



Terms and Conditions for Fruugo Retailers

Last updated: 1 November 2024

This Agreement is between Fruugo UK, Fruugo Ireland and the Retailer. In this Agreement capitalised following words and phrases shall, unless the context otherwise requires, have the meanings given to them or as set out in Appendix 1.

1. ACCEPTANCE OF THIS AGREEMENT BY THE RETAILER

1.1 By completing the Retailer Application, and/or using the Fruugo Platform as a retailer including providing Product data and/or completing the retailer details in the Fruugo Portal, the Retailer agrees to be bound by this Agreement, the Fruugo Terms of Use and the Fruugo Policies.

2. THE FRUUGO PLATFORM

2.1 **Platform.** The Fruugo Platform enables the Retailer to display and sell Products in some or all of the Fruugo Country Marketplaces, as determined by the Retailer. Fruugo UK, Fruugo Ireland or their third-party service provider(s) (as applicable), shall process payment for all Orders on the Fruugo Platform via the Fruugo Checkout System.

2.2 **Products.** Fruugo UK or Fruugo Ireland (as applicable) shall display through the Fruugo Platform the Retailer's Products optimally categorised, in local currencies on the Fruugo Country Marketplaces in the relevant local language(s). Fruugo UK, Fruugo Ireland or their third party service provider(s), shall enable Buyers to make purchases of Products through a range of payment methods as made available by Fruugo UK from time to time through the Fruugo Checkout System. Fruugo UK and Fruugo Ireland shall only have any access to the Buyers' payment details for the sole purpose of issuing refunds on behalf of the Retailer and will delete all records on completion of the payment.

2.3 **Search result ranking.** Fruugo UK ranks products within search results on the Fruugo Platform, aiming to display the most relevant unique products to buyers' searches and based on the following parameters (in descending order of importance): (a) popularity of the product as determined by historical sales performance; (b) the commission payable to Fruugo UK or Fruugo Ireland (as applicable) on each product; and (c) historical sales and service performance of the retailer. The parameters and their relative importance are subject to change from time to time.

2.4 **Upgrades and maintenance.** From time to time, Fruugo may temporarily suspend a Retailer's access to the Fruugo Platform for the purpose of performing software upgrades or maintenance.

3. IPR OWNERSHIP AND LICENCES

3.1 **Fruugo's IPR.** Fruugo UK (and its applicable licensors) owns and shall continue to own all Intellectual Property Rights in:

- 3.1.1 the Fruugo Platform;
- 3.1.2 the Fruugo APIs; and
- 3.1.3 the Fruugo Plugins.

3.2 **Use of the Fruugo Platform.** Subject to the terms of the Agreement and the payment by the Retailer of all applicable Retailer Fees, Fruugo UK or Fruugo Ireland (as applicable) hereby grants to the Retailer a non-exclusive, non-transferable, non-sublicensable (except as expressly stated in this Agreement) and revocable right during the Term for the Retailer to access and use the Fruugo Platform, the Fruugo APIs and the Fruugo Plugins to list Products on the Fruugo Platform via the Fruugo Portal and to manage and process Orders solely as follows:

- 3.2.1 in accordance with the Fruugo Terms of Use and Fruugo Policies; and
- 3.2.2 in accordance with any terms and restrictions contained in this Agreement.

3.3 **Licence for Retailer Content.** The Retailer hereby grants (and shall procure the grant of) a royalty-free, worldwide, non-exclusive, perpetual licence to Fruugo UK, Fruugo Ireland and their respective Affiliates (together with a right for Fruugo UK and its Affiliates to sub-licence the same to their subcontractors (for use on Fruugo UK's and its Affiliates' behalf)) to:

- 3.3.1 use and modify the Retailer Content to the extent necessary to perform its obligations under this Agreement (including to create Fruugo Content); and
- 3.3.2 analyse, enhance, develop, test and operate Fruugo UK 's and its Affiliates' systems, products and services.

3.4 **Reservation of rights.** Other than the licences expressly granted in this clause 3, neither party grants any licence of, right in, or makes any assignment of any of its rights (including Intellectual Property Rights).

4. USE OF THE FRUUGO PLATFORM

4.1 Login credentials

4.1.1 Fruugo UK shall provide the Retailer with access by username and password to use the Fruugo Platform during the Term to enable the Retailer to list and manage Products and process Orders, including to review and update Orders. Each Retailer is solely responsible for maintaining its username and password security. The Retailer must not disclose its username or password to any unauthorised third parties and shall be solely responsible for any use or action taken under its username or its password on the Fruugo Platform. If the Retailer's password is compromised, the Retailer must contact Fruugo UK as soon as practicable and request a change of password.

4.1.2 Fruugo UK shall provide the Retailer with such administrator rights to the Fruugo Portal as are required for the creation of usernames and passwords for the Retailer's authorised users.

4.2 Listing Products on the Fruugo Platform

4.2.1 **Product Pricing.** The Retailer shall set and maintain the prices for its Products available on the Fruugo Platform exclusive of VAT and any other applicable taxes, charges or levies in the currency in which its account operates. The Retailer shall clearly specify the delivery costs for each Product listed on the Fruugo Platform. Delivery costs defined by the Retailer must not exceed the actual cost of delivery.

4.2.2 **Responsibility for pricing.** The Retailer is solely responsible for the accuracy of the price and delivery costs of each of its Products, and any other information required to calculate the same at the time they are submitted to the Fruugo Portal by the Retailer or any third party authorised by the Retailer. On becoming aware of them, the Retailer shall notify Fruugo UK immediately of any discrepancies in Product prices, delivery costs, and any other information submitted to the Fruugo Platform. Fruugo UK or Fruugo Ireland (as applicable) reserves the right to insist that the Retailer honours the price and delivery costs of each Product as was submitted to the Fruugo Portal by the Retailer or its authorised third party and published on the Fruugo Platform.

4.2.3 **Retail pricing.** Fruugo UK or Fruugo Ireland (as applicable) uses the Retailer's price for each Product in the Retailer's own currency as the basis for pricing the Retailer's Products in other currencies as required on all other Fruugo Country Marketplaces. Fruugo UK or Fruugo Ireland (as applicable) reserves the right to determine the conversion rate and to calculate the local retail price of each Product on all other Fruugo Country Marketplaces. This calculation is performed at Fruugo UK's or Fruugo Ireland's own risk (as applicable); the Retailer shall always receive the amount of Net Sale Proceeds in the Retailer's own currency at the Retailer's price for each Product in any Order as such price has been submitted to the Fruugo Portal by, or on behalf of, the Retailer.

4.2.4 No promotion

- (a) The Retailer must not display its own website address, email address, phone number or any other direct or identifying contact details in any part of the Retailer Content, including Product titles, descriptions or images. Product images must not carry any text or watermarks.
- (b) The Retailer must not directly market its website, any other sales channel or its business to Buyers using any digital or physical communication such as email, telephone, web-based marketing, or tools each as provided via the Fruugo Portal, or any other promotional materials (including inserts in the Buyer's Product package).
- (c) Retailers may be invited by Fruugo UK, from time to time, to submit information about their business as part of a 'Premium Seller' scheme. Information submitted by a Retailer is published at the sole discretion of Fruugo UK and must otherwise comply with the contents of this clause 4.2.4.

4.2.5 Retailer Content and Fruugo Content

- (a) Notwithstanding clauses 9.2.1 and 9.2.5(e), and without prejudice to its other rights and remedies under this Agreement, Fruugo UK or Fruugo Ireland (as applicable) reserves the right to remove or restrict access to Retailer Content at its sole discretion, without advance notice to the Retailer, whenever Fruugo UK or Fruugo Ireland (as applicable) reasonably believes, or is advised by a third party, that such Retailer Content may violate any third party's Intellectual Property Rights or other legal rights or applicable laws, or if Fruugo UK or Fruugo Ireland (as applicable) is of the reasonable opinion that such Content should be removed for other reasons. Upon Retailer's reasonable request, Fruugo UK will provide commercially reasonable assistance to the Retailer if the Retailer wishes to try to resolve such issues with the relevant third parties, with a view to reinstating the Retailer Content where legally permissible to do so. Subject to clause 8.1, Fruugo UK or Fruugo Ireland (as applicable) will not be liable for any loss or damage caused by or arising out of or in connection with any action or inaction by Fruugo UK or Fruugo Ireland (as applicable) within the scope of this clause 4.2.5(a).
- (b) Fruugo UK or Fruugo Ireland (as applicable) may refer any issues concerning the Retailer Content to the Retailer, including any issues within the scope of clause 4.2.5(a). In such

circumstances, it is a mandatory requirement for a Retailer to engage with the relevant third party, as soon as practicable, once they have been contacted directly by them. The Retailer agrees to negotiate in good faith with the relevant third party and use all reasonable endeavours to resolve the issue, and to notify Fruugo UK of the outcome within 14 days of the relevant Fruugo entity referring the relevant issue to the Retailer. Fruugo may also reasonably request documentary evidence from the Retailer in support its Retailer Content. Without prejudice to clause 4.2.5(a), failure to comply with this clause may result in the suspension or termination of the Retailer's access to the Fruugo Platform in accordance with clause 10.

- (c) Fruugo UK or Fruugo Ireland (as applicable) may create Fruugo Content from the Retailer Content and shall use its reasonable endeavours to ensure that the Fruugo Content remains consistent with the Retailer Content.
- (d) The Retailer hereby attests that all Retailer Content and Product Listings made available in the European Union and EEA, including Norway, Switzerland and Northern Ireland shall be fully compliant with all applicable laws (including but not limited to all directives and regulations). The Retailer acknowledges and accepts that it shall be the economic operator for all Retailer Content and Product Listings provided on the Fruugo Platform and the Retailer shall assume all regulatory responsibility pursuant to the role of an economic operator. The Retailer shall ensure that it completes any self-attestations required by the Fruugo Platform when submitting its Retailer Content.
- (e) The Retailer will provide in the format required by the Fruugo Platform accurate and complete Required Product Information for each Product that it intends to make available for sale via the Fruugo Platform. The Retailer shall promptly update that information as necessary to ensure it at all times remains accurate and complete. The Retailer shall ensure that the Products (including packaging) comply with all applicable laws (including all minimum age, marking and labelling requirements).
- (f) The Retailer agrees that it will not export, re-export, sell or transfer any products (including software or other digital products) via the Fruugo Platform to any country, individual, corporation, organisation or entity to which such export is restricted or prohibited by law.

4.2.6 **Duplicate product listings.** Where two or more product listings are uploaded for the same product by more than one retailer, Fruugo UK or Fruugo Ireland (as applicable) reserves the right to link them into one product listing with one relevant description and image(s) provided by one retailer.

4.2.7 **International listings.** The Retailer may choose to make its Products available on certain Fruugo Country Marketplaces. When electing to make its Products available, the Retailer must ensure that they are compatible with the chosen market. Retailer Fees shall be payable on all Orders of the Retailer's Products, regardless of which part of the Fruugo Platform the Order originated from. The Retailer must ship from the country in which its account is registered with the Fruugo Platform unless Fruugo UK or Fruugo Ireland (as applicable) give express written consent to the Retailer to ship from an alternative location.

4.2.8 **Advertising with third parties.** As well as promoting Products on the Fruugo Platform, Fruugo UK or Fruugo Ireland (as applicable) may also selectively advertise the Products, at Fruugo's own cost, on various paid search websites, including independent shopping portals, Google Shopping (via the Google Adwords platform), Bing and Facebook.

4.2.9 **Prohibited Products.** Fruugo UK and its Affiliates prohibit the sale of illegal and offensive Products. Products available on the Fruugo Platform must be authentic. The Retailer must ensure that a Product is legally eligible for sale in each of the Country Marketplaces it is operating in and that it will not be considered an illegal Buyer purchase. Any Product that has been illegally replicated, reproduced or manufactured is prohibited from sale on the Fruugo Platform. If Fruugo UK or Fruugo Ireland (as applicable) determines in its sole discretion that any Product, or the content of the Product Pages, and/or any Retailer Content, is prohibited, potentially illegal, or inappropriate, then without prejudice to its other rights and remedies, Fruugo UK may remove the Product and/or Product Pages, and/or Retailer Content from the Fruugo Platform or alter such content on the Fruugo Platform.

4.2.10 **No misrepresentation.** Fruugo UK and Fruugo Ireland (as applicable) expressly prohibit any form of misrepresentation by the Retailer in respect to the Retailer Content. The Retailer is solely responsible for the accuracy of the Retailer Content including but not limited to, the product pricing, product categorisation and product description. At Fruugo UK's full and absolute discretion, a Retailer's Content may be suspended if it is deemed to be inaccurate or non-compliant with Fruugo's Policies and/or a refund may be issued to the Buyer at the Retailer's expense.

4.2.11 **Product Safety.** The Retailer must ensure that each Product it makes available for sale on the Fruugo Platform meets the requirements of all product safety legislation for the country that it is being shipped to (including but not limited to the General Product Safety Regulation, Regulation (EU) 2023/988 of the European Parliament). This includes ensuring that all Products are compatible for the specific country that they are being shipped to and fully adhere to applicable product labelling requirements for that country. The Retailer must specifically ensure that any Products aimed at minors are fully compliant with all relevant product safety legislation. The Retailer must ensure that for each Product Listing it intends to submit to the Fruugo Platform, any product safety information and/or instruction manuals are

in the recognised language of the buyer's country of residence. Fruugo UK or Fruugo Ireland (as applicable) may request documentary evidence of the Retailer's compliance with this clause 4.2.11 upon reasonable notice to the Retailer. For the avoidance of doubt, Fruugo UK and Fruugo Ireland (as applicable), shall not be held responsible for any translation errors, misinformation or misrepresentation resulting from any language translation services offered by the Fruugo Platform in respect to the Retailer Content.

4.2.12 **Unique Listings overage.** The Retailer shall be allocated an agreed number of permitted SKUs. Fruugo UK and Fruugo Ireland (as applicable) in their full and absolute discretion shall be entitled to charge a Retailer a unique listings overage fee in the event that the number of permitted SKUs is exceeded by the Retailer. These fees are described under 'Retailer Content Fees' in Appendix 2.

4.2.13 **Extended Producer Responsibility (EPR).** Where applicable, the Retailer must ensure that it liaises directly with the responsible organisation in each of the Country Marketplaces it is operating in, in order to obtain the relevant EPR unique number, registration licence or identification for each of the categories of Product it is selling. Fruugo UK or Fruugo Ireland (as applicable) may request documentary evidence of the Retailer's compliance with this clause 4.2.13 upon reasonable notice to the Retailer. At Fruugo UK's full and absolute discretion, a Retailer's Content may be suspended if a Retailer does not fully comply with this clause 4.2.13.

4.3 Processing Orders

4.3.1 **Fruugo and its Affiliates are not a party.** Fruugo UK provides the Fruugo Platform for the Retailer and Buyers to complete Transactions. Fruugo and its Affiliates are never a party to any Transaction completed through the Fruugo Platform. Any contract of sale concluded through the Fruugo Platform is solely between the Retailer and the Buyer. Fruugo or its Affiliate, Fruugo Ireland (as applicable) has the Retailer's authority to bind the Retailer to a Transaction pursuant to such contract to the extent it is created through the Fruugo Platform. Fruugo UK or Fruugo Ireland (as applicable) acts as a commercial agent on behalf of the Retailer only and not on behalf of the Buyer. Fruugo Ireland shall act as commercial agent on behalf of the Retailer to complete Transactions for all Orders made by Buyers which are EU Sales. Fruugo UK shall act as commercial agent on behalf of the Retailer to complete Transactions for all other Orders made by Buyers. By joining the Fruugo Portal and/or listing Products for sale on the Fruugo Platform, the Retailer authorises Fruugo or Fruugo Ireland (as applicable) to conclude the sale of Products to Buyers through the Fruugo Platform on behalf of the Retailer.

4.3.2 **Order information.** When an Order is submitted on the Fruugo Platform, Fruugo UK or Fruugo Ireland (as applicable) shall collect all required Order information, which it shall make available to the Retailer via the Fruugo Portal and/or the Fruugo APIs. Where a Buyer submits an Order for products from more than one retailer on the Fruugo Platform, the Retailer may only access its own Products' Order information.

4.3.3 **The Fruugo Checkout System.** The Fruugo Checkout System operated by Fruugo UK collects payment for the Order from the Buyer in the relevant Fruugo Country Marketplace's currency. At its sole discretion Fruugo UK or Fruugo Ireland (as applicable) has the right to select the payment options made available to the Buyer in the Fruugo Checkout System. The entity receiving payment through the Fruugo Checkout System for any Order to complete a Transaction will vary depending on nature of the Transaction. All funds transferred through the Fruugo Checkout System by Buyers to complete EU Sales Transactions shall be received by Fruugo Ireland acting as commercial agent on behalf of the relevant Retailer. All funds transferred through the Fruugo Checkout System for all other Orders made by Buyers to complete Transactions shall be received by Fruugo UK acting as commercial agent on behalf of the relevant Retailer.

4.3.4 **Settlement of Buyer's debt.** Once the Buyer has transferred the necessary funds required to complete a Transaction to Fruugo or Fruugo Ireland (as applicable), this will constitute settlement of the Buyer's debt to the Retailer.

4.4 **Delivery.** The Retailer is solely responsible for the end to end fulfilment process. Fruugo UK or Fruugo Ireland (as applicable) recommends that the Retailer uses a tracked delivery service to deliver Products to Buyers. If the Products are delivered via an untracked delivery service and are not delivered to the Buyer within the timeframe specified at the time of the Order, or, the item is tracked and tracking does not show delivery to the buyer within the allotted timescale, Fruugo UK or Fruugo Ireland (as applicable) reserves the right to require the Retailer, at the Buyer's option, either to issue either a refund or provide a replacement to the Buyer, in which case the Buyer shall not be required to return any Products delivered late unless the Retailer can prove (for example, by providing tracking details for the relevant Order) that the Products were successfully delivered to the Buyer within the relevant timeframe.

4.5 **Refunds.** Where a Buyer has a right to a full or partial refund, the Retailer shall process the applicable refund to the Buyer via the Fruugo Portal within the relevant timescale. Fruugo UK or Fruugo Ireland (as applicable) may at its sole discretion, with reasonable notice to the Retailer, refund the Buyer on behalf of the Retailer and deduct the amount refunded from any monies owed to the Retailer in accordance with clause 6.1.6.

4.6 **Buyer Disputes.** In the event that a dispute arises between the Retailer and a Buyer, the Retailer shall use all reasonable endeavours to resolve the dispute in a timely manner. Neither Fruugo UK nor Fruugo Ireland (as applicable) is obliged to mediate between the Retailer and the Buyer or enforce or execute the fulfilment of any contract of sale or otherwise. In some circumstances, Fruugo UK or Fruugo Ireland (as applicable) may, at its sole

and absolute discretion, decide to refund the Buyer at the Retailer's expense. The Retailer shall, and shall procure that the Buyer shall, release Fruugo UK and Fruugo Ireland (as applicable) (and their respective agents and employees and Affiliates) from any claims, demands, and damages (actual and consequential) of every kind and nature arising out of or in any way connected with such disputes.

- 4.7 **Order cancellations.** The Retailer shall use all reasonable endeavours to ensure that its Order cancellation rate (where cancellation is due to the Retailer rather than the Buyer) is kept to a minimum, and in any event shall ensure such rate does not exceed 5% of all valid Orders. Fruugo UK or Fruugo Ireland (as applicable) reserves the right to terminate the Agreement, at its discretion, if the Retailer's cancellation rate exceeds 5% of all valid Orders. In circumstances where a Buyer reasonably requests a cancellation and it has not been honoured by the Retailer, Fruugo UK or Fruugo Ireland (as applicable) may, at their sole and absolute discretion, refund the Buyer at the Retailer's expense.
- 4.8 **Fruugo APIs.** The Fruugo APIs are available if the Retailer wishes to integrate and automate Orders into its existing sales order processing systems. Where possible Fruugo UK or Fruugo Ireland (as applicable) shall co-operate with the Retailer to set up the Fruugo APIs.
- 4.9 **Transfer of ownership of the Retailer's Fruugo Platform account.** If the Retailer wants to transfer ownership of its Fruugo Platform account for any reason, including a transfer of ownership of the Retailer's business, this must be requested in writing to Fruugo UK. If such a request is made, Retailer shall provide Fruugo UK with all information in relation to the proposed new retailer or new owner of the Retailer's business as requested by Fruugo UK. Fruugo UK or Fruugo Ireland (as applicable) may suspend the Retailer's Fruugo Platform account while Fruugo UK verifies the proposed new retailer's or new owner's details, eligibility and suitability to be a retailer on the Fruugo Platform. Where applicable, Fruugo UK or Fruugo Ireland (as applicable) will only provide access to the Fruugo Platform to a new retailer if they enter into an agreement incorporating this Agreement. The Retailer's Fruugo Platform account may be suspended until all payments owed to the outgoing Retailer have been cleared. Any attempt to transfer a Retailer's Fruugo Platform account without firstly obtaining Fruugo UK's written consent may result in Fruugo UK or Fruugo Ireland (as applicable) suspending the relevant Retailer's Fruugo Platform account until the proposed new retailer has been verified and identification provided. In any event, Fruugo and/or Fruugo Ireland (as applicable) may terminate this Agreement if Fruugo UK or Fruugo Ireland (as applicable), in its sole discretion, determines that the change of ownership of the Retailer's Fruugo Platform account or of the Retailer's business renders the Retailer's Fruugo Platform account or business no longer eligible or suitable to be listed on the Fruugo Platform.
- 4.10 **Retailer Identification.** The Retailer will use only a name that it is authorised to use in connection with the Fruugo Platform services and will update all of the information it provides to Fruugo UK or Fruugo Ireland (as applicable) in connection with the services as necessary to ensure that it at all times remains accurate, complete, and valid. The Retailer authorises Fruugo UK or Fruugo Ireland (as applicable) (and will provide documentation evidencing such authorisation upon request) to verify its information (including any updated information), in order to obtain appropriate identity verification as part of its mandatory compliance due diligence checks and credit reports from time to time.

5. FRUGO PLATFORM RESTRICTIONS

- 5.1 **Restrictions.** Unless expressly permitted in this Agreement or applicable legislation or otherwise agreed in writing between the parties, the Retailer shall not (and shall procure that anyone accessing the Fruugo Platform, Fruugo APIs or Fruugo Plugins on the Retailer's behalf shall not):
- 5.1.1 copy, reproduce, publish, distribute, modify, create derivative works of, sell or in any way commercially exploit any part of the Fruugo Platform, Fruugo APIs or Fruugo Plugins;
 - 5.1.2 copy, frame or mirror any part of the Fruugo Platform, Fruugo APIs or Fruugo Plugins to copy its features, functions or graphics to develop a competing platform or software, or attempt to gain access to third-party data contained within the Fruugo Platform, Fruugo APIs or Fruugo Plugins;
 - 5.1.3 reverse engineer, decompile, translate, disassemble or attempt to discover any source code or underlying ideas or algorithms in the Fruugo Platform, Fruugo APIs or Fruugo Plugins;
 - 5.1.4 post, link to or transmit through the Fruugo Platform, Fruugo APIs or Fruugo Plugins any material, which is unlawful, or that contains a Virus and/or other hostile computer program, malware or spam;
 - 5.1.5 attempt to gain unauthorized access to or disrupt any service, device, data, account or network;
 - 5.1.6 use the Fruugo Platform, Fruugo APIs or Fruugo Plugins in any manner in a way that could harm the Fruugo Platform, Fruugo APIs or Fruugo Plugins (or impair anyone else's use of any of them); or
 - 5.1.7 assist or encourage anyone to do any of the above.

6. FEES

6.1 Payment of Net Sale Proceeds and Retailer Fees

- 6.1.1 Fruugo UK or Fruugo Ireland (as applicable) shall charge Retailer Fees on all Orders sent to the Retailer for despatch, except for any Orders which are cancelled by the Buyer prior to the Expected Despatch Date. Retailer Fees shall apply to all Orders, regardless of which part of the Fruugo Platform the Order originated from.

- 6.1.2 After delivery of an Order to the Buyer and the completion of any applicable cooling off period, and subject to any right of Fruugo UK or Fruugo Ireland (as applicable) to withhold payments to the Retailer and/or deduct Retailer Fees, Fruugo UK shall pay the Net Sale Proceeds to the Retailer in the Retailer's local currency. For the purposes of this clause 6.1.2, an Order shall be assumed to have been delivered on the earlier of: (i) the date the Order is delivered to the Buyer (as evidenced by the tracking details for the relevant Order); and (ii) 14 days from the date the Retailer notifies Fruugo UK via the Fruugo Portal that the Order has been despatched to the Buyer. Fruugo UK may require the Retailer to provide evidence that any despatch occurred on the date specified.
- 6.1.3 Subject to clause 6.1.12 and clause 10.7.6, Fruugo UK or Fruugo Ireland (as applicable) shall make payments of Net Sale Proceeds to the Retailer on a weekly basis. These payments shall be made by BACS in the UK and by various methods in other countries. Fruugo UK or Fruugo Ireland (as applicable) shall choose the most cost-effective way to pay the Retailer in the operating currency of its account and this may have one or more days clearing days between initiation of the payment by Fruugo UK or Fruugo Ireland (as applicable) and the cleared funds being available in the Retailer's bank account.
- 6.1.4 With each payment of Net Sale Proceeds to the Retailer, Fruugo UK or Fruugo Ireland (as applicable) shall provide by email a reconciled statement of Net Sale Proceeds transferred, together with a corresponding VAT invoice for any VAT due on the Retailer Fees.
- 6.1.5 Fruugo UK or Fruugo Ireland (as applicable) shall apply UK VAT on its applicable Retailer Fees charged to UK based Retailers, which can be reclaimed by the Retailer, where applicable. Each non-UK-based Retailer, may have to self-account for applicable VAT, sales taxes, charges or levies in the country where it is established.
- 6.1.6 If Fruugo UK or Fruugo Ireland (as applicable) determines that, singly or cumulatively: (i) it has incorrectly calculated the Retailer Fees applicable to any payments already made to the Retailer in accordance with clause 6.1.2; and/or (ii) the Retailer's account balance falls below a certain threshold which may put the Retailer at risk of not being able to collect any such recalculated Retailer Fees from its account balance; and/or (iii) the amount of Buyer dispute chargebacks exceeds the monies owed to the Retailer by Fruugo UK or Fruugo Ireland (as applicable); and/or (iv) the Retailer fails to remit any VAT, and/or any other applicable taxes, charges or levies directly to the appropriate national authorities, then Fruugo UK or Fruugo Ireland (as applicable) may either:
- (a) suspend its payments of Net Sale Proceeds to the Retailer's bank account otherwise payable in accordance with clause 6.1.2 until the correct amount of Retailer Fees have been paid by the Retailer from its account balance; or
 - (b) require the Retailer to make an immediate payment to cover the outstanding balance of Retailer Fees.
- 6.1.7 A Retailer may be eligible to subscribe to receive additional services from Fruugo UK in respect to its Retailer Content and these additional services shall be subject to additional fees. In addition, Fruugo UK, at its full and absolute discretion, shall have the right to invoice a Retailer for additional services undertaken by Fruugo UK or Fruugo Ireland (as applicable) with respect to a Retailer's use of the Fruugo Platform and particularly with respect to any additional resources and services that have been required as a result of clause 6.7 (Court Orders) or as a result of Retailer Content being investigated pursuant to the contents of Clause 4. All fees charged pursuant to this clause 6.1.7 shall be retailer content fees ("**Retailer Content Fees**") as set out in Appendix 2. Retailer Content Fees shall be itemised and invoiced in the Transaction Report in accordance with the provisions of clause 6. The application of these Retailer Content Fees shall be at Fruugo's sole and absolute discretion.
- 6.1.8 Fruugo UK or Fruugo Ireland (as applicable), in its sole and absolute discretion, shall have the right to withhold any Retailer Fees from a Retailer pending further investigation into its Retailer's Content and/or in respect to any alleged misconduct whilst using the Fruugo Platform. Where there has been a product safety or legality issue with respect to a Retailer's Product Listing pursuant to clauses 4.2.9 and/or 4.2.11, including but not limited to the requirement to conduct a product recall, Fruugo shall be entitled to provide Buyers with a full refund at the Retailer's sole expense. All charges shall be itemised and invoiced in the Transaction Report in accordance with the provisions of clause 6. The application of these fees shall be at Fruugo's sole and absolute discretion.
- 6.1.9 If Fruugo UK or Fruugo Ireland (as applicable), determine that a Retailer's actions or performance will or may reasonably be expected to result in returns, chargebacks, claims, disputes, violations of the Fruugo Platform's terms or policies, or other risks to Fruugo UK or Fruugo Ireland (as applicable), Fruugo UK or Fruugo Ireland (as applicable) may in its sole and absolute discretion withhold any payments to a Retailer for as long as Fruugo UK or Fruugo Ireland (as applicable) determines (acting reasonably) that any risks set out in this clause 6.1.9 to Fruugo UK or Fruugo Ireland (as applicable) or third parties persist.
- 6.1.10 For any amounts that Fruugo UK or Fruugo Ireland (as applicable) determine a Retailer itself owes to either Fruugo UK or Fruugo Ireland (as applicable) in accordance with these terms, Fruugo UK or Fruugo Ireland (as applicable) shall be entitled to offset any amounts that are payable by a Retailer against any payments Fruugo UK or Fruugo Ireland shall otherwise be obliged to make to a Retailer or amounts that Fruugo UK or Fruugo Ireland (as applicable) may owe to a Retailer. For the avoidance of doubt, Fruugo UK and Fruugo Ireland (as applicable) shall be entitled under this clause 6.1.10 to offset

a balance owed by a Retailer to one of either Fruugo UK or Fruugo (Ireland) by deducting such sums from Net Sale Proceeds payments owed and otherwise payable to the Retailer by either of Fruugo UK or Fruugo Ireland.

6.1.11 Fruugo UK or Fruugo Ireland (as applicable) shall only be obliged to settle Net Sale Proceeds once a Retailer's account balance has reached a minimum threshold of £50.00 credit or the equivalent sum in an alternative currency. Retailer account balances below this sum shall be carried over and paid to the Retailer only once this Retailer account balance credit threshold has been met.

6.1.12 Fruugo UK or Fruugo Ireland (as applicable) may indefinitely withhold any payments due to a Retailer if:

- (a) it determines or reasonably suspects, at its sole and absolute discretion, that a Retailer's account has been used to engage in deceptive, fraudulent, or illegal activity;
- (b) it is requested to do so by a court of competent jurisdiction or any governmental, law enforcement or regulatory authority;
- (c) there has been a change to the Retailer's bank account since the last payment was made to the Retailer, until such a time that it is able to carry out all necessary authentication procedures in respect of the new account; or
- (d) in the event of the termination or expiry of this Agreement, it is not able to complete any required identification checks or account closure procedures owing to the acts or omissions of the Retailer, until such a time that it is able to complete such checks or procedures.

6.2 **Payment and invoicing queries.** Subject to clause 8.1, payment and invoicing queries of any kind (including disputes) must be raised with Fruugo UK within 12 months of the Order date and must be sent by email to: accounts@fruugo.com. Any credit balance in the Retailer's account which is unclaimed and not subject to bona fide and notified dispute for 12 months or more, will be retained by Fruugo UK or Fruugo Ireland (as applicable).

6.3 Responsibility for chargebacks

6.3.1 **Fraud chargebacks.** Fruugo UK or Fruugo Ireland (as applicable) shall be responsible for payment related fraud chargebacks for all payment types except where Fruugo UK or Fruugo Ireland (as applicable) has instructed the Retailer that an Order be cancelled prior to despatch.

6.3.2 Non-fraud chargebacks.

- (a) The Retailer shall be responsible for Buyer dispute chargebacks including where a Product is 'not as described' or 'defective' or similar and for delivery related reasons (except where the Retailer has proof of delivery to the Buyer's address specified on the Fruugo Platform. For the avoidance of doubt, proof of delivery shall comprise of photographic evidence of delivery to the recipient's address, or a signature from the recipient). For a Buyer dispute chargeback, Fruugo UK or Fruugo Ireland (as applicable) will automatically assign liability to the Retailer and Fruugo UK or Fruugo Ireland (as applicable) will deduct the amount of the chargeback plus any administration fees from any monies owed to the Retailer as Net Sale Proceeds or otherwise. If the amount of the chargeback exceeds the monies owed to the Retailer by Fruugo UK or Fruugo Ireland (as applicable), Fruugo UK or Fruugo Ireland (as applicable) reserves the right to demand immediate transfer of funds from the Retailer to Fruugo UK or Fruugo Ireland (as applicable) to cover any shortfall in accordance with clause 6.1.6.
- (b) Fruugo UK or Fruugo Ireland (as applicable) shall use its reasonable endeavours to defend Buyer dispute non-fraud chargebacks raised against the Retailer where the Retailer can provide suitably compelling evidence (as determined by the relevant payment processor), which shall be provided to Fruugo UK or Fruugo Ireland (as applicable) within 3 business days of request by Fruugo UK or Fruugo Ireland (as applicable). If no compelling evidence is provided, Fruugo UK or Fruugo Ireland (as applicable) reserves the right to accept the chargeback (for which the Retailer shall be liable in accordance with clause 6.3.1). Fruugo UK or Fruugo Ireland (as applicable) shall credit the full amount of the chargeback plus the acquirer's administration fee to monies owed to the Retailer if the chargeback is successfully defended.

6.3.3 Tax authority chargebacks.

Where Fruugo UK or Fruugo Ireland (as applicable) is legally required to collect VAT and/or any other applicable taxes, charges or levies for any reason and in any jurisdiction, in respect of the Retailer's use of the Fruugo Platform, Fruugo UK or Fruugo Ireland (as applicable) shall do so based on the classification of the Products as determined by the Retailer. If this classification is deemed incorrect, Fruugo UK or Fruugo Ireland (as applicable) reserves the right to directly recover from the Retailer, all undercharged VAT or any other interest, fines or penalties imposed by any authority. Fruugo UK or Fruugo Ireland (as applicable) shall do so by using a chargeback mechanism and shall deduct the amount of the chargeback plus any reasonable administration fees, from any monies owed to the Retailer. Fruugo UK or Fruugo Ireland (as applicable) reserves the right to demand immediate transfer of funds from the Retailer to Fruugo to cover any shortfall in accordance with clause 6.1.6.

6.4 VAT

- 6.4.1 For the purpose of listing the relevant VAT rate applicable to each Product on the Fruugo Platform, Fruugo UK or Fruugo Ireland (as applicable) shall assume that the Retailer's Products shall be despatched from the Retailer's country of domicile, as specified by the Retailer in the Fruugo Portal, unless notified otherwise by the Retailer in the Fruugo Portal (in which case the Retailer shall specify the country that each Product is despatched from).
- 6.4.2 Fruugo UK or Fruugo Ireland (as applicable) shall be responsible for calculating and charging the Buyer the applicable VAT and/or any other applicable taxes, charges or levies (other than any Customs and Import Fees) payable on all Orders.
- 6.4.3 Where Fruugo UK or Fruugo Ireland (as applicable) is legally obliged to collect VAT and/or any other applicable taxes, charges or levies for any reason in any jurisdiction in respect of the Retailer's use of the Fruugo Platform, the Fruugo APIs or the Fruugo Plugins or any Transactions, Fruugo UK or Fruugo Ireland (as applicable) will report and remit the relevant sums in respect of such VAT, other taxes, charges or levies directly to the appropriate national authorities and will accrue such sums from the sums paid by a Buyer in any Transaction and so reduce by the value of the relevant VAT, and/or any other applicable taxes, charges or levies, the Net Sale Proceeds otherwise due to the Retailer for that Transaction.
- 6.4.4 Where Fruugo UK or Fruugo Ireland (as applicable) is not legally obliged to collect VAT and/or any other applicable taxes, charges or levies for any reason in any jurisdiction in respect of the Retailer's use of the Fruugo Platform, the Fruugo APIs or the Fruugo Plugins or any Transactions, Fruugo UK or Fruugo Ireland (as applicable) shall remit the Net Sale Proceeds to the Retailer inclusive of such VAT, and/or any other applicable taxes, charges or levies and the Retailer shall be solely responsible for reporting and remitting the relevant sums in respect of such VAT, and/or any other applicable taxes, charges or levies directly to the appropriate national authorities. In the event that Fruugo UK or Fruugo Ireland (as applicable) incurs liabilities in respect of any failure by the Retailer to remit such VAT, and/or any other applicable taxes, charges or levies directly to the appropriate national authorities, Fruugo UK and Fruugo Ireland (as applicable) reserves the right to deduct any such amounts from any payments due to the Retailer in accordance with clause 6.1.6.
- 6.4.5 The Retailer shall notify Fruugo UK or Fruugo Ireland (as applicable) as soon as possible if it becomes aware that the Fruugo Platform is incorrectly displaying VAT and/or any other applicable taxes, charges or levies for any of the Retailer's Products on any Fruugo Country Marketplace, or if there has been any significant change in the Retailer's tax configuration (e.g., additional tax registrations or de-registrations).
- 6.4.6 Where Fruugo UK or Fruugo Ireland (as applicable) are not liable to account for any VAT and/or any other applicable taxes, charges or levies on the supply of any of the Retailer's Products on any Fruugo Country Marketplace, the Retailer will ensure it complies with any taxation registration requirements that may exist as in respect of such supplies. The Retailer shall notify Fruugo UK or Fruugo Ireland (as applicable) promptly of any such registration.

6.5 Customs and Import Fees

- 6.5.1 Any Customs and Import Fees levied on an Order shall be the Retailer's sole responsibility. If a Buyer raises a query regarding any Customs and Import Fees applicable to its Order, it shall be entitled to have such charges reimbursed if it can provide evidence of the same with official documentation, in which case Fruugo UK or Fruugo Ireland (as applicable) shall reimburse the Buyer and shall deduct the applicable Customs and Import Fees from any payments due to the Retailer in accordance with clause 6.1.6.
- 6.5.2 The Retailer must ensure that the value of the contents of all Product packages is correctly stated on the relevant packing materials to avoid the Buyer being charged incorrect or excessive Customs and Import Fees. In the event that Fruugo UK or Fruugo Ireland (as applicable) incurs Customs and Import Fees in respect of any Orders that are a direct result of the mislabelling of Order consignments by the Retailer, Fruugo UK or Fruugo Ireland (as applicable) each reserves the right to deduct any such charges from any payments due to the Retailer's payment in accordance with clause 6.1.6.
- 6.5.3 Neither Fruugo UK nor Fruugo Ireland (as applicable) accepts any liability for any Customs and Import Fees arising on any Products returned by the Buyer to the Retailer, which shall be the sole responsibility of the Retailer.

6.6 **Late payment by the Retailer.** If the Retailer fails to make any payment due to Fruugo UK or Fruugo Ireland (as applicable) under this Agreement by the due date for payment, then, without limiting Fruugo UK's or Fruugo Ireland's (as applicable) respective rights and remedies under clause 10 (*Termination*), the Retailer shall pay interest on the overdue amount at the rate set out in the Late Payment of Commercial Debts (Interest) Act 1998. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Retailer shall pay the interest together with the overdue amount.

6.7 **Court Orders.** If Fruugo UK or Fruugo Ireland (as applicable) is notified that a Retailer is subject to a court order from any jurisdiction, Fruugo UK or Fruugo Ireland (as applicable) shall notify the Retailer as soon as practicable.

If a court order requires funds to be withheld or transferred from the Retailer's account, this shall be actioned by Fruugo UK or Fruugo Ireland (as applicable) in compliance with the relevant court order and communicated to the Retailer by Fruugo UK.

6.8 Interest on Outstanding Balances

6.8.1 **Where the outstanding balance arises in accordance with the provisions of clause 6.1.12 or clause 10.7.6.** Notwithstanding any statutory provisions or regulations to the contrary, the parties expressly agree that no interest, whether statutory or otherwise (including under the Late Payment of Commercial Debts (Interest) Act 1998), will be payable by Fruugo UK or Fruugo Ireland (as applicable) to the Retailer on any outstanding balances under this Agreement that have not been paid to the Retailer in accordance with the provisions of clause 6.1.12 or clause 10.7.6.

7. PERSONAL DATA

7.1 The Retailer shall execute the Fruugo Data Processing Agreement provided by Fruugo or any of its Affiliates from time to time, an example of which is attached at Appendix 3 which, once executed, shall be incorporated into this Agreement.

7.2 The Retailer shall ensure that it is aware of and fully compliant with all national and local Data Protection Legislation in the countries that it chooses to elect to trade in.

8. LIMITATION OF LIABILITY

8.1 Nothing in this Agreement shall exclude or limit any liability arising from fraud, fraudulent misrepresentation, death or personal injury resulting from negligence or any other liabilities which cannot lawfully be limited or excluded under applicable law.

8.2 Subject to clause 8.1, in no event shall Fruugo UK or any of its Affiliates be liable to the Retailer, whether in contract, tort (including, without limitation, negligence), under statute or otherwise for any wasted expenditure, indirect or consequential loss or damage, or any (i) loss of profits; (ii) loss of revenue; (iii) loss of anticipated savings; (iv) loss of business; (v) loss of opportunity; (vi) loss of goodwill; (vii) loss due to business interruption; (viii) liability to third parties (including any obligation to pay buyer compensation whether ex gratia or otherwise); (ix) loss, alteration or corruption of data; (x) additional operational and administrative costs and expenses; (xi) any fines, penalties or expenses imposed by a regulator, governmental authority or professional body (each of items (i) to (xi) applying whether such loss is direct or indirect).

8.3 Subject to clauses 8.1 and 8.2, Fruugo's total aggregate liability, whether in contract, tort (including negligence), under statute or otherwise to the Retailer for any and all losses, liabilities, damages, costs and expenses arising under or in connection with this Agreement in respect of all events occurring in any Contract Year shall be limited to £1,000. For the avoidance of doubt, this clause 8.3 shall take precedence over any limitation of liability clause in the Fruugo Terms of Use.

9. REPRESENTATIONS AND WARRANTIES

9.1 **General.** Each party represents and warrants that:

9.1.1 if it is a business, it is duly organized, validly existing and in good standing under the laws of the territory in which the business is registered, and in the case of the Retailer, it holds a valid bank account in the agreed and supported operating currency it has specified in the Fruugo Portal;

9.1.2 it has all requisite right, power and authority to enter into this Agreement and perform its obligations and grant the rights, licences and authorizations its grants hereunder;

9.1.3 any information provided or made available by one party to the other party or its affiliates is accurate and complete, and it will promptly update such information as necessary to ensure it at all times remains accurate and complete; and

9.1.4 it is not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the US Government (e.g., the US Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list and the US Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority.

9.2 **Retailer.** The Retailer represents and warrants that:

9.2.1 it shall comply with all applicable laws and shall not cause Fruugo UK or Fruugo Ireland (as applicable) to be in breach of any applicable laws and shall not infringe the rights (including Intellectual Property Rights) of any third party in its performance of this Agreement;

9.2.2 it shall comply with its obligations under this Agreement, the Fruugo Terms of Use and the Fruugo Policies;

9.2.3 it shall perform all of its obligations under this Agreement (including to Buyers) with reasonable care and skill and in accordance with best industry practice; and

9.2.4 it shall not undertake any anti-competitive behaviours or practices either of itself or in collusion with any other retailers;

- 9.2.5 by listing a Product for sale on the Fruugo Platform:
- (a) it owns the Product or is authorised by the owner to list the Product on the Fruugo Platform, the Product is in stock and available for prompt delivery, is new, original and authentic and has not been illegally replicated, reproduced or manufactured;
 - (b) it is able to transfer good title to the Product free from any third-party claims, liens or encumbrances;
 - (c) the Product Pages (including any Retailer Content and the Product classification) are accurate, current and complete and is not misleading or otherwise deceptive in any way;
 - (d) it shall despatch Orders promptly and in any event within the later of: (i) 24 hours from the time the Buyer places the Order; and (ii) the lead time, if a lead time is specified by the Retailer when the Buyer places the Order (the “**Expected Despatch Date**”); and
 - (e) the Product and the Retailer Content comply with all applicable laws including the laws of all countries in which the Product is made available via the Fruugo Platform, the country in which the Buyer resides and any other relevant country (including the country where the Product is manufactured), including any prohibitions on sale, distribution or offering for sale of specific products, customs procedures, taxation, Intrastat, Intellectual Property Rights, parallel importation, copyright levies, export controls, CE marketing and any other relevant EU marks and labels, environment including the Electrical and Electronic Equipment Act in Germany, health and safety legislation and product compliance legislation.
- 9.2.6 it shall not list any Products on the Fruugo Platform and shall immediately remove any such Products from sale which are or subsequently become:
- (a) considered by any local regulator or government body to be dangerous, harmful or hazardous, including all those listed as such on RAPEX, Safety Gate or similar; or
 - (b) subject to recall by the manufacturer or distributor.

9.3 **Fruugo.** Subject to clause 8.1:

9.3.1 the Fruugo Platform, Fruugo APIs and Fruugo Plugins are provided on an “**as is**” basis; and

9.3.2 except for the warranties, representations, conditions and obligations expressly set out in this Agreement, Fruugo UK disclaims all warranties, representations, conditions and obligations, whether express or implied, including:

- (a) the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement; and
- (b) that the Fruugo Platform, Fruugo APIs or Fruugo Plugins will meet the Retailer’s requirements, will always be available, accessible, uninterrupted, timely, secure or operate without error.

10. TERM AND TERMINATION

10.1 **Term.** This Agreement begins on the Effective Date and shall continue in force until terminated by either party in accordance with its terms (“**Term**”).

10.2 **Material breach termination.** Either party is entitled to terminate this agreement if the other party commits any persistent, continuing or material breach of any term of this Agreement, the Fruugo Terms of Use and/or the Fruugo Policies (or a succession of minor breaches which taken together are material) and (in the case of a breach capable of being remedied) the party has failed to remedy the breach within 30 days of being notified in writing by the innocent party (specifying reasonable detail) of the material breach.

10.3 **Termination on Insolvency Event.** Either party is entitled to terminate this Agreement immediately upon written notice to the other party if the other party suffers an Insolvency Event.

10.4 **Termination for non-payment.** Fruugo UK or Fruugo Ireland (as applicable) may, at any time during the Term suspend or terminate its performance under this Agreement immediately upon written notice to Retailer if Retailer’s payment of any undisputed portion of any fees is not received within 21 days of the Retailer’s receipt of a written demand for payment.

10.5 **Fruugo’s additional termination rights.** Fruugo UK or Fruugo Ireland (as applicable) may terminate this Agreement or performance of any part of the services:

10.5.1 in accordance with clause 4.7 and 4.9;

10.5.2 immediately by giving written notice to the Retailer, if required to do so by any regulator, court order or any applicable law, if continued performance of this Agreement is contrary to any applicable law, or if any of Fruugo’s or its relevant Affiliate’s agreements with its licensors terminate or expire, such that Fruugo or its relevant Affiliate is no longer able to provide the services or any part thereof; or

10.5.3 on 30 days’ written notice to the Retailer for any reason.

10.6 **Retailer’s additional termination rights.** The Retailer may terminate this Agreement:

- 10.6.1 by giving written notice to Retailer if required to do so by any regulator, court order or any applicable law or if continued performance of this Agreement is contrary to any applicable law; or
- 10.6.2 as set out in clause 13.7.3; or
- 10.6.3 on 30 days' written notice to Fruugo UK for any reason.
- 10.7 **Consequences of termination.** On termination or expiry of this Agreement for any reason:
- 10.7.1 the Retailer's access to the Fruugo Portal, and its ability to list new Products for sale on the Fruugo Platform, shall immediately cease, save to the extent necessary for the Retailer to process and/or manage any Orders submitted prior to termination, for which the Retailer shall remain fully responsible;
- 10.7.2 the Retailer's existing Products shall be removed from the Fruugo Platform;
- 10.7.3 except as otherwise set out in this Agreement, each party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other party (including the Fruugo Portal);
- 10.7.4 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced;
- 10.7.5 without prejudice to Fruugo UK or Fruugo Ireland (as applicable) other rights and remedies, the Retailer shall immediately pay all payments due to Fruugo UK or Fruugo Ireland (as applicable) prior to the date of termination; and
- 10.7.6 Fruugo UK or Fruugo Ireland (as applicable) are entitled to retain a portion of any payments due to the Retailer for up to 6 months from the date of termination to fund any recalculation of Retailer Fees in accordance with clause 6.1.6.
- 10.8 **Suspension.** Without prejudice to Fruugo UK's or Fruugo Ireland's (as applicable) rights pursuant to the remainder of this clause 10, Fruugo may immediately suspend the Retailer's access to the Fruugo Portal (and/or the availability of any Products listed on the Fruugo Platform by the Retailer and/or any payments due to the Retailer pursuant to clause 6.1.2) if Fruugo or its relevant Affiliate, acting reasonably, determines any of the following:
- 10.8.1 the Retailer is in breach of the terms of this Agreement, the Fruugo Terms of Use and/or the Fruugo Policies and such breach has had (or is reasonably likely to have) a serious adverse impact on: (i) the performance of Fruugo's IT systems; and/or (ii) the security of Fruugo's IT systems; and/or the security of Fruugo's other Buyers and their data;
- 10.8.2 the Retailer is in breach of clauses 5.1 or 9.2; or
- 10.8.3 the Retailer fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment.
- 10.9 **Notification of reasoning.** Fruugo UK or Fruugo Ireland (as applicable) shall promptly following any termination or suspension of this Agreement, or the Retailer's access the Fruugo Platform notify the Retailer of its reasoning for such suspension or termination.
11. **INDEMNITY**
- 11.1 The Retailer will defend, indemnify and hold Fruugo, its Affiliates and each of their respective officers, directors, employees and agents harmless from and against any claims, cause of action, liability, expense, loss or demand, including without limitation reasonable legal, accounting and court fees, arising out of, or in any way connected with that Retailer's breach of this Agreement.
12. **CONFIDENTIALITY**
- 12.1 All parties agree that where a party is in possession of information about the other party or its Affiliates that is by its nature confidential, or is designated as such by the other party (whether in writing or orally) ("**Confidential Information**"), all parties undertake to: (i) keep it confidential; (ii) use it only in connection with the performance of this Agreement; and (iii) not to disclose it to any other person or entity without the other party's prior written consent. These undertakings will not apply to information that otherwise becomes generally publicly available, was possessed prior to the Effective Date (or prior to being designated as Confidential Information), or is lawfully acquired from a third party who is under no obligation of confidence or information which is or has been independently developed by the recipient.
- 12.2 All parties will be entitled to disclose Confidential Information to legal advisors to protect legitimate interests and to comply with any legal, professional or regulatory requirement. The Retailer agrees to reimburse any costs Fruugo UK or Fruugo Ireland (as applicable) may incur in complying with any such disclosure requirement relating to this Agreement imposed in any proceedings or regulatory process not involving any substantive claim or proceeding against Fruugo UK or Fruugo Ireland (as applicable), provided that Fruugo UK or Fruugo Ireland (as applicable) notifies the Retailer promptly and, where reasonably or legally possible, prior to disclosure.
- 12.3 The Retailer acknowledges that Fruugo UK or Fruugo Ireland (as applicable) is entitled to share the Retailer's Confidential Information with its Affiliates and any subcontractors Fruugo UK or Fruugo Ireland (as applicable) uses in the performance of this Agreement (and more generally to those contractors providing administrative, infrastructure and other support services to Fruugo UK) in each case whether located within or outside of the

United Kingdom on the understanding that they will treat the information as Confidential Information in accordance with the provisions of this Agreement.

- 12.4 When offering Fruugo's services to other parties Fruugo UK or Fruugo Ireland (as applicable) may disclose to them that Fruugo UK or Fruugo Ireland (as applicable) has acted for the Retailer unless the Retailer instructs Fruugo UK or Fruugo Ireland (as applicable) to the contrary.
- 12.5 Nothing in this Agreement will prevent or restrict Fruugo UK, Fruugo Ireland or each of their Affiliates from providing services to other clients (including services which are the same or similar to those offered under this Agreement) or using or sharing for any purpose any knowledge, experience and skills used in, gained or arising from performing this Agreement subject to the obligations of confidentiality set out in clause 12.1 even if those other clients' interests are in competition with the Retailer. Equally, the Retailer agrees that to the extent that Fruugo UK or Fruugo Ireland (as applicable) possesses information obtained under an obligation of confidentiality to another client or other third party, Fruugo UK or Fruugo Ireland (as applicable) is not obliged to disclose it to the Retailer or make use of it for the Retailer benefit, however relevant it may be to the performance of the services under this Agreement.
- 12.6 This clause 12 shall survive termination of the Agreement for any reason.

13. GENERAL

- 13.1 **Export control.** The Retailer shall not export, directly or indirectly, any technical data acquired from Fruugo UK or Fruugo Ireland (as applicable) or their respective Affiliates under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable law ("**Export Control Laws**"), including United States export laws and regulations, to any sanctioned country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval. The Retailer undertakes: (i) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and (ii) if requested, to provide Fruugo UK or Fruugo Ireland (as applicable) with any reasonable assistance, at Fruugo UK's or Fruugo Ireland's (as applicable) reasonable cost, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.
- 13.2 **No waiver.** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.3 **No partnership/agency.** Nothing in the Agreement is intended to or shall operate to create a partnership between the parties. Further, save as expressly set out in clause 4.3.1, nothing in the Agreement is intended to or shall operate to or authorise a party to act as agent for any other, and no party shall have the authority to act in the name or on behalf of or otherwise to bind any other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 13.4 **Counterparts.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which shall be an original and all of which shall together constitute a single agreement. The parties may execute this Agreement via electronic signature.
- 13.5 **Further assurance.** Each party will at the request of the other parties at its own costs do (or procure others to do) everything necessary to give the other the full benefit of the Agreement.
- 13.6 **Entire agreement.** This Agreement constitutes the entire agreement and understanding between the parties relating to its subject matter and supersedes any previous agreement between the parties relating to any of such subject matter. Each party acknowledges and agrees that in entering into this Agreement, all statements, representations, warranties and undertakings on which it relies are incorporated into this Agreement and it does not rely on (and shall have no remedy in respect of) any statement, representation, warranty or undertaking (whether negligently or innocently made) of any person (whether party to this Agreement or not) which is not expressly set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation, or negligent misstatement, based on any statement in this Agreement.
- 13.7 **Variation.**
- 13.7.1 Subject to clause 13.7.2, Fruugo UK and Fruugo Ireland (as applicable) may amend any of the terms of this Agreement by giving the Retailer at least 21 days' prior written notice, after which the amendment shall be considered incorporated into this Agreement. The Retailer's continued use of the Fruugo Platform and/or Fruugo Portal following Fruugo UK's or Fruugo Ireland's (as applicable) notice of the amendment will constitute the Retailer's acceptance of the amended Agreement.
- 13.7.2 The notice period in clause 13.7.1 shall not apply where:
- (a) Fruugo UK and/or Fruugo Ireland (as applicable) is subject to a legal or regulatory obligation which requires it to amend this Agreement in a manner which does not allow it to respect the notice period referred to in clause 13.7.1; or
 - (b) Fruugo UK and/or Fruugo Ireland (as applicable) has exceptionally to amend this Agreement to address an unforeseen and imminent danger related to defending the online intermediation

services, consumers or business users from fraud, malware, spam, data breaches or other cybersecurity risks.

13.7.3 If any amendment proposed by Fruugo UK and/or Fruugo Ireland (as applicable) is unacceptable to the Retailer, the Retailer shall be entitled to terminate this Agreement within 15 days of receipt of notice of the amendment.

13.8 Managing disputes.

13.8.1 If any dispute arises in connection with this Agreement, the parties agree to first try to resolve the dispute through Fruugo UK's or Fruugo Ireland's (as applicable) complaints procedure, which is available upon request.

13.8.2 If the dispute is not wholly resolved through Fruugo UK's or Fruugo Ireland's (as applicable) complaint's procedure, then the dispute may be referred at the discretion of the Retailer to CEDR for mediation. The parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 working days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**ADR Notice**") to the other party to the dispute, referring the dispute to mediation. A copy of the referral should be sent to CEDR.

13.8.3 If there is any point on the logistical arrangements of the mediation, other than the nomination of the mediator, upon which the parties cannot agree within 14 working days from the date of the ADR Notice, where appropriate, in conjunction with the mediator, CEDR will be requested to decide that point for the parties having consulted with them.

13.9 **Force majeure.** No party will be liable for any delays or failures in performance or breach of contract due a Force Majeure Event.

13.10 **Notices.** All notices hereunder shall be: (i) in writing (including by email), (ii) delivered to the representatives of the parties at the addresses specified in the Fruugo Portal and (iii) be deemed to have been received: (a) at the time of delivery when delivered personally, (b) 2 business days if sent by first class or registered post, or (c) when sent if delivered to the recipient's correct address without any delivery error message when emailed. The Retailer shall ensure that its contact details are up to date on the Fruugo Portal.

13.11 **Subcontracting, assignment & rights of third parties.** Fruugo may sub-contract the provision of the services or any part to any person including any Affiliate of Fruugo, but this will not affect Fruugo's responsibility for the services. The Retailer agrees not to bring any claim (whether in contract, tort, breach of statutory duty or otherwise) against any of Fruugo's Affiliates in respect of loss or damage suffered by the Retailer arising out of or in connection with this Agreement or the services. No third parties have any rights to enforce any part of this Agreement (which can be varied or terminated without any third party's consent), except that Fruugo's Affiliates are intended third party beneficiaries of this clause and may in their own right enforce such terms for their protection. Neither party may assign or otherwise transfer the benefit of this Agreement without the prior express written consent of the other, such consent not to be unreasonably withheld or delayed.

13.12 **Order of precedence.** In the event and only to the extent of any conflict between the terms of this Agreement, the Fruugo Terms of Use and the Fruugo Policies, the following order of precedence shall apply:

13.12.1 this Agreement;

13.12.2 the executed Fruugo Data Processing Agreement;

13.12.3 the schedules and appendices of this Agreement;

13.12.4 the Fruugo Policies; and

13.12.5 the Fruugo Terms of Use.

13.13 **Severance.** If any provision of this Agreement is unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Fruugo UK or Fruugo Ireland (as applicable) and the Retailer set forth in this Agreement.

13.14 **Anti-bribery & modern slavery.** All parties will: (i) comply with the Bribery Act 2010; (ii) have and shall maintain in place throughout the Term their respective policies and procedures, to ensure compliance with the Bribery Act 2010; and comply with the Modern Slavery Act 2015 and applicable anti-money laundering laws.

14. Governing law and jurisdiction. This Agreement shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to resolve any dispute or claim arising out of or in connection with the subject matter of this Agreement (including non-contractual disputes and claims). Nothing in this Agreement will prevent either party from bringing legal proceedings at any time in any jurisdiction to protect or enforce its legal rights in respect of any Intellectual Property Rights or Confidential Information (including but not limited to seeking an injunction).

Appendix 1: Definitions and interpretation

1. **Definitions.** In this Agreement, the following words and expressions shall have the following meanings:
 - 1.1 “**ADR Notice**” has the meaning set out in clause 13.8.2;
 - 1.2 “**Affiliate**” means an entity that, either directly or indirectly, Controls, is Controlled by or is under common Control with the relevant entity;
 - 1.3 “**Agreement**” means this agreement, as amended from time to time in accordance with its terms, including the schedules and appendices and the executed Fruugo Data Processing Agreement;
 - 1.4 “**CEDR**” means the Centre for Effective Dispute Resolution;
 - 1.5 “**Commission**” means the commission payable to Fruugo UK or Fruugo Ireland (as applicable) on each Order, as specified in Appendix 2;
 - 1.6 “**Confidential Information**” has the meaning set out in clause 12.1;
 - 1.7 “**Contract Year**” means a period of 12 months (or such shorter period if this Agreement is terminated earlier), commencing on the Effective Date or an anniversary of the Effective Date;
 - 1.8 “**Control**” means the ability to direct the affairs of another by ownership, contract or otherwise;
 - 1.9 “**Buyer**” means a user of the Fruugo Platform who has submitted an Order to the Retailer via the Fruugo Platform.
 - 1.10 “**Customs and Import Fees**” means any customs and import fees and other duties and/or levies, penalties or fines imposed by any authority, government or government agency in any jurisdiction, including local import tax, and any handling and/or administration fees;
 - 1.11 “**Expected Despatch Date**” has the meaning set out in clause 9.2.5(d);
 - 1.12 “**Effective Date**” means the date on which the Retailer’s Retailer Application is accepted by Fruugo;
 - 1.13 “**EEA**” means the European Economic Area;
 - 1.14 “**EU Sale**” means an Order made by a Buyer where the Retailer Fees due from the Retailer are payable to Fruugo Ireland, and not Fruugo UK, as set out in the reconciled statement of Net Sale Proceeds and corresponding VAT invoice provided to the Retailer;
 - 1.15 “**Export Control Laws**” has the meaning set out in clause 13.1;
 - 1.16 “**Force Majeure Event**” means an event beyond the reasonable control of the relevant party, including flood, fire, explosion, the elements, epidemic, disease, war, civil commotion, terrorist activity, shortage of raw materials, power or fuel, breakdown of plant or machinery, computer, software and hardware failure, or any failure in a communications network. For the avoidance of doubt the non-payment of any fees by the Retailer is not a Force Majeure Event;
 - 1.17 “**Fruugo UK**” means Fruugo.com Ltd, incorporated and registered in England and Wales with company number 06553460 whose registered office address is 13 Fountain Street, Ulverston LA12 7EQ, United Kingdom;
 - 1.18 “**Fruugo Ireland**” means Fruugo (Ireland) Limited, incorporated and registered in Ireland with company number 693063 whose registered office address is Ground Floor, 71 Lower Baggot Street, Dublin, D02 P593, Ireland;
 - 1.19 “**Fruugo APIs**” means any application programming interface made available by Fruugo UK under this Agreement, including the Fruugo Product and Order API, and any other APIs that Fruugo may make available for use by the Retailer from time to time;
 - 1.20 “**Fruugo Checkout System**” means Fruugo UK’s checkout system in which Buyers place Orders in their local currency on the Fruugo Platform and Fruugo UK settles the Net Sale Proceeds to the Retailer in the Retailer’s own currency;
 - 1.21 “**Fruugo Content**” means content generated by Fruugo UK or Fruugo Ireland (as applicable) from the Retailer Content, including manual or automatic translations of Product descriptions or resized Product images;
 - 1.22 “**Fruugo Country Marketplaces**” means the fully localised versions of the Fruugo Platform;
 - 1.23 “**Fruugo Platform**” means the multi-country, multi-currency, multi-language platform owned and operated by Fruugo for Buyers and Retailers to transact with each other, the Fruugo Country Marketplaces and the Fruugo Portal;
 - 1.24 “**Fruugo Plugins**” means the plug-ins developed by Fruugo UK and its partners for numerous major ecommerce platforms such as Magento and Shopify, together with API integrations into multi-channel management solutions

such as ChannelAdvisor, Linnworks and PlentyMarkets. The current list of Fruugo Plugins and future planned integrations is available upon request;

- 1.25 **“Fruugo Policies”** means the following policies and any other policies and guidelines notified to the Retailer by Fruugo, in each case as may be amended or updated from time to time:
- 1.25.1 Fruugo Chargebacks Policy, available at: <https://fruugo.atlassian.net/c/nfrkuQ0u>
 - 1.25.2 Fruugo Intellectual Property Policy, available at: <https://fruugo.atlassian.net/wiki/spaces/RR/pages/2565406721/Intellectual+Property+Policy>;
 - 1.25.3 Fruugo Third Party Legal Complaints Policy, available at: <https://www.fruugo.co.uk/help/detail/fruugo-third-party-legal-complaints-policy>
 - 1.25.4 Fruugo Prohibited Product Policy, available at: <https://www.fruugo.co.uk/help/detail/prohibited-product-policy>
 - 1.25.5 Fruugo Anti-Counterfeit, available at: <https://www.fruugo.co.uk/help/detail/anti-counterfeit-products-policy>
- 1.26 **“Fruugo Portal”** means the back-office facility that allows the Retailer to list and sell Products on the Fruugo Platform;
- 1.27 **“Fruugo Product and Order API”** means the optional API for automatic Product data management and Order processing between the Fruugo Platform and the Retailer’s own systems. Documentation for the Fruugo Product and Order API is available upon request;
- 1.28 **“Fruugo Terms of Use”** means the terms of use governing the use of the content, software and services offered through the Fruugo Platform, available at: <https://www.fruugo.co.uk/help/detail/terms>;
- 1.29 **“Funds Processing Fee”** means the funds processing fee payable to Fruugo UK or Fruugo Ireland (as applicable) on each Order, as specified in Appendix 2;
- 1.30 **“Insolvency Event”** means any corporate action, legal proceedings or other procedure or step (save for any corporate action, legal proceedings or other procedures which are frivolous or vexatious and which are being contested in good faith) taken in relation to: (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise); (b) a composition, compromise, assignment or arrangement with any creditor; (c) commencing action to appoint, or the appointment of, a liquidator (other than in respect of a solvent liquidation), receiver, administrative receiver, administrator, compulsory manager or other similar officer; or (d) any analogous procedure or step is taken in any jurisdiction;
- 1.31 **“Intellectual Property Rights”** means all patents, trademarks, service marks, trade names, design rights, copyright, rights in software, database rights, rights in know-how and other intellectual property rights or equivalent forms of protection of whatever nature arising anywhere in the world, whether registered or unregistered and including applications for the grant of any such rights, and rights in Confidential Information;
- 1.32 **“Merchant Performance Level”** means the performance rating assigned to a Retailer by Fruugo from time to time, based on the Retailer’s historic sales levels and account conduct (ratings being determined as Bronze, Silver, Gold or Platinum at Fruugo’s sole and absolute discretion);
- 1.33 **“Order”** means an order submitted by a Buyer to buy one or more Products from the Retailer via the Fruugo Platform;
- 1.34 **“Net Sale Proceeds”** means the proceeds of an Order, after all applicable Retailer Fees have been subtracted by Fruugo;
- 1.35 **“Product”** means a product listed for sale on the Fruugo Platform by the Retailer and **“Products”** shall be interpreted accordingly;
- 1.36 **“Product Detail Page”** means the Product page on the Fruugo Platform which includes a detailed description of the Product;
- 1.37 **“Product Listing”** means the Product listing which appears in a grid of similar products on the Fruugo Platform which includes a brief description of the Product;
- 1.38 **“Product Pages”** means the Product Detail Page and the Product Listing;
- 1.39 **“Product SKU”** means a product variant including but not limited to the size or colour variation of a Product;

- 1.40 **“Required Product Information”** means with respect to each Product to be listed by the Retailer on the Fruugo Platform, the following; (a) manufacturer information, (b) responsible person information (as applicable), (c) product description, including as applicable, all mandatory product safety information and labelling requirements, (d) CE marking (as applicable), EAN and other identifying information as Fruugo UK or Fruugo Ireland (as applicable) may reasonably require, (e) digitised image(s) that accurately depicts the Product, (f) purchase price (g) shipping information and charges, (h) any text, disclaimers, warnings, notices, labels or other content required by applicable laws to be displayed in connection with the product; and (i) any other information reasonably requested by Fruugo UK or Fruugo Ireland (as applicable) (e.g. invoices and other documentation demonstrating the safety and authenticity of the Product).
- 1.41 **“Retailer”** means the user of the Fruugo Platform named in the Retailer Application;
- 1.42 **“Retailer Application”** means the Retailer’s application to become a retailer on the Fruugo Platform which has been accepted by Fruugo;
- 1.43 **“Retailer Content”** means the content uploaded by the Retailer to the Fruugo Platform in relation to a Product, including Product descriptions and images;
- 1.44 **“Retailer Fees”** means the amounts deductible from the proceeds of an Order, as further set out in Appendix 2 including the Commission, and any other applicable taxes, charges or levies specified in this Agreement or as otherwise notified by Fruugo UK or Ireland (as applicable) to the Retailer from time to time;
- 1.45 **“Term”** has the meaning set out in clause 10.1;
- 1.46 **“Transaction”** means the purchase of one or more Products from the Retailer via the Fruugo Platform in completion of an Order;
- 1.47 **“VAT”** means any taxes or levies imposed by a government agency pursuant to the purchase of goods, such as value added tax chargeable under or pursuant to the Value Added Tax Act 1994 or Council Directive 2006/112/EC and/or any equivalent and/or similar sales, purchase, goods and services or turnover tax chargeable outside the European Union;
- 1.48 **“Virus”** means any thing or device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
- 2. Interpretation.** In this Agreement:
- 2.1 a reference to a party is to a party to this Agreement and includes that party’s representatives, successors and permitted assignees;
- 2.2 a reference to persons includes individuals, corporations, unincorporated bodies and associations which are recognised at law (whether or not having separate legal personality);
- 2.3 any reference to a statute, statutory provision or statutory instrument is a reference to it as it is in force for the time being, as may be amended, extended, consolidated, re-enacted, replaced, superseded or otherwise converted, succeeded or modified or incorporated into law (whether in relation to the United Kingdom’s exit from the European Union or otherwise);
- 2.4 general words are not to be given a restrictive meaning because they are followed by examples, and any words introduced by the word "including" or any similar expression are to be construed as illustrative and shall not limit the sense of the related general words;
- 2.5 writing includes email to the designated email addresses notified by the recipient party to the notifying party on the Fruugo Portal from time to time, which in the case of the Retailer shall be the email specified by the Retailer in the Fruugo Portal;
- 2.6 the headings and sub-headings in this Agreement are included for convenience only and are not intended to affect the interpretation of this Agreement; and
- 2.7 "subsidiary" and "holding company" have the meanings given to these terms in sections 1159 and 1162 of the Companies Act 2006.

Appendix 2: Fruugo Retailer Fees

Current Retailer Fees (apply from 1st September 2023)

Joining and Set-Up Fee:	£0
Commission:	15.00% of Transaction value (being the value paid by the shopper for the Products and the delivery costs, including any applicable taxes, charges or levies)
Funds Processing Fee:	2.35% of Transaction value (being the value paid by the shopper for the Products and the delivery costs, including any applicable taxes, charges or levies)

Note: Commission and Funds Processing Fee are each calculated on the local sale price of the Product plus delivery costs paid by the Buyer, including any applicable VAT and any other applicable taxes, charges or levies, and converted into the Retailer's local currency. For the avoidance of doubt, the Funds Processing Fee concerns transaction costs incurred by Fruugo UK or Fruugo Ireland (as applicable) directly or on behalf of their Affiliates and does not relate to any form of payment service provided to the Retailer. Funds Processing Fees are non-refundable.

Retailer Content Fees*

Service Description	Performance Level				
	Unrated	Bronze	Silver	Gold	Platinum
Optional Premium Content Service cost per calendar month**	n/a	n/a	£40	£40	£40
Permitted volume of free unique listings per calendar month	10,000	20,000	50,000	100,000	Unlimited
Overage charge for additional thousand unique listings per calendar month above free allowance***	£10	£10	£5	£2.50	£0.00
Product Re-categorisation Service, per thousand unique Product Listings****	£15	£15	£15	£15	£15
Product De-listing service for Prohibited Products and non-compliant products, per listing removed*****	£0.50	£0.50	£0.50	£0.50	£0.50
Non-Fraud Chargeback support service, per case	£10	£10	£10	£0.00	£0.00
Court Order service, per case	£500	£500	£500	£500	£500

*The application of the above fees is at Fruugo's sole and absolute discretion.

**Retailers with a Merchant Performance Level of Gold shall have a 50% fee reduction for the Optional Premium Content Service and Platinum Retailers shall not be charged. Eligible Retailers may opt-in or opt-out of this subscription at any time.

***Retailers with a Merchant Performance Level of Platinum shall not be charged an Overage Charge. The volume of unique products and the associated fees are calculated per calendar month.

****All Retailers shall have an error margin threshold of 25% before being charged. If this error margin threshold is exceeded by a Retailer with respect to incorrect categorisation of their Products, a Retailer shall be charged for 100% of all incorrectly categorised Product Listings calculated at £0.015 per Product Listing.

*****De-Listing services will be monitored by Fruugo UK and Retailers may be escalated for internal review should Prohibited Products and non-compliant products repeatedly be made available for sale on the Fruugo Platform.

Appendix 3: Fruugo Data Processing Agreement

THIS AGREEMENT is made the [REDACTED] day of [REDACTED] 20[]

BETWEEN:

- (1) FRUUGO.COM LTD. of Fountain Street House, 13 Fountain Street, Ulverston, Cumbria, LA12 7EQ, United Kingdom, Registered as a company in England And Wales as Company Number 06553460
- (2) FRUUGO (IRELAND) LIMITED of Ground Floor, 71 Lower Baggot Street, Dublin, D02 P593, Ireland . Incorporated and registered as a company in Ireland with Company Number 693063
each separately a "Fruugo Controller"; and
- (3) [PARTY 2] of [ADDRESS & Company Registration Number] ("Processor"),
(with each a "Party" and all the "Parties").

BACKGROUND:

- (A) The Processor is required to Process Personal Data on behalf of each Fruugo Controller in connection with the Terms and Conditions for Fruugo Retailers agreed between the Parties ("**Fruugo Agreement**").
- (B) This Agreement effects the appointment of the Processor and sets out the terms and conditions that shall apply to its Processing of the Processed Data.

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

"Commencement Date"	[the date of this Agreement];
"Controller"	has the meaning given to it in the GDPR;
"Data Protection Impact Assessment"	means an assessment by each Fruugo Controller, for the purposes of Article 35 of the GDPR, of the impact of certain envisaged Processing of Personal Data;
"Data Protection Legislation"	means all applicable data protection and privacy legislation and laws in force from time to time, as applicable to a Party or the services performed under the Fruugo Agreement, including but not limited to: (a) the GDPR, the ePrivacy Directive 2002/58/EC, the UK Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; (b) any laws which implement or supplement any such laws in any relevant jurisdiction; and (c) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing; and (d) any guidance or codes of practice issued by any Supervisory Authority from time to time;
"Data Subject"	has the meaning given to it in the GDPR;
"Data Subject Access Request"	a request made by, or on behalf of, a Data Subject in accordance with the Data Subject's rights under the Data Protection Legislation to access their Personal Data;
"GDPR"	General Data Protection Regulation (Regulation (EU) 2016/679) ("EU GDPR") and/or the UK GDPR (as defined in Part 1, Section 3(10) of the Data Protection Act 2018), as the context permits and to the extent applicable to a Party;
"International Organisation"	has the meaning given to it in the GDPR;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, (as applicable) any enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;
"Personal Data"	has the meaning given to it in the GDPR;

“Personal Data Breach”	has the meaning given to it in the GDPR and includes also any breach of Article 5(1)(f) (the integrity and confidentiality principle) of GDPR;
“Processing”	has the meaning given to it in the GDPR, and the terms “Process” and “Processed” shall be construed accordingly;
“Processor”	has the meaning given to it in the GDPR;
“Processed Data”	means such item(s) forming part of the Personal Data being processed by the Processor on behalf of the Controller or which the Processor has access to under this Agreement as are more particularly specified in Annex 1 of this Agreement;
“Processor Personnel”	means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement;
“Sub-Processor”	means any third party appointed to Process the Processed Data on behalf of the Processor;
“Third Country”	means any country other than the UK, a European Union Member State or a member of the European Economic Area at the time of transfer of the Processor Processed Data; and
“Supervisory Authority”	means the UK Information Commissioner and otherwise (where relevant) has the meaning given to it in the EU GDPR.

- 1.2 Clause, Annex and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 The Annexes form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annexes.
- 1.4 Unless the context otherwise, requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 A reference to a person shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision, and such statute, statutory provision and subordinate legislation as amended, updated or re-enacted from time to time during the Term.
- 1.7 References to clauses and annexes are to the clauses and annexes of this Agreement and references to paragraphs are to paragraphs of the relevant Annex.
- 1.8 Any words following the terms “including”, “include”, “in particular”, “for example” or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.9 In the case of any ambiguity between any provision contained in the main body of this Agreement and any provision contained in the Annexes, the provision in the main body of this Agreement shall take precedence.
- 1.10 A reference to writing or written includes messages transmitted by email.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Commencement Date and continue in force until one of the following events occurs:
 - 2.1.1 the termination or expiry of the commercial relationship between the Fruugo Controllers and the Processor including the completion of any post-termination obligations of the Processor set out in the Fruugo Agreement which require the Processor to Process Processed Data; or
 - 2.1.2 a Fruugo Controller terminates the appointment of the Processor by giving not less than one (1) month’s prior notice to the Processor,
 at which point this Agreement shall terminate with immediately effect.
- 2.2 On the expiry or termination of this Agreement, the Processor shall cease to Process the Personal Data.

3. DATA PROCESSING

- 3.1 For the purposes of the Data Protection Legislation, each Fruugo Controller is a Controller and hereby appoints the Processor as its Processor of the Processed Data, on the basis that the only Processing that the Processor is authorised to do is the Processing described in Annex 1 (as amended from time to time in accordance with Clause 5 of this Agreement). The Processor shall not make any decisions as to the

Processing of the Processed Data such that it would make it a controller of such Personal Data, including to commercialise, license, sell or otherwise use such data, even on an anonymised basis.

- 3.2 The Processor shall notify each Fruugo Controller immediately if it considers that any of a Fruugo Controller's instructions does not comply with the Data Protection Legislation and/or with Law. If the Processor acts on a Fruugo Controller's instructions without giving any such notification, the Processor shall be deemed to have evaluated such instructions and concluded that they comply with the Data Protection Legislation and with Law.
- 3.3 If the Processing to be carried on by the Processor is to any extent subject to Article 35 and/or Article 36 of GDPR, the Processor shall provide reasonable assistance to the Fruugo Controllers in the preparation of the Data Protection Impact Assessment prior to commencing any Processing or in relation to any prior consultation with a Supervisory Authority. Such assistance may, at the discretion of the Fruugo Controllers, include:
 - 3.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 3.3.2 an assessment of the necessity and proportionality of the Processing operations;
 - 3.3.3 an assessment of the risks that the Processing shall pose to the rights and freedoms of Data Subjects; and
 - 3.3.4 the measures proposed or envisaged to address such risks, including appropriate technical and organisational measures to ensure the protection of the Personal Data.
- 3.4 The Processor shall, in relation to any Processed Data Processed by it:
 - 3.4.1 Process that Processed Data only in accordance with Annex 1 and in accordance with the Fruugo Controller's written instructions (including with respect to transfers of Personal Data to a Third Country or International Organisation), unless the Processor is required to do otherwise by Law (and if so required by Law the Processor shall promptly notify the Fruugo Controller before Processing the Processed Data unless prohibited by Law);
 - 3.4.2 keep the Processed Data confidential and not disclose it to any third party without the prior written consent of the Fruugo Controller;
 - 3.4.3 take appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Processed Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects, including as appropriate:
 - 3.4.3.1 the pseudonymisation and encryption of the Processed Data;
 - 3.4.3.2 the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;
 - 3.4.3.3 the ability to restore the availability and access to the Personal Data in a timely manner in the event of a physical or technical incident; and
 - 3.4.3.4 a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing;
 - 3.4.4 ensure that:
 - 3.4.4.1 the Processor Personnel do not Process any Processed Data except in accordance with this Agreement (and in particular Annex 1);
 - 3.4.4.2 it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Processed Data and ensure that they:
 - (a) are aware of and comply with the Processor's duties under this Clause 3;
 - (b) are subject to appropriate confidentiality undertakings that are enforceable by the Processor and/or are under an appropriate statutory obligation of confidentiality;
 - (c) are informed of the confidential nature of the Processed Data and do not publish, disclose or divulge any of the Processed Data to any third party unless directed in writing to do so by the Fruugo Controller or as otherwise permitted by this Agreement; and
 - (d) have undergone adequate training in the use, care, protection and handling of Processed Data;
 - 3.4.5 not:
 - 3.4.5.1 (where the Processor is located in the United Kingdom or the EEA) transfer the Processed Data to a Third Country, or to any International Organisation; or

- 3.4.5.2 (where the Processor is located outside the United Kingdom or the EEA) effect an onward transfer of the Processed Data to a Third Country, or to any International Organisation,
- unless the prior written consent of a Fruugo Controller has been obtained and the following conditions are fulfilled:
- (a) the Processor has, prior to such transfer, established, or procured the establishment of, appropriate safeguards in relation to the transfer of the Processed Data and complied with the provisions of clause 3.13 in respect of any transfers of Processed Data to Sub-Processors in Third Countries for Processing;
 - (b) each Data Subject whose Personal Data is transferred has enforceable rights and effective legal remedies which are enforceable against the Processor, and the Processor has ensured prior to any such transfer that such rights and remedies are available;
 - (c) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection for all Processed Data that is transferred (or procures that such protection is provided); and
 - (d) the Processor complies with all reasonable instructions notified to it in advance of such transfer by the Fruugo Controller with respect to such transfer, including to provide to the Fruugo Controller copies of adequate safeguards such as standard contractual clauses to be used by the Processor and details of transfer impact assessments or other risk assessments undertaken by the Processor in respect of the transfer.
- 3.5 Where the Processor is located outside the United Kingdom or the EEA, the Parties shall put in place appropriate safeguards in relation to the transfer of the Processed Data, and the Processor shall assist the Fruugo Controllers with carrying out such transfer impact assessments or other risk assessments as are required under Data Protection Laws in respect of the transfer.
- 3.6 Taking into account the nature of the processing, the Processor shall assist the Fruugo Controllers by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Fruugo Controllers' obligation to respond to requests for exercising data subject's rights, including Data Subject Access Requests.
- 3.7 Subject to Clause 3.8, the Processor shall notify the Fruugo Controllers immediately if it:
- 3.7.1 receives any Data Subject Access Request (or purported Data Subject Access Request);
 - 3.7.2 receives any request to rectify, block or erase any Processed Data;
 - 3.7.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 3.7.4 receives any communication from any Supervisory Authority or any other regulatory authority in connection with Processed Data;
 - 3.7.5 receives a request from any third party for disclosure of Processed Data where compliance with such request is required by Law; or
 - 3.7.6 becomes aware of any Personal Data Breach (and such notification shall be made not later than twenty-four (24) hours following the Processor becoming aware of each Personal Data Breach).
- 3.8 The Processor's obligation to notify the Fruugo Controllers under Clause 3.7 shall include an obligation to provide information in accordance with Clause 3.9, and an obligation to provide further information to the Fruugo Controllers in phases, as further details become available.
- 3.9 The Processor shall assist and co-operate with the Fruugo Controllers in relation to the Fruugo Controller's compliance with its obligations under Data Protection Legislation (including each complaint, communication or request made under Clause 3.6 as well as any other complaint, communication or request relating to any Processed Data), and shall do so within the timescales reasonably required by the Fruugo Controller. In particular the Processor shall promptly provide the Fruugo Controller with:
- 3.9.1 full details and copies of each complaint, communication or request received by the Processor (or received by the Fruugo Controller and relating to any Personal Data);
 - 3.9.2 such assistance as is reasonably requested by the Fruugo Controllers to enable the Fruugo Controller to comply with each Data Subject Access Request within the relevant timescales specified in or under the Data Protection Legislation;
 - 3.9.3 copies of any Processed Data specified by the Fruugo Controllers, and details of the Processing of such Processed Data by or on behalf of the Processor;
 - 3.9.4 assistance as requested by the Fruugo Controllers in relation to any Personal Data Breach, including in relation to any notifications to Supervisory Authorities or affected Data Subjects;

- 3.9.5 assistance to ensure that Processing of Processed Data by or on behalf of the Processor complies with any exercise by any relevant Data Subject of any of his or her rights under Data Protection Legislation, including to ensure that the Personal Data relating to such Data Subject is (for example) deleted and/or rectified and/or made subject to restrictions in accordance with such exercise of such rights; and
 - 3.9.6 assistance as requested by the Fruugo Controllers with respect to any request from a Supervisory Authority, or any consultation by the Fruugo Controllers with a Supervisory Authority.
- 3.10 The Processor shall maintain complete and accurate records and information of the Processing it carries out in connection with this Agreement, which shall contain as a minimum:
- 3.10.1 its details, the Fruugo Controllers' details and the details of the Processor's data protection officer (if applicable) or, if the Processor is not subject to a mandatory requirement under Data Protection Legislation to appoint such an officer, the details of the person who has overall responsibility for the Processor's compliance with the Data Protection Legislation;
 - 3.10.2 the categories of Processing of the Processed Data that are carried out by or on behalf of the Processor;
 - 3.10.3 the details of any transfers to any Third Countries, where applicable, and the safeguards in place for each such transfer; and
 - 3.10.4 accurate records of the technical and organisational measures that the Processor has in place in accordance with clause 3.4.3.
- 3.11 The Processor shall make available to the Fruugo Controllers on request (and within three (3) days) all information necessary to demonstrate compliance by the Processor and the Fruugo Controller with their respective obligations under Data Protection Legislation (including the copies of the records referred to in clause 3.10), and allow for and contribute to audits, including inspections, of its Processing activities (including the records maintained under clause 3.10) by the Fruugo Controller or the Fruugo Controller's designated auditor. The Fruugo Controller's rights under this clause 3.11 include a right for a Fruugo Controller, or its designated auditor, to access premises used by or on behalf of the Processor, and to access and interview any Processor Personnel.
- 3.12 Each Party shall designate its own data protection officer if required by the Data Protection Legislation or (if not so required) shall designate one of its senior managers as being responsible for overseeing and managing the Party's compliance with Data Protection Legislation.
- 3.13 Before allowing any Sub-Processor to Process any Processed Data, the Processor must:
- 3.13.1 notify the Fruugo Controllers in writing of the intended Sub-Processor and Processing;
 - 3.13.2 obtain the written consent of the Fruugo Controllers to the Processor appointing or using the proposed Sub-Processor to Process certain Processed Data;
 - 3.13.3 enter into a written agreement with the Sub-Processor which appoints the Sub-Processor on terms and conditions that comply with Data Protection Legislation and are no less onerous on the Sub-Processor, and no less protective of the Personal Data and of Data Subjects, than the provisions of this Agreement (and provide comprehensive details of such agreement to the Fruugo Controllers on request); and
 - 3.13.4 provide the Fruugo Controllers with such information regarding the proposed Sub-Processor as the Fruugo Controllers may reasonably require.
- 3.14 If any authorisation is given under clause 3.13.2, the Processor shall not make any changes concerning the addition or replacement of other Processors without first obtaining a Fruugo Controller's written consent to such changes.
- 3.15 The Processor shall remain fully responsible for, and liable in respect of, all acts or omissions of its Sub-Processors.
- 3.16 The Fruugo Controllers may, at any time on not less than thirty (30) days' notice, amend this Clause 3 by replacing it with any applicable Fruugo Controllers to Processor standard clauses approved by a Supervisory Authority or other relevant approving authority.
- 3.17 In the event of a notification under clause 3.7.6, the Fruugo Controllers shall at its sole discretion determine whether to provide notification to the Data Subject, any third party or Supervisory Authority, and the Processor shall not notify the Data Subject, any third party or Supervisory Authority unless such disclosure is required by Law or is otherwise approved by the Fruugo Controllers.
- 3.18 At the written direction of the Fruugo Controllers given at any time (whether during the continuance of this Agreement, on the termination or expiry of this Agreement, or at any time after its termination or expiry), the Processor shall promptly (and in any event within three (3) days) securely return to the Fruugo Controller and, if and when the Fruugo Controller specifies, securely delete, the Processed Data or any part of it that is specified by the Fruugo Controller (together with all copies of such Processed Data), unless the Processor is required by Law to retain the Processed Data (in which case it shall securely erase it as soon as such legal requirement has been fulfilled).

- 3.19 Nothing in this clause 3 shall relieve the Processor of its own direct responsibilities and liabilities under the Data Protection Legislation, where applicable.
- 3.20 The Parties agree to take account of any guidance issued by the Information Commissioner. The Fruugo Controllers may on not less than thirty (30) days' notice to the Processor amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner.
- 3.21 In relation to processing by a Party of Personal Data of the other Party's staff or representatives for contract administration purposes, each Party does so as an independent controller and shall do so in compliance with their respective obligations under Data Protection Legislation.

4. DISPUTE RESOLUTION

- 4.1 The Parties intend for the dispute resolution procedures set out in the Fruugo General Terms And Conditions to apply to this Agreement.

5. VARIATION

- 5.1 Subject to Clauses 3.16 and 3.20, any amendment or variation to this Agreement shall be in writing and signed by duly authorised representatives of each of the Parties.
- 5.2 If the Data Protection Legislation changes in a way that the Agreement is no longer adequate for the purpose of governing lawful Processing exercises, the Parties agree they will negotiate in good faith to review the Agreement in the light of the new legislation.

6. NOTICES

- 6.1 Any notice or other communication given by either Party under or in connection with this Agreement shall be in writing and shall be:
- 6.1.1 delivered by hand, courier or by recorded post or other next working day recorded delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 6.1.2 sent by email to the following addresses: dpo@fruugo.com and [Party 2 address]].
- 6.2 Any notice or communication shall be deemed to have been received:
- 6.2.1 if delivered by hand or courier, on the date on which the delivery receipt is signed;
- 6.2.2 if sent by recorded post or other next working day recorded delivery service, at the time recorded by the delivery service; and
- 6.2.3 if delivered by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume,

and in this clause 6.2 "business hours" means 9.00am to 5.00pm Monday to Friday on a working day, and in this clause 6 "working day" means that is not a weekend or public holiday in the place of receipt.

- 6.3 This clause 6 shall not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

7. SEVERABILITY

- 7.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 7.2 If any provision or part-provision of this Agreement is deemed deleted under Clause 7.1, the Parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

8. WAIVER

- 8.1 No failure or delay by any Party to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right to remedy.

9. THIRD PARTY RIGHTS

- 9.1 A person who is not a Party to this Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

10. ENTIRE AGREEMENT

- 10.1 This Agreement, together with the Fruugo Agreement, supersedes all prior representations and agreements between the Parties (whether written or oral) relating to the subject matter of the Agreement and sets forth the entire agreement and understanding between the Parties.
- 10.2 Each Party warrants to the other that it has not relied on any representation or agreement (whether written or oral) not expressly set out or referred to in the Agreement or the Fruugo Agreement.

11. COUNTERPARTS

11.1 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by the Parties shall constitute a full original of this Agreement for all purposes.

12. GOVERNING LAW AND JURISDICTION

12.1 Each Party submits to the exclusive jurisdiction of the English courts and agrees that the Agreement is to be governed and construed according to English law. This Agreement has been entered into on the date stated above.

ANNEX 1

DATA PROCESSING

Description	Details
Subject matter of the Processing	Shopping transactions placed by buyers of Fruugo.com on a website operated by Fruugo.com Ltd.
Duration of the Processing	Until terminated under the terms of the Data Processing Agreement
Nature and purposes of the Processing	To fulfil the Buyer transactions by shipping goods to Buyers
Type(s) of Personal Data	Buyer Name; Buyer Address; Buyer E-Mail Address; Buyer Order Reference Number; Buyer Phone Number(s); Buyer Nationality; Buyer Gender
Categories of Data Subject	Consumers; Users of websites operated by Fruugo.com Ltd

SIGNATURE PAGE

IN WITNESS WHEREOF, this Agreement is entered into with effect from the date first set out below.

For Fruugo.com Ltd (a Fruugo Controller)

Signature _____

Name: _____

Title: _____

Date Signed: _____

For Fruugo (Ireland) Limited (a Fruugo Controller)

Signature _____

Name: _____

Title: _____

Date Signed: _____

For (the Processor)

Signature _____

Name _____

Title _____