

**COMPREHENSIVE WALMART MARKETPLACE PROGRAM
RETAILER AGREEMENT**

(Terms and Conditions for Walmart Marketplace Program, Walmart Fulfillment Services, and Walmart Ad Center)

ARTICLE I: INTRODUCTION

Welcome to the Walmart.com Marketplace Program.

The terms contained in Article I apply to all Walmart Marketplace Retailers.

This Comprehensive Walmart Marketplace Program Retailer Agreement (“**Agreement**”) consists of (1) the Walmart Marketplace Terms and Conditions (“**Walmart Marketplace Terms and Conditions**”), (2) the Walmart Fulfillment Services Terms and Conditions (if you select to participate in WFS Services (as defined herein)), (3) the Multichannel Fulfillment Services Terms and Conditions (if you select to participate in Multichannel WFS Services (as defined herein)), (4) the Walmart Ad Center Platform Terms of Use (if you participate in the Walmart Ad Center (as defined herein)), and (5) all [Walmart.com Marketplace Program polices and guidelines for Retailers](#) and other policies referenced herein (together, the “**Retailer Policies**”), which are incorporated by reference.

This Agreement applies to any entity (“**Retailer**” or “**you**”) that wants to sell goods or services (“**Products**”) in the Walmart.com Marketplace through the Walmart.com site or any Walmart applications (“**Walmart.com Sites**”), use any order processing, fulfillment, shipping, returns, or other services related to the Walmart.com Marketplace provided by or for Walmart, including, but not limited to Walmart Ad Center (as defined in Article IV) (“**Walmart.com Services**”), or use any platform, portal, web service, application, interface, or other tool provided by or for Walmart.com in connection with the Walmart.com Marketplace (“**Walmart.com Tools**”). The Walmart.com Sites, the Walmart.com Services and Walmart.com Tools shall be collectively known as the Walmart.com Marketplace Program, the Walmart.com Marketplace, or the Marketplace Program.

By submitting your application, clicking the “I’ve read and agree to the Terms for Walmart Marketplace, Walmart Fulfillment Services, and Walmart Ad Center” check box which you are prompted to click or by offering any Products for sale on the Walmart.com Marketplace, using any of the Walmart.com Services, or using any of the Walmart.com Tools, you agree to be bound by all terms and conditions of this Agreement (including the Retailer Policies), as this Agreement (or the Retailer Policies) may be updated from time to time in accordance with this Agreement. You represent and warrant that you are registering with the Walmart.com Marketplace on behalf of an entity and that you have the requisite right, power, and authority to enter into this Agreement on behalf of the entity you register with the Walmart.com Marketplace. You represent and warrant that you will update all of the information you provide to us in connection with the Walmart.com Marketplace, Walmart.com Services and Walmart.com Tools as necessary to ensure that it at all times remains accurate, complete, and valid. You authorize us (and will provide us documentation evidencing your authorization upon our request) to verify your information (including any updated information) from time to time.

Walmart.com may change this Agreement or the Retailer Policies, including by introducing entirely new terms on subjects not previously addressed, at any time in its sole discretion. The changes will be effective upon posting of such updates in Seller Center, which is the primary web-based interface provided to you by Walmart.com as part of the Marketplace Program. You are responsible for reviewing such postings

and any applicable changes. Your continued participation in the Marketplace Program, including offering any Products for sale on the Walmart.com Marketplace, using any of the Walmart.com Services, or using any of the Walmart.com Tools constitutes your acceptance of such changes. If you do not agree to any posted changes, do not continue to use the Walmart.com Marketplace, the Walmart.com Services, or the Walmart.com Tools.

ARTICLE II: WALMART MARKETPLACE PROGRAM TERMS AND CONDITIONS

The terms contained in Article II apply to all Walmart Marketplace Retailers.

1. Walmart.com's Role

Walmart.com, through the Walmart.com Marketplace Program, provides the Walmart.com Sites, Walmart.com Tools, and Walmart.com Services to enable you to sell your Products to third party buyers ("**Customers**"). You may only sell those Products you have the legal right to sell and must do so consistent with the terms and conditions of this Agreement. All transactions with Customers are between you and the Customer, and you will be the seller of record. Walmart.com is not a party to any transactions although Walmart.com will provide the Walmart.com Services in connection with the transactions as expressly set forth in Section 6. You acknowledge and agree that Walmart.com may contract with third party service providers to provide Walmart.com Services, management software and other services for the Walmart.com Marketplace Program.

2. General Product Policy

(a) **Product Guidelines.** The Walmart Marketplace Terms and Conditions describe certain general obligations regarding Products you may and may not list on the Walmart.com Marketplace. The [Prohibited Products Policy](#) provide more detail regarding Walmart.com's product requirements. You will not list, market, promote, offer for sale, or sell any Products through the Walmart.com Sites in violation of this Agreement (including the [Prohibited Products Policy](#)).

(b) **Abiding by the Law.** You will (and you represent and warrant that you will) comply with all applicable "**Laws**" (meaning all applicable laws, regulations, legal requirements, and generally accepted industry standards and self-regulatory principles), including Laws related to marketing, packaging, consumer and product safety, product testing, labeling, and pricing in connection with this Agreement; your use of the Walmart.com Marketplace, the Walmart.com Services, and the Walmart.com Tools, and your marketing, promotion, offering for sale, or selling any Products through the Walmart.com Marketplace. Upon Walmart.com's request, you will promptly provide Walmart.com with (i) certificates of authenticity (or similar documentation) for Products, (ii) documentation (e.g. email verifications from the brand owner or supplier) showing that you have a legal right to sell the Products through the Walmart.com Sites, (iii) documentation (e.g. email verifications from applicable rights holders) showing that you are licensed or otherwise have a right to use any Retailer Product Content (as defined below), and (iv) any other information or documentation requested by Walmart.com.

(c) **U.S. Only.** You will only offer Products for sale on the Walmart.com Sites that may legally be sold and shipped in all U.S. states.

(d) **Legal Right to Sell.** You may sell a Product on Walmart.com through the Marketplace Program if you are an authorized reseller of that Product, or purchased or otherwise legally acquired that Product from an authorized reseller of that Product, or otherwise have a legal right to sell that Product.

(e) **Product Authenticity.** You may only sell Products through the Marketplace Program that are authentic. You will maintain adequate processes and procedures for conducting diligence to assure that Products are authentic, authorized for sale, and not stolen, counterfeit, illegal or misbranded. You may not (and you represent and warrant that you will not) list any Product or Retailer Product Content on the Walmart.com Sites or through the Marketplace Program that is counterfeit, illegal, stolen, or fraudulent, or infringes any third-party “**Intellectual Property Rights**” (meaning any patent, copyright, trademark, service mark, trade dress (including any proprietary “look and feel”), trade name, logo, moral right, trade secret and any other intellectual property or proprietary right), or that you otherwise do not have the right to sell. All information you provide about the Product will be accurate, current, and complete and not misleading, deceptive, or fraudulent in any way.

(f) **Prohibited or Restricted Listings.** Walmart.com, in its sole discretion, may remove (but does not have the affirmatively obligation) listings or Retailer Product Content, or prohibit you or ask you to refrain from listing any Products or providing any Retailer Product Content. In addition, Walmart.com may remove your listings in its sole discretion in response to notices of alleged copyright infringement, trademark misappropriation, or other Intellectual Property Rights or other claims. If Walmart.com requests that you remove Products or Retailer Product Content from the Walmart.com Sites, you will make commercially reasonable efforts to remove the Products or Retailer Product Content within 24 hours of such request so that the Products and related Retailer Product Content no longer appear on the Walmart.com Sites. You will not list or include such removed Products or Retailer Product Content on the Walmart.com Sites at any time unless their inclusion is specifically authorized by Walmart.com in writing.

3. Retailer Product Content and Retailer Trademarks

You may provide, link to, or opt into certain product information and any related media, materials, links, images, and other content (together, the “**Retailer Product Content**”) in connection with this Agreement. You represent and warrant that all Retailer Product Content you provide, link to, or opt into is truthful and accurate and is in compliance with all Retailer Policies and that you will not use Retailer Product Content to redirect end users of the Walmart.com Sites to any other sales channels. You hereby grant Walmart.com and its affiliates, and its service providers and marketing partners, a non-exclusive, royalty-free, perpetual, sublicensable, irrevocable right and license (a) to publish, reproduce, display, distribute, transmit and otherwise use Retailer’s name, trademarks, service marks, and logos (“**Retailer Marks**”), and (b) to publish and perform, reproduce, distribute, transmit, display, modify, create derivative works of, and otherwise use and commercially exploit all Retailer Product Content, in each case in connection with the Walmart.com Marketplace Program (including without limitation advertising, marketing and promoting the Products, other products, or the Marketplace Program through the Walmart.com Sites, third party websites, e-mail, social media or any other medium). Walmart.com and its affiliates may permit Customers, other users of the Walmart.com Sites, and other third parties to share and post Retailer Product Content on their websites, applications, and social media outlets. You acknowledge and agree that Walmart.com assumes no responsibility or liability for any Retailer Product Content (including, but not limited to, no responsibility for reviewing or policing such Retailer Product Content or any third party’s use of such Retailer Product Content), and you are solely responsible for the use of your use of the Retailer Product Content.

4. Required Product Information

(a) **Retailer Product Content.** In order to list a Product for sale on the Walmart.com Sites, you must provide all requested Retailer Product Content. You must also provide Walmart.com with all

warnings or disclaimers required to be posted with respect to the Products. If the Product fits into a category that is subject to specific product guidelines, you may be required to provide additional Retailer Product Content and/or documentation or certifications for those types of Products. Additionally, Retailer Product Content provided by you to Walmart.com for the Walmart.com Sites must be of at least the same level of quality as the highest quality information displayed or used on the Retailer Site or any other online sales channel for Retailer's Products and provides users of the Walmart.com Sites with at least as much product information, images and other content as the information provided on the Retailer Site or any other online sales channel for Retailer's Products.

(b) **Inventory Feed.** You will (i) use commercially reasonable efforts to timely provide Walmart.com with an error-free updated inventory feed for those Products where inventory levels have changed since the last inventory feed provided for such Product, and (ii) provide Walmart.com with a daily inventory feed for all Products.

(c) **No Unlicensed Content.** If you do not have but need a license from the brand owner or supplier to use certain content related to a Product, do not provide that content to Walmart.com.

5. Referral Fees and Payment

(a) **Referral Fees.** Walmart.com will earn a referral fee equal to a percentage of the gross sales proceeds from the sale of Products (i) including all shipping and handling, gift wrap, and other charges and (ii) excluding only those taxes separately stated and charged (the "**Referral Fee Percentage**") from each Product sale through the Walmart.com Site (the "**Referral Fee**") as further set forth in the [Referral Fee Schedule](#). Walmart.com will remit to you the total amount it collects from the sale of Retailer's Products, less the Referral Fee, for Products shipped in each 14-day period within 7 days of the end of such 14-day period except as otherwise provided for herein.

(b) **Payment.** At Walmart.com's option, all payments to your bank account will be remitted through an Automated Clearing House system. We may offset any amounts that are payable by you to us against any payments we may make to you, or collect payment from you by any other lawful means. We will impose an initial holding period as a security requirement before funds will be disbursed for new sellers. If Walmart.com concludes that your actions or performance in connection with this Agreement may result in customer disputes, chargebacks, violations of Retailer Policies, risks to Walmart.com or third parties, or other claims, then Walmart.com may, in its sole discretion, delay initiating any remittances and withhold any payments to be made or that are otherwise due to you under this Agreement pending completion of any investigation(s) regarding your actions or performance in connection with this Agreement. If Walmart.com determines that your account has been used to engage in fraudulent, deceptive or illegal activity or repeated violation of Retailer Policies, we may permanently withhold payments to you in our sole discretion. As a security measure, Walmart.com may, but is not required to, impose transaction limits on you or some or all Customers relating to the value of any transaction or disbursement, the cumulative value of all transactions or disbursements during a period of time, or the number of transactions per day or other period of time.

(c) **Set Off.** Further, Walmart.com may recoup, set off, or credit against amounts payable to you all present and future indebtedness of you to Walmart.com arising from this or any other transaction with you or any of your affiliates whether or not related to this Agreement. Walmart.com may also establish a reserve or place a hold on your account.

6. Purchase/Order Processing, Fulfillment, and Shipping

(a) **Order Process.** All transactions with Customers are between you and the Customer, and you will be the seller of record. Customers will place orders (the “**Orders**”) using the Walmart.com checkout system and Walmart.com will collect all proceeds from such transactions on your behalf. You hereby authorize Walmart.com as your authorized agent to accept payment from Customers for remittance to you for the Products, and as such when a Customer pays Walmart.com, it shall be construed as if the Customer will be paying you. The Customer shall never be at risk of loss of funds upon payment to Walmart.com on your behalf. Walmart.com will electronically transmit to you the Order information that Walmart.com determines is necessary to fulfill each Order (the “**Transaction Information**”). Walmart.com will send an automated email message to each Customer confirming receipt of an Order.

(b) **Order Fulfillment.** Once Walmart.com has transmitted an Order to you, you will, at your own expense, be solely responsible for, and bear all liability for, the fulfillment of the Order, including without limitation, packaging and shipping Products and customer service. If you cannot fulfill the entire quantity of a purchase order (“**PO**”) line in an Order, then you will cancel that PO line, fulfill all other lines in the Order and promptly notify Walmart.com of such cancellation. If the Order consists of one PO line that you cannot fulfill the entire quantity for, then you will cancel the entire Order and promptly notify Walmart.com. In the event that you have opted into receive the WFS Services as set forth in Article III below, such obligations set forth within this Section shall not apply to the limited extent such obligations are otherwise covered by the WFS Services as set forth in Article III below.

(c) **Shipping Options.** You are responsible for properly specifying shipping options for all Products through the Walmart.com Tool as requested by Walmart.com. You will provide Walmart.com with the shipping, handling, and any other charges for each Product required by the Walmart.com Tool, separate from the purchase price. You will not enable shipping in the Walmart.com Tool for any Product in any region where the sale of such Product violates any Retailer Policy or applicable Law. In the event that you have opted into receive the WFS Services as set forth in Article III below, such obligations set forth within this Section shall not apply to the limited extent such obligations are otherwise covered by the WFS Services as set forth in Article III below.

(d) **Shipping Process.** You will be responsible for shipping all Products purchased by Customers in accordance with the [Shipping Methods and Timing Policy](#). You will be responsible for all shipping charges and for any costs or charges related to shipping-related problems, including without limitation, damaged or lost Products, late shipments or misdelivery. You will be solely liable for all costs related to any duplicate or inaccurate shipments based upon your retransmission of Order files through any Walmart.com Tool. Packaging for Products may not contain any Retailer marketing materials, and emails sent by you to Customers in connection with an Order will not contain any marketing materials or links to any Retailer or third party website, except for links to shipping websites that permit the Customer to track shipment of their Order. In the event that you have opted into receive the WFS Services as set forth in Article III below, such obligations set forth within this Section shall not apply to the limited extent such obligations are otherwise covered by the WFS Services as set forth in Article III below.

(e) **Shipping Status Reports.** Orders not timely shipped in accordance with the Shipping Methods and Timing Policy may be automatically cancelled by Walmart.com and you will be solely liable and responsible for all Product costs and shipping costs associated with such cancelled Order and you forfeit any claims for any payments of Referral Fee otherwise payable under this Agreement related to such cancelled Orders. In the event that you have opted into receive the WFS Services as set forth in Article III below, such obligations set forth within this Section shall not apply to the limited extent such obligations are otherwise covered by the WFS Services as set forth in Article III below.

(f) **Risk of Fraud or Loss.** Please note that, although Walmart.com will bear the risk of credit card fraud occurring in connection with an Order, you will bear all other risk of fraud or loss and all costs related thereto. For all credit card chargebacks for which you bear the risk, Walmart.com will offset such chargeback amounts against amounts otherwise owed you, or send you an invoice and you will pay such invoice within 30 days of receipt. However, notwithstanding the foregoing, Walmart.com will not bear the risk of credit card fraud in connection with any Product that is not shipped by you to the shipping address specified in the Transaction Information provided by Walmart.com, and you will be responsible for all costs related to such credit card fraud under these circumstances.

7. **Price Adjustments; Cancellations, Returns, Refunds, and Recalls**

(a) **Price Adjustments.** In the event that you include a mistake or error in connection with a Product sold on the Walmart Marketplace, upon receipt of an Order, at Walmart.com's discretion, you may be required to honor such mistake or error and provide the Product to the Customer.

(b) **Return Logistics and Cancellations.** Except as otherwise provided for in Article III, in the event that you participate in WFS Services, you are solely responsible for processing all Customer cancellations, returns, refunds and/or customer service price adjustments. You will stop and/or cancel any Order if requested by Walmart.com; provided that, if you have transferred Products to a shipper, you will use commercially reasonable efforts to stop and or cancel delivery by the shipper. In the event that you participate in the WFS Services, the parties acknowledge and agree that WFS Services shall govern Customer cancellations and returns.

(c) **Improper Returns and Abandonment.** You represent and warrant that you shall include and keep updated with Walmart.com a proper and valid return address for Customer to return Products. In the event that your Products are returned to Walmart.com or a third party, you acknowledge and agree that such Products shall be considered abandoned by you, and Walmart shall have sole discretion to handle the disposition of your Products. You will pay any and all costs incurred by Walmart.com and third parties who improperly receive your Products.

(d) **Return Policy.** Your return and refund policies for Products sold through the Walmart.com Sites will be no less favorable to Customers than your most favorable policies offered on your website ("Retailer Site") for such Products and must comply with the [Returns Policy](#).

(e) **Refunds.** You will be responsible for all non-cash refunds (e.g., store credit, gift cards and exchanges). If you determine a Customer is due a cash refund (e.g., via a refund to the Customer's credit card, debit card, or other form of original payment), you will notify Walmart.com through Seller Center and include other related information requested by Walmart.com. For cash refunds, Walmart.com will provide the refund to the Customer via the Customer's original payment method (e.g., credit or debit card), if possible. You will be responsible for reimbursing Walmart for any cash refunds or adjustments Walmart.com makes to a Customer and Walmart.com, in its sole discretion, will obtain reimbursement from you either (i) via offset of any amounts payable by Walmart.com to you or (ii) by billing you for such amounts.

(f) **Recalls.** Walmart.com will have no responsibility or liability for any recalls of Products sold through the Walmart.com Sites. You are solely responsible for any non-conformity or defect in, or any public or private recall, or any safety alert of Retailer's Products. You will promptly remove any recalled Products from the Walmart.com Sites by unpublishing or retiring the Product through the Walmart.com Tool. You will notify Walmart.com by e-mail at OmnichannelRecallTea@email.wal-mart.com of all Product

recalls within 24 hours of becoming aware of the recall and will promptly provide Walmart.com with all information reasonably requested regarding the recall.

8. Customer Service

(a) **Obligations.** You will be responsible for all customer service, except for issues related to payment as otherwise outlined herein. In performing such customer service, you will always represent yourself as a separate entity from Walmart.com. You will not disparage Walmart.com or its affiliates or its or their products or services when performing customer service obligations or any other obligation under this Agreement. If you monitor or record customer service calls, you must give notice of such monitoring or recording to all Customers during each such call prior to providing any customer service in accordance with applicable Law.

(b) **Adjustments.** Walmart.com reserves the right to provide a customer service adjustment (not to exceed the total amount paid by such Customer in connection with the Products, including without limitation, taxes and gift wrapping and shipping fees) to a Customer that Walmart.com reasonably determines has not been dealt with correctly by your customer service in accordance with the [Customer Care Requirements Policy](#) and offset such amounts against amounts otherwise owed you or by billing you for such amounts.

9. Reporting and Audit Rights

(a) **Reporting.** You will, within a reasonable period of time (not to exceed 30 days) following request from Walmart.com, provide Walmart.com with any reports, information or other documentation relating to your compliance with this Agreement and applicable Law reasonably requested by Walmart.com. In the event Walmart.com requests that you provide Walmart.com with copies of reports that you were required to file with the Consumer Product Safety Commission or any other regulatory agency, you will provide such reports within 7 days of Walmart.com's written request.

(b) **Audit Rights.** You will keep accurate and complete books, records, product testing, compliance information and records, and accounts related to your Products, the Marketplace Program transactions and this Agreement, and will allow Walmart.com, or its duly authorized representative, the right, upon not less than 5 business days prior written notice, during the term of this Agreement and for two (2) years after its termination or expiration to conduct, during regular business hours, full and independent audits and investigations of all information, books, records, product testing, compliance information and records, and accounts reasonably required by Walmart.com to confirm your compliance with the terms of this Agreement and applicable Law. The cost of any and all audits shall be borne by you. Further, upon Walmart.com's sole discretion, Walmart.com may require you to submit your Products to additional audit and compliance testing which shall be at your sole cost and expense.

10. Ownership and Use Rights

(a) **Ownership of Walmart.com Marketplace.** Walmart.com, its affiliates, and their service providers and licensors retain all right, title and interest (including all Intellectual Property Rights) in and to (i) the Walmart.com Marketplace, the Walmart.com Sites, the Walmart.com Tools, and the Walmart.com Services and (ii) any of their Confidential Information (as defined herein). Except for a limited right for you to access the Walmart.com Sites and Walmart.com Tools made available to you in accordance with and subject to all the terms and conditions of this Agreement, Walmart.com, its affiliates, and their service providers and licensors, as applicable, retain all rights in the foregoing and grant no other

rights or licenses (whether by implication, estoppel, or otherwise) under any of their Intellectual Property Rights under or in connection with this Agreement.

(b) **Ownership of Transaction Information.** Walmart.com owns (and you hereby assign to Walmart.com) all Transaction Information and all other information relating to Orders or Products, including, but not limited to, information that is entered into a Walmart.com Tool, information that is created as a result of a transaction, and ratings and reviews provided by Customers. All such information is subject to the [Walmart.com Privacy Policy](#) and any additional privacy guidelines posted by Walmart.com on Seller Center.

(c) **Use of Transaction Information.** You may only use Transaction Information to further a transaction related to this Agreement, in accordance with the terms of the Agreement and the [Walmart.com Privacy Policy](#), and applicable Law. You will not (i) disclose or convey any Transaction Information to any third party (except as necessary for you to perform your obligations under the Agreement); (ii) use any Transaction Information to conduct customer surveys or for any marketing or promotional purposes; (iii) contact a Customer that has ordered a Product that has not yet been delivered with the intent to collect any amounts in connection therewith or to influence such Customer to make an alternative or additional purchase; (iv) target communications of any kind on the basis of the intended recipient being a Walmart.com user; or (v) use any information about Walmart.com Customers gained through the Marketplace Program to directly solicit such Walmart.com Customers through any other sales channels. The foregoing does not prevent you from using information you gathered independent of the Marketplace Program; provided that, you do not target communications on the basis of the intended recipient being a Walmart.com user.

(d) **Ratings and Reviews.** Walmart.com may use mechanisms that rate or review, or allow shoppers to rate or review, your Products and your performance as a seller and Walmart.com may make these ratings publicly available. Walmart.com will have no liability to you for the content or accuracy of any ratings or reviews, and Walmart.com will have no liability or responsibility to review or moderate such ratings or reviews. You will have no ownership interest in or license to use any rating or reviews posted on the Walmart.com Sites.

(e) **Suggestions and Feedback.** If you provide or make available suggestions, comments, ideas, improvements or other feedback or materials to Walmart.com or its affiliates in connection with the Walmart.com Marketplace, the Walmart.com Sites, or other subject matter of this Agreement, Walmart.com will be free to disclose, reproduce, modify, license, transfer and otherwise distribute, and use and exploit any of the foregoing feedback or materials in any manner.

11. Termination or Suspension; Survival

Walmart.com may terminate this Agreement with you at any time in its sole discretion without notice to you on Seller Center or otherwise. Walmart may also immediately terminate or suspend your participation in the Walmart.com Marketplace, your access to Walmart.com Services or the Walmart.com Tools, or remove your listings at any time in its sole discretion if you violate the terms of this Agreement. Sections 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 shall survive the expiration or termination of this Agreement for any reason.

12. Indemnification

(a) **Indemnity.** You will protect, defend (at Walmart.com's option), indemnify and hold Walmart.com and its affiliates (and their respective officers, employees, shareholders, directors, agents and representatives) harmless from and against any and all liabilities, costs, losses, damages, judgments, fines, penalties, interest, and expenses (including reasonable attorneys' fees and disbursements of counsel, court costs, and costs of any investigation, defense, and settlement) arising out of any actual or alleged Claims (regardless of whether such matters are groundless, fraudulent or false) that arise out of or relate to any actual or alleged: (i) any breach (or alleged acts or omissions that if true would be a breach) of any of your representations, warranties, or obligations set forth in this Agreement; (ii) the Retailer Site or other sales channels, the Products, any Retailer Product Content, the advertisement, offer, sale or return of any Products; (iii) any actual or alleged violation, misappropriation or infringement of any Intellectual Property Rights by you, the Products, or any Retailer Product Content; (iv) any taxes assessed, incurred, or owed in connection with, or arising out of, any transaction undertaken on the Marketplace Program, or the collection, payment or failure to collect or pay such taxes, including, but not limited to, your obligations set forth in Section 15 herein; (v) death of or injury to any person, damage to any property, or any other damage or loss, by whomsoever, suffered, resulting or alleged to result in whole or in part from your use of the Walmart.com Marketplace, the Retailer Site, the Products, or any Retailer Product Content.

(b) **Claims.** "Claim" means any action, allegation, claim, demand, lawsuit, legal proceeding, administrative or other proceedings or litigation, inquiry, audit, or investigation.

(c) **Indemnification Procedure.** You shall promptly notify Walmart.com in writing of the assertion, filing or service of any Claim or other matter that is or may be covered by this indemnity, and shall immediately take such action as necessary or appropriate to protect the interests of Walmart.com, and its affiliates, respective officers, employees, shareholders, directors, agents and representatives. You shall promptly notify Walmart.com in writing of the legal counsel that you propose to engage to defend the interests of Walmart.com in such matter. Such legal counsel shall strictly comply with Walmart's Indemnity Counsel Guidelines. If Walmart.com determines that such legal counsel has not represented, defended or protected Walmart.com's interests in accordance with Walmart.com's Indemnity Counsel Guidelines, or reasonably believes your legal counsel is unwilling or unable to do so, Walmart.com may replace such counsel with other counsel of Walmart.com's own choosing. In such event, any fees and expenses of Walmart.com's new counsel, together with all expenses or costs incurred because of the change of counsel, shall be paid or reimbursed by you as part of its indemnity obligation under this Agreement. Further, you will provide, at your sole cost and expense, all cooperation, documentation, and information reasonably requested by Walmart.com in connection with any Claim. Walmart.com shall at all times have the right to direct the defense of, and to accept or reject any offer to compromise or settle, any lawsuit, claim, demand or liability asserted against Walmart.com, and its affiliates, respective officers, employees, shareholders, directors, agents and representatives, and you will not settle or resolve any portion of any such claim or lawsuit without Walmart.com's prior written approval.

13. Limitation of Liability

(a) **No Consequential Damages.** IN NO EVENT SHALL WALMART.COM OR ITS AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (I) LOST PROFITS, LOSS OF USE, LOST REVENUE, LOSS OF BUSINESS OR LOSS OF OR INACCURATE DATA, INTERRUPTION OF BUSINESS, (II) EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR THE LIKE, OR (III) FOR COST OF COVER, RECOVERY OR RECOUPMENT OF ANY INVESTMENT, EACH OF WHICH IS HEREBY EXCLUDED BY

AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR WHETHER THE PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) **Monetary Cap.** IN NO EVENT SHALL WALMART.COM'S OR ITS AFFILIATES' AGGREGATE LIABILITY TO YOU OR ANY THIRD PARTY FOR ANY CLAIMS, COSTS, LOSSES, DAMAGES, JUDGMENTS, FINES, PENALTIES, PENALTIES, INTEREST, COSTS, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS OF ANY INVESTIGATION, DEFENSE, AND SETTLEMENT) FOR ANY REASON WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, EXCEED THE TOTAL REFERRAL FEES PAID BY YOU TO WALMART.COM PURSUANT TO THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES.

(c) **Survival of Limitations.** THE LIMITATIONS SPECIFIED IN THIS SECTION 13 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

14. No Warranties.

THE MARKETPLACE PROGRAM, THE WALMART.COM SITES, THE WALMART.COM SERVICES, AND THE WALMART.COM TOOLS ARE PROVIDED ON AN "AS IS" BASIS. NEITHER WALMART.COM NOR ITS AFFILIATES MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION: (a) THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT; (b) THAT THE MARKETPLACE PROGRAM, THE WALMART.COM SITES, THE WALMART.COM SERVICES, OR THE WALMART.COM TOOLS WILL MEET YOUR REQUIREMENTS, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, OR OPERATE WITHOUT ERROR; AND (c) ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. TO THE FULL EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WALMART.COM AND ITS AFFILIATES DISCLAIM ANY AND ALL SUCH WARRANTIES.

15. Taxes

(a) **Withholding.** If Walmart.com reasonably determines that a Law or any taxing authority requires Walmart.com to deduct or withhold any taxes (including any tax that Walmart.com reasonably determines should have been withheld from previous payments under the Agreement but was erroneously not deducted or withheld) from a payment to you under the Agreement, Walmart.com shall deduct and withhold any taxes required to be withheld by Walmart.com under applicable Law as and when the legal obligation to withhold arises, and you hereby irrevocably consent to such withholdings.

(b) **Documentation.** You agree that you will provide Walmart.com with appropriate withholding certificates or other certificates or documentation, including but not limited to IRS Forms W-9 or W-8 (e.g., Form W-8ECI, Form W-8BEN, Form W-8BEN-E, Form W-8IMY, etc.) before any payment is made to you under this Agreement, as required by Law, and upon subsequent request by Walmart.com. You further agree to timely file all required returns, report any income, and pay any applicable taxes incurred as a result of the payments you receive under this Agreement, and provide, upon request, evidence to Walmart.com, including IRS Form 4669 (or other similar form requested by Walmart.com), that such income was reported. To the extent required by applicable Law, Walmart.com agrees to provide IRS Forms 1099-K or other appropriate forms to you evidencing the amounts paid to you under the terms of the Agreement and any taxes withheld.

15. Confidentiality.

(a) **Other Confidentiality Obligations.** You may have entered into a separate confidentiality agreement with Walmart.com or its affiliates. The parties acknowledge and agree that the confidentiality obligations herein shall not modify any separate confidentiality agreement entered into by you and Walmart.com. This Agreement does not limit your obligations under any separate agreement with Walmart.com or its affiliates.

(b) **Confidential Information Defined.** With respect to this Agreement, Confidential Information means any information, in any form or any medium, that is provided by Walmart.com or its affiliates to you which is (i) treated as confidential by or is a trade secret of Walmart.com, and is expressly identified, orally or visually, as “confidential”, “restricted”, or the like, (ii) is acknowledged by Walmart.com as valuable, special or a unique asset of Walmart.com, or (iii) would otherwise logically be considered confidential or proprietary of Walmart.com. Walmart.com’s Confidential Information includes, but is not limited to, this Agreement, Walmart.com’s business plans, business processes, cost, pricing, marketing, sales, customer, and strategy information, and any additional information which Walmart.com designates as confidential. In addition, you will treat as confidential, and may not disclose to any third party, any information or communication from, on behalf of, or with Walmart.com regarding your compliance with this Agreement. However, in any event, Confidential Information shall not mean information that you can prove (A) is in or becomes part of the public domain other than through an unauthorized or improper act or omission of you; (B) is or was independently developed by you without reference to Walmart.com’s Confidential Information; or (C) is or was lawfully received from a third party having no obligation as to its confidentiality.

(c) **Obligation of Confidentiality.** You shall treat as confidential Walmart.com’s Confidential Information and shall protect it from unauthorized access, use, or disclosure. You will use no less than reasonable care in maintaining the confidentiality of Walmart.com’s Confidential Information. You shall not use or copy Walmart.com’s Confidential Information for any purpose other than in furtherance of authorized purposes under this Agreement. Further, you shall restrict disclosure of, and access to, Walmart.com’s Confidential Information solely to your personnel, agents or contractors who need to know such Confidential Information in furtherance of the authorized purposes under this Agreement, and only after you advise such personnel, agents or contractors as to, and they have acknowledged and agreed to comply with, the restrictions as to such Confidential Information under this Agreement as they apply to you. The restrictions on disclosure shall not apply to the extent that Confidential Information is required to be disclosed pursuant to any order or directive of a court or governmental agency of competent jurisdiction; provided that, to the extent practicable, prior written notice is given to Walmart.com so that it may, in its discretion, seek a protective order or other relief from disclosure.

(d) **Injunction.** Without limiting any other remedies available at law or equity, Walmart.com shall be entitled to seek injunctive relief to enjoin any threatened or continuing disclosure or unauthorized use of its Confidential Information in violation of this Agreement.

(e) **Return of Confidential Information.** Upon Walmart.com’s written request or upon the termination or expiration of this Agreement, you shall return all Confidential Information of Walmart.com in your possession or control.

(f) **Survival of Confidentiality Obligations.** The confidentiality obligations hereunder shall continue for three (3) years from the expiration or termination of this Agreement; provided, however,

that you shall keep any trade secrets of Walmart.com confidential as long as such information is deemed a trade secret by Walmart.com.

16. Miscellaneous

(a) **Integrated Agreement.** This Agreement (and all [Retailer Policies](#), including [Referral Fee Percentages Schedule](#), [Customer Care Requirements Policy](#), [Seller Performance Standards](#), [Shipping Methods & Timing Policy](#), [Returns Policy](#), [Prohibited Products Policy](#), [Tax Collection & Remittance Addendum](#), and [Information Security Addendum](#)) and any documents linked or referenced herein, which are incorporated by reference into this Agreement) constitutes the complete integrated agreement between the parties concerning the subject matter of this Agreement. All prior and contemporaneous agreements, understandings, negotiations or representations, whether oral or in writing, relating to the subject matter of this Agreement are superseded in their entirety by this Agreement. To the extent you are already a party to an agreement with Walmart.com regarding your participation as a retailer in the Walmart.com Marketplace Program, the terms and conditions of that agreement are hereby terminated and replaced in their entirety with the terms and conditions of this Agreement but you will continue to comply with all your surviving obligations under that agreement.

(b) **Responsibility for Affiliates and Agents.** You will be responsible for any actions taken by your affiliates, agents, or other third parties on your behalf in connection with this Agreement.

(c) **Independent Contractors.** You and Walmart.com are acting as independent contractors. No agency, partnership, joint venture, employee-employer or franchiser-franchisee relationship is intended or created by this Agreement.

(d) **Governing Law.** This Agreement is governed by and will be construed in accordance with the laws of the State of Arkansas without regard to its principles of conflicts of law. You agree to exclusive jurisdiction of the federal and state courts located in Benton and Washington County, Arkansas shall have the exclusive venue and jurisdiction over any actions or suits relating thereto. The parties shall not raise and hereby waive any defenses based upon venue, inconvenience of forum, or lack of personal jurisdiction in any action or suit brought in accordance with the foregoing.

(e) **Assignment.** You may not assign this Agreement or any of your rights or obligations under this Agreement without Walmart.com's prior written consent.

(f) **Ongoing Warranties.** Except as otherwise expressly provided in this Agreement, the representations and warranties made in this Agreement are continuous in nature and will be deemed to have been given by Retailer at the execution of this Agreement and each stage of performance of this Agreement.

(g) **Insurance.** You may have obligations to customers or others in the event of claims for damage or injury arising from your operations or products you sell. If you currently maintain commercial general, product, umbrella, and/or excess liability insurance to insure against such claims, each policy shall also include Walmart Inc, its subsidiaries and its affiliates as additional insured. You may be required to obtain additional insurance. If notified of such requirement, you will have up to thirty (30) days to secure coverage. At our request, you will provide to us certificates of insurance, complete insurance policies, and any other related documents evidencing the required insurance coverage.

(h) **Publicity.** You will not use the name, logo, trademarks or trade names of Walmart.com or any of their affiliates or otherwise, directly or indirectly, refer to Walmart.com or any of its affiliates in any publicity release, promotional material, customer or partner list, advertising, marketing or business-generating effort, whether written or oral, without the prior written consent of Walmart.com.

(i) **Export Control.** Retailer will not use the Walmart.com Marketplace to directly or indirectly export, re-export, transmit, or cause to be exported, re-exported or transmitted, any commodities, software or technology to any country, individual, corporation, organization, or entity to which such export, re-export, or transmission is restricted or prohibited, including any country, individual, corporation, organization, or entity under sanctions or embargoes administered by the United Nations, US Departments of State, Treasury or Commerce, the European Union, or any other applicable government authority.

(j) **Severability.** In the event that any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such provision (or part thereof) shall be enforced to the extent possible consistent with the stated intention of the parties, or, if incapable of such enforcement, shall be deemed to be deleted from this Agreement, while the remainder of this Agreement shall continue in full force and remain in effect according to its stated terms and conditions.

(k) **Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy that it has or may have operate as a waiver of any right or remedy.

(l) **Attorney's Fees.** In the event either party brings any action or proceeding against the other under this Agreement, each party will be responsible for its own attorney's fees, costs, and expenses.

(m) **Force Majeure.** Walmart.com will not be liable for any delay or failure to perform any of its obligations under this Agreement by reasons, events, or other matters beyond its reasonable control.

(n) **Cross Default.** If Retailer is in material breach of this Agreement, Walmart.com may, in its sole discretion, deem Retailer in material breach of any other contract that Retailer has with Walmart.com or its affiliates. Likewise, if Retailer is in material breach of any other contract with Walmart.com or its affiliates, Walmart.com may, in its sole discretion, deem Retailer to be in material breach of this Agreement. In each case, Walmart.com may pursue against Retailer any and all remedies that Walmart.com has at law or in equity.

ARTICLE III: WALMART FULFILLMENT SERVICES TERMS AND CONDITIONS

The terms contained in Article III apply only to Walmart.com Marketplace Retailers receiving WFS Services.

17. WFS Services. In the event that you select to participate in the WFS Services in order to offer Products on Walmart.com Marketplace and/or seek to use all or a part of the supply chain capabilities and services offered by Walmart.com, including but not limited to, inbound logistics, fulfillment, outbound transportation and reverse logistics in connection with Walmart.com Marketplace (the "**WFS Services**"), Article III shall additionally govern your use of the WFS Services.

18. WFS Services Additional Terms. The WFS Services are governed by the Agreement including the terms contained within this Article III. The WFS Agreement consists of these Walmart.com Fulfillment Services Terms and Conditions set forth in this Article III ("**WFS Terms and Conditions**"), the [WFS Services Description](#), [WFS Fees](#), and the [Routing Guide](#), each of which are incorporated here by this reference. In the event of a conflict, inconsistency or ambiguity between the Agreement and the WFS Agreement, this WFS Agreement shall govern and control, only with respect to the WFS Services.

19. WFS Service Representations and Warranties. You represent and warrant that you are registering for WFS Services on behalf of an entity and that you have the requisite right, power, and authority to enter into this WFS Agreement on behalf of the entity you register for WFS Services. You will update all of the information you provide to us in connection with the WFS Services, including contact information, as necessary to ensure that it at all times remains accurate, complete, and valid. You authorize us to verify your information (including any updated information) from time to time.

20. Term; Termination. This WFS Agreement shall continue until terminated by you or Walmart.com in accordance with this WFS Agreement. Either you or Walmart.com may at any time, terminate this WFS Agreement with or without cause, upon thirty (30) days' prior written notice to the other party. If Retailer materially breaches the Agreement, Walmart.com may immediately terminate this WFS Agreement, in whole or in part, or immediately suspend all or any portion of the WFS Services by giving written notice to Retailer. If you terminate this WFS Agreement, you will be billed for all unpaid expenses and any cost associated with disposition of Inventory as further outlined in this WFS Agreement.

21. Inventory for WFS Services. WFS Services shall only be performed with respect to inventory that is acquired and owned by Retailer that is delivered to Walmart.com for storage and processing under the terms of this WFS Agreement (the "**Inventory**").

- (a) **Inventory.** As more fully described in this WFS Agreement and the [WFS Services Description](#) Walmart.com shall receive, store, and process Inventory on Retailer's behalf. Walmart.com will hold Inventory tendered pursuant to this WFS Agreement for distribution as directed by Retailer and for other disposition as set forth in this WFS Agreement. All right, title and interest to such Inventory will remain at all times with Retailer, except as set forth in Section 24.
- (b) **Facilities.** Walmart.com will use the Facilities listed in the [WFS Services Description](#) to provide the WFS Services. If Walmart.com needs to use other facilities to perform the WFS Services, Walmart.com shall notify Retailer prior to relocating Inventory from a Facility listed in the WFS Services Description to another facility.
- (c) **Lien on Inventory.** Walmart.com shall have a lien on the Inventory to secure payment of the WFS Service Fees agreed to between the parties in this WFS Agreement.
- (d) **Hazardous Materials.** Retailer represents and warrants that no Hazardous Materials will be included in the Inventory subject to this WFS Agreement unless first approved by Walmart.com in writing in each instance. "**Hazardous Materials**" means any product or substance whose presence, use, transportation or release, either by itself or in combination with other materials, is either (i) potentially injurious to the public health, safety or welfare, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability to any governmental agency or third party under any applicable

statute or common law theory. Any Hazardous Materials of Retailer are required to go through a product safety assessment as defined by Walmart.com before acceptance to enable proper handling, storage, and shipment in accordance with applicable Law and safety standards.

- (e) **Product Restrictions.** Retailer will not (and represents and warrants that it will not) deliver to Walmart.com, and Walmart.com may refuse to accept, any shipment or Inventory that is a Prohibited Product, restricted from WFS Services, or that does not comply with the Agreement. Failure to comply with such requirements may result in refusal, disposal or return of Inventory, restriction of future shipments to a Facility, or charges for noncompliance. Retailer must provide sufficient information to enable assessment of items for purposes of WFS Services and policies applicable to storage, handling, transportation, and disposal of items.
- (f) **Returns.** Customer returns will be sent back to a Walmart.com Facility. Returns will be evaluated to determine condition. If the item in Walmart.com's determination is sellable, it will be added back to Inventory. If determined to be unsellable, Walmart.com will use the return reason to determine fault for the return (Walmart.com or Retailer) and apply the fees and payments specified in [WFS Fees](#). Walmart.com will be considered at fault if the item is lost or damaged while at a Walmart.com Facility or while in transit for delivery to the end Customer. Retailer may request unsellable items be sent back to it or have Walmart.com dispose of the item as set forth in Section 24. Retailer shall pay a Removal fee as specified in [WFS Fees](#).

22. Service Fees and Payment Terms.

- (a) **Service Fees.** Retailer shall pay the fees for the WFS Services ("**WFS Service Fees**") as set forth in [WFS Fees](#).
- (b) **Payment.** Walmart.com may offset amounts owed by Retailer to Walmart.com under this WFS Agreement from payments Walmart.com may make to Retailer under the Agreement, or invoice Retailer for amounts due, in which case Retailer will pay the invoiced amounts upon receipt, or collect payment or reimbursement from Retailer by any lawful means. Retailer also may be required to provide Walmart.com with a valid credit card as well as bank account information acceptable to Walmart.com. Retailer authorizes Walmart.com to charge Retailer's credit card or debit Retailer's bank account for amounts owed and payable by Retailer.
- (c) **Credit and Financial Information.** Walmart.com reserves the right to change or revoke Retailer's credit limit on the basis of any non-payment amounts owed under this WFS Agreement. In such case and upon ten (10) days prior written notice by Walmart.com, Retailer agrees that Walmart.com will have the right to decline to extend credit to Retailer and to require that the applicable WFS Fees and costs be paid prior to performance of the WFS Services. Retailer will promptly notify Walmart.com of all changes to Retailer's name, address, payment details, or a pending sale of substantially all of its assets. Any obligation of Walmart.com under these terms and conditions to deliver Inventory or WFS Services on credit terms will terminate upon ten (10) days prior written notice by Walmart.com if Retailer files a voluntary petition under a bankruptcy statute, or makes

an assignment for the benefit of creditors, or if an involuntary petition under a bankruptcy statute is filed against Retailer, or if a receiver or trustee is appointed to take possession of the assets of Retailer.

23. Compliance with Laws and Policies. Both parties agree to comply fully with any and all applicable Laws.

- (a) **Compliance of Products.** In addition to Retailer's representations and warranties and obligations set forth in Section 2 of the Agreement ("**General Product Policy**"), Retailer further represents and warrants that (i) it has valid legal title to all Inventory and all necessary rights to perform under this WFS Agreement; (ii) all Inventory and its packaging complies with applicable Laws for marking, labeling, and other requirements; (iii) the Inventory has been produced in compliance with applicable Laws; and (iv) the Inventory complies with Walmart.com restricted products policies.
- (b) **Product Representations and Warranties.** Retailer represents and warrants that its Inventory and each Product it sells or offers to sell on Walmart.com Marketplace or tenders to Walmart.com for WFS Services complies with all applicable Laws and regulations, including without limitation Hazardous Materials regulations, Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the Textile Fiber Products Identification Act, the Fur Products Labeling Act, the Consumer Product Safety Act, the National Traffic and Motor Vehicle Safety Act, the Wool Products Labeling Act, rules and regulations of the Federal Communications Commission, and state regulations such as air quality standards enforced by the California Air Resources Board, and Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop 65). Retailer acknowledges that it is solely responsible for disclosing all relevant information regarding its Inventory and each Product to ensure that Walmart.com can properly and legally handle, store, ship, and dispose of such Product.
- (c) **Recalls.** If a Product is subject to a Recall (as defined below), whether initiated by you, Walmart.com, or a governmental entity (including the issuance of safety notices), you shall be responsible for all matters and costs associated with the Recall, including but not limited to: (i) Customer notification and contact; (ii) all expenses and losses incurred by Walmart.com in connection with such Recall (and where applicable, any products with which the Recalled Inventory has been packaged, consolidated or commingled), including, but not limited to, refunds to customers, lost profits, transportation costs and all other costs associated therewith; and (iii) initial contact and reporting of the Recall to any government agency having jurisdiction over the affected Products. If a government agency initiates any inquiry or investigation relating to the Products or similar goods manufactured or supplied by you, you shall notify Walmart.com in writing immediately thereof and take reasonable steps to resolve the matter without exposing Walmart.com to any liability or risk. "**Recall**" shall mean any removal of Product from the stream of commerce initiated by you, Walmart.com, or a government entity.

24. Termination of Storage, Removal of Inventory, Disposition of Inventory.

- (a) **Effect of Termination on Inventory.** Walmart.com may on notice to Retailer require removal of any Inventory, including but not limited to on termination of this WFS Agreement, or because Retailer's participation in the Walmart.com Marketplace is suspended or terminated.

If Inventory are not removed before the end of the notice period, Walmart.com may dispose of Inventory as set forth in this WFS Agreement.

- (b) **Return.** Walmart.com also may on notice to Retailer return Inventory to Retailer. Inventory will be returned to Retailer's shipping address freight collect. If the address is not correct, or Retailer has not provided or confirmed on Walmart.com request a designated shipping address, or Walmart.com cannot make arrangements for Retailer to pay for the return Inventory, then Walmart.com will deem the Inventory abandoned and may dispose of the Inventory.
- (c) **Disposal.** Walmart.com also may on notice dispose of the Inventory immediately if (i) the quality or condition of the Inventory is a hazard to other property, or to the Facility or to persons, or (ii) contrary to the terms of any Walmart.com policy incorporated into this WFS Agreement, including but not limited to Retailer Policies, or the Routing Guide. Walmart.com disposal of Inventory as set forth in this WFS Agreement may include sale or liquidation, donation, recycling, or destruction or other disposition as it deems appropriate and title to such items will transfer to Walmart.com as necessary for Walmart.com to dispose of the items. Retailer shall pay applicable removal fees as set forth in the WFS Fees.
- (d) **Proceeds.** Walmart.com may keep all proceeds of any Inventory that it disposes of or to which title transfers including returned, damaged, or abandoned Inventory. Retailer will have no security interest, lien, or other claim to the proceeds that Walmart.com receives in connection with the disposition of Inventory.

25. WFS Indemnification Obligations. In addition to the indemnification obligations set forth in Article I, Section 12, the following indemnification obligations of the parties shall be included, only with respect to Article II.

(a) **Your WFS Indemnification Obligations.** In the event of (i) any act or omission of Retailer or its employees, servants, agents, or representatives relating to the WFS Services causes or results in (A) loss, damage to or destruction of property of the other party or third parties, and/or (B) death or injury to persons including, but not limited to, employees or invitees of Retailer; (ii) Retailer's violation of any law, statute, ordinance, governmental administrative order, rule or regulation relating to the WFS Services; (iii) Retailer's negligent act or omission or willful misconduct by a party, or any of its employees, representatives or agents relating to the WFS Services; or (iv) any breach by Retailer of its representations, warranties, or obligations under this WFS Agreement, then Retailer shall protect, defend (at Walmart.com's option), indemnify, and hold the Walmart.com and its affiliates (and their respective officers, employees, shareholders, directors, agents and representatives) harmless from and against any and all liabilities, losses, damages, judgements, fines, penalties, interests, costs, and expenses (including reasonable attorneys' fees and disbursements of counsel, court costs, and cost of any investigation, defense, and settlement) resulting from any and all Claims resulting therefrom. The indemnification procedure set forth in Section 12(c) shall govern indemnification claims under this Section 25(a).

(b) **Walmart.com's WFS Indemnification Obligations.** Walmart.com shall indemnify Retailer from any and all third-party liability damages, claims, suits, judgments, costs and expenses (including reasonable outside attorneys' fees), incurred as a result of its failure to comply with applicable Law, regulation, or order in performing its obligations under this WFS Agreement.

26. WFS Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY TO THIS WFS AGREEMENT FOR ANY INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE AND/OR CONSEQUENTIAL DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING FROM OR RELATED TO THE PERFORMANCE OR ANY FAILURE TO PERFORM ANY OF SUCH PARTY'S OBLIGATIONS UNDER THIS WFS AGREEMENT. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO LIMIT DAMAGE RECOVERY WHICH ARISES FROM OR IS RELATED TO A PARTY'S GROSS NEGLIGENCE IN THE PERFORMANCE OF OR THE FAILURE TO PERFORM SUCH PARTY'S OBLIGATIONS HEREUNDER. THE FOREGOING LIMITATION ON LIABILITY ALSO SHALL NOT SERVE TO LIMIT ANY PARTY'S RECOVERY FOR DIRECT DAMAGES FOR BREACH OF THIS WFS AGREEMENT. FOR CLARIFICATION AND AVOIDANCE OF DOUBT, THIS SECTION 26 SHALL ONLY APPLY TO THE RECEIPT AND PROVISION OF WFS SERVICES SET FORTH IN ARTICLE III.

27. Multichannel WFS. The terms contained in this Section 27 only apply to Walmart.com Marketplace Retailers receiving Multichannel WFS Services.

(a) A Retailer who utilizes Walmart.com's WFS Services as outlined in the WFS Agreement may expand its use of the WFS Services outside of the Walmart.com Marketplace Program to permit Walmart.com to provide inbound logistics, fulfillment, outbound transportation and reverse logistics to Retailer for alternative sales channels ("**Multichannel WFS Services**"). In the event that you elect to receive Multichannel WFS Services, in addition to the terms of the WFS Agreement, the terms of this Section 27 shall govern Multichannel WFS Services. In the event of a conflict, ambiguity, or inconsistency between this Section 27 and the WFS Agreement, this Section 27 shall govern and control.

(b) **Multichannel Governing Terms.** The Multichannel WFS are also governed by the Multichannel Services Description and the Fees for the Multichannel WFS Services, each of which are incorporated by this reference (collectively, the "**Multichannel WFS Services Terms and Conditions**").

(c) **Multichannel Representations and Warranties.** You further represent and warrant that (i) you are registering for Multichannel WFS Services on behalf of an entity and that you have the requisite right, power, and authority to enter into these Multichannel WFS Services Terms and Conditions on behalf of the entity you register for Multichannel WFS Services and (ii) you have all rights and permissions necessary in connection with your use of the WFS Multichannel Services, include all appropriate rights and permissions from the platform which sells the product or service which is being fulfilled by the Multichannel WFS Services. You will update all of the information you provide to us in connection with the Multichannel WFS Services, including contact information, as necessary to ensure that it at all times remains accurate, complete, and valid. You authorize us to verify your information (including any updated information) from time to time.

(d) **Multichannel WFS Service Fees.** In lieu of the WFS Service Fees set forth in the WFS Agreement, the **Fees for the Multichannel WFS Services** shall be charged to Retailer for the provision of the Multichannel WFS Services.

(e) **Multichannel Order Processing.** Retailer shall transmit all Multichannel WFS Services orders ("**Multichannel Order(s)**") received by Retailer to Walmart.com via an application program interface ("**API**"). Walmart.com's Order Management Group will manage all API errors in processing of API transmissions. The communication plan concerning all errors and/or Multichannel Order Cancellations resulting from API errors will be mutually agreed upon by Walmart.com and Retailer.

ARTICLE IV: WALMART AD CENTER PLATFORM TERMS OF USE

The terms contained in Article IV apply in connection with Retailer's use of Walmart Ad Center.

In the event that Retailer utilizes Walmart.com's self-service advertising services ("Walmart Ad Center"), the terms at https://i5.walmartimages.com/dfw/4ff9c6c9-3238/1f108ecd-c918-47cf-a7bd-094f9ebd478a/v1/Walmart_Advertising_Agreement.pdf (the "Walmart Ad Center Platform Terms of Use") shall govern Retailer's use of Walmart Ad Center. In the event of a conflict, inconsistency or ambiguity between the Agreement and the Walmart Ad Center Platform Terms of Use, the Walmart Ad Center Platform Terms of Use shall govern and control, only with respect to Walmart Ad Center.