for a Design Project does not guarantee a Production Partner shall indeed be located and available to complete such a Design Project.
- (v) *Samples, Review and Changes*. Prior to production of the Garments in connection with any given Design Project, Designer agrees to promptly review, approve and/or provide comments on any Garment sample (the “**Sample**”) created by a Production Partner in connection with such Design Project. If Designer desires to make major and substantial changes to a Sample (a “**Major Alteration**”) that materially impact the Estimated Production Time, the pricing estimate or other material term contained in a Quote, as determined in Company’s sole discretion, Company may place on hold or otherwise cancel the applicable Design Project for re-pricing and a new Quote shall be issued in accordance with *Section 1(b)(i)*. By way of illustration and without limitation, a Major Alteration may include change of the product type, change of construction of a Garment by adding a hood or sleeve or other feature, change in the process type from print to embroidery or substantially changing materials (i.e., from denim to leather). Once an Approving Collaborator (as defined below) approves a Sample (an “**Approved Sample**”), no changes of any kind can be made to a Garment or the number of units for a given Garment in connection with the applicable Design Project.
- (vi) Designer will (1) provide clear instructions and timeline to any Production Partner for the production of Garments in

connection the applicable Design Project, (2) be available during normal business hours to respond to any Production Partner's questions related to a Garment, Approved Sample or a Design Project, and (3) will designate one (1) or more collaborators, at Designers discretion, for each Design Project via email (each an "**Approving Collaborator**") to provide timely approval, rejection and/or comments to a Sample or other inquiries or questions. For the avoidance of doubt, each Approving Collaborator shall have Designer's authorization to provide approval, rejection and/or comments to any Sample without further authorization from Designer or another Approving Collaborator and such approval shall be final, irrevocable and definitive for all purposes under this Agreement.

- (c) *Delivery.* Company shall ensure delivery of the Garments to Designer to the accurate, truthful and up to date shipping information provided through the Platform for the delivery of Garments. The method of shipping will be provided through a nationally recognized and reputable courier or delivery service ("**Courier**") chosen by Company; and Designer agrees to be present on the delivery date confirmed by Company (the "**Delivery Date**") or designate an authorized adult to accept delivery of the Garments on the Delivery Date. Company shall not be responsible for any damage caused by the Courier to the Garments and Designer's sole recourse will be against such Courier, as applicable, for such damage.
- (d) *Damaged Garments.* Upon delivery of the Garments, Designer or its designee will inspect all Garments promptly upon delivery and, if Garments are reasonably determined to be damaged, defective, or deficient (the "**Damaged Garments**"), Designer will promptly, but in any event within five (5) days from the Delivery Date (the "**Notification Period**"), notify Company in writing and provide evidence of such damage, defect or deficiency. Following such notification, Company shall work with Designer and the Production Partner, as applicable depending on the nature of the issue, to remedy the damage, defect, or deficiency and, if reasonably necessary, return the Damaged Garments at the applicable Production Partner's cost and expense. For the avoidance of doubt, if Designer fails to provide notice of its receipt of Damaged Garments within the Notification Period, then such Garments shall be deemed accepted and any cost, expense or other remedial measure shall be the sole and exclusive responsibility of Designer.
- (e) *Other Services.* Any services that are outside the scope of the Services and Production Services specifically contemplated in this Agreement (the "**Other Services**") may be requested by Designer and provided in Company's sole discretion, subject to the costs and expenses thereof being the sole and exclusive responsibility of Designer (such costs and expenses, the "**Other Services Costs**"). For the avoidance of doubt, Other Services Costs shall be in addition to the Subscription Fee, Production Fee and Quote Percentage Fee as further detailed herein.

2. Fees; Financing; Payment

The scope of fees, costs and expenses that Designer may incur and be rendered due and payable to Company in accordance with the terms of this Agreement as follows: (i) the Subscription Fee, (ii) the Quote Percentage Fee, (iii) Production Fee(s), (iv) Financing Repayment(s), if applicable (v) the Other Services Costs, if applicable, and (vi) the Late Payment Charges, if applicable (the fees, costs and expenses described in the foregoing clauses (i) – (vi) of this Section 2, collectively, the “**Fees**”) each as further detailed herein.

- (a) *Subscription Fee.* Designer will pay via credit card, automatic transfer hold (ATH), wire transfer or any other direct transfer method approved by Company, in its sole discretion, to Company the non-cancelable and non refundable monthly subscription fee applicable to Designer’s Subscription set forth on the Subscription Pricing Page (the “**Subscription Fee**”). The first payment of the Subscription Fee shall be due on the date of Acceptance and each subsequent Subscription Fee shall be due on each monthly anniversary thereafter as indicated by the applicable invoice (the “**Subscription Fee Invoice**”). At the end of the Initial Term, for the Renewal Term, if any, Designer will pay the then-current non-cancelable and non-refundable Subscription Fee set for on the Subscription Pricing Page.
- (b) *Quote Percentage Fee.* As previously described in Section 1(b)(iv), Designer shall pay to Company, in one (1) lump sum, prior to the commencement of Production Services, a fee equal to the percentage of the Production Fee offered by the Company via email, in its sole discretion (the “**Quote Percentage Fee**”), however, if all or any part of such Quote Percentage Fee is financed in accordance with Section 2(d) hereof, the portion of the Quote Percentage Fee subject to Financing approved by the Company, in its sole discretion, shall be paid in accordance with Section 2(f) hereof.
- (c) *Production Fee.* As previously described in Section 1(b)(iv), with respect to each Design Project, the Production Fee shall be paid at Checkout, prior to commencement of Production Services; provided, however, if all or any part of such Production Fee is financed in accordance with Section 2(d) hereof, the portion of the Production Fee subject to Financing as agreed to at Checkout shall be paid in accordance with Section 2(f) hereof.
- (d) *Financing.*
 - (i) Company may, in its sole discretion, offer financing to Designer to cover all or part of any Production Fees and the Quote Percentage Fee (the “**Financing**”). If Designer desires to apply for Financing, Designer will promptly provide Company with its bank statements for the past three (3) months, a direct connection into Designer’s relevant bank account, access to Designer’s e-commerce platform and any other information reasonably requested by Company. Following review by

Company thereof, Company may, in its sole discretion, determine the amount of Financing, if any, to be made available to Designer at any given time during the Term (the “**Credit Limit**”), which, for the avoidance of doubt, may be adjusted or revoked as the Company may, from time to time, determine. Designer may access the Financing to cover all or part of the Production Fee and Quote Percentage Fee for each given Design Project (the amount of each such use, a “**Financing Amount**” and collectively, the “**Financing Amounts**”). For the avoidance of doubt, Company will not extend to Designer any Financing Amount, which together with already outstanding Financing Amounts, would, in the aggregate, exceed the Credit Limit.

- (ii) Designer will be responsible for repayment of the Financing Amounts in full in accordance with the terms hereof. The Financing Amounts outstanding will be repaid (a) in one lump sum payment on the date that is four (4) months following the Checkout (the “**Final Repayment Date**”) or (b) as may be determined by the Company in its sole discretion (the “**Alternate Repayment Terms**”) (such amount, as applicable, the “**Financing Repayment**”).
 - (iii) Notwithstanding anything to the contrary contained herein, any portion of the Financing Amounts that have not been repaid by the Final Repayment Date or in accordance with the Alternate Repayment Terms (such portion, the “**Financing Balance**”) shall (a) become immediately due and payable. Company may exercise all remedial measures appropriate and available to it pursuant to applicable law, including without limitation, collection or seizure of Produced Garments in order to collect the outstanding Financing Balance and (b) accrue interest pursuant to *Section 2(e)* hereof. Notwithstanding the first sentence of this paragraph, in the event Designer does not offer the Garments, related to the financed Design Project, for sale within fourteen (14) days of the Delivery Date, the full Financing Balance shall become subject to clauses (a) and (b) in the preceding sentence as if the Final Repayment Date has occurred.
- (e) *Late Payments.* Any amounts owed by Designer to Company pursuant to this Agreement not paid by Designer within thirty (30) days of when due will bear interest at the maximum rate permitted by applicable law, computed and compounded daily from the date due until the date paid in full (such late payments owed plus any accrued interest, “**Late Payment Charges**”).
- (f) *Invoicing; Payment.* No later than the fifteenth (15th) calendar day of each month, Company shall submit to Designer an invoice (the “**Invoice**”) for fees and costs due to Company for the preceding calendar month pursuant to this Agreement. The Invoice shall include the following amounts due and payable for each Design Project (such aggregate amounts, the “**Invoice Amount**”), (1) the Quote Percentage Fee, if applicable, (2) the Financing Repayment, if applicable, (3) Late Payment Charges, if applicable and (4) Other

Services Costs, if applicable. Unless disputed in accordance with *Section 2(g)*, all Invoices, excluding the Subscription Fee Invoice which shall be due as described in Section 2(a) hereof, shall be due and payable on the fifth (5th) business day following Company's submission thereof (the "**Payment Deadline**"). Unless disputed in accordance with *Section 2(g)*, Company will charge Designer's bank account, provided to Company in accordance with Section 2(d)(i), (the "**Provided Account**") on the Payment Deadline (or, if such means of collection is not available or is insufficient at the time, Designer shall pay via automatic transfer hold (ATH), wire transfer or any other direct transfer method approved by Company, in its sole discretion any amounts that could not be collected through the Provided Account by the Payment Deadline).

- (g) *Invoice Disputes*. If Designer submits a writing (email sufficient) with evidence reasonably acceptable to Company to dispute any portion of the Invoice Amount (such writing, an "**Invoice Dispute**") prior to the Payment Deadline, Company will not charge Designer for the amount reasonably disputed in such Invoice Dispute until the Invoice Dispute has been resolved in accordance with the terms of this *Section 2(g)*. In the event Designer submits an Invoice Dispute, the Parties will work together in good faith, using commercially reasonable efforts, to resolve such Invoice Dispute and to agree to a final Invoice Amount to be paid by Designer (such final Invoice Amount, a "**Resolved Invoice Amount**"). If, after thirty (30) calendar days, the Parties have not resolved the Invoice Dispute by agreeing to a Resolved Invoice Amount, the Invoice Dispute shall be submitted to a mutually agreeable independent, registered public accounting firm for resolution (the "**Accountant**"). Designer shall bear one hundred percent (100%) of the cost of such Accountant's services. Notwithstanding the foregoing, if Designer is the prevailing party and the Resolved Invoice Amount is at least five percent (5%) less than the Invoice Amount, Company shall bear one hundred percent (100%) of the cost of such Accountant's services. The Accountant's determination of the amounts owed by Designer to Company for the applicable calendar month shall be final, binding and non-appealable (such amount, the "**Final Invoice Amount**"). Company will charge any Resolved Invoice Amount or Final Invoice Amount, as applicable, to Designer's Provided Account (or, if such means of collection is not available or is insufficient at the time, Designer shall pay via automatic transfer hold (ATH), wire transfer or any other direct transfer method approved by Company, in its sole discretion any amounts that could not be collected through such means) on the third (3rd) business day following the date of resolution of a Resolved Invoice Amount or Final Invoice Amount, as applicable.

- (h) *Recommended Retail Price.* Company will, for Designer's sole benefit, provide a recommended retail price for each Garment sold by Designer with a view to maximizing sales and thereby increasing the likelihood of covering the amounts set forth in this Section 2 due and payable to Company; provided, however, that Company is in no manner responsible for any recommendations provided to Designer or the effects thereof and Designer remains solely and exclusively responsible for payment of all amounts due and payable to Company under this Section 2.

3. Term; Termination; Deactivation; Survival

- (a) *Term.* Subject to earlier termination as provided in this Section 3, this Agreement shall be for an initial term of one (1) year from Acceptance (such term, the "**Initial Term**"); provided, however, if any Design Project submitted pursuant to Section 1(b)(iii) remains incomplete, the terms of this Agreement shall continue to govern completion of such Design Project regardless of whether this Agreement renews pursuant to the following sentence. At the end of the Initial Term, in the event Designer has not accepted a new agreement, this Agreement will automatically renew for successive renewal terms of thirty (30) days (each, a "**Renewal Term**" and together with the Initial Term, collectively, "**Term**"), unless either Party provides written notice of non-renewal to the other Party at least thirty (30) days prior to the end of the Initial Term. Either party may terminate any Renewal Term, for any reason, upon at least thirty (30) days' written notice.
- (b) *Termination for Cause.* This Agreement may be earlier terminated by either Party: (i) if the other Party materially breaches a provision of this Agreement, and fails to cure such breach within fifteen (15) business days after receiving written notice of such breach from the non-breaching Party;
or (ii) immediately upon written notice, if the other Party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other Party's property, or the other Party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other Party and is not dismissed within ninety (90) days, or the other Party becomes insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course. If Designer is the terminating Party under the foregoing subsections (i) or (ii), Company will refund to Designer any Fees that were pre-paid for the then current Term, prorated for the remainder thereof.
- (c) *Deactivation Policy.* Company's goal is to provide reliable and long lasting partnerships with Partners and contractors. Company does this by connecting the top designers with the top Partners in terms of design, quality, reliability, accountability, and transparency in communication. This is only possible when designers trust Partners

and vice versa. If Company determines, in its sole discretion, that Designer has breached the terms of this Agreement or any other understanding or agreement, Designer may be barred or suspended from using the Platform, either temporarily or permanently, depending on the seriousness of the breach.

4. Property Rights of the Parties.

- (a) *Confidential Information.* Each Party recognizes and acknowledges that it may receive ("**Receiving Party**") Confidential Information (as defined herein) of the other Party ("**Disclosing Party**") provided under this Agreement. The Receiving Party agrees to hold all of the Disclosing Party's Confidential Information in confidence, not to disclose any portion of it to others or use it in any way, commercially or otherwise, except as necessary to perform or receive the Services and/or Production Services and not to allow any unauthorized person access to it, either before or after termination of this Agreement; provided, however, that any such Confidential Information may be provided only to the Receiving Party's employees, agents, partners, members, consultants, subcontract contractors or contractors (collectively, "**Representatives**") that have a need for such access for the sole purposes of Designer's performance of, or Designer's receipt of, the Services and/or Production Services pursuant to this Agreement, such Representatives being, in each case, subject to confidentiality restrictions similar to those contained herein. The Receiving Party or its Representatives shall not make copies of, disassemble, reverse engineer, or otherwise decompile any of the Disclosing Party's Confidential Information. The Receiving Party shall promptly notify the Disclosing Party in the event of any unauthorized use or disclosure of any of the Disclosing Party's Confidential Information. Upon the Disclosing Party's request or the termination of this Agreement, the Receiving Party shall promptly return all documents and other materials received from the Disclosing Party, unless otherwise provided in this Agreement. The Receiving Party agrees that the Disclosing Party owns the Disclosing Party's Confidential Information and it shall continue to be the exclusive property of the Disclosing Party, whether or not prepared in whole or in part by the Receiving Party and whether or not disclosed to or entrusted to the Receiving Party's custody. Subject to *Section 4(b)*, Designer owns all right, title and interest in and to the Designer Materials.

As used herein, the term "**Confidential Information**" means all information (whether or not patentable and whether or not copyrightable), owned, possessed or used by the Disclosing Party hereunder, including, without limitation, inventions, products, designs, formulas, vendor and Partner identity and information, customer information or lists, apparatuses, equipment, processes, research, reports, technical data, know-how, computer programs, software, software or process documentation, hardware designs, technology, marketing or business plans, forecasts, unpublished financial statements, budgets, licenses, prices, costs and employee lists, specifications, samples, patterns, designs, plans, drawings, documents, data, and Third-Party Confidential

Information that are communicated to, learned of, developed or otherwise acquired by the Receiving Party under this Agreement, whether disclosed orally or in written or electronic communication or other forms of media, and whether or not marked, designated or otherwise identified as being "confidential", "secret", or "proprietary". For avoidance of doubt: (i) Company's Confidential Information includes confidential and proprietary information related to the Services, Production Services, Site, Platform, Software, Partners, Quote(s), Production Fee(s), the Quote Percentage Fee, Subscription Fee and Other Services Costs; and (ii) Designer Confidential Information includes confidential and proprietary information related to any Design Project. For purposes of this Agreement, Confidential Information shall not include information the Receiving Party can document: (a) was or has become readily available to the public without restriction through no fault of the Receiving Party; (b) was received without restriction from a third party lawfully entitled to possess and disclose such information; (c) was rightfully in possession of the Receiving Party without restriction prior to the Disclosing Party's disclosure of such information to the Receiving Party; or (d) was or is independently developed by the Receiving Party, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information. For the purposes of this Agreement, "**Third-Party Confidential Information**" means confidential or proprietary information of third parties received by the Receiving Party for which the Receiving Party is subject to a duty to maintain the confidentiality of such information and to use it only for certain limited purposes.

(b) *Designer License*. Designer hereby grants to Company a non-exclusive, sub-licensable (to Company's Partners or Representatives only), world wide, royalty-free license to use, reproduce, modify, distribute, make derivatives, publicly perform, publicly display, and otherwise exploit any tangible or intangible ideas, inventions, marks, documents, memoranda, software, data, text, logos, content, designs, photographs, multimedia, and other Intellectual Property owned or created by Designer, as well as Designer Confidential Information, any Design Project, products, Garments, software, technology, know-how and other materials (collectively, "**Designer Materials**"), only as reasonably necessary for Company's performance of the Services and/or the Production Services and limited to the Term of this Agreement. For the purposes of this Agreement, "**Intellectual Property**" includes, without limitation, all (i) trademarks, service marks, trade dress, corporate names, trade names, slogans, logos, and other indicia of source, whether registered or unregistered, and all translations, adaptations, derivations and combinations of the foregoing, together with the goodwill associated therewith; (ii) Internet domain names, Internet addresses and domain name registrations; (iii) copyrights, including copyrights in software, copyrightable works and copyrightable subject matter, moral rights, neighboring rights, and derivative works thereof; (iv) patents, patent applications, and inventions (whether patentable or not and/or registered or not); (v) trade secrets, know-how, technologies, data, documentation, databases, processes, techniques, protocols, methods, formulae, algorithms, layouts, designs, artwork specifications, confidential information and lists of suppliers, vendors, customers and distributors; (vi) copies and tangible embodiments (in whatever form or medium) of any of

the foregoing; and (vii) any other Intellectual Property rights in the foregoing (of every kind and nature however designated, regardless of whether such rights are registered or not) whether arising by operation of law, treaty, contract, license, or otherwise, together with all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof.

- (c) *Company Property*. Company owns all right, title, and interest, including all Intellectual Property, in and related to the Services, Production Services and Other Services ("**Company Property**"). Designer will not act to jeopardize, limit, or interfere in any manner with Company's ownership of and rights with respect to the Company Property. This Agreement grants to Designer a limited right to use Approved Samples by Designer, solely to the extent necessary to, and for the sole purpose of, promoting the applicable Design Product. For the avoidance of doubt, this Agreement does not convey any license or other grant of rights that would allow Designer to sell, disclose, duplicate or otherwise use for any other purposes, any assets, material, property, artwork, designers or any other Company Property or any property belonging to any Production Partner.
- (d) *Work Product Ownership*. Company owns all right, title, interests, including all Intellectual Property, and designs in and to, Garments, products and other materials specifically produced for each Design Project for Designer in the performance of the Services under this Agreement (the "**Work Product**"). Company shall automatically, and without further action by any Party, assign all right, title and interests, including all Intellectual Property, in and to the Work Product to Designer solely upon the payment by Designer to Company of the full balance of the Production Fee, Quote Percentage Fee and Financing Amount, if applicable, for each Design Project. For the avoidance of doubt, immediately upon the occurrence of the condition stated in the preceding sentence, the Parties agree and acknowledge that Designer will maintain all right, title and interest in the Work Product.
- (e) *Defend Trade Secrets Act of 2016*. Each Party acknowledges and understands that, pursuant to the Defend Trade Secrets Act of 2016 (18 USC § 1833(b)), an individual may not be held criminally or civilly liable under any federal or state trade secret law for disclosure of a trade secret: (i) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; and/or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Additionally, an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to his or her attorney and use the trade secret information in the court proceeding, so long as any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.

5. Designer Representations and Warranties

Designer hereby agrees, represents and warrants that:

- (a) Designer (i) is duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization and authorized to do business in the United States, (ii) (x) has no direct, nor indirect owner, nor does business with any person resident of, or entity domiciled in, such countries identified on the list of sanctioned countries as designated as such by the Office of Foreign Assets and Control from time to time and (y) is not a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, rule, regulation or executive order of the President of the United States, and (iii) has the requisite corporate, limited partnership or limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) Designer hereby acknowledges and agrees that it will use the Services, Production Services, Site, Platform, and/or Software in full compliance at all times with all relevant state, federal and local laws, statutes, rules, ordinances, regulations, policies and other requirements.
- (c) Designer will comply with all terms and conditions of this Agreement and any other agreements and policies related to the use of the Services, Production Services, Site, Software and Platform.
- (d) Designer owns all right, title and interest in and to all Designer Materials and has all necessary rights to grant the license to Company as described in *Section 4(b)* hereof.
- (e) Designer's performance of its obligations pursuant to this Agreement does not violate any agreement or obligation between Designer and any third party.
- (f) The Designer Materials, including but not limited to Designer's Garment designs and any Design Project, do not and will not infringe, violate, or misappropriate any right of a third party, including but not limited to any privacy rights, copyright, patent, trade secrets, trademark, or other proprietary or Intellectual Property right held by any third party.
- (g) Designer will promptly update Partner via the Platform as to any relevant updates with respect to any Design Project, including, but not limited to, any preset list of tasks in connection with any Design Project and/or changes to such list.
- (h) Designer will not use the Services, Production Services, Site, Platform, or Software in any manner that (i) is harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, fraudulent, deceptive, or misleading or otherwise objectionable; or

(ii) adversely affects or reflects negatively on Company's goodwill, name or reputation or causes duress, distress or discomfort to Company or anyone else, or discourages any person, firm or enterprise from using all or any portion, feature, or function of the Services, Production Services, Site, Platform or Software or from advertising, liking or becoming a supplier to use in connection with the Services, Production Services, Site, Platform or Software.

- (i) Designer (i) has obtained and currently holds all necessary permissions, rights and licenses to collect and use customer data needed to ensure Designer will not infringe, violate, or misappropriate any right of any third-party, including without limitation, any IP Right held by any third party; and (ii) it is in full compliance with all applicable local, state and federal laws, rules and regulations with respect to its customer data and privacy. For the purposes of this Agreement, "**IP Rights**" shall mean, whether registered or unregistered, all patents, copyrights, trademarks, service marks, trade secrets, privacy rights, data rights, moral rights and other Intellectual Property and proprietary rights, including all classes and types in all countries in the world, and applications, continuations, divisions, reexaminations, reissues, extensions, modifications and derivatives of all of the foregoing.

6. Company Representations and Warranties

Company hereby agrees, represents and warrants that:

- (a) Company is duly formed, validly existing and in good standing under the laws of the State of Delaware and it has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) Company hereby acknowledges and agrees that it will provide the Services, Production Services, Site, Platform, and/or Software in full compliance at all times with all relevant state, federal and local laws, statutes, rules, ordinances, regulations, policies and other requirements.
- (c) Company will develop, manufacture, produce, promote, market, sell and distribute the Garments in full compliance with all applicable federal, state, provincial and local laws, regulations and standards; and

7. Indemnity

- (a) *Indemnification.* Each Party agrees to indemnify, defend, and hold the other Party and its affiliates, successors and assigns, and all of their officers, directors, employees, Partners and other agents (collectively, “**Indemnitees**”), harmless from any and all costs, expenses (including reasonable attorneys’ fees), losses, damages, claims, causes of action, liabilities, demands, penalties, forfeitures, suits and judgments, which any Indemnitee may hereafter incur, become responsible for or pay, as a result of any breach of such breaching Party’s representations, warranties, agreements or other promises contained in this Agreement.
- (b) *Limitation of Liability.* In no event shall either Party be liable to the other, for special, punitive, incidental, consequential or other indirect damages arising out of or in connection with any breach of this Agreement, even if advised of the possibility of such damages in advance. In no event will either Party’s liability for any damages to the other Party, regardless of the form of action, whether based on contract, tort (including negligence), strict liability, products liability or otherwise, ever exceed the Fees paid by Designer to Company for the Services on which the claim is based that were provided by Company in the twelve (12) months preceding the claim.

8. Taxes

Designer shall be solely responsible for all local, state and federal income taxes and assessments arising in connection with production of the Garments and other products created and sold pursuant to the terms of this Agreement. If Company is required to pay any local, state or federal, taxes or assessments based on the Services or Garments provided under this Agreement, such taxes shall be billed to and paid by Designer in addition to the other costs owed to Company pursuant to *Section 2*.

9. Non-Solicitation; Non-Circumvent

- (a) *Non-Solicitation.* To the fullest extent permitted under applicable law, for the Term and for eighteen (18) months following the termination or expiration of this Agreement pursuant to its terms, each Party agrees that, it shall not, and shall not attempt to, directly or indirectly, solicit or hire any of the other Party’s board members, officers, employees, independent contractors and other agents whom the other Party meets or who becomes known to such Party during, or as a result of, performance of the Services and/or the Production Services. The foregoing provision will not prevent either Party from conducting generalized solicitations through the use of media advertisements, professional search firms or otherwise not specifically targeted to the other Party’s Representatives.

- (b) *Non-Circumvent*. Designers may be introduced to or learn of Partners, entities, customers, distributors, clients and Representatives of Company (collectively, “**Designated Parties**”). To the fullest extent permitted under applicable law, for the Term and for eighteen (18) months following the expiration or earlier termination of this Agreement for any reason, Designer agrees not to circumvent, attempt to circumvent, or permit any other party or person on Designer’s behalf to circumvent Company’s relationships and/or agreements with the Designated Parties in any way, manner or form, including without limitation, contacting, calling on, soliciting, consummating transactions, contracts or engagements, or taking away, either directly or indirectly, any Designated Party without the prior written permission of Company. Further, Designer will not engage in any competition with Company, or engage in any action which may constitute intentional interference with Company’s prospective economic advantage.
- (c) *Remedies*. In the event of any breach of this *Section 9*, both Parties, in addition to any other remedies at law or in equity that the Parties may have, will be entitled, without the requirement of posting a bond or other security, to seek equitable relief.

10. Miscellaneous

- (a) *Governing Law*. This Agreement shall be governed by the laws of the State of New York, without regard to any conflict of laws provisions or rules (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of New York.
- (b) *Dispute Resolution*. The Parties agree that any controversy or dispute (other than an Invoice Dispute, which shall be resolved exclusively in accordance with the terms of *Section 2(g)* hereof) between the Parties concerning this Agreement will first be subject to reasonable good faith efforts by the Parties to resolve such dispute, and if such good faith efforts are not successful, shall be submitted to binding arbitration in New York County, New York, on the request of any Party, and the arbitration shall comply with and be governed by the provisions of the New York Civil Practice Law & Rules, Article 75. Any cause of action or claim Designer may have with respect to this Agreement must be commenced within one (1) year after the claim or cause of action arises. Arbitration shall be conducted by three (3) arbitrators familiar with the commercial practices of Company and Designer’s industry. Each Party shall be entitled to select one (1) arbitrator, which two (2) selected arbitrators shall in turn select a third arbitrator. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the Parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. All Parties to the arbitration shall as an initial matter share the costs of such proceeding, but the prevailing Party may be awarded fees and costs, including reasonable attorney’s fees. No action at law or in

equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by either Party except (a) an action to compel arbitration pursuant to this *Section 10(b)*, or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this *Section 10(b)*.

- (c) *Injunctive Relief.* Any breach of *Section 4* (Property Rights of Parties) of this Agreement will cause irreparable harm to Company for which damages would not be an adequate remedy, and therefore, Company will be entitled to seek injunctive relief with respect thereto in addition to any other remedies.
- (d) *Waiver.* Company's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other term, provision or condition hereof, whether or not similar, nor shall such waiver constitute a continuing waiver of any such term, provision or condition hereof.
- (e) *Severability.* In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Furthermore, in lieu of any such illegal or unenforceable provision hereof, the Parties shall add as a part of this Agreement a provision as similar in terms to such illegal or unenforceable provision as may be possible to be legal and enforceable.
- (f) *Entire Agreement; Amendments.* This Agreement entered into in connection with Designer's use of the Services and the Production Services, including any terms of service, represent the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior proposals, representations, agreements and undertakings related to the subject matter of this Agreement. This Agreement may be amended or modified only by a written instrument executed by duly authorized representatives of both Company and Designer.
- (g) *Assignment.* This Agreement is personal to Designer and Designer shall not have the right or ability to assign, transfer or subcontract any rights or obligations under this Agreement without the written consent of the Company. Any attempt to do so will be null and void and a material breach by the Designer of this Agreement. Companies may freely assign this Agreement, in whole or in part, to any third party.
- (h) *Survival.* *Sections 2* (Fees; Financing; Payment), *3* (Termination), *4* (Proprietary Information; Ownership of Work Product), *7* (Indemnity), *9* (Non-Solicitation; Non-Circumvent) and *10* (Miscellaneous) hereof will survive any termination or expiration of this Agreement in accordance with their terms.

- (i) *Notices.* All notices by Designer under this Agreement shall be in writing and shall be deemed given when sent by Designer via email to hi@mercercor.com. All notices by Company under this Agreement can be sent to Designer via email set forth under Designer's name on the signature page hereto.

Designer Agreement

This Designer Agreement (this “**Agreement**”) is entered into by Mercer Design Studio, Inc., a Delaware corporation (“**Company**”), and you, the Designer (hereafter referred to as “**Designer**”, “**you**”, “**your**” or “**yours**”); with the foregoing also referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

In consideration of the covenants and conditions described below, Company and Designer agree as follows:

By clicking on the “accept” or similar button, (1) you are consenting and expressly agree to be bound by and are becoming a party to (a) the terms of this Agreement, and (b) the terms of the Terms of Use located at <https://mercer.design/terms> (the “Terms of Use”); and (2) you represent and acknowledge that you have read and reviewed this Agreement and the Terms of Use (“Acceptance”).

Please note that to be a Designer with Company and to use the Platform (as defined herein) and the associated Software (as defined herein), you must agree to the terms and conditions set forth in this Agreement and the Terms of Use. We may modify this Agreement at any time, and such modification shall be effective immediately upon either posting of the modified agreement or notifying you. You agree to review this Agreement periodically to ensure that you are aware of any modifications. Your continued access or use of the Platform shall be deemed your conclusive acceptance of the modified agreement. If you do not agree to the terms of this Agreement and/or the Terms of Use, you do not have our authorization to use any of the Services and you may not access or use any portion of the Site (as defined herein), Platform, or Software.

Terms not defined herein shall have the meaning as provided in our Terms of Use and incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and the Terms of Use, the terms of this Agreement shall supersede and control to the extent of any such conflict. This Agreement is effective as of the date of Acceptance.

Agreement

1. Services

- (a) *General.* Through Company’s technology platform (the “**Platform**”), which includes Company’s proprietary software and content (the “**Software**”) on Company’s online website (including all content and functionality available through the <https://mercer.design/> domain name, “**Site**”), Company will provide Designer with certain services, including (i) the procurement of Customer Service, Fulfillment, and, if expressly agreed pursuant to *Section 1(f)(i)* or *(ii)*, as applicable, Marketing Services and Other Services, and (ii) to connect Designer with Company’s design, production, fulfillment and other partners (each, a “**Partner**” and collectively, “**Partners**”) for the provision of

the foregoing in furtherance of the production of custom apparel, garments and accessories (collectively, “**Garments**”) in Designer’s design project(s) (each such design project, a “**Design Project**”) (such services, the “**Services**”). In connection with the Services, Company and/or its Partners shall provide Designer with certain production services (including fabric manufacturing, trim vendors and sample making and production of the Garments) and access to consultants (including technical designers, pattern makers, and other sourcing services) (collectively, the “**Production Services**”). For avoidance of doubt, the specific Services and Production Services provided to Designer will be consistent with the subscription model selected by Designer, as more fully described on the subscription pricing page (the “**Subscription Pricing Page**”) located at <https://mercer.design/access> (“**Subscription**”).

(b) *Production Services.*

- (i) *Production Fee Approval Process.* Following design and submission by Designer of a proposed Design Project via the Platform, Company will review such Design Project to determine the estimated costs of the Production Services in connection with the applicable Design Project. Company will provide Designer with a quote for all costs and fees in connection with the Production Services for such Design Project, including without limitation, costs and fees for any of pattern-making, material sourcing, prototypes, product development, custom labels, samples for final approval, bulk units, a keep sample for Company and packaging (collectively, a “**Quote**”). For the avoidance of doubt, the Quote shall exclude Fulfillment Costs and, if applicable, Marketing Costs and Other Services Costs, which shall be assessed to Designer pursuant to the terms of *Section 1(c)*, *Section 1(f)(i)* and *Section 1(f)(ii)*, respectively.
- (ii) Upon review by Designer of a Quote, Designer shall either (x) approve such Quote (such approved Quote, a “**Production Fee**”) or (y) submit proposed revisions to the Design Project to Company in writing (email sufficient), which will again be subject to the process set forth in *Section 1(b)(i)* (the process described in *Sections 1(b)(i)* and *(ii)*, the “**Production Fee Approval Process**”). For the avoidance of doubt, any Production Fee (and all information used to create such Production Fee) is considered Company’s Confidential Information (as defined herein) subject to all obligations and restrictions in *Section 4* hereof.
- (iii) *Checkout.* Upon obtaining a mutually agreed to Production Fee via the Production Fee Approval Process for a given Design Project, Company shall communicate to Designer, in its sole and absolute discretion, whether (1) Company shall require payment of such Production Fee (or any portion thereof) in accordance with *Section 2(c)* or (2) such Production Fee (or any portion thereof) may be financed in accordance with *Section 2(d)*. At “Checkout” for a Design Project in the Platform (the “**Checkout**”), Designer will confirm the following order

details with respect to each Design Project (a) the Production Fee, which Production Fee is equal to the “Total Costs” set forth on the Checkout page on the Platform (the “**Checkout Page**”), (b) the Financing Amount, which Financing Amount is equal to the “Credit Applied” set forth on the Checkout Page, (c) the amount, if any, of the Production Fee to be paid at Checkout in accordance with *Section 2(c)*, which amount is equal to the “Total Costs” minus the “Credit Applied” set forth on the Checkout Page (the “**Checkout Payment**”) and (d) the estimated time to completion of production of the Garments, described as “Est. Time” on the Checkout Page (the “**Estimated Production Time**”). The initial delivery location of the Garments provided for in the Design Project shall be confirmed via email or any other method of communication mutually agreeable to the Parties.

- (iv) *Production*. Designer understands and agrees that with respect to each Design Project (1) Company may, in its sole discretion, match and connect Designer with a Partner (any such Partner, a “**Production Partner**”) based on the compatibility of the Production Services offered by such Production Partner to a Design Project; (2) Designer agrees to pay or finance the Production Fee as provided for in *Section 2* of this Agreement prior to the commencement of the Production Services; and (3) no Production Services will begin until the Checkout Payment is successfully processed. Company’s employment of commercially reasonable efforts to locate a Production Partner for a Design Project does not guarantee a Production Partner shall indeed be located and available to complete such a Design Project.
- (v) *Samples, Review and Changes*. Prior to production of the Garments in connection with any given Design Project, Designer agrees to promptly review, approve and/or provide comments on any Garment sample (the “**Sample**”) created by a Production Partner in connection with such Design Project. If Designer desires to make major and substantial changes to a Sample (a “**Major Alteration**”) that materially impact the Estimated Production Time, the pricing estimate or other material term contained in a Quote, as determined in Company’s sole discretion, Company may place on hold or otherwise cancel the applicable Design Project for re-pricing and a new Quote shall be issued in accordance with *Section 1(b)(i)*. By way of illustration and without limitation, a Major Alteration may include change of the product type, change of construction of a Garment by adding a hood or sleeve or other feature, change in the process type from print to embroidery or substantially changing materials (i.e., from denim to leather). Once an Approving Collaborator (as defined below) approves a Sample (an “**Approved Sample**”), no changes of any kind can be made to a Garment or the number of units for a given Garment in connection with the applicable Design Project.
- (vi) Designer will (1) provide clear instructions and timeline to any Production Partner for the production of Garments in

connection the applicable Design Project, (2) be available during normal business hours to respond to any Production Partner's questions related to a Garment, Approved Sample or a Design Project, and (3) will designate one (1) or more collaborators, at Designers discretion, for each Design Project via email (each an "**Approving Collaborator**") to provide timely approval, rejection and/or comments to a Sample or other inquiries or questions. For the avoidance of doubt, each Approving Collaborator shall have Designer's authorization to provide approval, rejection and/or comments to any Sample without further authorization from Designer or another Approving Collaborator and such approval shall be final, irrevocable and definitive for all purposes under this Agreement.

- (c) *Fulfillment and Delivery.* For the provision of fulfillment services to Designer from a Partner (any such Partner, a "**Fulfillment Partner**"), including warehousing and storage, shipping and delivery of the Garments to Designer's customers (any such fulfillment services, "**Fulfillment**"), (i) the costs of any such Fulfillment (the "**Fulfillment Costs**") shall be paid up front by Company and reimbursed by Designer as provided for in *Section 2(f)* hereof; (ii) Designer will provide accurate, truthful and up to date shipping information through the Platform for the delivery of Garments; (iii) Company or the Fulfillment Partner may, in its sole discretion, store Garments at a warehouse or with another Fulfillment Partner of its choosing; (iv) the method of shipping will be provided through a nationally recognized and reputable courier or delivery service ("**Courier**") chosen by Company or Fulfillment Partner, as applicable; and (v) if Designer chooses to receive the Garments, Designer agrees to be present on the delivery date confirmed by the Fulfillment Partner (the "**Delivery Date**") or designate an authorized adult to accept delivery of the Garments on the Delivery Date. Company shall not be responsible for any damage caused by a warehouse or other Fulfillment Partner or Courier to the Garments and Designer's sole recourse will be against such warehouse or other Fulfillment Partner or Courier, as applicable, for such damage.
- (d) *Damaged Garments.* Upon delivery of the Garments, Designer or its designee will inspect all Garments promptly upon delivery and, if Garments are reasonably determined to be damaged, defective, or deficient (the "**Damaged Garments**"), Designer will promptly, but in any event within five (5) days from the Delivery Date (the "**Notification Period**"), notify Company in writing and provide evidence of such damage, defect or deficiency. Following such notification, Company shall work with Designer and the Fulfillment or Production Partner, as applicable depending on the nature of the issue, to remedy the damage, defect, or deficiency and, if reasonably necessary, return the Damaged Garments at the applicable

Fulfillment or Production Partner's cost and expense. For the avoidance of doubt, if Designer fails to provide notice of its receipt of Damaged Garments within the Notification Period, then such

Garments shall be deemed accepted and any cost, expense or other remedial measure shall be the sole and exclusive responsibility of Designer.

(e) *Customer Service*. With respect to each Design Project, Company will manage the procurement of customer service from a Partner, including coordination of responses to customer inquiries and arranging for returns (such services, "**Customer Service**") for no additional cost to Designer.

(f) *Marketing; Other Services*.

- (i) *Marketing Services*. With respect to each Design Project, Company may, at the request of Designer, set up paid marketing campaigns, creative and advertisements with a marketing Partner (a "**Marketing Partner**") (such services, the "**Paid Marketing Services**"). Prior to initiation of Marketing Services with a Marketing Partner, Designer shall approve the costs and expenses associated therewith ("**Marketing Costs**") in writing (email sufficient). The Marketing Costs shall be paid up front by Company and reimbursed by Designer as provided for in *Section 2(f)* hereof. For the avoidance of doubt, the Marketing Costs will include an additional service fee due and payable to Company.
- (ii) *Other Services*. Any services that are outside the scope of the Services and Production Services specifically contemplated in this Agreement (the "**Other Services**") may be requested by Designer and provided in Company's sole discretion, subject to the costs and expenses thereof being the sole and exclusive responsibility of Designer (such costs and expenses, the "**Other Services Costs**").
- For the avoidance of doubt, the Marketing Costs and Other Services Costs shall be in addition to the Subscription Fee, the Production Costs and the Fulfillment Costs, as further detailed herein.

2. Fees; Financing; Payment

The scope of fees, costs and expenses that Designer may incur and be rendered due and payable to Company in accordance with the terms of this Agreement as follows: (i) the Subscription Fee, (ii) the Revenue Share Fee, (iii) the Fulfillment Costs, (iv) Production Fee(s), (v) Financing Repayment(s), if applicable, (vi) the Marketing Costs, if applicable, (vii) the Other Services Costs, if applicable, and (viii) the Late Payment Charges, if applicable (the fees, costs and expenses described in the foregoing clauses (i) – (viii) of this Section 2, collectively, the "**Fees**") each as further detailed herein.

(a) *Subscription Fee*. Designer will pay via credit card, automatic transfer hold (ATH), wire transfer or any other direct transfer method approved by Company, in its sole discretion, to Company the non-cancelable and non refundable monthly subscription fee

applicable to Designer's Subscription set forth on the Subscription Pricing Page (the "**Subscription Fee**"). The first payment of the Subscription Fee shall be due on the date of Acceptance and each subsequent Subscription Fee shall be due on each monthly anniversary thereafter as indicated by the applicable invoice (the "**Subscription Fee Invoice**"). At the end of the Initial Term, for the Renewal Term, if any, Designer will pay the then-current non-cancelable and non-refundable Subscription Fee set for on the Subscription Pricing Page.

- (b) *Revenue Share Fee.* With respect to each Design Project, Designer shall pay to Company, on a monthly basis as provided for in Section 2(f) hereof, a fee equal to the percentage applicable to Designer's Subscription set forth on the Subscription Pricing Page (the "**Revenue Share Percentage**") of all income of any kind whatsoever generated from the sale of any Garments by Designer or on Designer's behalf and at its direction ("**Revenue**"), including, for the avoidance of doubt, any Garment sales occurring after termination of this Agreement (such monthly fee, the "**Revenue Share Fee**").
- (c) *Production Fee.* As previously described in Section 1(b)(iv), with respect to each Design Project, the Production Fee shall be paid at Checkout, prior to commencement of Production Services; provided, however, if all or any part of such Production Fee is financed in accordance with Section 2(d) hereof, the portion of the Production Fee subject to Financing as agreed to at Checkout shall be paid in accordance with Section 2(f) hereof.
- (d) *Financing.*
 - (i) Company may, in its sole discretion, offer financing to Designer to cover all or part of any Production Fees (the "**Financing**"). If Designer desires to apply for Financing, Designer will promptly provide Company with its bank statements for the past three (3) months, a direct connection into Designer's relevant bank account, access to Designer's e-commerce platform and any other information reasonably requested by Company. Following review by Company thereof, Company may, in its sole discretion, determine the amount of Financing, if any, to be made available to Designer at any given time during the Term (the "**Credit Limit**"), which, for the avoidance of doubt, may be adjusted or revoked as the Company may, from time to time, determine. Designer may access the Financing to cover all or part of the Production Fee for each given Design Project (the amount of each such use, a "**Financing Amount**" and collectively, the "**Financing Amounts**"). For the avoidance of doubt, Company

will not extend to Designer any Financing Amount, which together with already outstanding Financing Amounts, would, in the aggregate, exceed the Credit Limit.

- (ii) Designer will be responsible for repayment of the Financing

Amounts in full in accordance with the terms hereof. The Financing Amounts outstanding will be repaid on a monthly basis as provided for in *Section 2(f)* hereof. Until all Financing Amounts are repaid in full, each such monthly repayment amount due under this *Section 2(d)(ii)* shall be equal to (a) (1) the applicable calendar month's Revenue, minus (2) the Revenue Share Fee, minus (3) the Fulfillment Costs, minus (4) the Marketing Costs, if applicable, minus (5) the Other Services Costs, if applicable, minus (6) the Late Payment Charges, if applicable or (b) such smaller amount sufficient to pay the Financing Amount in full (such amount, as applicable, the "**Financing Repayment**").

- (iii) ## Notwithstanding anything to the contrary contained herein, the Financing Amounts must be repaid in full no later than the date that is four (4) months following the Checkout (the "**Final Repayment Date**"). Any portion of the Financing Amounts that have not been repaid by the Final Repayment Date (such portion, the "**Financing Balance**") shall (a) become immediately due and payable. Company may exercise all remedial measures appropriate and available to it pursuant to applicable law, including without limitation, collection or seizure of Produced Garments in order to collect the outstanding Financing Balance and (b) accrue interest pursuant to *Section 2(e)* hereof. Notwithstanding the first sentence of this paragraph, in the event Designer does not offer the Garments, related to the financed Design Project, for sale within fourteen (14) days of the Delivery Date, the full Financing Balance shall become subject to clauses (a) and (b) in the preceding sentence as if the Final Repayment Date has occurred.

(e) *Late Payments*. Any amounts owed by Designer to Company pursuant to this Agreement not paid by Designer within thirty (30) days of when due will bear interest at the maximum rate permitted by applicable law, computed and compounded daily from the date due until the date paid in full (such late payments owed plus any accrued interest, "**Late Payment Charges**").

(f) *Invoicing; Payment*. No later than the fifteenth (15th) calendar day of each month, Company shall submit to Designer an invoice (the "**Invoice**") for fees and costs due to Company for the preceding calendar month pursuant to this Agreement. The Invoice shall include the following amounts due and payable for each Design Project (such aggregate amounts, the "**Invoice Amount**"), (1) Revenue Share Fee, (2) Fulfillment Costs, (3)

Marketing Costs, if applicable, (4) Other Services Costs, if applicable, (5) the Financing Repayment, if applicable, and (6) Late Payment Charges, if applicable. Unless disputed in accordance with *Section 2(g)*, all Invoices, excluding the Subscription Fee Invoice which shall be due as described in *Section 2(a)* hereof, shall be due

and payable on the fifth (5th) business day following Company's submission thereof (the "**Payment Deadline**"). Unless disputed in accordance with *Section 2(g)*, Company will charge Designer's bank account, provided to Company in accordance with *Section 2(d)(i)*, (the "**Provided Account**") on the Payment Deadline (or, if such means of collection is not available or is insufficient at the time, Designer shall pay via automatic transfer hold (ATH), wire transfer or any other direct transfer method approved by Company, in its sole discretion any amounts that could not be collected through the Provided Account by the Payment Deadline).

- (g) *Invoice Disputes*. If Designer submits a writing (email sufficient) with evidence reasonably acceptable to Company to dispute any portion of the Invoice Amount (such writing, an "**Invoice Dispute**") prior to the Payment Deadline, Company will not charge Designer for the amount reasonably disputed in such Invoice Dispute until the Invoice Dispute has been resolved in accordance with the terms of this *Section 2(g)*. In the event Designer submits an Invoice Dispute, the Parties will work together in good faith, using commercially reasonable efforts, to resolve such Invoice Dispute and to agree to a final Invoice Amount to be paid by Designer (such final Invoice Amount, a "**Resolved Invoice Amount**"). If, after thirty (30) calendar days, the Parties have not resolved the Invoice Dispute by agreeing to a Resolved Invoice Amount, the Invoice Dispute shall be submitted to a mutually agreeable independent, registered public accounting firm for resolution (the "**Accountant**"). Designer shall bear one hundred percent (100%) of the cost of such Accountant's services. Notwithstanding the foregoing, if Designer is the prevailing party and the Resolved Invoice Amount is at least five percent (5%) less than the Invoice Amount, Company shall bear one hundred percent (100%) of the cost of such Accountant's services. The Accountant's determination of the amounts owed by Designer to Company for the applicable calendar month shall be final, binding and non-appealable (such amount, the "**Final Invoice Amount**"). Company will charge any Resolved Invoice Amount or Final Invoice Amount, as applicable, to Designer's Provided Account (or, if such means of collection is not available or is insufficient at the time, Designer shall pay via automatic transfer hold (ATH), wire transfer or any other direct transfer method approved by Company, in its sole discretion any amounts that could not be collected through such means) on the third (3rd) business day following the date of resolution of a Resolved Invoice Amount or Final Invoice Amount, as applicable.

- (h) *Recommended Retail Price.* Company will, for Designer's sole benefit, provide a recommended retail price for each Garment sold by Designer

with a view to maximizing sales and thereby increasing the likelihood of covering the amounts set forth in this *Section 2 due and payable to Company*; provided, however, that Company is in no manner responsible for any recommendations provided to Designer or the effects thereof and Designer remains solely and exclusively responsible for payment of all amounts due and payable to Company under this *Section 2*.

3. Term; Termination; Deactivation; Survival

- (a) *Term.* Subject to earlier termination as provided in this Section 3, this Agreement shall be for an initial term of one (1) year from Acceptance (such term, the "**Initial Term**"); provided, however, if any Design Project submitted pursuant to Section 1(b)(iii) remains incomplete, the terms of this Agreement shall continue to govern completion of such Design Project regardless of whether this Agreement renews pursuant to the following sentence. At the end of the Initial Term, in the event Designer has not accepted a new agreement, this Agreement will automatically renew for successive renewal terms of thirty (30) days (each, a "**Renewal Term**" and together with the Initial Term, collectively, "**Term**"), unless either Party provides written notice of non-renewal to the other Party at least thirty (30) days prior to the end of the Initial Term. Either party may terminate any Renewal Term, for any reason, upon at least thirty (30) days' written notice.
- (b) *Termination for Cause.* This Agreement may be earlier terminated by either Party: (i) if the other Party materially breaches a provision of this Agreement, and fails to cure such breach within fifteen (15) business days after receiving written notice of such breach from the non-breaching Party; or (ii) immediately upon written notice, if the other Party makes any assignment for the benefit of creditors, or a receiver, trustee in bankruptcy or similar officer is appointed to take charge of any or all of the other Party's property, or the other Party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding or such a proceeding is instituted against the other Party and is not dismissed within ninety (90) days, or the other Party becomes insolvent or, without a successor, dissolves, liquidates or otherwise fails to operate in the ordinary course. If Designer is the terminating Party under the foregoing subsections (i) or (ii), Company will refund to Designer any Fees that were pre-paid for the then current Term, prorated for the remainder thereof.
- (c) *Deactivation Policy.* Company's goal is to provide reliable and long lasting partnerships with Partners and contractors. Company does this by connecting the top designers with the top Partners in terms

of design, quality, reliability, accountability, and transparency in communication. This is only possible when designers trust Partners and vice versa. If Company determines, in its sole discretion, that Designer has breached the terms of this Agreement or any other understanding or agreement, Designer may be barred or suspended from using the Platform, either temporarily or permanently, depending on the seriousness of the breach.

4. Property Rights of the Parties

(a) *Confidential Information.* Each Party recognizes and acknowledges that it may receive ("**Receiving Party**") Confidential Information (as defined herein) of the other Party ("**Disclosing Party**") provided under this Agreement. The Receiving Party agrees to hold all of the Disclosing Party's Confidential Information in confidence, not to disclose any portion of it to others or use it in any way, commercially or otherwise, except as necessary to perform or receive the Services and/or Production Services and not to allow any unauthorized person access to it, either before or after termination of this Agreement; provided, however, that any such Confidential Information may be provided only to the Receiving Party's employees, agents, partners, members, consultants, subcontract contractors or contractors (collectively, "**Representatives**") that have a need for such access for the sole purposes of Designer's performance of, or Designer's receipt of, the Services and/or Production Services pursuant to this Agreement, such Representatives being, in each case, subject to confidentiality restrictions similar to those contained herein. The Receiving Party or its Representatives shall not make copies of, disassemble, reverse engineer, or otherwise decompile any of the Disclosing Party's Confidential Information. The Receiving Party shall promptly notify the Disclosing Party in the event of any unauthorized use or disclosure of any of the Disclosing Party's Confidential Information. Upon the Disclosing Party's request or the termination of this Agreement, the Receiving Party shall promptly return all documents and other materials received from the Disclosing Party, unless otherwise provided in this Agreement. The Receiving Party agrees that the Disclosing Party owns the Disclosing Party's Confidential Information and it shall continue to be the exclusive property of the Disclosing Party, whether or not prepared in whole or in part by the Receiving Party and whether or not disclosed to or entrusted to the Receiving Party's custody. Subject to *Section 4(b)*, Designer owns all right, title and interest in and to the Designer Materials.

As used herein, the term "**Confidential Information**" means all information (whether or not patentable and whether or not copyrightable), owned, possessed or used by the Disclosing Party hereunder, including, without limitation, inventions, products, designs, formulas, vendor and Partner identity and information, customer information or lists, apparatuses, equipment, processes, research, reports, technical data, know-how, computer programs, software, software or process documentation, hardware designs, technology, marketing or business plans, forecasts, unpublished financial statements, budgets, licenses,

prices, costs and employee lists, specifications, samples, patterns, designs, plans, drawings, documents, data, and Third-Party Confidential Information that are communicated to, learned of, developed or otherwise acquired by the Receiving Party under this Agreement, whether disclosed orally or in written or electronic communication or other forms of media, and whether or not marked, designated or otherwise identified as being “confidential”, “secret”, or “proprietary”. For avoidance of doubt: (i) Company’s Confidential Information includes confidential and proprietary information related to the Services, Production Services, Site, Platform, Software, Partners, Quote(s), Production Fee(s), the Revenue Share Fee, Subscription Fee, Fulfillment Costs, Marketing Costs and Other Services Costs; and (ii) Designer Confidential Information includes confidential and proprietary information related to any Design Project. For purposes of this Agreement, Confidential Information shall not include information the Receiving Party can document: (a) was or has become readily available to the public without restriction through no fault of the Receiving Party; (b) was received without restriction from a third party lawfully entitled to possess and disclose such information; (c) was rightfully in possession of the Receiving Party without restriction prior to the Disclosing Party’s disclosure of such information to the Receiving Party; or (d) was or is independently developed by the Receiving Party, as established by documentary evidence, without reference to or use of, in whole or in part, any of the Disclosing Party’s Confidential Information. For the purposes of this Agreement, “**Third-Party Confidential Information**” means confidential or proprietary information of third parties received by the Receiving Party for which the Receiving Party is subject to a duty to maintain the confidentiality of such information and to use it only for certain limited purposes.

- (b) *Designer License*. Designer hereby grants to Company a non-exclusive, sub-licensable (to Company’s Partners or Representatives only), world wide, royalty-free license to use, reproduce, modify, distribute, make derivatives, publicly perform, publicly display, and otherwise exploit any tangible or intangible ideas, inventions, marks, documents, memoranda, software, data, text, logos, content, designs, photographs, multimedia, and other Intellectual Property owned or created by Designer, as well as Designer Confidential Information, any Design Project, products, Garments, software, technology, know-how and other materials (collectively, “**Designer Materials**”), only as reasonably necessary for Company’s performance of the Services and/or the Production Services and limited to the Term of this Agreement. For the purposes of this Agreement, “**Intellectual Property**” includes, without limitation, all (i) trademarks, service marks, trade dress, corporate names, trade names, slogans, logos, and other indicia of source, whether registered or unregistered, and all translations, adaptations, derivations and combinations of the foregoing, together with the goodwill associated therewith; (ii) Internet domain names, Internet addresses and domain name registrations; (iii) copyrights, including copyrights in software, copyrightable works and copyrightable subject matter, moral rights, neighboring rights, and derivative works thereof; (iv) patents, patent applications, and inventions (whether patentable or not and/or registered or not); (v) trade secrets, know-how, technologies, data, documentation,

databases, processes, techniques, protocols, methods, formulae, algorithms, layouts, designs, artwork specifications, confidential information and lists of suppliers, vendors, customers and distributors; (vi) copies and tangible embodiments (in whatever form or medium) of any of the foregoing; and (vii) any other Intellectual Property rights in the foregoing (of every kind and nature however designated, regardless of whether such rights are registered or not) whether arising by operation of law, treaty, contract, license, or otherwise, together with all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof.

- (c) *Company Property*. Company owns all right, title, and interest, including all Intellectual Property, in and related to the Services, Production Services, Marketing Services and Other Services (“**Company Property**”). Designer will not act to jeopardize, limit, or interfere in any manner with Company’s ownership of and rights with respect to the Company Property. For the avoidance of doubt, this Agreement does not convey any license or other grant of rights that would allow Designer to sell, disclose, duplicate or otherwise use for any other purposes, any assets, material, property, artwork, designers or any other Company Property or any property belonging to any Production Partner.
- (d) *Work Product Ownership*. Company owns all rights, title, interests, including all Intellectual Property, and designs in and to, Garments, products, Samples and Approved Samples and other materials specifically produced for each Design Project for Designer in the performance of the Services under this Agreement (the “**Work Product**”). Prior to the payment by Designer to Company of the full balance of the Production Fee and Financing Amount, if applicable, for each Design Project (the “**Transfer Payment**”), Company grants to Designer a limited right to use Approved Samples by Designer, solely to the extent necessary to, and for the sole purpose of, promoting the applicable Design Product. Company shall automatically, and without further action by any Party, assign all right, title and interests, including all Intellectual Property, in and to the Work Product to Designer solely upon the Transfer Payment. For the avoidance of doubt, immediately upon the occurrence of the condition stated in the preceding sentence, the Parties agree and acknowledge that Designer will maintain all right, title and interest in the Work Product.
- (e) *Defend Trade Secrets Act of 2016*. Each Party acknowledges and understands that, pursuant to the Defend Trade Secrets Act of 2016 (18 USC § 1833(b)), an individual may not be held criminally or civilly liable under any federal or state trade secret law for disclosure of a trade secret: (i) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; and/or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Additionally, an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to his or her attorney and use the trade secret information in the court proceeding, so long as any document containing the trade secret is filed under seal and

the individual does not disclose the trade secret except pursuant to court order.

5. Designer Representations and Warranties

Designer hereby agrees, represents and warrants that:

- (a) Designer (i) is duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization and authorized to do business in the United States, (ii)(x) has no direct, nor indirect owner, nor does business with any person resident of, or entity domiciled in, such countries identified on the list of sanctioned countries as designated as such by the Office of Foreign Assets and Control from time to time and (y) is not a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, rule, regulation or executive order of the President of the United States, and (iii) has the requisite corporate, limited partnership or limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) Designer hereby acknowledges and agrees that it will use the Services, Production Services, Site, Platform, and/or Software in full compliance at all times with all relevant state, federal and local laws, statutes, rules, ordinances, regulations, policies and other requirements.
- (c) Designer will comply with all terms and conditions of this Agreement and any other agreements and policies related to the use of the Services, Production Services, Site, Software and Platform.
- (d) Designer owns all right, title and interest in and to all Designer Materials and has all necessary rights to grant the license to Company as described in *Section 4(b)* hereof.
- (e) Designer's performance of its obligations pursuant to this Agreement does not violate any agreement or obligation between Designer and any third party.
- (f) The Designer Materials, including but not limited to Designer's Garment designs and any Design Project, do not and will not infringe, violate, or misappropriate any right of a third party, including but not limited to any privacy rights, copyright, patent, trade secrets, trademark, or other proprietary or Intellectual Property right held by any third party.
- (g) Designer will promptly update Partner via the Platform as to any relevant updates with respect to any Design Project, including, but not limited to, any preset list of tasks in connection with any Design Project and/or changes to such list.
- (h) Designer will not use the Services, Production Services, Site, Platform, or Software in any manner that (i) is harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, fraudulent, deceptive, or misleading or otherwise objectionable; or

(ii) adversely affects or reflects negatively on Company's goodwill, name or reputation or causes duress, distress or discomfort to Company or anyone else, or discourages any person, firm or enterprise from using all or any portion, feature, or function of the Services, Production Services, Site, Platform or Software or from advertising, liking or becoming a supplier to use in connection with the Services, Production Services, Site, Platform or Software.

- (i) Designer (i) has obtained and currently holds all necessary permissions, rights and licenses to collect and use customer data needed for Fulfillment; (ii) its customer data does not and will not infringe, violate, or misappropriate any right of any third-party, including without limitation, any IP Right held by any third-party; and (iii) it is in full compliance with all applicable local, state and federal laws, rules and regulations with respect to its customer data and privacy. For the purposes of this Agreement, "**IP Rights**" shall mean, whether registered or unregistered, all patents, copyrights, trademarks, service marks, trade secrets, privacy rights, data rights, moral rights and other Intellectual Property and proprietary rights, including all classes and types in all countries in the world, and applications, continuations, divisionals, reexaminations, reissues, extensions, modifications and derivatives of all of the foregoing.

6. Company Representations and Warranties

Company hereby agrees, represents and warrants that:

- (a) Company is duly formed, validly existing and in good standing under the laws of the State of Delaware and it has the requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) Company hereby acknowledges and agrees that it will provide the Services, Production Services, Site, Platform, and/or Software in full compliance at all times with all relevant state, federal and local laws, statutes, rules, ordinances, regulations, policies and other requirements.
- (c) Company will develop, manufacture, produce, promote, market, sell and distribute the Garments in full compliance with all applicable federal, state, provincial and local laws, regulations and standards; and

7. Indemnity

- (a) *Indemnification.* Each Party agrees to indemnify, defend, and hold the other Party and its affiliates, successors and assigns, and all of their officers, directors, employees, Partners and other agents (collectively, "**Indemnitees**"), harmless from any and all costs, expenses (including reasonable attorneys' fees), losses, damages, claims, causes of action, liabilities, demands, penalties, forfeitures, suits and judgments, which any Indemnitee may hereafter incur, become responsible for or pay, as a result of any breach of such

breaching Party's representations, warranties, agreements or other promises contained in this Agreement.

- (b) *Limitation of Liability.* In no event shall either Party be liable to the other, for special, punitive, incidental, consequential or other indirect damages arising out of or in connection with any breach of this Agreement, even if advised of the possibility of such damages in advance. In no event will either Party's liability for any damages to the other Party, regardless of the form of action, whether based on contract, tort (including negligence), strict liability, products liability or otherwise, ever exceed the Fees paid by Designer to Company for the Services on which the claim is based that were provided by Company in the twelve (12) months preceding the claim.

8. Taxes

Designer shall be solely responsible for all local, state and federal income taxes and assessments arising in connection with production of the Garments and other products created and sold pursuant to the terms of this Agreement. If Company is required to pay any local, state or federal, taxes or assessments based on the Services or Garments provided under this Agreement, such taxes shall be billed to and paid by Designer in addition to the other costs owed to Company pursuant to *Section 2*.

9. Non-Solicitation; Non-Circumvent

- (a) *Non-Solicitation.* To the fullest extent permitted under applicable law, for the Term and for eighteen (18) months following the termination or expiration of this Agreement pursuant to its terms, each Party agrees that, it shall not, and shall not attempt to, directly or indirectly, solicit or hire any of the other Party's board members, officers, employees, independent contractors and other agents whom the other Party meets or who becomes known to such Party during, or as a result of, performance of the Services and/or the Production Services. The foregoing provision will not prevent either Party from conducting generalized solicitations through the use of media advertisements, professional search firms or otherwise not specifically targeted to the other Party's Representatives.
- (b) *Non-Circumvent.* Designers may be introduced to or learn of Partners, entities, customers, distributors, clients and Representatives of Company (collectively, "**Designated Parties**"). To the fullest extent permitted under applicable law, for the Term and for eighteen (18) months following the expiration or earlier termination of this Agreement for any reason, Designer agrees not to circumvent, attempt to circumvent, or permit any other party or person on Designer's behalf to circumvent Company's relationships and/or agreements with the Designated Parties in any way, manner or form, including without limitation, contacting, calling on, soliciting, consummating transactions, contracts or engagements, or taking away, either directly or indirectly, any Designated Party without the prior written permission of Company. Further, Designer will not engage in any competition with Company, or engage in any action

which may constitute intentional interference with Company's prospective economic advantage.

- (c) *Remedies.* In the event of any breach of this *Section 9*, both Parties, in addition to any other remedies at law or in equity that the Parties may have, will be entitled, without the requirement of posting a bond or other security, to seek equitable relief.

10. Miscellaneous

- (a) *Governing Law.* This Agreement shall be governed by the laws of the State of New York, without regard to any conflict of laws provisions or rules (whether of the State of New York or any other jurisdiction) that would cause the application of laws of any jurisdictions other than those of the State of New York.
- (b) *Dispute Resolution.* The Parties agree that any controversy or dispute (other than an Invoice Dispute, which shall be resolved exclusively in accordance with the terms of *Section 2(g)* hereof) between the Parties concerning this Agreement will first be subject to reasonable good faith efforts by the Parties to resolve such dispute, and if such good faith efforts are not successful, shall be submitted to binding arbitration in New York County, New York, on the request of any Party, and the arbitration shall comply with and be governed by the provisions of the New York Civil Practice Law & Rules, Article 75. Any cause of action or claim Designer may have with respect to this Agreement must be commenced within one (1) year after the claim or cause of action arises. Arbitration shall be conducted by three (3) arbitrators familiar with the commercial practices of Company and Designer's industry. Each Party shall be entitled to select one (1) arbitrator, which two (2) selected arbitrators shall in turn select a third arbitrator. Any award or decision obtained from any such arbitration proceeding shall be final and binding on the Parties, and judgment upon any award thus obtained may be entered in any court having jurisdiction thereof. All Parties to the arbitration shall as an initial matter share the costs of such proceeding, but the prevailing Party may be awarded fees and costs, including reasonable attorney's fees. No action at law or in equity based upon any claim arising out of or related to this Agreement shall be instituted in any court by either Party except (a) an action to compel arbitration pursuant to this *Section 10(b)*, or (b) an action to enforce an award obtained in an arbitration proceeding in accordance with this *Section 10(b)*.
- (c) *Injunctive Relief.* Any breach of *Section 4* (Property Rights of Parties) of this Agreement will cause irreparable harm to Company for which damages would not be an adequate remedy, and therefore, Company will be entitled to seek injunctive relief with respect thereto in addition to any other remedies.
- (d) *Waiver.* Company's failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. No waiver of any term, provision or condition of this Agreement, whether by conduct

or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other term, provision or condition hereof, whether or not similar, nor shall such waiver constitute a continuing waiver of any such term, provision or condition hereof.

- (e) *Severability*. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Furthermore, in lieu of any such illegal or unenforceable provision hereof, the Parties shall add as a part of this Agreement a provision as similar in terms to such illegal or unenforceable provision as may be possible to be legal and enforceable.
- (f) *Entire Agreement; Amendments*. This Agreement entered into in connection with Designer's use of the Services and the Production Services, including any terms of service, represent the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior proposals, representations, agreements and undertakings related to the subject matter of this Agreement. This Agreement may be amended or modified only by a written instrument executed by duly authorized representatives of both Company and Designer.
- (g) *Assignment*. This Agreement is personal to Designer and Designer shall not have the right or ability to assign, transfer or subcontract any rights or obligations under this Agreement without the written consent of the Company. Any attempt to do so will be null and void and a material breach by the Designer of this Agreement. Companies may freely assign this Agreement, in whole or in part, to any third party.
- (h) *Survival*. Sections 2 (Fees; Financing; Payment), 3 (Termination), 4 (Proprietary Information; Ownership of Work Product), 7 (Indemnity), 9 (Non-Solicitation; Non-Circumvent) and 10 (Miscellaneous) hereof will survive any termination or expiration of this Agreement in accordance with their terms.
- (i) *Notices*. All notices by Designer under this Agreement shall be in writing and shall be deemed given when sent by Designer via email to hi@mercer.design. All notices by Company under this Agreement can be sent to Designer via email set forth under Designer's name on the signature page hereto.

Terms of Use

Acceptance of Terms

The following terms and conditions govern all use of the <https://mercer.design/> web site (including all content and functionality available through the <https://mercer.design/> domain name, the "Site"). The Site is offered subject to acceptance without modification of any of the terms and conditions contained herein or all other operating rules, policies and procedures that may be published from time to time on the Site by Mercer Design Studio, Inc. ("MERCER", "we", "us" and "our"). Subject to the terms of this Terms of Use (the "Agreement"), MERCER provides you with access to the Site, related data, our proprietary software, and content and related documentation and information through the Site in connection with our design, sourcing and production of garment and fitting services, including our "MERCER Fit" product, and any future features, products and/or services we may provide through the Site, through a technology platform (the "Platform") on the Site (collectively the "Services").

Please read these Terms of Use carefully before using the Site and/or Services. If you do not agree to the terms of this Agreement and/or the Privacy Policy, you do not have MERCER's authorization to use any of the Services and you may not access or use any portion of the Site.

By visiting and providing information to us through the Site and/or registering for an account (an "Account") as either a designer (the "Designer") or production partner (the "Partner"), accessing or using any part of the Site, you (the terms "You", "Your", and "Yours" shall refer to any and all users of the Site, including Designers and Partners (the "Users")) expressly agree to and consent to be bound by (a) the terms and conditions of this Agreement, (b) MERCER's privacy policy, which can be found at <https://mercer.design/privacy> (the "Privacy Policy"); and (c) the terms of the Designer Agreement and/or Production Partner Agreement, as applicable.

Changes

MERCER reserves the right, at its sole discretion, to modify or replace any of these Terms of Use at any time. It is your responsibility to check the Terms of Use periodically for changes. Your continued use of the Apps following the posting of any changes to the Terms of Use constitutes acceptance of those changes.

Proprietary Rights

You acknowledge and agree that all MERCER content, data and materials

displayed on the Site and the Services or otherwise made available by MERCER (collectively, the “Content”) are protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws. There may be collective work that is the property of other third parties and such collective work is also protected by copyright and other intellectual property laws. Except as expressly authorized by MERCER in writing, you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from such materials or Content. You do not have the right to lend, lease, rent or sublicense the Site. However, you may print or download a reasonable number of copies of the materials or content from the Site or for your internal business purposes; provided, that you retain all copyright and other proprietary notices contained therein. You may not change or delete any proprietary notices from materials downloaded from the Site. You agree not to use any MERCER logo or any other proprietary graphic or trademark (whether modified or not) without MERCER’s express written consent, except to the extent permitted by fair use. As between the parties, title, ownership rights, and intellectual property rights in the Content, and any copies or portions thereof, shall remain in MERCER and/or its content providers. Third-party trademarks, service marks and logos contained in the Site are owned and licensed by their respective owners. Any and all rights not expressly granted herein are reserved.

Grant of Limited License

Your access to the Service is licensed and not sold. Subject to the terms of this Agreement, and upon your registration for an Account, MERCER hereby grants you a revocable, non-exclusive, non-transferable account enabling you to access and use the Services and the Site. Your use of the Services (including the use of the materials that you download in connection with the use of the Site, along with any documentation, text, software, photos, video, graphics, and music, sound or other multimedia files that might accompany it (collectively, “Material”)) is governed by the terms of this Agreement. We reserve the right, without notice and in our sole discretion, to terminate your license to use the Site and Services, and to block or prevent future access to and use of the Site and Services. You are not permitted to, directly or indirectly, and the foregoing license grant does NOT include the right for you to (a) publish, publicly perform or display, duplicate, or distribute to any third party any Materials, including reproduction on any computer network or broadcast or publications media; (b) market, sell or make commercial use of the Site or any Material; (c) systematically collect and use of any data or content including the use of any data spiders, robots, or similar data gathering, mining or extraction methods; (d) make derivative uses of the Site or the Material; or (e) use, frame or utilize framing techniques to enclose or capture any portion of the Site (including the images found at this Site or any text or the layout/design of any page or form contained on a page).

User Agreement

In order to access the Service, you will be required to register for an

Account by providing us with information such as your name and your email address. In addition, if you are accessing the Site as (a) a Designer, you must agree to accept the terms of the Designer Agreement, accessible here, and/or (b) a Partner, you must agree to accept the terms of the Production Partner Agreement, accessible here. You further agree to: (i) provide true, accurate, current and complete information about yourself when registering for an Account, including any credit card information (your "Credit Card"), as applicable; (ii) maintain and promptly update your Account to keep it true, accurate, current and complete; and (iii) authorize us, or our third party billing service, to charge your Credit Card for any and all service fees incurred by your use of Services, as applicable. If you provide any information that is untrue, inaccurate, not current or incomplete, or we have reasonable grounds to suspect that such information is untrue, inaccurate, not current or incomplete, we have the right to suspend or terminate your Account and refuse any and all current or future use of the Services (or any portion thereof).

Rules and Conduct

You represent and warrant that (a) you are over the age of eighteen (18) and have the power, authority or consent to enter into and perform your obligations under the Agreement; (b) all information provided by you to us, including Credit Card information, is truthful, accurate and complete; (c) you are authorized, or have the permission of the authorized signatory of the Credit Card or charge card provided to us, to pay any fees incurred from use of the Services (as applicable); (d) you shall comply with all terms and conditions of this Agreement; (e) you have provided and will provide accurate and complete registration information, including, without limitation, your legal name and email address; (f) you will maintain the security of your user identification, password and other confidential information relating to your Account; (g) you will maintain the security, confidentiality and integrity of all messages and the content that you receive, transmit through or store on the Service; (h) you will maintain all charges resulting from the use of your Account, including but not limited to, unauthorized use of your Account prior to you notifying us in writing of such use and taking steps to prevent its further occurrence by changing your password; (i) you will comply with the terms of this Agreement set forth herein; and (j) you will comply with all applicable U.S. and international laws, statutes, ordinances, rules, regulations, contracts and applicable licenses regarding your use of the Services or Site.

You further warrant, represent and agree that you will not use the Site and/or Services in a manner that (i) infringes the intellectual property rights or proprietary rights, or rights of publicity or privacy, of any third party; (ii) violates any law, statute, ordinance or regulation; (iii) you should know is harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, fraudulent, deceptive, or misleading or otherwise objectionable; (iv) adversely affects or reflects negatively on our goodwill, name or reputation or causes duress, distress or discomfort to us or anyone else, or discourages any person, firm or enterprise from using all or any portion, feature, or function of the Site or from advertising, liking or becoming a supplier to use in connection with the Site; (v) sends or results in the transmission of junk e-mail, chain letters, duplicative or unsolicited messages, or so-called "spamming"; (vi) transmits, distributes

or uploads programs or material that contain malicious code, such as viruses, timebombs, cancelbots, worms, trojan horse, spyware, or other potentially harmful programs or other material or information; (vii) falsely reports to an employee or agent of MERCER; (viii) circumvents, disables or otherwise interferes with security-related features of the Site or its features that prevent or restrict use or copying of any content; (ix) intercepts or attempts to intercept email or other private communications not intended for you; and/or (x) causes the Site to be used for commercial or business purposes, including, without limitation, advertising, marketing, or offering goods or services, whether or not for financial or any other form of compensation or through linking with any other Site or web pages. You further warrant, represent and agree that you will not (A) post or transmit any message, data, image or program which is indecent, obscene or pornographic; (B) use the Site to threaten, harass, stalk, abuse, or otherwise violate the legal rights (including rights of privacy and publicity) of others; and (C) delete any author attributions, legal notices or proprietary designations or labels in a file that you upload to the Site. While it is not our intent to discourage you from reporting problems about the Services, nonetheless, we reserve the right to take such action as we deem appropriate and/or to remove any content from the Site at any time, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such content or if we are concerned that you may have breached the provisions of this Section), at our sole discretion.

User Restrictions

You are not permitted, directly or indirectly, to (a) engage in any acts inconsistent with the principles of copyright protection and fair use, as codified in 17 U.S.C. Sections 106-110, without obtaining the express written consent of MERCER and/or the copyright owner; or (b) distribute, display, rent, lease, transfer or otherwise transfer rights to, or in any way exploit, the Content, in whole or in part; or (c) remove any proprietary notices or labels on the Content.

Fees and Third Party Payment Processors

Designers. If you access and use the Services as a Designer, the Platform will generate fees and projected costs (the “Fees”) for the completion of your Design Project (as defined in the Designer Agreement). You understand and agree that you will pay all Fees in a timely manner as set forth in the Designer Agreement and you will be solely responsible to Partners for any non-payment or late payment of Fees. You further understand that no Production Services will commence until Fees are paid upfront according to the Designer Agreement.

Partners. If you access and use the Services as a Partner, you understand and agree that Fees due to you for your Production Services (as defined in the Production Partner Agreement) will be only due and paid to you by MERCER upon receipt of payment by Designers in the manner set forth in the Production Partner Agreement. You further understand and agree that claims or actions of any kind with respect to Fees due to you by a Designer shall be brought solely against Designer and not MERCER in

the manner set forth in the Production Partner Agreement.

Subscription Fees. MERCER may, at times, require a subscription fee (“Subscription Fee”) to access the Platform and Services. Notification of such Subscription Fee will be posted to the Site when and if applicable and you may choose to pay such Subscription Fee in order to access the Platform and Services. MERCER, in its sole discretion, may waive such Subscription Fee on a case-by-case basis.

Third Party Payment Processors. In registering for an Account and using our Services, you understand and agree that you may be charged a fee for the Services and we may use a third-party service provider (the “Processor”) (e.g., Stripe, Bill.com, etc.) for payment services (e.g., credit card transaction processing, merchant settlement, and any related service fees). By using the Site or Services, you agree to be bound by the Processor’s Terms of Service and the Processor’s Privacy Policy. You hereby consent to provide and authorize us and the Processor to share any Credit Card information and payment instructions you provide to the extent required to complete the payment transactions in accordance with this Agreement, including personal, financial, credit card payment, and transaction information. You represent and warrant that you have the legal right to use any credit card(s) or other payment means used to pay any fee or charge. By providing us or the Processor with your payment information, you agree that we and/or the Processor are authorized to immediately invoice you for all fees and charges due and payable to us hereunder and that no additional notice or consent is required. You agree to immediately notify us and the Processor (as applicable) of any change to your payment information. You will be responsible for paying any applicable taxes relating to your payments and credits received and will indemnify and hold harmless MERCER and the Processor from any and all taxes, including sales tax, based on any payments made or received by you in connection with the Services.

Feedback

At times, we may ask you to provide us with comments and feedback regarding the Services and/or the Site. Any such comments or feedback you provide through the Site will collectively be referred to as “Feedback”. By providing Feedback to us, you grant to us a perpetual, royalty-free, non-exclusive, irrevocable, unrestricted, worldwide license to use, copy, sublicense, reproduce, distribute, redistribute, modify, adapt, publish, edit, translate, transmit, create derivative works of, publish or broadcast, publicly perform or display any materials or other information (including without limitation, ideas contained therein for new or improved products or services) you submit to us as part of the Feedback. You further acknowledge and agree that your name and/or likeness may be associated with your Feedback and posted on the Site and you hereby grant us a perpetual, royalty-free, non-exclusive, irrevocable, unrestricted, worldwide license to use your name and/or likeness in association with your Feedback. You agree that you shall have no recourse against us for any alleged or actual infringement or misappropriation of any proprietary right in your communication to us. You further acknowledge and agree that no compensation will be paid with respect to the use of your Feedback, as provided herein, and that we may remove any Feedback we

post on the Site at any time in our sole discretion. Further, when you provide Feedback, you authorize and direct us to make such copies thereof as we deem necessary in order to facilitate the posting and storage of such content on the Site.

Operation

We reserve complete and sole discretion with respect to the operation of the Site. We may, among other things: (a) delete email or private messages if they have not been accessed by a User within the time established by our policies; (b) subject to the terms herein, make available to third parties information relating to the Users; and (c) withdraw, suspend or discontinue any functionality or feature of the Site. We may, in our complete and sole discretion, review uploaded files, conferences, forums, and chats and authorize restrictions on access thereto. We will not review the contents of email or private messages except as required or allowed by applicable law or legal process.

Content and General Disclaimers

General. The Services and Site are provided by us on an “as is” basis. We make no representations or warranties of any kind, express or implied, as to the operation of the Services, Site, or the information, content, materials, or products included on the Services or Site. To the fullest extent permissible by applicable law, we disclaim all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement, and warranties that access to or use of the Services will be uninterrupted or error-free. These are not warranties that extend beyond the face of these Terms. We cannot and do not warrant against human and machine errors, omissions, delays, interruptions or losses, including loss of data. We cannot and do not guarantee or warrant that files available for downloading from the Services or Site will be free of infection by viruses, worms, trojan horses or other code that manifest contaminating or destruction properties. We do not warrant or guarantee that the functions or Services accessed through the Services will be uninterrupted or error-free or that defects in the Site will be corrected. This disclaimer of warranty constitutes an essential part of these Terms. If you are dissatisfied with any portion of the Service, or with any term in this Agreement, your sole and exclusive remedy is to discontinue using the Services. We may change the Services or Site or the features in any way, and at any time and for any reason. Although we have attempted to provide accurate information on the Services or Site, we assume no responsibility for the accuracy or completeness of the information.

Informational Purposes Only. Any opinions expressed on the Site, or in Feedback, are the personal opinions of the original author and not of MERCER, even though the original author may be employed by us. The Content is provided for informational and entertainment purposes only and is not an endorsement or representation by us or any other Party. We do not assume any responsibility or liability for any Feedback, blogs, opinions or other commentary posted on the Site or received by you through the Services, or any third party website linked to the Site and makes no

express or implied warranty or guarantee about the accuracy, copyright compliance, legality, or any other aspect of the Content.

Disclaimer of Third Party Information. You understand that when using the Site, you may be exposed to Feedback and third party content from a variety of sources, and that we are not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such Feedback or third party content. You further understand and acknowledge that you may be exposed to Feedback and third party content that may be offensive, indecent, inaccurate, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against us, or our executives, directors, employees, stockholders or agents, with respect thereto. You acknowledge that statements made on the Site or in Feedback reflect only the views of their authors. Forum managers, forum hosts, content providers, or merchants appearing on the Site, if applicable, are not authorized MERCER spokespersons, and their views do not necessarily reflect those of MERCER, and we do not endorse any Feedback, or any opinion, recommendation, or advice expressed therein.

Links to Third Party Sites. The Site may permit you to link to other websites on the Internet, and other websites may contain links to the Site. These other websites are not under MERCER control, and you acknowledge that MERCER is not responsible for the accuracy, legality, appropriateness or any other aspect of the content or function of such websites. The inclusion of any such link does not imply endorsement by MERCER or any association with its operators.

Indemnification

Each Party agrees to indemnify, defend, and hold the other Party and its affiliates, successors and assigns, and all of their officers, directors, employees, Partners and other agents (collectively, “**Indemnitees**”), harmless from any and all costs, expenses (including reasonable attorneys’ fees), losses, damages, claims, causes of action, liabilities, demands, penalties, forfeitures, suits and judgments, which any Indemnitee may hereafter incur, become responsible for or pay, as a result of any breach of such breaching Party’s representations, warranties, agreements or other promises contained in this Agreement, the Designer Agreement or the Production Partner Agreement, as applicable.

Waiver and Release

You agree that neither we nor our officers, directors, stockholders, employees, agents, partners, licensors or suppliers shall have any liability to you under any theory of liability or indemnity in connection with your use of the Site, the Services, Software or the Platform. You specifically acknowledge that we shall not be liable for the defamatory, offensive, or illegal conduct of any third party and that the risk of harm or damage from the foregoing rests entirely with you. You hereby release and forever waive any and all claims you may

have against MERCER, our officers, directors, stockholders, employees, agents, partners, licensors or suppliers (including but not limited to claims based upon the negligence of MERCER, our officers, directors, stockholders, employees, agents, partners, licensors or suppliers) for losses or damages you sustain in connection with your use of the Site, the Services, Software or the Platform.

Limitation of Liability

In no event shall either Party be liable to the other, for special, punitive, incidental, consequential or other indirect damages arising out of or in connection with any breach of this Agreement, the Designer Agreement or the Production Partner Agreement, even if advised of the possibility of such damages in advance.

Copyright or Intellectual Property Infringement Notification

- (a) We respect the intellectual property rights of others. You can notify us of possible copyright infringement, and we will review all claims of copyright infringement received and remove content deemed to have been posted or distributed in violation of any such laws. To make a claim, please provide the following:
- i. A physical or an electronic signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest that is allegedly infringed;
 - ii. A description of the copyrighted work or other intellectual property that you claim has been infringed;
 - iii. A description of where on the Site the material that you claim is infringing is located, the detail of the description being reasonably sufficient to permit us to locate the material;
 - iv. Your contact information, including your address, telephone number, and email;
 - v. A statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
 - vi. A statement by you that the above information in your notice is accurate and that you, made under penalty of perjury, are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf. Contact the agent designated to receive and act on copyright violations under the Digital Millennium Copyright Act ("DMCA"). Claims can be directed to us at +19174739270, hi@mercer.design, Mercer Design Studio, Inc. 50 Eldridge st. Floor 2, New York, NY 10002.

Miscellaneous

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, excluding its conflicts of law rules, and the United States of America. You agree that any legal action or proceeding between MERCER and you for any purpose concerning this Agreement, the Designer Agreement or Production Partner Agreement, as applicable, or the parties' obligations here-under or thereunder shall be brought exclusively in a court of competent jurisdiction sitting in New York County, New York, United States. Any cause of action or claim you may have with respect to MERCER must be commenced within one (1) year after the claim or cause of action arises. Our failure to insist upon or enforce strict performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Agreement will otherwise remain in full force and effect and enforceable. MERCER may assign, transfer or delegate any of its rights and obligations hereunder without consent. All waivers and modifications must be in a writing signed by MERCER, except as otherwise provided herein. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other term, provision or condition hereof, whether or not similar, nor shall such waiver constitute a continuing waiver of any such term, provision or condition hereof. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement, and neither Party has any authority of any kind to bind the other in any respect. This Agreement, along with the Designer Agreement and Production Partner Agreement, as applicable, constitutes the complete and exclusive statement of the agreement between the parties with respect to the Site or Services and supersedes any and all prior or contemporaneous communications, representations, statements and understandings, whether oral or written, between the parties concerning the Service. If any action in law or in equity is necessary to enforce the terms of this Agreement, the prevailing Party will be entitled to reasonable fees of attorneys, accountants, and other professionals, and costs and expenses in addition to any other relief to which such prevailing Party may be entitled. No provisions of this Agreement are intended, nor will be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any Nonprofit User, client, customer, affiliate, or any Party hereto or any other person unless specifically provided otherwise herein, and except as so provided, all provisions hereof will be personal solely between the parties to this Agreement; except that the sections pertaining to Indemnification, Waiver and Release, and Liability Limitation are intended to benefit MERCER and its officers, directors, stockholders, directors, employees, agents, licensors, and suppliers.

Export Controls

You shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control (“OFAC”), or other United States or foreign agency or authority, and not to export, or allow the export or re-export of the Material in violation of any such restrictions, laws or regulations. By downloading or using the Material, you are agreeing to the foregoing and you are representing and warranting that you are not located in, under the control of, or a national or resident of any restricted country or on any such list.

Copyright and Trademark Notices

Unless otherwise indicated, these Terms of Use and all Content provided by MERCER are copyright c 2020 Mercer Design Studio, Inc. All rights reserved. MERCER and the MERCER logo are trademarks of Mercer Design Studio, Inc.

Contact

You may contact MERCER at hi@mercer.design