

WHOLESALEERS (IBO) AGREEMENT

THIS AGREEMENT made the _____ day of _____
2018.

BETWEEN: Tessarella House Pty Ltd (ACN: 615 433 899) a company incorporated in Australia and having its registered office at Unit 19, 20-28 Maddox Street, Alexandria NSW 2015 (**hereinafter referred to as “TH”**);

AND: [Name of wholesaler _____] of [address _____]
(**hereinafter referred to as “the wholesaler” and/or “IBO”**)

RECITALS:

- A. TH carries on the business described in Part A of the Schedule (the “Business”) and has decided to appoint wholesalers (Independent Business Operators [“IBO’s”]) for the purpose set out in Part B of the Schedule (the “Purpose”) during the period set out in Part C of the Schedule (the “Term”) and on the terms contained in this Agreement.
- B. The wholesaler has agreed to act in accordance with the terms and conditions expressly set out in this Agreement within Australia as set out in Part D (the “Territory”).
- C. The words “wholesaler” and “IBO” are interchangeable and refer to any male or female who becomes registered with TH and apply both singularly and in the plural sense.

THE PARTIES AGREE AS FOLLOWS:

1. APPOINTMENT OF WHOLESALE AND RELATIONSHIP

- 1.1. TH hereby appoints the wholesaler as an Independent Business Operator (IBO) to sell its products at prices determined by TH and prescribed in Part E of the Schedule (the “RRP”).
- 1.2. The wholesaler hereby accepts its appointment as wholesaler without obligation to sell TH products during the Term and

acknowledges that its authority to act as an IBO is limited to those Powers set out in Part F of the Schedule or as amended from time to time by agreement in writing between the Parties.

- 1.3. This appointment does not create any relationship between the wholesaler and TH other than the wholesaler relationship created by this Agreement. In particular there is no joint venture, partnership, agency, or employment relationship between TH and the wholesaler.
- 1.4. Whilst the Service may involve one or more of the following; the promotion of, marketing of, introduction of or sale to potential or existing customers of TH of any of its products or services, including by the wholesaler for personal use, the wholesaler will in all those activities be acting as an ambassador of TH and not as a principal in its own right of the Business.
- 1.5. The wholesaler acknowledges that it owes a duty to promote the interests of TH at all times but otherwise the wholesaler is in no way restricted as to what products or services made by other companies it sells, whether in direct opposition or not, to TH.
- 1.6. The wholesaler may share the cost of becoming an IBO with as many other persons as the wholesaler likes, however, only the wholesaler who is party to this Agreement shall be recorded as the IBO and registered within TH's system. Where there is more than one person contributing to the IBO fee, any and all such persons are bound by the terms and conditions contained within this Agreement and it is the sole responsibility of the IBO to make these other persons aware of same by providing a copy of this Agreement and/or recommending that they read it.

2. WHOLESALER FEES AND EXPENSES

- 2.1. The wholesaler shall bear and be responsible for all usual and operating expenses involved in the provision of the Service. Without limiting the generality of what are usual and normal operating expenses, the wholesaler acknowledges that these include:

- 2.1.1. wages, salaries and bonuses, superannuation and other expenses of any employees and agents it may engage;
 - 2.1.2. all computer equipment, motor vehicles, travel expenses and accommodation expenses alike;
 - 2.1.3. all costs, premiums and other payments in any way related to any insurances that are in any way associated with the wholesaler's business;
 - 2.1.4. all entertainment costs associated with the wholesaler's business in providing the Service;
 - 2.1.5. all taxes whether incurred in Australia or elsewhere in any way relating to the revenue earned by the wholesaler and/or the wholesaler's staff or agents including all income taxes, payroll taxes and fringe benefits taxes;
 - 2.1.6. all general expenses associated with the provision of the Service by the wholesaler including the purchase of products from TH. No credit shall be given and product is only ever supplied after payment has been received.
- 2.2 TH may at any time in writing extend the Powers as set out in Part F of the Schedule at TH's absolute discretion. Unless the wholesaler's activities or conduct are expressly authorized as part of the Powers or TH has in writing expressly authorized such conduct, the wholesaler must not exceed the Powers set out in Part F in any of its dealings in acting as wholesaler for TH. The wholesaler hereby indemnifies and agrees to keep indemnified TH, it's principals, shareholders and agents against any loss, liability, cost or expense which the wholesaler might suffer or incur as a direct or indirect consequence of any breach of this subclause by the wholesaler. A breach of this subclause constitutes a breach by the wholesaler of an essential term of this Agreement and entitles TH to terminate this Agreement in accordance with Clause 8 following.

3. COMPLIANCE CONDITIONS

- 3.1 The wholesaler represents to TH that during the Term it will comply with all employment laws, occupational health and safety laws, pay all taxes and duties it is obligated to pay as and when the same fall due, maintain all required insurances (if any) and contribute to any statutory superannuation payments which by

law it is obliged to pay and otherwise meet all its legal obligations if any exist.

- 3.2 The wholesaler shall not in any of its dealings or activities with potential customers or customers or any other person in providing the Services engage in conduct that is misleading or deceptive or likely to mislead or deceive any person in any way including but without limitation, as to the nature, quality, origin, specification, use, maintenance or standards of any of the products or services of TH or otherwise as to the Business, brand or principals of TH. If the wholesaler breaches this subclause, the wholesaler shall indemnify TH against any loss it might suffer or incur as a direct consequence of such breach. A breach of this subclause is a breach of an essential term of this Agreement.

4 TH'S AND WHOLESALER'S BUSINESS

- 4.1. The wholesaler must follow all reasonable and lawful direction given by TH relating to the Service. Notwithstanding, TH acknowledges that the wholesaler is not obligated to sell any product, nor required to make appointments or do anything whatsoever toward the marketing and sale of TH's products. Such activity is entirely at the wholesaler's discretion.
- 4.2. Subject to this Clause 4, TH acknowledges that the wholesaler is free to carry on any and all businesses and activities of its own as it deems appropriate.
- 4.3. The wholesaler and TH jointly acknowledge that they stand in a fiduciary relationship and accordingly agree never to deliberately act in conflict with the other nor damage the other in any way.
- 4.4. Neither TH nor the wholesaler shall at any time disparage or bring the other, the Business including other merchants' products or services sold by TH, or the products or services of TH into disrepute.

5. CONFIDENTIALITY

- 5.1. The wholesaler undertakes to keep strictly confidential its login details, identification number and any information which is expressed to be confidential by TH or is by its nature confidential.

The wholesaler further undertakes and promises to TH that it will only use such information in good faith and for the proper and lawful performance of its obligations under this Agreement.

- 5.2. Neither party may share or give access to any confidential information to any third party without the express prior written consent of the other party to this Agreement.
- 5.3. Each party acknowledges that damages alone would not be a sufficient remedy for a breach of this clause or a threatened breach of this clause, and that any breach or threatened breach entitles the party whose confidential information is disclosed or threatened to be disclosed in breach of this clause to seek injunctions, damages and such other orders as may be necessary to protect its confidential information which includes but is not limited to the designs of the products TH sells.
- 5.4. A breach of this clause is a breach of an essential term entitling the party not in breach to terminate this Agreement.

6. INTELLECTUAL PROPERTY

- 6.1. Nothing in this Agreement gives the wholesaler interest or right in the intellectual property of TH.
- 6.2. During the Term the wholesaler may use the logos, designs, brochures and any marketing, advertising or promotional materials that TH provides to it.

7. GOOD FAITH AND COOPERATION

- 7.1. Each of the parties undertakes to the other that in all their activities and in the performance of their obligations and exercise of their rights under this Agreement they will at all times act in good faith towards the other party and have regard to the reasonable benefits and entitlements which the other party may expect from this Agreement.
- 7.2. Notwithstanding subclause 7.1, should a party breach any of the terms of this Agreement then the party not in breach will not be constrained or prevented from taking any action which it deems

prudent or reasonable to protect its rights and in those circumstances, subclause 7.1 does not apply.

8. TERM AND TERMINATION

- 8.1. This Agreement shall formally commence as at the date of execution and continue in perpetuity (the Term) unless terminated by either party to this Agreement.
- 8.2. Either party may terminate this Agreement at any time if the other party commits a breach of an essential term by giving written notice to the other party setting out the essential term that has been breached and the details of said breach. Such termination will take effect immediately upon the service of such notice of termination.
- 8.3. In all circumstances where a clause that is not an essential term of this Agreement has been breached, the party not in breach will be entitled to give written notice to the other party requiring the breach to be remedied and if it is not remedied within the prescribed seven (7) days the party not in breach may terminate this Agreement.
- 8.4. Upon termination the wholesaler may retain any and all product which has been paid for. The product may be sold at the RRP determined by TH thereafter, however, effective from the date of termination, the wholesaler shall no longer be able to purchase product from TH at wholesale prices and the wholesaler's IBO registration shall be revoked.
- 8.5. Termination of this Agreement means that neither party shall have any further obligation to the other as it shall be construed that there is no longer any commercial arrangement on foot between them.
- 8.6. An essential term of this Agreement is a term that is specifically identified as an essential term or is a term of this Agreement which by its nature is of fundamental importance to either party and if not included, that party would not have entered into this Agreement.

9. WAIVERS AND VARIATIONS

- 9.1 No party shall be deemed to have waived any breach or its entitlement to expect compliance with any clause of this Agreement unless such waiver is in writing signed by the party waiving such breach or non-compliance.
- 9.2. No variation or amendment may be made to this Agreement without it being made in writing and signed by all the parties to this Agreement.

11. INDEPENDENT LEGAL ADVICE

- 11.1. The parties acknowledge and represent to each other that they have had the opportunity to seek separate and independent legal advice as to the terms of this Agreement and as to the rights conferred and obligations imposed upon them. If any party elects not to obtain such independent legal advice then it enters into this Agreement on the understanding that it will not be entitled to rely upon any failure to seek such advice to avoid any obligation or liability under this Agreement.

12. WHOLE AGREEMENT

- 12.1. The parties acknowledge that the express terms of this Agreement represent the whole Agreement made between them and that there are to be no implied terms whether implied by statute or law in this Agreement and to the fullest extent possible all implied terms that can be expressly excluded are hereby so excluded. Nothing in this clause purports to exclude any term which under statute cannot be excluded.
- 12.2. This Agreement supersedes any other prior agreement between the parties whether written or oral.

13. JURISDICTION

- 13.1. This Agreement shall be construed in accordance with the laws of Australia and in particular the laws of the State of New South Wales. Each party to this Agreement expressly consents to the jurisdictions of the Courts of New South Wales for the purposes of determining any dispute arising out of this Agreement.

EXECUTED by the Parties as an Agreement on the _____ day of
_____ 2018.

SIGNED BY

Name:

Authorised representative of Tessarella House Pty Ltd

Signature of Witness

Print Name:

SIGNED BY:
(Wholesaler)
IBO #:

Signature of Witness

Print Name:

SCHEDULE

PART A - The Business

TH makes and sells statement jewellery designed and made by us as well as product made by outside suppliers.

PART B - The Purpose

There are no performance requirements under this Agreement however, the wholesaler is encouraged to take good care of the product and to present it favourably whether wearing it personally and/or attempting to sell it.

PART C - The Term

This Agreement shall continue in perpetuity unless terminated by either party in accordance with clause 8. Term and Termination.

PART D - The Territory

Australia

PART E - The RRP

The wholesaler may sell TH's product at the prices prescribed by TH (Recommended Retail Price) and promoted via the company's website and/or in the general course of business. The wholesaler shall at all times attempt to be familiar with the RRP of any and all items the wholesaler may expect to sell.

PART F - The Powers

The wholesaler is authorized to promote and sell TH's products and/or services and to create sales and general commercially advantageous opportunities for same within the Territory. The wholesaler has the opportunity to introduce other IBOs to TH and will receive a commission of ten percent (10%) of the gross registration fee for every 'successful introduction'. A successful introduction is construed as having been made once an IBO has been accepted and has subsequently paid the full registration fee to TH.