



## THE KONG COMPANY, LLC AUTHORIZED ONLINE SELLER AGREEMENT

This The Kong Company, LLC Authorized Online Seller Agreement (the “Agreement”) is hereby entered into by and between The Kong Company, LLC (“KONG”) and the undersigned Seller (“Seller,” “you” or “your”) (collectively, the “Parties” and individually, a “Party”). The “Effective Date” of this Agreement is the date this Agreement is accepted by KONG after being agreed to by you. You agree to this Agreement, and are deemed the “undersigned” by signing below.

1. **Modification of the Terms.** By entering into this Agreement, Seller affirms its agreement to adhere to the terms in the currently effective The Kong Company, LLC Authorized Reseller Policy or The Kong Company, LLC Authorized Retailer Policy, as applicable to Seller (the “Terms”). This Agreement supplements, amends, and is deemed incorporated into the Terms. Except as supplemented or amended pursuant to the terms and conditions in this Agreement, the Terms remain unchanged and in full force and effect as written. Unless otherwise defined herein, capitalized terms herein shall have the same meanings ascribed to them in the Terms.

2. **Authorization of Online Sales.**

(a) ***Authorization of Online Sales.*** Other than websites that may be defined in the Terms as “Permissible Websites,” the Terms prohibit the sale of the Products on any publicly accessible website without KONG’s prior written consent. Execution by KONG of this Agreement constitutes KONG’s consent, and the various provisions in the Terms pertaining to such prohibition are deemed amended in order to effectuate such approval. Subject to and to the extent provided by the terms and conditions herein, you may market for sale and sell Products solely and exclusively at the website(s) identified as approved by KONG in the Application for Website Approval above or designated as Permissible Websites in the Terms (collectively, the “Authorized Websites”). You are prohibited from marketing for sale and/or selling Products on any other publicly accessible website.

(b) ***Authorized Websites.***

(i) Your Authorized Websites must be confined to the specific approved domain name(s) and/or screen name(s) or storefront name(s). You may not use any KONG trademark or product name, nor any misspelling of any KONG trademark or product name, in the construction of your domain name, including top-level domains and sub-domains, for any part of your Authorized Websites, or in the construction of any screen name or storefront name used on an Authorized Website.

(ii) You may not sell online anonymously. The full legal name, mailing address, email address, and telephone contact of your business must be clearly indicated on your Authorized Websites and must be included with any shipment of Products from your Authorized Websites.

(iii) At KONG’s request, you will reasonably cooperate in demonstrating and/or providing access to, and copies of, all web pages that comprise your Authorized Websites. In your marketing and descriptions on your Authorized Websites, all Product images and descriptions must be kept up to date. You must remove outdated Product images and descriptions.

(iv) Your Authorized Websites must have a mechanism for receiving customer feedback and you agree to use reasonable efforts to address all customer feedback received. You also agree to provide copies of any information related to customer feedback, including your responses, to KONG for review upon request. You shall retain all records relating to customer feedback for at least one year from the date of the last communication (whether from a customer or from you) pertaining to a specific customer’s feedback. Further,

you agree to cooperate with KONG in the investigation of any negative online product review associated with your sale of Products.

(v) As of the Effective Date and throughout the term of the Agreement, when selling Products on your Authorized Websites, you shall (A) be in compliance with all applicable privacy and data security laws, regulations and industry standards including, but not limited to, the Payment Card Industry Data Security Standard (“PCI DSS”); (B) maintain detailed privacy policies and be in compliance with your privacy policies and the requirements of any contract to which you are a party; and (C) have implemented and maintain written information security guidelines, which include physical, administrative and technological controls designed to prevent the unauthorized access to, disclosure, destruction, or loss of personally identifying information.

(vi) Your Authorized Websites shall be compliant and will maintain compliance with the World Wide Web Consortium Web Content Accessibility Guidelines 2.0 at the AA level, or, in the absence of a AA level standard, at the A level.

(vii) To the extent that one or more of your Approved Websites is a storefront on a third-party marketplace website, including, but not limited to storefronts on Amazon, eBay, Jet, Rakuten, Walmart Marketplace, or Sears Marketplace, KONG reserves the right to require Seller to adhere and agree to additional terms relating to the quality and sale of Products through such storefronts.

### 3. **Product Fulfillment and Sales.**

(a) In your sales of Products from your Authorized Websites, you acknowledge and agree that you are responsible for all fulfillment to your individual customers, any applicable taxes associated with such individuals’ purchases of Products, and any returns of Products.

(b) Unless separately authorized in writing by KONG, Seller may not use any third-party fulfillment service to store inventory or fulfill orders for the Products. Under no circumstances shall Seller fulfill orders in any way that results in the shipped Product coming from stock other than the Seller’s.

(c) Seller agrees not to represent or advertise any product as “new” that has been returned or repackaged.

4. **Intellectual Property.** KONG grants you a non-exclusive, non-transferable, revocable, limited license to use those KONG trademarks, trade names, service marks, logos, and trade dress separately authorized in writing by KONG (collectively for this Agreement, “KONG IP”) solely for purposes of performing marketing under this Agreement on your Authorized Websites; provided, however, KONG may review and approve your intended or current use of such KONG IP at any time, without limitation. You acknowledge that you own no right, title, or interest in any of the KONG IP except as granted herein. This license shall be revoked immediately upon termination of this Agreement. Your use of KONG IP shall be in conformance with any guidelines that may be provided by KONG and must be commercially reasonable as to the size, placement, and other manners of use. All goodwill arising from your use of KONG IP shall inure solely to the benefit of KONG.

5. **Termination.** KONG, in its sole and absolute discretion, may terminate its approval for you to market and sell Products at one or all of your Authorized Websites, and you must cease all such marketing and sales immediately on the applicable Authorized Website(s) upon receiving notice of such termination. Upon termination of your approval to market and sell Products at one or more Authorized Websites, your authorization to use KONG IP on such websites shall be revoked. KONG may terminate this Agreement with written notice at any time. On termination of your status as an Authorized Reseller or Authorized Retailer pursuant to the Terms, this Agreement shall terminate automatically, and you must immediately cease all marketing and sales of Products on your Authorized Websites.

6. **Availability of Injunctive Relief.** If there is a breach or threatened breach of Sections 2 (Authorization of Online Sales), 3 (Product Fulfillment and Sales), 4 (Intellectual Property), or 5 (Termination) of this Agreement, it is agreed and understood that KONG will have no adequate remedy in money or other damages and accordingly shall be entitled to injunctive relief and other equitable remedies; provided, however, no specification in this Agreement of any particular remedy shall be construed as a waiver or prohibition of any other remedies in the event of a breach or threatened breach of this Agreement. No failure, refusal, neglect, delay, waiver, forbearance, or omission by KONG to exercise any right(s) herein or to insist upon full compliance by Seller with Seller's obligations herein shall constitute a waiver of any provision herein or otherwise limit KONG's right to fully enforce any or all provisions and parts thereof

7. **Indemnification.** Except as otherwise provided herein, Seller shall, and hereby does, indemnify, defend, save and hold harmless KONG, and its directors, officers, employees, shareholders, partners, counsel, auditors, accountants, agents, advisors and all other representatives and each of the heirs, executors, successors and assigns of any of the foregoing, from and against any and all losses, liabilities, obligations, actions, causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims, and demands whatsoever, in law, admiralty, or equity, known or unknown of any kind to the extent they are caused by, arise from, or are incurred in connection with (a) any breach of, or failure to perform, any term, covenant or condition in the Agreement by Seller, or (b) the negligence or willful misconduct of Seller or its officers, employees, agents or contractors.

8. **Miscellaneous.**

(a) KONG reserves the right to update, amend or modify this Agreement upon written notice to Seller. Unless otherwise provided, such amendments will take effect immediately and Seller's continued use, advertising, offering for sale, or sale of the Products on the Authorized Websites following notice of the amendments will be deemed Seller's acceptance of the amendments.

(b) No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, nor shall it constitute a course of dealing and no waiver shall be effective unless made in writing. If any provision of this Agreement is held contrary to law, the remaining provisions shall remain valid.

(c) This Agreement may not be assigned or transferred by Seller without the prior, written consent of KONG. KONG is entitled to assign this Agreement, in whole or in part, without Seller's consent to any KONG-affiliated company or to any entity to which KONG sells, transfers, conveys, assigns, or leases all or substantially all of its rights and assets with respect to the development, production, marketing, or sale of the Products. This Agreement is intended for the benefit of the Parties and their permitted assigns, and no other person will be entitled to rely upon this Agreement or be entitled to any benefits under this Agreement.

(d) This Agreement, the Terms and their attachments, if any, constitute the entire agreement between the Parties regarding the contemplated transactions and supersedes all prior agreements and understandings between the Parties relating to the sale of the Products online.

(e) The descriptive headings and sections of this Agreement are inserted for convenience only, and shall not control or affect the meaning or construction of any of the provisions hereof. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the same will not apply a presumption that the terms hereof will be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent prepared the same, it being agreed that all Parties, directly or through their agents, have participated in the preparation or negotiation hereof.

(f) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

9. **Governing Law and Venue.** The terms of this Agreement and any dispute arising under it shall be governed by, construed, and enforced in accordance with the laws of the State of Colorado, without regard to its choice of law rules. In the event of a dispute over the terms or performance under this Agreement, Seller expressly submits to personal jurisdiction and venue in the state courts in Jefferson County, Colorado and the U.S. District Court for the District of Colorado.

10. **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES EACH HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THE PARTIES' ACTIONS IN THE NEGOTIATIONS, ADMINISTRATION, OR ENFORCEMENT HEREOF OR THEREOF. THE PARTIES ACKNOWLEDGE THAT SUCH WAIVER IS MADE WITH FULL KNOWLEDGE AND UNDERSTANDING OF THE NATURE OF THE RIGHTS AND BENEFITS WAIVED HEREBY, AND WITH THE BENEFIT OF ADVICE OF COUNSEL OF ITS CHOOSING.

The Parties have caused this The Kong Company, LLC Authorized Online Seller Agreement to be executed in their respective names by their duly authorized representatives.