

eBay has developed a web-based marketplace in which a community of buyers and sellers are brought together to browse, buy and sell various items. An increasing number of businesses are realizing the power of the eBay marketplace as a sales channel. These businesses often want third parties to help them operate more effectively on eBay - from providing strategic advice, to software that facilitates listing, to completely outsourcing listing execution, customer service, and/or fulfillment. Some of these service providers have a reasonable level of familiarity and skill pertaining to transacting via the eBay Site, and desire a standardized designation indicating that they offer eBay-specific expertise, and have met certain requirements set by eBay. In order to document, and allow approved participants to so indicate, a standardized, minimum level of eBay-specific aptitude, eBay has created the eBay Certified Provider Program (the "Program"). Through the Program, companies may earn certification (and the right to use the applicable Program Logo) for one of the following designations: eBay Certified Service Provider and eBay Certified Solution Provider (each as defined below). The certification requirements for each designation correspond to certain relevant minimum criteria as specified by eBay.

Membership Agreement

This Membership Agreement ("Agreement") is made by and between eBay Inc., the operator of the Program, and You, an entity interested in joining the Program. If you reside outside of the United States, the party you are contracting with is eBay International AG. This Agreement describes the terms and conditions under which eBay offers You the ability to participate in the Program. This agreement may be translated into different languages for your convenience only, but only English will be the controlling language. This Agreement is in addition to the eBay User Agreement and, for eBay Certified Solution Providers, the eBay API License. In order to join the Program, you first need to meet all Program qualifications and pay the Program fees, all as described in this Agreement, and you must read and agree to the terms of this Agreement by checking the "I Accept" checkbox at the end of this contract. If You do not agree to the terms of this Agreement, and/or if You do not meet the requirements described herein, You are not eligible to join the Program or use any Program materials, including the Program Logo(s). Further, if at any time you stop being a Program member, You must immediately cease using the Program Logo(s) and/or identifying yourself as a Program participant.

1 DEFINITIONS

"Applicable Staff" includes both Your employees and contractors You may hire to perform services for Customers on your behalf and means: (i) for Certified Service Providers, anyone who makes a recommendation to Your Customers in the form of an actual recommendation or a transaction utilizing your recommendation; and (ii) for Certified Solution Providers, anyone who makes a recommendation to Your Customers in the form of an actual recommendation or a transaction utilizing your recommendation and anyone who performs software coding work of any kind for the express purpose of building a software application interfacing directly with eBay Site.

"Certification" means satisfactorily passing the Program Exam(s) and complying with all other Program requirements specified by eBay in this Agreement.

"Certification Guide" means the document defining all aspects of the Program, downloadable at <http://developer.ebay.com/programs/certifiedprovider/resources>, which is hereby incorporated by reference.

"Consultant" means anyone who makes recommendations on behalf of your organization to Your Customers with respect to their eBay transactions (e.g., account managers, support representative, etc.). These individuals may become certified (as "eBay Certified Consultants") to count toward Your Applicable Staff certification requirement outlined below, all as more particularly set forth in the Certification Guide (<http://developer.ebay.com/programs/certifiedprovider/resources>).

"Customer" means a third party who has hired You to perform services or provide functionality with respect to optimizing its sales via the eBay Site.

“Designation” refers to the official name of either of the two Certification paths of the Program (eBay Certified Service Providers and eBay Certified Solution Providers), established by eBay for which You may attain Certification by passing the applicable Program Exam(s) and complying with the Program requirements and the terms of this Agreement. Designations indicate the path You have chosen as appropriate for Your business as outlined in the Certification Guide.

“eBay” means either eBay Inc. or eBay International AG.

“eBay Certified Provider” (either Services or Solution) means an entity who: (i) has met the requirements set by eBay for the Program (including but not limited to having at least 50% - at least one person - of its Applicable Staff satisfactorily passing the applicable Program Exam(s)), (ii) maintains compliance with the Program terms as set forth herein, and (iii) complies with the terms of this Agreement, and is therefore entitled to use one of the Designations and Program Logos in accordance with this Agreement.

“eBay Certified Provider Program” (or “Program”) means the certification program described in this Agreement documenting standardized, minimum levels of aptitude pertaining to the eBay Site to be offered by service providers who desire membership.

“eBay Site” means one of the online marketplaces owned and controlled by eBay . eBay Site does not include co-branded site in which eBay currently participates or may participate in the future.

“eBay User” means any party who accesses any page on the eBay Site.

“Engineers” means anyone who writes software code for the purpose of building an application that interfaces with the eBay Site. Your Engineers may become certified (as “eBay Certified Engineers”) to count toward Your organization’s Applicable Staff certification requirement below, all as described in the Certification Guide (<http://developer.ebay.com/programs/certifiedprovider/resources>).

“Individual Designation” means the certification title (either “eBay Certified Consultant” or “eBay Certified Engineer”) that certain of your Applicable Staff may earn by passing the applicable Program Exam and meeting (and maintaining) certain requirements set by eBay, all as more particularly set forth in the Individual Certification Agreement (<http://developer.ebay.com/programs/certifiedprovider/resources>).

“Program Exams” means any test that eBay requires a specified percentage of Program candidates’ Applicable Staff to satisfactorily pass in order for the organization to be eligible for Certification through the Program.

“Program Logo(s)” shall mean any of the logos developed by eBay for the Program, the terms for use of which are set forth herein.

2 Membership Requirements. You will be eligible to join the Program provided all of the following criteria are met and maintained during the term of this Agreement:

2.1 Staff.

2.1.1 Staff Expertise: At least 50% of the Applicable Staff in each job category in Your organization (at least one person), as set forth in the Certification Guide (<http://developer.ebay.com/programs/certifiedprovider/resources>) must pass the applicable Program Exam(s) for the Program Designation You seek to join. Consultants must be included in the calculation of Applicable Staff.

2.1.2 Staff Compliance. You shall ensure that all of your Applicable Staff who pass Program Exams and earn individual certification as an eBay Certified Consultant

or eBay Certified Engineer comply with the terms of the Individual Certification Agreement (<http://developer.ebay.com/programs/certifiedprovider/resources>) (the "Individual Agreement") at all times during the Term, including without limitation all provisions relating to representations/displays of Program affiliation. Breach by any of Your Applicable Staff of the Individual Agreement will be deemed a breach by You of this Agreement.

2.2 eBay Site Interface. Any and all software applications that interface with the eBay Site, scraping or otherwise, must complete the Compatible Application Check through the eBay Developer Program (as the term is defined in the API License). If You have any interface to the eBay Site, or if you receive data through eBay's data licensing program, You agree to apply for, or upgrade to, the eBay Certified Solution Provider Designation to maintain your Certification status in the Program. You may not operate or enable any scraping applications with respect to the eBay Site. Failure to comply may result in termination of Your Program membership. Conversely, if You do not provide technology or eBay data-related solutions, nor perform tasks with the assistance of technology that You have created or via using eBay marketplace data, You are not eligible for, nor will you imply that you have, the eBay Certified Solution Provider Designation.

2.3 eBay Experience.

2.3.1 Service Offering Visibility to eBay Users. To become a Program member, You must visibly offer eBay related services to eBay Users, provide verifiable proof of these services, and maintain that offering visibility for the duration of Your membership in the Program. As set forth in the Certification Guide, at a minimum, proof must include the URL of Your website where You describe your eBay-related services, additional proof may include business overview documents for submission to eBay, data sheet collateral, or other marketing materials targeted towards eBay Users.

2.3.2 Customer References. To become a Program member, You must also provide ten (10) Customer references, that are not employees or Contractors of Your organization, who have received an eBay related service from You. One of those references must come from an eBay PowerSeller™. If transactions occur under Your User ID, You may be the required eBay PowerSeller™ reference, but You must provide the name and contact information of the Customer(s) whose transactions you service (so that eBay may contact them). You hereby authorize eBay to contact Your references and inquire about the services You provided to them.

2.4 Continued Membership. To maintain Your Certification, You must comply with any and all applicable continuing Certification requirements specified by eBay from time to time. You acknowledge and agree that eBay may modify Certification requirements (both initial and continuing), at any time in its discretion. eBay will notify you via email (at the email address you provide to eBay) of any modifications affecting eligibility for the Program Designation for which you are certified. You will have then have a reasonable period of time as specified by eBay to comply with such updated requirements. Once granted, Your Certification will remain valid for twelve consecutive months provided You maintain compliance with all ongoing Certification and Program requirements. At the conclusion of such period, if you would like to continue as a member of the Program, you must re-certify under the then-current Program terms as set forth in the Program area of the eBay Site accessible at <http://developer.ebay.com/programs/certifiedprovider>.

2.5 Additional Terms. You must at all times during the Term comply with the Program standards set forth below in Section 4, including without limitation the Code of Conduct

(as defined below).

- 3 Fees.** You will pay eBay the fees associated with the Program (e.g. for Exams, membership, etc.) set forth in the fee schedule accessible at <http://developer.ebay.com/programs/certifiedprovider/benefits>, which is hereby incorporated by reference. All payments are non-refundable and shall be made within the timeframes set forth in the fee schedule. To be clear, all payments must be made in advance of receiving the applicable service/ benefit (Exams, membership, and any requested training). All payments made by You under this Agreement shall exclude, and You shall pay, any sales use, excise, gross receipts or other taxes associated with such payments or this Agreement (excluding taxes based on eBay's net income).
- 4 Standards** You must at all times during the Term comply with:
- 4.1** the terms of this Agreement, including without limitation the Code of Conduct set forth in Section 4.4;
- 4.2** the terms and conditions of Your service (e.g., response times, quality level, customer satisfaction, etc.) that You pledge to Your Customers.
- 4.3** to the extent You are directly engaging in the selling of items via the eBay Site on behalf of Your Customers, You must comply with the eBay User Agreement and all incorporated policies (including without limitation the links policy), eBay Privacy Policy, and all other eBay policies pertaining to interacting with eBay and/or the eBay Site, OR to the extent Your Customers are the ones directly engaging in the selling of items via the eBay Site, You shall not take any action, make any recommendation nor supply any product that would cause or encourage Your Customer(s) to violate any eBay policy, and you shall in any event use your best efforts to encourage your Customers to comply with all eBay policies (e.g., eBay User Agreement and all incorporated policies (including without limitation the links policy), eBay Privacy Policy, and all other eBay policies pertaining to interacting with eBay and/or the eBay Site).
- 4.4 Code of Conduct.** You agree to abide by the following minimum conduct standards in your Program-related dealings with others during the term of this Agreement:
- 4.4.1** You will not represent yourself as an eBay employee or agent of eBay. Further, you will not imply an affiliation with eBay or in any way suggest that eBay is involved with or endorses your products or services.
- 4.4.2** You will not request unreasonable assistance from eBay employees with respect to any Customer marketing or outreach efforts that you choose to perform.
- 4.4.3** You will not use Your membership in the Program to market any off-eBay solutions nor will You advocate to your Customers solutions/services that are not needed to meet their objectives.
- 4.4.4** You agree that all business you conduct in your capacity as a Program member, and all services you provide relating to the eBay Site, shall be performed in a manner that (a) avoids deceptive, misleading or unethical practices; and (b) does not harm eBay's reputation.

5 CONFIDENTIAL INFORMATION

5.1 Confidential Information Defined. "Confidential Information" is information provided by eBay to You related to the Program, and shall include, but not be limited to, the terms of this

Agreement, Program materials and metrics, and any information disclosed by eBay pertaining to the Program or its users. In connection with Your receipt of Confidential Information, You agree not to disclose Confidential Information to any third party, and You shall use Confidential Information only as required to perform under this Agreement. "Confidential Information" shall not include, and such restrictions shall not apply to, information which (a) becomes publicly known through no act or fault of You, (b) You receive from a third party without a restriction on disclosure or use, or (c) You independently develop without reference to the Confidential Information as evidenced by written records. Where Confidential Information is required to be disclosed by a court, government agency, regulatory requirement, or similar disclosure requirement, You shall immediately notify eBay upon learning of the existence or likely existence of such requirement and shall use reasonable efforts to avoid such disclosure and, if necessary, use reasonable efforts to obtain confidential treatment or protection by order of any disclosed Confidential Information. Notwithstanding any contrary provision in Section 12.6 ("Notice"), notification to eBay under this Section 5.1 should be provided by personal delivery on a same day or overnight basis, overnight courier, confirmed facsimile, or confirmed e-mail. Your obligations hereunder shall survive the expiration or early termination of this Agreement for a period of three (3) years.

5.2 Destruction of Confidential Information Upon Termination. Within ten (10) days of the termination of this Agreement, You shall destroy and certify such destruction to eBay, all Confidential Information and all documents or media containing any such Confidential Information and any and all copies or extracts thereof.

5.3 No Intellectual Property Rights; Injunctive Relief. Except as expressly set forth herein, no rights or licenses to any eBay intellectual property rights are implied or granted under this Agreement. The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized use or disclosure of Confidential Information and that eBay shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, without obligation to post any bond.

5.4 User Data. During the Term, You shall maintain a privacy policy applicable to Your services consistent with industry best practices. You will display Your privacy policy prominently on Your web site. Your use of any data given to You by Your Customers solely in Your role as an eBay Certified Solution Provider (i.e., not via the eBay API, eBay's data licensing program, or in Your capacity as an eBay user), will be governed by Your privacy policy. To the extent that You collect or receive information about Your Customers or other eBay Users ("User Data") via Your use of the eBay Site, You shall use such User Data in accordance with the eBay Privacy Policy. Further, to the extent that You obtain User Data via use of the eBay API or eBay's data licensing program, Your use of that information shall be governed by the API license or your data license agreement with eBay, as applicable.

6. LICENSES AND RESTRICTIONS.

6.1 Program Logo License. Subject to and expressly contingent upon compliance with the terms and conditions of this Agreement, upon Your Certification as a Program member, and for so long as You remain a member in compliance with all applicable continuing Certification requirements, eBay hereby authorizes You to use the Program Logo and any Designation for which you have obtained Certification solely for the Permitted Uses set forth below in Section 6.2. This license is nonexclusive, nontransferable, non-assignable, non-sublicenseable and royalty free. All rights not expressly granted herein are reserved by eBay. You acknowledge eBay's sole ownership of the Program Logos and Designations, and that nothing in this Agreement, your performance as a Program member, or that may be implied by law gives you any right title or interest in the Program Logos or Designations.

You agree to immediately cease all use of the Program Logo(s) and Designations upon the expiration or termination of this Agreement.

6.2 Permitted Uses. Subject to the terms of this Section 6 (including without limitation the conditions set forth in Section 6.1 and the display criteria set forth in Section 6.3), You may use/display the Program Logo and Designation for which you have been certified only as follows: (a) on Your web site; (b) on Your corporate data sheets (i.e., single page descriptions of your organization intended for third party distribution), (c) in Your business proposals; (d) in Your company demos; (e) in event banners; (f) in Your company's window dressing/cling; and (g) in Your advertising for services you offer Customers relating to the Program; (collectively, with the Individual Designation Permitted Use (defined below), the "Permitted Uses"). Notwithstanding anything to the contrary herein, the Permitted Uses stated in the immediately preceding sentence apply only to Your (corporate) Designation and Program Logo. In contrast, subject to the provisions of this Section 6, Individual Designations for which any of your Applicable Staff obtain certification may be used solely by You (and not your relevant Applicable Staff), on Your corporate background materials where You relay key information about your staff and set forth the applicable billing rate You charge Customers for their work ("Individual Designation Permitted Use"). In no event will your Applicable Staff be permitted to use, display, or otherwise exploit their Individual Designation.

You may not use or display any Program Logo or Designation in a manner that implies an affiliation with eBay or in any way suggests that eBay is involved with or endorses your products or services. Any use of the Program Logo(s), Designation(s), or any other eBay protected material not specifically authorized in this Agreement is not permitted without eBay's prior written approval. Without limiting the foregoing, You may not use any Program Logo or Designation as part of any item listings on the eBay Site, and you may not use any Program Logo as part of any text. You may not allow any of Your Customers to use or display the Program Logo or any Designation.

6.3 Display Criteria. After you become a Program member and pay your membership Fee, eBay will provide You artwork for the Program Logo and any Designation for which you (or your Applicable Staff) have been Certified for use in accordance with the terms of this Section 6. You may display such Program Logo and Designation(s) only in the form eBay provides to You. Without the prior written approval of eBay, You may not modify or alter the Program Logo or any Designation in any way, including proportions, colors, elements, white space, type or in any other respect. However, You MAY alter the size of the Program Logo to correspond to the size of the respective medium of each Permitted Use; provided, however, that in no event will the Program Logo be larger than 50% of the size of Your organization's logo displayed in such Permitted Use.

6.4 Restrictions. If You (or, with respect to Individual Designations, your Applicable Staff) exceed the scope of the license granted herein or use the Program Logo or any Designation in a manner that is misleading or reasonably objectionable to eBay, eBay may immediately terminate the foregoing Program Logo and Designation license, remove You from any Program directory, material, or marketing collateral, and/or terminate your membership in the Program. Alternatively, instead of terminating the license in total, eBay may specify that certain of Your uses may not contain the Program Logo and/or Designation. You shall not use any name or trademark confusingly similar to any eBay mark and/or in such proximity to any of Your trademarks or third party trademarks so as to create a combination or composite mark. If eBay modifies the Program Logo(s) or Designation and requests You to modify any use accordingly, You shall modify such items within seven (7) days. You shall not form any combination marks with the Program Logo (or Designation) and any other mark.

6.5 General Restrictions. Notwithstanding anything contrary in this Agreement, You shall not: (i) collect personally identifiable information from any eBay User without their express permission; nor (ii) commercialize (sell, rent, or lease) any User Data.

7. **TRAINING.** eBay may make available, for a fee, certain training materials designed to familiarize You with topics covered by the Program Exams. It is Your choice as to whether or not to take such training. Fees for training are set forth in the Program training fee schedule accessible at <http://developer.ebay.com/programs/certifiedprovider/gettingcertified/individuals/certifiedconsultant/view/>

and

<http://developer.ebay.com/programs/certifiedprovider/gettingcertified/individuals/certifiedengineer/view/>.

8. TERM AND TERMINATION.

8.1 **Term; Termination.** The term of this Agreement shall be for an initial period of twelve months from Your click-through acceptance ("Initial Term"). Thereafter, re-Certification will be required in order to maintain participation in the Program. Assuming you are re-Certified, the Agreement will automatically extend for an additional twelve months, as measured from the date of your re-Certification (The Initial Term and any renewal period(s) are collectively referred to herein as the "Term"). In addition, this Agreement shall be terminable early if: (i) a party, or Your Applicable Staff, materially breaches this Agreement or any other agreement it has with eBay, and, assuming the breach is susceptible to cure, does not cure such breach within thirty (30) days following written notice thereof from the non-breaching party; (ii) by eBay immediately if You breach Sections 2, 4, or 6; or (iii) by eBay for convenience upon thirty (30) days prior written notice. Upon expiration or termination of this Agreement, all licenses granted hereunder shall immediately terminate.

8.2 **Survival.** The following Sections of the Agreement shall survive any expiration or termination of this Agreement: Section 3 ("Fees"), Section 5 ("Confidential Information"), Section 6.4 ("Restrictions"), Section 6.5 ("General Restrictions"), Section 8.2 ("Survival"), Section 9.2 ("Disclaimer"), Section 10 ("Indemnification"), Section 11 ("Limitation of Liability"), and Section 12 ("General").

9. WARRANTIES; DISCLAIMER

9.1 **REPRESENTATIONS AND WARRANTIES.** You represent and warrant that, during the Term, You shall at all times comply with all laws and regulations applicable to Your products and/or services offered relating to this Program.

9.2 **Disclaimer of Other Warranties.** EXCEPT AS EXPRESSLY STATED HEREIN, EBAY DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EBAY DOES NOT REPRESENT OR WARRANT THAT THE EBAY SITE WILL OPERATE SECURELY OR WITHOUT INTERRUPTION. Each party acknowledges that it has not entered into this Agreement in reliance upon any warranty or representation except those specifically set forth herein.

10. Indemnification.

eBay will indemnify You against any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys' fees (collectively, "Claims") which You may

incur as a result of any third party actions arising from or relating to infringement by any Program Logo or Designation of a U.S. copyright, trademark right, or other intellectual property right of a third party or misappropriation of any third party trade secret, except where such Program Logo or Designation has been modified without authorization and such modification is the basis of the Claim, or where You have used such Program Logo or Designation in excess of the rights granted, or in a manner not permitted, herein. Such indemnification will be eBay's sole and exclusive obligation and Your sole and exclusive remedy as a result of any third party actions arising from infringement. You agree that eBay will have no liability to You or any of your Customers, and that You will defend, indemnify, and hold eBay, its subsidiaries and affiliates and their respective employees, officers and directors harmless from any and all Claims arising from or relating to (i) Your participation in the Program, including without limitation Claims related to Your Applicable Staff, and/or the promotion, performance, or sale of Your services; (ii) Your breach of this Agreement, including without limitation breach of the Individual Agreement by Your Applicable Staff; (iii) eBay's termination of this Agreement pursuant to the terms herein; and (iv) infringement by any of Your marks, products or services of a U.S. patent, copyright, trademark right or other intellectual property right of a third party or misappropriation of any third party trade secret, except where such item has been modified without authorization, and such modification is the basis of the Claim.

The foregoing obligations are conditioned on the indemnified party: (i) giving the indemnifying party notice of the relevant claim, (ii) cooperating with the indemnifying party, at the indemnifying party's expense, in the defense of such claim, and (iii) giving the indemnifying party the right to control the investigation, defense and settlement of any such claim, except that the indemnifying party will not enter into any settlement that affects the indemnified party's rights or interest without the indemnified party's prior written approval. The indemnified party will have the right to participate in the defense at its expense.

11. LIMITATION OF LIABILITY

IN NO EVENT WILL EBAY, ITS SUBSIDIARIES OR AFFILIATES, BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS (HOWEVER ARISING, INCLUDING NEGLIGENCE) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING RELATING TO YOUR CERTIFICATION, FAILURE TO ACHIEVE OR MAINTAIN CERTIFICATION, USE OF OR INABILITY TO USE THE PROGRAM LOGOS OR DESIGNATIONS, OR ARISING FROM OR RELATED TO TERMINATION OF YOUR CERTIFICATION, EVEN IF EBAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT IN THE EVENT OF A CLAIM UNDER SECTION [10] ("INDEMNIFICATION"), IN NO EVENT WILL EBAY BE LIABLE TO YOU IN AN AMOUNT GREATER THAN ONE HUNDRED DOLLARS (\$100.00). THIS LIMITATION OF LIABILITY IS CUMULATIVE, WITH ALL PAYMENTS FOR CLAIMS OR DAMAGES IN CONNECTION WITH THIS AGREEMENT BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT. SOME JURISDICTIONS DO NOT ALLOW THE FOREGOING LIMITATIONS OF LIABILITY, SO THEY MAY NOT APPLY TO YOU.

12. GENERAL

12.1 Governing Law; Venue. This Agreement shall be construed in accordance with and governed exclusively by the laws of the State of California applicable to agreements made among California residents and to be performed wholly within such jurisdiction, regardless of

such parties' actual domiciles. You agree that any cause of action arising under this Agreement shall be brought exclusively in a court in Santa Clara County, CA.

- 12.2 Publicity.** Without limiting the provisions of Section 5 ("Confidential Information"), You shall not make any public statement regarding the terms of this Agreement, any aspect thereof, or the Program (except to indicate that You are a Member where applicable) without eBay's prior written approval which may be withheld in eBay's discretion.
- 12.3 Independent Contractors.** This Agreement does not create, and nothing contained in this Agreement shall be deemed to establish, a joint venture between the parties, or the relationship of employer-employee, partners, principal-agent or the like. Further, neither party shall have the power to bind the other without the other's prior written consent, nor make any representation that it has any such power.
- 12.4 Assignment.** You may not assign Your rights nor delegate Your duties hereunder without eBay's prior written consent, and any attempt to do so will be null and void.
- 12.5 Severability.** If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions shall continue in full force without being impaired or invalidated in any way.
- 12.6 Notice.** Any notice under this Agreement shall be in writing and delivered by personal delivery, overnight courier, confirmed facsimile, confirmed e-mail, or certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, one (1) day after deposit with an overnight courier, five (5) days after deposit in the mail, or upon confirmation of receipt of facsimile or e-mail. Notices shall be sent to a party at its address set forth above or such other address as that party may specify in writing pursuant to this Section 12.6 ("Notice").
- 12.7 Entire Agreement; Waiver.** This Agreement sets forth the entire understanding and agreement of the parties regarding the Program, and supersedes any and all oral or written agreements or understandings between the parties, as to the Program. The waiver of a breach of any provision of this Agreement shall not operate or be interpreted as a waiver of any other or subsequent breach. Any modification to this Agreement shall be mutually agreed upon by the parties in writing. Notwithstanding the foregoing, in the event eBay modifies the Program, eBay shall provide notice of any changes to Program members on the eBay Site or, for changes affecting Program eligibility, through electronic transmission. Upon the posting or provision of such notice, the terms of this Agreement shall be modified in accordance with such changes. The terms of the eBay User Agreement remain in full force and effect, and shall govern Your transactions on the eBay Site as a buyer or seller. In the event of a conflict between this Agreement and the eBay User Agreement relating solely to the Program (or any element thereof), this Agreement shall govern; provided, however, in all other instances, the eBay User Agreement shall govern.

The eBay User Agreement is hereby incorporated by reference, and is available at <http://pages.ebay.com/help/community/png-user.html>. eBay may change the eBay User Agreement from time to time.

[I have read and accept these terms]