

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

**Civil Division**

DISTRICT OF COLUMBIA,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

CASE NO.: 2021 CA 001775 B

JUDGE: Alfred S. Irving, Jr.

NEXT EVENT: Sept. 3, 2021 at 9:30 AM

EVENT: Initial Conference

**DEFENDANT AMAZON.COM, INC.'S OPPOSED MOTION TO DISMISS PLAINTIFF  
DISTRICT OF COLUMBIA'S COMPLAINT**

Defendant Amazon.com, Inc. ("Amazon") respectfully moves, under Super. Ct. R. Civ. P. 12(b)(6), to dismiss Plaintiff District of Columbia's (the "District's") complaint. Like all retailers, Amazon must compete for customers by offering a great experience in its stores, including low prices. The District's complaint seeks to argue that Amazon's practice of encouraging low prices in its stores is somehow anticompetitive, but the complaint fails to allege essential elements of an antitrust claim and, in any event, the conduct it attacks has been held by courts to be procompetitive. The grounds for Amazon's motion are more fully set forth in the accompanying Memorandum of Points and Authorities.

**RULE 12-I(a) CERTIFICATION**

I certify that Counsel for Amazon conferred with Counsel for the District on July 19, 2021.

The District of Columbia informed Amazon that it opposes the requested relief.

Dated: July 20, 2021

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON &  
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S  
OPPOSED MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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## INTRODUCTION

Within the intensively competitive retail industry, having a reputation for low prices can be essential to winning customers' business. For any retail purchase, customers have many options and tend to shop around until they find the best deal. Even a single bad customer experience—whether receiving a bad product, slow delivery, or overpaying for a product found at a lower price elsewhere—can damage trust with a customer and hurt the retailer's brand.

For this reason, Amazon has made the business decision to prioritize offering customers competitive prices. The District of Columbia's (the "District's") complaint (the "complaint"), however, seeks to attack these very business practices designed to encourage low prices, counterintuitively arguing that they are anticompetitive. But the proposition forming the basis of the complaint—that Amazon should not be allowed to encourage low prices from the third-party sellers that sell in Amazon's stores—contradicts the letter and purpose of the antitrust laws, which encourage and protect the very type of competition in which the complaint alleges Amazon is engaging. And indeed, no court of any jurisdiction has ever condemned a business model requiring competitive prices in a retail store, much less one prohibiting "significantly higher prices" as Amazon's does.

The District initiated this lawsuit without reviewing any documents or data from Amazon, which has contributed to both misunderstanding and mischaracterization of Amazon's written policies. The result is an attack on Amazon's model that is ill-conceived and would, perversely, subject retailers to antitrust scrutiny for conduct that protects consumers, prevents price gouging, and encourages low prices.

Unsurprisingly then, there are multiple bases upon which the law directs that the District's complaint be dismissed:

*First*, all the claims fail because the challenged conduct—(1) a price parity provision that

has not been in effect for over two years and (2) Amazon’s unilaterally adopted Marketplace Fair Pricing Policy—ensures that when consumers shop in Amazon’s store, they will find competitive prices, and not prices that are “significantly higher” than those recently offered on Amazon or through other retail channels. Insisting on a competitive price “tends to further competition on the merits and, as a matter of law, is not exclusionary.” *Ocean State Physicians Health Plan, Inc. v. Blue Cross & Blue Shield of R.I.*, 883 F.2d 1101, 1110 (1st Cir. 1989).

*Second*, Count I, which alleges that the former price parity provision and the Fair Pricing Policy are *per se* antitrust violations, also fails to state a claim because that claim applies the wrong legal standard: courts reserve *per se* treatment for certain categories of conduct between horizontal competitors, which the District does not allege. The complaint describes vertical arrangements between Amazon, which operates as a retail store, and third-party sellers, who sell goods to consumers and purchase services from Amazon to facilitate those sales. These firms plainly stand at different levels in the distribution chain, requiring dismissal of the District’s *per se* claims.

*Third*, Counts I and II, to the extent they are based on the Fair Pricing Policy, fail to state a claim because they do not involve an agreement, but rather a policy that was unilaterally set by Amazon. There is no allegation, nor could there be, that third-party sellers played any role in formulating the Fair Pricing Policy; they were only required to comply with it. A restraint of trade claim must be based on concerted activity, not unilateral conduct.

*Fourth*, the District’s restraint of trade claim based on the rule of reason, as well as its monopolization and attempted monopolization claims (Counts II–IV), fail to state claims because the District has failed plausibly to allege a relevant product market, an essential element of each of those claims. A relevant market depends on reasonably interchangeable substitutes. The District’s allegation of an undifferentiated “online retail sales market” comprised of a “virtually-

unlimited range of products” (Compl. ¶ 40) is a textbook example of an alleged market that fails to satisfy the rule of interchangeability; the purchase of dishwasher soap is not a substitute for a ream of copy paper, and neither of these is a substitute for a DVD. Nor has the District even attempted (as it must) to plausibly allege that all of these products face the same competitive conditions, or that Amazon has market power over each of them.

*Fifth*, the District’s restraint of trade claim based on the rule of reason and its monopolization and attempted monopolization claims (Counts II–IV) also fail because the District has not sufficiently alleged anticompetitive harm. The District actually alleges the opposite of anticompetitive harm: that Amazon has required sellers in its store to offer competitive prices to Amazon’s customers—establishing consumer benefit. And the District has failed to allege the exclusion of any actual or potential competitors.

*Finally*, the District lacks standing to assert antitrust claims on behalf of consumers who made purchases through online retail channels other than Amazon’s store because only consumers who purchased goods distributed or produced by an alleged antitrust violator may bring suit under the D.C. Antitrust Act (“DCAA”).

For these reasons, and as explained below, the District’s complaint should be dismissed as follows:

<b>Legal Argument:</b>	<b>Claim Subject to Dismissal:</b>
Competitive price provisions are legal as a matter of law	All claims
Failure to state a <i>per se</i> claim	Count I
No agreement	Counts I and II relating to the Fair Pricing Policy
No plausible relevant product market alleged	Counts II–IV
No anticompetitive effects alleged	Counts II–IV
No antitrust standing	Claims on behalf of purchasers using retail channels other than Amazon

## **BACKGROUND**

### **A. Amazon's Retail Store**

Amazon operates a retail store in which it sells products directly to consumers. Compl. ¶ 17. Amazon has also invited independent, third-party sellers to sell in its store, most of whom are small- and medium-sized businesses. *Id.* By providing third-party sellers with an additional sales channel, Amazon has substantially increased competition in retail. Amazon has also significantly invested in tools and services designed to assist third-party sellers. *Id.* ¶ 19. This has fueled third-party sales in Amazon's store, with third-party sellers now accounting for "approximately 60% of the value of products sold" on Amazon. *Id.* ¶ 17.

### **B. Other Retailers That Compete With Amazon**

The retail environment in which Amazon operates is far more competitive than described in the complaint, but even the complaint describes abundant online competition. For example, third-party sellers can sell their products on "other retail platforms like eBay, Walmart.com, and individual TPS [third-party sellers'] websites." Compl. ¶ 38. According to the complaint, each of these options is small compared to Amazon, but that allegation does not change the fact that there are countless retailers and websites offering products for sale in competition with Amazon. Many of these retailers are launching services similar to the innovative tools Amazon developed for third-party sellers. For example, Walmart recently launched its own fulfillment service similar to Fulfillment by Amazon for its third-party sellers. *Id.* ¶ 35.

### **C. Amazon's Efforts To Offer Competitive Prices In Its Store**

In a highly competitive and dynamic retail environment, Amazon has earned consumers' trust by consistently offering products at competitive prices delivered with the best service. The District challenges steps Amazon has taken to maintain that reputation and ensure that its consumers are offered competitive prices, focusing on (1) a "price parity provision" Amazon

discarded over two years ago and (2) a unilaterally set policy, the Marketplace Fair Pricing Policy.<sup>1</sup>

What the District refers to as the “price parity provision” does not exist today. It previously was a provision in Amazon’s Business Solutions Agreement (“BSA”) that required third-party sellers to offer products in Amazon’s store at an all-in price that was “at least as favorable to Amazon Site users as the most favorable terms upon which a product is offered or sold” by the third-party seller elsewhere online. Ex. A § S-4 (Former BSA, provision partially quoted at Compl. ¶ 26). In the event that sellers violated the provision, they must “promptly compensate adversely affected customers.” *Id.* Amazon removed the provision from the BSA more than two years ago, in March 2019. Compl. ¶ 29.<sup>2</sup> The complaint does not allege, because it cannot, that this provision was widely enforced; there is not a single instance of a third-party seller being required to provide such compensation identified in the complaint. The complaint also does not, because it cannot, allege that provisions like the price parity provision are not commonplace in retail.

Separately, the Fair Pricing Policy, which is in effect today and is published on Amazon’s website (Compl. ¶ 30) explains: “In our mission to be Earth’s most customer-centric company, Amazon strives to provide our customers with the largest selection at the lowest price, and with the fastest delivery,” and “sellers play an important role” in meeting those goals. Ex. B (Amazon Marketplace Fair Pricing Policy, partially quoted at Compl. ¶ 30). The policy states, “Sellers are responsible for setting their own prices on Amazon marketplaces”; however, if Amazon sees “pricing practices on a marketplace offer that harms customer trust,” it may decide not to feature the offer, remove the offer from the Buy Box, remove the offer from Amazon’s store, or, “in

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<sup>1</sup> Because the District references the former price parity provision and the Fair Pricing Policy throughout its complaint, the Court can consider the full text of both without converting Amazon’s motion to dismiss into one for summary judgment. *Chamberlain v. Am. Honda. Fin. Corp.*, 931 A.2d 1018, 1025 (D.C. 2007).

<sup>2</sup> Although not an issue for this motion, Amazon notes that one reason to remove the provision was that it rarely enforced the provision.

serious or repeated cases,” suspend or terminate selling privileges in its store. *Id.*

The Fair Pricing Policy does not require sellers to offer their lowest prices in Amazon’s store. Instead, the Fair Pricing Policy expressly states that pricing practices that harm customer trust include “[s]etting a price on a product or service that is *significantly higher* than recent prices offered on or off Amazon.” Compl. ¶ 30 (emphasis added); Ex. B. To help ensure that customers are not offered a “significantly higher” price than that offered on or off Amazon, which would ensure sellers are not price gouging in Amazon’s store, Amazon monitors prices in its store and “compares them with other prices available to our customers.” Compl. ¶ 30; Ex. B. The policy does not distinguish between online and offline sales channels, nor does it say anything about the prices a third-party seller sets on its other sales channels. Ex. B. The Fair Pricing Policy, which is not the same as, and has always been separate from, the discarded “price parity provision,” is a unilateral policy published by Amazon on its website for third-party sellers. Compl. ¶¶ 6, 30. It is not, by any measure, an “effectively-identical substitute” for the price parity provision, as alleged in the complaint. *Id.* ¶ 6. To the contrary, rather than seeking price parity, the policy prohibits “significantly higher” prices. Amazon instituted the Fair Pricing Policy in November 2017, more than a year before the price parity provision was rescinded.

The plain terms of the former price parity provision and the Fair Pricing Policy demonstrate that the two are different. The former price parity provision ensured that third-party sellers could not discriminate against Amazon customers by setting a higher price in Amazon’s store than they set elsewhere. The Fair Pricing Policy simply says that prices set in Amazon’s store cannot be significantly higher than competitive prices, based on a comparison to prices across thousands of retailers (where prices may not be set by the third-party seller), as well as recent prices in Amazon’s store.

Throughout its complaint, the District refers collectively (and inaccurately) to the former price parity provision and the Fair Pricing Policy as “platform most-favored nation policies” or “PMFNs” and alleges that “the effect of both . . . is the same.” Compl. ¶¶ 6, 29, 31–32, 37, 46–47, 52, 57, 60–62, 65, 69, 77. The District’s complaint takes the terms of the discarded price parity provision and combines them with the enforcement consequences of the unilateral Fair Pricing Policy to create its so-called PMFNs. *Id.* ¶¶ 6, 29, 31–32, 37, 46–47, 52, 57, 60–62, 65, 69, 77. But, as explained above, the price comparisons that the former price parity provision and the Fair Pricing Policy address differ, and so do the consequences of noncompliance. This error is material, infects most of the District’s claims, and could have been avoided with an appropriate pre-filing investigation.<sup>3</sup>

## ARGUMENT

### **I. The Complaint Fails To State A Claim Because A Retail Competitive Price Provision And An Anti-Gouging Policy Are Both Legal As A Matter Of Law.**

The District cannot state an antitrust claim because a retail competitive price provision, which the former price parity provision was, and an anti-gouging policy, which the Fair Pricing Policy is, are both legal as a matter of law. No court has held that a competitive price provision is illegal under the antitrust laws on a *per se* basis or under the rule of reason. As the Court can judicially notice,<sup>4</sup> these provisions are commonplace, allowing retailers to offer consumers a trusted place to shop with low prices. For example, Target requires sellers “to price products on

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<sup>3</sup> The pre-suit Civil Investigative Demand that the District issued to Amazon was unusual because it directed that Amazon produce all documents to a private firm, Hausfeld LLP, that has been adverse to Amazon; and Hausfeld lawyers have made public statements concerning Amazon that reflect biases against Amazon. Prior to producing documents, Amazon requested an appropriate confidentiality agreement that would ensure that its confidential business information would be used solely for a public purpose, and could not be used for private gain by Hausfeld lawyers. Instead of agreeing to appropriate protections, even protections to which the Hausfeld firm consented, the District chose to file this lawsuit without reviewing any documents or data from Amazon.

<sup>4</sup> *Mody v. Center for Women’s Health, P.C.*, 998 A.2d 327, 336 (D.C. 2010) (taking judicial notice of Skype as an available service for a deposition, citing information available concerning Skype on the Internet).

the Target Plus marketplace at parity with their other sales channels,”<sup>5</sup> and Walmart had a “Price Parity Rule” that would “automatically unpublish items from Walmart Marketplace if a customer would save by purchasing the same item from the same seller on a competing website, including the cost of shipping.”<sup>6</sup>

Provisions demanding competitive prices for consumers, as the former price parity provision here is alleged to have done, have been held to be legal as a matter of law. *See Blue Cross & Blue Shield of Wis. v. Marshfield Clinic*, 65 F.3d 1406, 1415 (7th Cir. 1995) (best-price provisions are “standard devices by which buyers try to bargain for low prices” and are “the sort of conduct that the antitrust laws seek to encourage”); *Ocean State Physicians Health Plan*, 883 F.2d at 1110 (insisting on the lowest price “tends to further competition on the merits and, as a matter of law, is not exclusionary”); *Kartell v. Blue Shield of Mass. Inc.*, 749 F.2d 922, 928–29 (1st Cir. 1984) (upholding as a matter of law insurer’s best-price policy despite claim it “discourages doctors from charging others low prices by insisting that its subscribers be given the benefit of any such low prices”).<sup>7</sup> The leading antitrust treatise confirms that courts should “never condemn” even “a dominant firm’s insistence that it obtain the lowest generally available price for a product.” Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law: An Analysis of Antitrust Principles and Their Application* ¶768a6 (4th and 5th eds., 2021 Cum. Supp.).

The Fair Pricing Policy is not a competitive price provision; it is an Amazon policy that prohibits prices that are “significantly higher” than recent prices on or off Amazon. Compl. ¶ 30;

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<sup>5</sup> Brian Roizen, *Target Plus (Target+) Seller FAQs to Get You Started*, Feedonomics (Jun. 10, 2020), <https://feedonomics.com/blog/target-plus-target-seller-faqs-to-get-you-started/#:~:text=All%20sellers%20must%20have%20a,Trade%20Services%20are%20not%20offered>.

<sup>6</sup> *Catalog Optimization Insights to Help You Sell More*, Walmart Marketplace, <https://marketplace.walmart.com/catalog-optimization-insights/> (last visited July 19, 2021).

<sup>7</sup> D.C. courts turn to federal precedent in interpreting the provisions of the D.C. Antitrust Act. D.C. Code § 28-4515 (“It is the intent of the Council of the District of Columbia that in construing this chapter, a court of competent jurisdiction may use a guide interpretations given by federal courts to comparable antitrust statute.”).



Ex. B. Under the policy, sellers retain the ability to offer lower prices on other sales channels. The Fair Price Policy means that sellers cannot price gouge Amazon consumers. Amazon’s policy is even analogous to the language used by state price-gouging statutes, including the statute in the District.<sup>8</sup> Condemning the Fair Pricing Policy would subject retailers’ anti-gouging policies to challenge under the antitrust laws—a result antithetical to the antitrust laws’ purposes and the District’s law prohibiting price gouging.

## **II. Count I Should Also Be Dismissed Because The District Fails To State A *Per Se* Restraint of Trade Claim.**

Count I fails to state a claim because the requirements for alleging a *per se* unlawful restraint of trade have not been alleged.<sup>9</sup> The presumptive rule is that restraint of trade claims are reviewed based on the rule of reason, with only “certain types of recurring agreements which proved to be so consistently unreasonable that they could be branded illegal *per se*.” *Kreuzer v. Am. Acad. of Periodontology*, 735 F.2d 1479, 1490 (D.C. Cir. 1984); *see also Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co.*, 472 U.S. 284, 289 (1985) (*per se* rule applies only to a narrow category of agreements with no “redeeming virtue”). Whether the District has alleged a *per se* claim is a threshold legal issue because it will impact the elements that the District must prove for its restraint of trade claims and, if its restraint of trade claims proceed, discovery. There are multiple reasons why the District has failed to state a *per se* claim.

*First*, the *per se* rule is limited to certain horizontal agreements “to fix prices or allocate

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<sup>8</sup> D.C. Code § 28-4102 (prohibiting charging more than the “normal average retail price” during an emergency); Iowa Admin. Code r. 61-31.1(714) (prohibiting “excessive” prices during a state of emergency); Idaho Code § 48-603(19) (same); Louisiana Stat. Ann. § 29.732 (prohibiting during state of emergency prices higher than those “ordinarily charged”); Missouri Code Regs. tit. 15, §60-8.030(1)(B)–(C) (prohibiting “an excessive price” during an emergency); North N.C. Gen. Stat. § 75-38(a) (prohibiting “unreasonably excessive” prices during emergency); Tex. Bus. & Com. Code Ann. § 17.46(b)(27) (prohibiting “excessive” price during a disaster).

<sup>9</sup> As explained below, the District’s restraint of trade claims based on the Fair Pricing Policy fail because it is a unilateral policy and not an agreement, but even if it were an agreement, the Fair Pricing Policy would be subject to the rule of reason for the same reasons that the former price parity provision is.

markets,” *In re McCormick & Co., Inc.*, 217 F. Supp. 3d 124, 135 (D.D.C. 2016). The District alleges that the former price parity provision is a “platform most favored nation agreement,” (Compl. ¶ 3), and such provisions fall outside of the “carefully demarcated categories” of agreements that are illegal *per se*, *Gross v. Wright*, 185 F. Supp. 3d 39, 49 (D.D.C. 2016) (quoting *Cap. Imaging Assocs, P.C. v. Mohawk Valley Med Assocs., Inc.*, 996 F.2d 537, 543 (2d Cir. 1993)). “‘Most favored nations’ clauses are standard devices by which buyers try to bargain for low prices, by getting the seller to agree to treat them as favorably as any of their other customers,” which “is the sort of conduct that the antitrust laws seek to encourage. It is not price fixing.” *Marshfield Clinic*, 65 F.3d at 1415. There has never been a challenge to a competitive price provision in the retail context; to the extent competitive price provisions have been challenged in other contexts, the provisions have been reviewed based on the rule of reason. This is dispositive and warrants dismissal of the District’s *per se* claim.

*Second*, courts apply *per se* treatment only after they “have had considerable experience with the type of restraint at issue” and “can predict with confidence that it would be invalidated in all or almost all instances under the rule of reason.” *Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 886–87 (2007). This is because there are “inherent limits on a court’s ability to master an entire industry” and “hard-to-see efficiencies attendant to complex business arrangements.” *Nat’l Collegiate Athletic Ass’n v. Alston*, 141 S. Ct. 2141, 2156 (2021). Cautioning against inappropriate application of the *per se* rule, the Supreme Court recently noted that “it can take economists years, sometimes decades, to understand why certain business practices work [and] determine whether they work because of increased efficiency or exclusion.” *Id.* (internal quotation marks and citation omitted). Because courts have upheld MFN provisions as a matter of law, it cannot be “predict[ed] with confidence that it would be invalidated in all or

almost all instances under the rule of reason” (*Leegin*, 551 U.S. at 886–87), making *per se* treatment inappropriate.

*Third*, as the District concedes, Amazon has “a vertical relationship with TPSs to the extent that Amazon provides its platform for a fee to TPSs as a vehicle through which to sell their products online.” Compl. ¶ 9. Vertical agreements are subject to the rule of reason. *Ohio v. Am. Express Co.*, 138 S. Ct. 2274, 2284 (2018); *McCormick*, 217 F. Supp. 3d at 135.

The District alleges that the former price parity provision is a horizontal agreement because Amazon competes with its third-party sellers’ own websites, and Amazon sells its own products in its store alongside the products of its third-party sellers. Compl. ¶ 8. That the District concurrently alleges both a horizontal and vertical relationship between Amazon and its third-party sellers demonstrates that the former price parity provision is subject to the rule of reason.<sup>10</sup>

### **III. Counts I–II Should Also Be Dismissed, To The Extent They Depend On Amazon’s Fair Pricing Policy—A Unilaterally Set Policy, Not Concerted Action.**

A restraint of trade claim requires unlawful “concerted activity.” *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 768 (1984). It “does not reach conduct that is ‘wholly unilateral.’” *Sky Angel U.S., LLC v. Nat’l Cable Satellite Corp.*, 33 F. Supp. 3d 14, 19 (D.D.C. 2014) (quoting *Copperweld*, 467 U.S. at 768). Policies that are “unilaterally formulated” and require “no acquiescence from” other parties do not provide a basis for conspiracy under the antitrust laws. *Int’l Logistics Grp., Ltd. v. Chrysler Corp.*, 884 F.2d 904, 907 (6th Cir. 1989). Here, the District does not allege that the Fair Pricing Policy was anything but unilaterally adopted

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<sup>10</sup> *Beyer Farms, Inc. v. Elmhurst Dairy, Inc.*, 35 F. App’x 29, 29 (2d Cir. 2002) (where plaintiff alleged “both a vertical and horizontal relationship,” “its complaint was subject to scrutiny under the ‘rule of reason’”); *Ogden v. Little Caesar Enters., Inc.*, 393 F. Supp. 3d 622, 636 (E.D. Mich. 2019) (agreements that display “both vertical and horizontal components” merit “a more in-depth analysis to determine unreasonableness” than the “quick look” approach); 2238 *Victory Corp. v. Fjallraven USA Retail, LLC*, No. 19-cv-11733 (PKC), 2021 WL 76334, at \*5 (S.D.N.Y. Jan. 8, 2021) (“Because the Complaint describes a mixed vertical and horizontal relationship between [the defendants], any agreement between them is scrutinized under the rule of reason and is not categorized as *per se* unlawful under the Sherman Act.”).

by Amazon; it alleges instead that third-party sellers are required through the BSA to follow all Amazon policies. Compl. ¶ 6. That is insufficient to establish concerted action.

Courts have dismissed claims under Section 1 of the Sherman Act, the federal analogue to D.C. Code § 28-4502, for failure to establish “concerted action,” where it is “clear that Defendants unilaterally implemented the Policy” and required parties with whom they deal to comply with the policy. *Baar v. Jaguar Land Rover N. Am., LLC*, 295 F. Supp. 3d 460, 465 (D.N.J. 2018); *see also Taylor v. Volkswagen of Am., Inc.*, No. C07-1849RSL, 2009 WL 1011631, at \*3 (W.D. Wash. Apr. 14, 2009) (the “mere fact that the dealerships agreed to comply with Volkswagen’s policy does not evidence a conspiracy”); *Chase v. Nw. Airlines Corp.*, 49 F. Supp. 2d 553, 561 (E.D. Mich. 1999) (requirement that travel agents comply with airline’s sales policies was not concerted action because there were “no allegations that travel agents played any role whatsoever in formulating” the policy).<sup>11</sup> Accordingly, to the extent they are based on the Fair Pricing Policy, the District’s D.C. Code § 28-4502 claims (Counts I and II) should be dismissed.

#### **IV. Counts II–IV Should Also Be Dismissed Because The District Has Failed To Allege A Plausible Relevant Product Market.**

For its restraint of trade claim subject to the rule of reason and its monopolization and attempted monopolization claims (Counts II–IV), the District must allege a relevant antitrust market. *Fed. Trade Comm’n v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020) (“A threshold step in any antitrust case is to accurately define the relevant market”). “Until a market’s parameters

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<sup>11</sup> *See also Int’l Logistics Grp.*, 884 F.2d at 907 (no concerted action where Chrysler required resellers of its engine to comply with its marketing policies when the policies were “unilaterally formulated” and required “no acquiescence from its dealers or its distributors in formulating marketing conditions”); *Relevant Sports, LLC v. U.S. Soccer Fed’n, Inc.*, No. 19-cv-8359 (VEC), 2020 WL 4194962, at \*6–7 (S.D.N.Y. July 20, 2020) (FIFA’s policies, with which defendant was “required to adhere” amounted just to “unilateral compliance with FIFA’s directive” and not concerted action); *Sambreel Holdings LLC v. Facebook, Inc.*, 906 F. Supp. 2d 1070, 1076–77 (S.D. Cal. 2012) (“agreements which Facebook unilaterally impose[d] upon companies that utilize the Facebook Platform” were not “concerted effort among the Application Developers and Facebook, as is required by the express terms of Sherman Act § 1”).

are reasonably well defined, a court cannot know whether a defendant has unreasonably restricted trade in that market.” *Gross*, 185 F. Supp. 3d at 49; *see also Walker Process Equip., Inc. v. Food Mach. & Chem. Corp.*, 382 U.S. 172, 177 (1965) (“Without [] definition of [a relevant] market there is no way to measure [the defendant’s] ability to lessen or destroy competition.”).

There are specific requirements that an antitrust plaintiff must plead to allege a relevant antitrust market. The “definition of the ‘relevant market’ rests on a determination of available substitutes.” *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 218 (D.C. Cir. 1986). For products to be economic substitutes, they must be “reasonably interchangeable by consumers for the same purpose.” *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956); *Fed. Trade Comm’n v. Facebook Inc.*, No. 20-cv-3590 (JEB), 2021 WL 2643627, at \*9 (D.D.C. June 28, 2021) (same). “Interchangeability implies that one product is roughly equivalent to another for the use to which it is put: while there may be some degree of preference for the one over the other, either would work effectively.” *Queen City Pizza, Inc. v. Domino’s Pizza, Inc.*, 124 F.3d 430, 437 (3d Cir. 1997) (citation omitted). “The degree to which a similar product will be substituted for the product in question is said to measure the cross-elasticity of demand . . . . The higher these cross-elasticities, the more likely it is that similar products . . . are to be counted in the relevant market.” *Rothery Storage*, 792 F.2d at 218.

Failure “to define the market by reference to the reasonable interchangeability” of products is not a mere technicality: it “is valid ground for dismissal.” *Sky Angel U.S., LLC v. Nat’l Cable Satellite Corp.*, 947 F. Supp. 2d 88, 103 (D.D.C. 2013) (citing *Queen City Pizza*, 124 F.3d at 436–37); *see also Gross*, 185 F. Supp. 3d at 50. The District’s alleged “online retail sales market” consisting of a “virtually-unlimited range of products” (Compl. ¶ 40) fails to define a market “by reference to the reasonable interchangeability” of those products. *Sky Angel*, 947 F. Supp. 2d at

103. For example, from the perspective of both a buyer and a seller, dishwasher soap is not a substitute for a ream of copy paper, which in turn is not a substitute for a DVD, even if all these products are available at one store. In other words, there is no “cross-elasticity of demand” nor “cross-elasticity of supply” among the “virtually-unlimited range of products” the District alleges are available in its proposed antitrust market, and therefore it cannot plausibly be a relevant product market of interchangeable substitutes. *Rothery Storage*, 792 F.2d at 218.<sup>12</sup>

The District also does not allege, and cannot allege, that the “virtually-unlimited range of products” are all subject to the “same competitive conditions” (*Fed. Trade Comm’n v. Staples, Inc.*, 190 F. Supp. 3d 100, 123 (D.D.C. 2016) (holding for business-to-business customers, a market existed for consumable office supplies, but did not include ink and toner, which faced different competitive conditions)), or that Amazon has market power over each of them (*Little Rock Cardiology Clinic, P.A. v. Baptist Health*, 573 F. Supp. 2d 1125, 1146 (E.D. Ark. 2008)). The absence of such allegations forecloses the District from combining a “virtually-unlimited range of products” into a single antitrust market.

## **V. Counts II–IV Should Also Be Dismissed Because The District Has Failed To Allege Anticompetitive Effects.**

For both its restraint of trade claim based on the rule of reason, and its monopolization and attempted monopolization claims (Counts II–IV), the District must allege anticompetitive effects. *McCormick*, 217 F. Supp. 3d at 137 (“Because anticompetitive effect is an essential element of a claim under the rule of reason, plaintiffs must plausibly allege it in their complaint.”); *Johnson v.*

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<sup>12</sup> The District’s alleged market is also impermissibly under-inclusive by excluding retail sales in physical stores. “[J]udicial experience and common sense” lead to the conclusion that consumers would turn to a physical retailer to purchase, for example, dishwasher soap if the price for that product from an online retailer were too high. *Hicks v. PGA Tour, Inc.*, 897 F.3d 1109, 1121 (9th Cir. 2018) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)) (affirming dismissal where plaintiff’s relevant market “omit[ted] many economic substitutes”). And an online retailer can price its dishwasher soap to “deprive” a physical retailer of “significant levels of business” in that product. *Id.* at 1120 (citation omitted). The District makes no allegations to the contrary.

*Comm’n on Presidential Debates*, 202 F. Supp. 3d 159, 170–71 (D.D.C. 2016) (“Plaintiffs’ failure to allege injury to competition in a commercial market constitutes a failure to state an antitrust claim.”). These claims fail because the complaint does not plausibly allege harm to “the competitive *process* and thereby harm [to] consumers.” *United States v. Microsoft Corp.*, 253 F.3d 34, 58 (D.C. Cir. 2001).

The complaint contains only three conclusory paragraphs alleging anticompetitive effects (Compl. ¶¶ 60–62), but none of these allegations “plausibly suggest[]” anticompetitive effects. *Bell Atl. v. Twombly*, 550 U.S. 544, 557 (2007) (allegations must “plausibly suggest[]”—not be “merely consistent with”—illegal conduct). *First*, the District alleges that the “real-world impact of Amazon’s PMFNs is higher prices for consumers”—an allegation unsupported by any facts in the complaint. Compl. ¶ 60.

The District’s allegation concerning higher prices cannot be reconciled with its other allegations and the operation of the Fair Pricing Policy, which expressly allows third-party sellers to charge lower prices in other stores as compared to the prices in Amazon’s store. The allegation that they cannot is contradicted by the allegation that other stores, websites, and marketplaces—such as Walmart, eBay, and sellers’ own sites—charge lower fees and commissions than Amazon. *Id.* ¶ 35. Taking this allegation as true, third-party sellers have every incentive to offer lower prices on those sites, and then market their products more aggressively on the lower fee sites. Nothing in Amazon’s alleged Fair Pricing Policy prevents third-party sellers from doing precisely that. The allegation that Amazon’s competitors charge lower fees and commissions is incompatible with the notion that Amazon’s Fair Pricing Policy creates a “price floor” for products sold through other online retail channels. *Id.* ¶ 9.

*Second*, the complaint cites a *Yale Law Journal* article stating that Amazon’s alleged MFN

works “as economists predicted,” quoting economists predicting that so-called “platform MFNs” would result in entrants being excluded. *Id.* ¶ 61. But the complaint contains no factual allegation that any actual or potential competitors have, in fact, been excluded. Nor could it, because during the applicable time period, retail sales and marketplaces have grown and expanded rapidly. Even the complaint suggests substantial competition in retail, specifically identifying Amazon alternatives such as eBay, Walmart, and third-party sellers’ own websites. *Id.* ¶ 4.

*Finally*, the complaint cites reviews conducted in 2013—not in this country, but in the United Kingdom and Germany—where the District alleges regulators found that the former price parity provision, not the Fair Pricing Policy, “soften[s] competition.” *Id.* ¶ 62. As an initial matter, the source text states that the clause “may” soften competition, but the District omits “may” from its quote. *Id.* ¶ 62 & n.6. These investigations also do not speak to any alleged harm *in the District of Columbia*—or anywhere in the United States. The District’s reliance on allegations of investigations performed eight years ago outside of the United States highlights its failure to conduct a pre-suit investigation concerning the operation of the former price parity provision in this country, the extent to which Amazon even enforced it, and the Fair Pricing Policy’s purpose.

A complaint based on these generic, conclusory allegations cannot sustain an antitrust claim. *See, e.g., Brantley v. NBC Universal, Inc.*, 675 F.3d 1192, 1202 (9th Cir. 2012) (holding that conclusory “allegations that an agreement has the effect of reducing consumers’ choices or increasing prices to consumers do[] not sufficiently allege an injury to competition”).

## **VI. The District Lacks Standing To Assert Claims On Behalf Of Consumers Who Made Purchases Through Online Retail Channels Other than Amazon.**

The District is seeking relief not only on behalf of D.C. consumers who purchased products in Amazon’s store, but also on behalf of consumers who made any online retail purchase, including outside of Amazon’s store. Compl. ¶¶ 66, 72, 79, 85. Even if the Court were to find that the



District has stated an antitrust claim, the purchases on which it could seek recovery would have to be narrowed. As explained below, the DCAA prohibits the District from seeking relief on behalf of consumers who made their purchases through retail channels other than Amazon.

*First*, DCAA Section 28-4509 allows the District to seek recovery only for purchases of goods distributed or produced by Amazon. Specifically, subsection (a) provides that only purchasers “*in the chain of manufacture, production, or distribution of goods or services*” may bring suit for damages as a result of any overcharge paid for such goods or services. D.C. Code § 28-4509(a) (emphasis added). As its legislative history makes clear, Section 28-4509 is limited to consumers who purchased a good or service “*initially distributed or produced by an antitrust violator.*” Council of the District of Columbia Rep. on Bill 3-107, The District of Columbia Antitrust Act of 1980, from the Comm. on the Judiciary to Members of the Council (Oct. 8, 1980) at 4 (emphasis added). Non-Amazon purchasers fall outside the scope of Section 28-4509 because they do not purchase goods initially produced or distributed by Amazon; they purchase from other retailers. *Peterson v. Visa U.S.A., Inc.*, No. Civ. A. 03-8080, 2005 WL 1403761, at \*2 (D.C. Super. Ct. Apr. 22, 2005) (dismissing plaintiff/consumer’s antitrust claims for lack of standing, concluding that they were a “non-purchaser of the services,” who did “not fit anywhere in the chain of distribution for [the debit card services at issue in the case]”).

*Second*, courts consistently reject antitrust standing where, as here, the chain of causation between the claimed antitrust injury and the alleged anticompetitive conduct is too attenuated, and there are intervening causes. *See, e.g., In re Vitamins Antitrust Litig.*, Nos. MISC. No. 99-197, 2001 WL 855463, at \*4–6 (D.D.C. July 2, 2001) (citing *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters* (“AGC”), 459 U.S. 519, 537–45 (1983)). As the complaint makes clear, multiple variables determine the prices of the products at issue, including independent

pricing decisions of non-conspiring retailers and independent decisions of third-party sellers related to marketplace fees, shipping methods, marketing, and other cost factors. *See AGC*, 459 U.S. at 541 (no antitrust standing where “injuries were only an indirect result of whatever harm may have been suffered by” others). If the District were permitted to sue Amazon on behalf of customers for purchases they made from non-party retailers or sellers—who make independent pricing, supplier, and cost decisions—there would be no stopping point for antitrust liability.

### CONCLUSION

For the foregoing reasons, Amazon’s motion to dismiss should be granted.

Dated: July 20, 2021

Respectfully submitted,

PAUL, WEISS, RIFKIND, WHARTON &  
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/s/ Karen L. Dunn

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of July, 2021, a true and correct copy of the foregoing Opposed Motion to Dismiss, the accompanying Memorandum of Points and Authorities, and a proposed Order were served electronically via Case File Xpress to the following:

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# **EXHIBIT A**

# Amazon Services Business Solutions Agreement

## General Terms

Welcome to **Amazon Services Business Solutions**, a suite of optional services for sellers including: [Selling on Amazon](#), [Fulfillment by Amazon](#), [Amazon Clicks](#), [Transaction Processing Services](#), and the [Marketplace Web Service](#).

THIS AMAZON SERVICES BUSINESS SOLUTIONS AGREEMENT (THE "**AGREEMENT**") CONTAINS THE TERMS AND CONDITIONS THAT GOVERN YOUR ACCESS TO AND USE OF THE SERVICES AND IS AN AGREEMENT BETWEEN YOU OR THE BUSINESS YOU REPRESENT AND AMAZON. BY REGISTERING FOR OR USING THE SERVICES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, INCLUDING THE SERVICE TERMS AND PROGRAM POLICIES THAT APPLY FOR EACH COUNTRY FOR WHICH YOU REGISTER OR ELECT TO USE A SERVICE (IN EACH CASE, THE "**ELECTED COUNTRY**").

As used in this Agreement, "**we**," "**us**," and "**Amazon**" means the applicable Amazon Contracting Party and any of its applicable Affiliates, and "**you**" means the applicant (if registering for or using a Service as an individual), or the business employing the applicant (if registering for or using a Service as a business) and any of its Affiliates. Capitalized terms have the meanings given to them in this Agreement. If there is a conflict among terms in this Agreement, the Program Policies will prevail over any applicable Service Terms and the General Terms, and the applicable Service Terms will prevail over the General Terms.

### 1. Enrollment.

To begin the enrollment process, you must complete the registration process for one or more of the Services. Use of the Services is limited to parties that can lawfully enter into and form contracts under applicable Law (for example, the Elected Country may not allow minors to use the Services). As part of the application, you must provide us with your (or your business') legal name, address, phone number and e-mail address. We may at any time cease providing any or all of the Services at our sole discretion and without notice.

### 2. Service Fee Payments; Receipt of Sales Proceeds.

Fee details are described in the applicable Service Terms and Program Policies. You are responsible for all of your expenses in connection with this Agreement. To use a Service, you must provide us with valid credit card information from a credit card or credit cards acceptable by Amazon ("**Your Credit Card**") as well as valid bank account information for a bank account or bank accounts acceptable by Amazon (conditions for acceptance may be modified or discontinued by us at any time without notice) ("**Your Bank Account**"). You will use only a name you are authorized to use in connection with a Service and will update all of the information you provide to us in connection with the Services 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), to obtain credit reports about you from time to time, to obtain credit authorizations from the issuer of Your Credit Card, and to charge Your Credit Card or debit Your Bank Account for any sums payable by you to us (in reimbursement or otherwise). All payments to you will be remitted to Your Bank Account through a banking network or by other means specified by us.

**If we determine that your actions or performance may result in returns, chargebacks, claims, disputes, violations of our terms or policies, or other risks to Amazon or third parties, then we may in our sole discretion withhold any payments to you for as long as we determine any related risks to Amazon or third parties persist. For any amounts that we determine you owe us, we may (a) charge Your Credit Card or any other payment instrument you provide to us; (b) offset any amounts that are payable by you to us (in**

reimbursement or otherwise) against any payments we may make to you or amounts we may owe you; (c) invoice you for amounts due to us, in which case you will pay the invoiced amounts upon receipt; (d) reverse any credits to Your Bank Account; or (e) collect payment or reimbursement from you by any other lawful means. If we determine that your account has been used to engage in deceptive, fraudulent, or illegal activity, or to repeatedly violate our Program Policies, then we may in our sole discretion permanently withhold any payments to you. Except as provided otherwise, all amounts contemplated in this Agreement will be expressed and displayed in the Local Currency, and all payments contemplated by this Agreement will be made in the Local Currency.

In addition, we may require that you pay other amounts to secure the performance of your obligations under this Agreement or to mitigate the risk of returns, chargebacks, claims, disputes, violations of our terms or policies, or other risks to Amazon or third parties. These amounts may be refundable or nonrefundable in the manner we determine, and failure to comply with terms of this Agreement, including any applicable Program Policies, may result in their forfeiture.

As a security measure, we may, but are not required to, impose transaction limits on some or all customers and sellers 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. We will not be liable to you: (i) if we do not proceed with a transaction or disbursement that would exceed any limit established by us for a security reason, or (ii) if we permit a customer to withdraw from a transaction because an Amazon Site or Service is unavailable following the commencement of a transaction.

### **3. Term and Termination.**

The term of this Agreement will start on the date of your completed registration for or use of a Service, whichever occurs first, and continue until terminated by us or you as provided in this Agreement (the "**Term**"). We may terminate or suspend this Agreement or any Service for any reason at any time by notice to you. You may terminate this Agreement or any Service for any reason at any time by the means then specified by Amazon. Termination or suspension of a Service will not terminate or suspend any other Service unless explicitly provided. Upon termination, all rights and obligations of the parties under this Agreement will terminate, except that Sections 2, 3, 4, 5, 6, 7, 8, 9, 11, 14, 15, 16, and 19 will survive termination. Any terms that expressly survive according to the applicable Service Terms will also survive termination.

### **4. License.**

You grant us a royalty-free, non-exclusive, worldwide, perpetual, irrevocable right and license to use, reproduce, perform, display, distribute, adapt, modify, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of Your Materials, and to sublicense the foregoing rights to our Affiliates and operators of Amazon Associated Properties; provided, however, that we will not alter any of Your Trademarks from the form provided by you (except to re-size trademarks to the extent necessary for presentation, so long as the relative proportions of such trademarks remain the same) and will comply with your removal requests as to specific uses of Your Trademarks (provided you are unable to do so using standard functionality made available to you via the applicable Amazon Site or Service); provided further, however, that nothing in this Agreement will prevent or impair our right to use Your Materials without your consent to the extent that such use is allowable without a license from you or your Affiliates under applicable Law (e.g., fair use under United States copyright law, referential use under trademark law, or valid license from a third party).

### **5. Representations.**

You represent and warrant to us that: (a) if you are a business, you are duly organized, validly existing and in good standing under the Laws of the country in which your business is registered and that you are registering for the Service(s) within such country; (b) you have all requisite right, power,

and authority to enter into this Agreement, perform your obligations, and grant the rights, licenses, and authorizations in this Agreement; (c) any information provided or made available by you or your Affiliates to Amazon or its Affiliates is at all times accurate and complete; (d) you and your financial institution(s) are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties or owned or controlled by such a party, including but not limited to the lists maintained by the United Nations Security Council, the US Government (e.g., the US Department of Treasury's Specially Designated Nationals list and Foreign Sanctions Evaders list and the US Department of Commerce's Entity List), the European Union or its member states, or other applicable government authority; and (e) you and all of your subcontractors, agents, and suppliers will comply with all applicable Laws in your performance of your obligations and exercise of your rights under this Agreement.

## **6. Indemnification.**

You release us and agree to indemnify, defend, and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives, and agents against any claim, loss, damage, settlement, cost, expense, or other liability (including, without limitation, attorneys' fees) (each, a "**Claim**") arising from or related to: (a) your actual or alleged breach of any obligations in this Agreement; (b) any of Your Sales Channels other than Amazon Sites and Amazon Associated Properties, Your Products (including their offer, sale, performance, and fulfillment), Your Materials, any actual or alleged infringement of any Intellectual Property Rights by any of the foregoing, and any personal injury, death, or property damage related thereto; (c) Your Personnel (including any act or omission of Your Personnel or any Claim brought or directed by Your Personnel); or (d) Your Taxes. You will use counsel reasonably satisfactory to us to defend each indemnified Claim. If at any time we reasonably determine that any indemnified Claim might adversely affect us, we may take control of the defense at our expense. You may not consent to the entry of any judgment or enter into any settlement of a Claim without our prior written consent, which may not be unreasonably withheld.

## **7. Disclaimer & General Release.**

a. THE AMAZON SITES AND THE SERVICES, INCLUDING ALL CONTENT, SOFTWARE, FUNCTIONS, MATERIALS, AND INFORMATION MADE AVAILABLE ON OR PROVIDED IN CONNECTION WITH THE SERVICES, ARE PROVIDED "AS-IS." AS A USER OF THE SERVICES, YOU USE THE AMAZON SITES, THE SERVICES, THE MWS SITE, AND SELLER CENTRAL AT YOUR OWN RISK. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE AND OUR AFFILIATES DISCLAIM: (i) ANY REPRESENTATIONS OR WARRANTIES REGARDING THIS AGREEMENT, THE SERVICES OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT; (ii) IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE; AND (iii) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM OUR NEGLIGENCE. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE AMAZON SITES AND THE SERVICES WILL MEET YOUR REQUIREMENTS OR BE AVAILABLE, TIMELY, SECURE, UNINTERRUPTED, OR ERROR FREE, AND WE WILL NOT BE LIABLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING BUT NOT LIMITED TO SYSTEM FAILURES OR OTHER INTERRUPTIONS THAT MAY AFFECT THE RECEIPT, PROCESSING, ACCEPTANCE, COMPLETION, OR SETTLEMENT OF ANY TRANSACTIONS.

b. BECAUSE AMAZON IS NOT INVOLVED IN TRANSACTIONS BETWEEN CUSTOMERS AND SELLERS OR OTHER PARTICIPANT DEALINGS, IF A DISPUTE ARISES BETWEEN ONE OR MORE PARTICIPANTS, EACH PARTICIPANT RELEASES AMAZON (AND ITS AGENTS AND EMPLOYEES) FROM CLAIMS, DEMANDS, AND DAMAGES (ACTUAL AND CONSEQUENTIAL) OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, SUSPECTED AND UNSUSPECTED, DISCLOSED AND UNDISCLOSED, ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH DISPUTES.

## **8. Limitation of Liability.**

WE WILL NOT BE LIABLE (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE, PRODUCT LIABILITY, OR OTHER THEORY), OR OTHERWISE) TO YOU OR ANY OTHER PERSON FOR COST OF COVER, RECOVERY, OR RECOUPMENT OF ANY INVESTMENT MADE BY YOU OR YOUR AFFILIATES IN CONNECTION WITH THIS AGREEMENT, OR FOR ANY LOSS OF PROFIT, REVENUE, BUSINESS, OR DATA OR PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF AMAZON HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE COSTS OR DAMAGES. FURTHER, OUR AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED WILL NOT EXCEED AT ANY TIME THE TOTAL AMOUNTS DURING THE PRIOR SIX MONTH PERIOD PAID BY YOU TO AMAZON IN CONNECTION WITH THE PARTICULAR SERVICE GIVING RISE TO THE CLAIM.

## **9. Insurance.**

If the gross proceeds from Your Transactions exceed the applicable Insurance Threshold during each month over any period of three (3) consecutive months, or otherwise if requested by us, then within thirty (30) days thereafter, you will maintain at your expense throughout the remainder of the Term for each applicable Elected Country commercial general, umbrella or excess liability insurance with the Insurance Limits per occurrence and in aggregate covering liabilities caused by or occurring in conjunction with the operation of your business, including products, products/completed operations and bodily injury, with policy(ies) naming Amazon and its assignees as additional insureds. At our request, you will provide to us certificates of insurance for the coverage to the following address: c/o Amazon, P.O. Box 81226, Seattle, WA 98108-1226, Attention: Risk Management.

## **10. Tax Matters.**

As between the parties, you will be responsible for the collection, reporting, and payment of any and all of Your Taxes, except to the extent that (i) Amazon automatically calculates, collects, or remits taxes on your behalf according to applicable law; or (ii) Amazon expressly agrees to receive taxes or other transaction-based charges on your behalf in connection with tax calculation services made available by Amazon and used by you. You agree to and will comply with the Tax Policies. All fees and payments payable by you to Amazon under this Agreement or the applicable Service Terms are exclusive of any applicable taxes, deductions or withholding (including but not limited to cross-border withholding taxes), and you will be responsible for paying Amazon any of Your Taxes imposed on such fees and any deduction or withholding required on any payment.

## **11. Confidentiality.**

During the course of your use of the Services, you may receive information relating to us or to the Services, including but not limited to Amazon Transaction Information, that is not known to the general public ("**Confidential Information**"). You agree that: (a) all Confidential Information will remain Amazon's exclusive property; (b) you will use Confidential Information only as is reasonably necessary for your participation in the Services; (c) you will not otherwise disclose Confidential Information to any other Person; and (d) you will take all reasonable measures to protect the Confidential Information against any use or disclosure that is not expressly permitted in this Agreement. You may not issue any press release or make any public statement related to the Services, or use our name, trademarks, or logo, in any way (including in promotional material) without our advance written permission, or misrepresent or embellish the relationship between us in any way.

## **12. Force Majeure.**

We will not be liable for any delay or failure to perform any of our obligations under this Agreement by reasons, events or other matters beyond our reasonable control.

## **13. Relationship of Parties.**



Subject to the Transaction Processing Service Terms (if the Elected Country for a Service is the United States), you and we are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between us. You will have no authority to make or accept any offers or representations on our behalf. This Agreement will not create an exclusive relationship between you and us. Nothing expressed or mentioned in or implied from this Agreement is intended or will be construed to give to any person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or in respect to this Agreement. This Agreement and all of the representations, warranties, covenants, conditions, and provisions in this Agreement are intended to be and are for the sole and exclusive benefit of Amazon, you, and customers. As between you and us, you will be solely responsible for all obligations associated with the use of any third party service or feature that you permit us to use on your behalf, including compliance with any applicable terms of use. You will not make any statement, whether on your site or otherwise, that would contradict anything in this section.

#### **14. Use of Amazon Transaction Information.**

You will not, and will cause your Affiliates not to, directly or indirectly: (a) disclose any Amazon Transaction Information (except that you may disclose that information solely as necessary for you to perform your obligations under this Agreement if you ensure that every recipient uses the information only for that purpose and complies with the restrictions applicable to you related to that information); (b) use any Amazon Transaction Information for any marketing or promotional purposes whatsoever, or otherwise in any way inconsistent with our or your privacy policies or applicable Law; (c) contact a Person that has ordered Your Product with the intent to collect any amounts in connection therewith or to influence that Person to make an alternative transaction; (d) disparage us, our Affiliates, or any of their or our respective products or services or any customer; or (e) target communications of any kind on the basis of the intended recipient being an Amazon Site user. In addition, you may only use tools and methods that we designate to communicate with Amazon Site users regarding Your Transactions, including for the purpose of scheduling, communicating, or cancelling the fulfillment of Your Products. The terms of this [Section 14](#) do not prevent you from using other information that you acquire without reference to Amazon Transaction Information for any purpose, even if that information is identical to Amazon Transaction Information, provided that you do not target communications on the basis of the intended recipient being an Amazon Site user.

#### **15. Suggestions and Other Information.**

If you or any of your Affiliates elect to provide or make available suggestions, comments, ideas, improvements, or other feedback or materials to us in connection with or related to any Amazon Site or Service (including any related Technology), we will be free to use, disclose, reproduce, modify, license, transfer and otherwise distribute, and exploit any of the foregoing information or materials in any manner. In order to cooperate with governmental requests, to protect our systems and customers, or to ensure the integrity and operation of our business and systems, we may access and disclose any information we consider necessary or appropriate, including but not limited to user contact details, IP addresses and traffic information, usage history, and posted content. If we make suggestions on using the Services, you are responsible for any actions you take based on our suggestions.

#### **16. Modification.**

We may amend any of the terms and conditions contained in this Agreement at any time and at our sole discretion. Any changes will be effective upon the posting of such changes on Seller Central, on the MWS Site, or on the applicable Amazon Site, and you are responsible for reviewing these locations and informing yourself of all applicable changes or notices. All notice of changes to the General Terms and the Service Terms will be posted for at least 30 days. Changes to Program Policies may be made without notice to you. You should refer regularly to Seller Central and the MWS Site, as applicable, to review the current Agreement (including the Service Terms and Program Policies) and to be sure that the items you offer can be offered via the applicable Service. YOUR CONTINUED USE OF A SERVICE

AFTER AMAZON'S POSTING OF ANY CHANGES WILL CONSTITUTE YOUR ACCEPTANCE OF SUCH CHANGES OR MODIFICATIONS.

## **17. Password Security.**

Any password we provide to you may be used only during the Term to access Seller Central (or other tools we provide, including the MWS Site, as applicable) to use the Services, electronically accept Your Transactions, and review your completed transactions. You are solely responsible for maintaining the security of your password. You may not disclose your password to any third party (other than third parties authorized by you to use your account in accordance with this Agreement) and are solely responsible for any use of or action taken under your password. If your password is compromised, you must immediately change your password.

## **18. Export.**

You will not 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.

## **19. Miscellaneous.**

The Governing Laws will govern this Agreement, without reference to rules governing choice of laws or the Convention on Contracts for the International Sale of Goods. If the Elected Country is Japan, Amazon and you both consent that any dispute with Amazon or its Affiliates or claim relating in any way to your use of the Services or this Agreement as it relates to your use of the Services in Japan will be adjudicated in the Governing Courts, and you consent to exclusive jurisdiction and venue in the Governing Courts. If the Elected Country is the United States, Canada, or Mexico, **Amazon and you both consent that any dispute with Amazon or its Affiliates or claim relating in any way to this Agreement or your use of the Services will be resolved by binding arbitration as described in this paragraph, rather than in court**, except that (i) you may assert claims in a small claims court that is a Governing Court if your claims qualify and (ii) you or we may bring suit in the Governing Courts, submitting to the jurisdiction of the Governing Courts and waiving our respective rights to any other jurisdiction, to enjoin infringement or other misuse of intellectual property rights. **There is no judge or jury in arbitration, and court review of an arbitration award is limited. However, an arbitrator can award on an individual basis the same damages and relief as a court (including injunctive and declaratory relief or statutory damages), and must follow the terms of this Agreement as a court would.** To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent, CSC Services of Nevada, Inc., 2215-B Renaissance Drive, Las Vegas, NV 89119. The arbitration will be conducted by the American Arbitration Association (AAA) under its rules, including the AAA's Supplementary Procedures for Consumer-Related Disputes. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. We will reimburse those fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous. Likewise, Amazon will not seek attorneys' fees and costs from you in arbitration unless the arbitrator determines the claims are frivolous. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person at a mutually agreed location. **Amazon and you each agree that any dispute resolution proceedings will be conducted only on an individual basis and not in a class, consolidated or representative action.** If for any reason a claim proceeds in court rather than in arbitration **Amazon and you each waive any right to a jury trial.**

You may not assign this Agreement, by operation of law or otherwise, without our prior written consent. Subject to that restriction, this Agreement will be binding on, inure to, and be enforceable against the parties and their respective successors and assigns. We may perform any of our obligations or exercise any of our rights under this Agreement through one or more of our Affiliates.

Our failure to enforce your strict performance of any provision of this Agreement will not constitute a waiver of our right to enforce such provision or any other provision of this Agreement subsequently.

We have the right in our sole discretion to determine the content, appearance, design, functionality, and all other aspects of the Services, including by redesigning, modifying, removing, or restricting access to any of them.

Because Amazon is not your agent (except for the limited purpose set out in the Transaction Processing Service Terms (if the Elected Country for a Service is the United States)), or the customer's agent for any purpose, Amazon will not act as either party's agent in connection with resolving any disputes between participants related to or arising out of any transaction.

We will send all notices and other communications regarding this Agreement to you at the e-mail addresses you designated for notifications and updates in your program application or within Seller Central or the MWS Site, as applicable, or by any other means then specified by Amazon. We may also communicate with you electronically and in other media, and you consent to such communications regardless of any "E-mail Preferences" (or similar preferences or requests) you may have indicated on the applicable Amazon Site, on Seller Central, on the MWS Site, or by any other means. You may change your e-mail addresses and certain other information in Seller Central and the MWS Site, as applicable. You will ensure that all of your information is up to date and accurate at all times. You must send all notices and other communications relating to Amazon to our Merchant Services Team by using the [Contact Us](#) form.

This Agreement incorporates and you accept the applicable Service Terms and Program Policies, which Amazon may modify from time to time. If any provision of this Agreement is deemed unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from these terms and conditions and will not affect the validity and enforceability of any remaining provisions. If the Elected Country is Canada, then it is the express wish of the parties that this Agreement and the applicable Service Terms and Program Policies have been drafted in English. (The following is a French translation of the preceding sentence: Si le pays de service est le Canada, les parties conviennent que la présente autorisation et tous les termes et conditions applicables s'y rattachant soient rédigés en anglais.) If the Elected Country is any country other than Japan, we may make available translations to this Agreement and the applicable Service Terms and Program Policies, but the English version will control. This Agreement represents the entire agreement between the parties with respect to the Services and related subject matter and supersedes any previous or contemporaneous oral or written agreements and understandings.

## Definitions

As used in this Agreement, the following terms have the following meanings:

**"Affiliate"** means, with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with that entity.

**"Amazon Associated Properties"** means any website or other online point of presence, mobile application, service or feature, other than an Amazon Site, through which any Amazon Site, or products or services available on any of them, are syndicated, offered, merchandised, advertised, or described.

**"Amazon Contracting Party"** means the party outlined below.

- If the Elected Country is Canada:

Service	Amazon Contracting Party
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Selling on Amazon	Amazon Services International, Inc.
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon Services Contracts, Inc.
Fulfillment by Amazon	Amazon.com.ca, Inc.
Amazon Clicks	Amazon Services International, Inc.

- If the Elected Country is Japan:

Service	Amazon Contracting Party
Selling on Amazon	Amazon Japan G.K.
Fulfillment by Amazon	Amazon Japan G.K.
Amazon Clicks	Amazon Japan G.K.

- If the Elected Country is Mexico:

Service	Amazon Contracting Party
Selling on Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.
Fulfillment by Amazon	Servicios Comerciales Amazon México S. de R.L. de C.V.
Amazon Clicks	Servicios Comerciales Amazon México S. de R.L. de C.V.

- If the Elected Country is the United States:

Service	Amazon Contracting Party
Selling on Amazon	Amazon Services LLC
Selling on Amazon (if your account is enabled to list Optional Coverage Plans)	Amazon Services Contracts, Inc.
Fulfillment by Amazon	Amazon Services LLC
Amazon Clicks	Amazon Services LLC
Transaction Processing Services	Amazon Payments, Inc., Amazon Capital Services, Inc., or Amazon Services, LLC, according to the Transaction Processing Services Terms

- If you register for or use the Marketplace Web Service, the Amazon Contracting Party is the Contracting Party that provides the applicable Service you use in connection with the Marketplace Web Service.

**"Amazon Site"** means, as applicable, the CA Amazon Site, the JP Amazon Site, the MX Amazon Site, or the US Amazon Site.

**"Amazon Transaction Information"** means, collectively, Order Information and any other data or information acquired by you or your Affiliates from Amazon, its Affiliates, or otherwise as a result of this Agreement, the transactions contemplated by this Agreement, or the parties' performance under this Agreement.

**"CA Amazon Site"** means the website, the primary home page of which is identified by the url [www.amazon.ca](http://www.amazon.ca), and any successor or replacement of such website.

**"Content"** means copyrightable works under applicable Law and content protected by database rights under applicable Law.

**"Excluded Products"** means the items described on the applicable [Restricted Products pages](#) in Seller Central, any other applicable Program Policy, or any other information made available to you by Amazon.

**"Governing Courts"** means the applicable one of the following:

- the state or Federal court in King County, Washington (if the Elected Country is Canada, Mexico, or the United States),
- Tokyo District Court or Tokyo Summary Court depending upon the amount of the claim made (if the Elected Country is Japan).

**"Governing Laws"** means the applicable one of the following:

- the laws of the State of Washington, United States together with the Federal Arbitration Act and other applicable federal law (if the Elected Country is Canada, Mexico, or the United States),
- the laws of Japan (if the Elected Country is Japan).

**"Insurance Limits"** means the applicable one of the following:

- One Million Canadian Dollars (\$1,000,000) (if the Elected Country is Canada),
- One Hundred Million Japanese Yen (¥100,000,000) (if the Elected Country is Japan),
- Ten Million Mexican Pesos (\$10,000,000) (if the Elected Country is Mexico),
- One Million U.S. Dollars (\$1,000,000) (if the Elected Country is the United States).

**"Insurance Threshold"** means the applicable one of the following:

- Ten Thousand Canadian Dollars (\$10,000) (if the Elected Country is Canada),
- One Million Japanese Yen (¥1,000,000) (if the Elected Country is Japan),
- One Hundred Thousand Mexican Pesos (\$100,000) (if the Elected Country is Mexico),
- Ten Thousand U.S. Dollars (\$10,000) (if the Elected Country is the United States).

**"Intellectual Property Right"** means any patent, copyright, Trademark, domain name, moral right, trade secret right, or any other intellectual property right arising under any Laws and all ancillary and related rights, including all rights of registration and renewal and causes of action for violation, misappropriation or infringement of any of the foregoing.

**"JP Amazon Site"** means that website, the primary home page of which is identified by the url [www.amazon.co.jp](http://www.amazon.co.jp), and any successor or replacement of such website.

**"Law"** means any law, ordinance, rule, regulation, order, license, permit, judgment, decision, or other requirement, now or in the future in effect, of any governmental authority (e.g., on a federal, state, or provincial level, as applicable) of competent jurisdiction.

**"Local Currency"** means the applicable one of the following:

- U.S. Dollars (if the Elected Country is the United States),
- Canadian Dollars (if the Elected Country is Canada),
- Mexican Pesos (if the Elected Country is Mexico),
- Japanese Yen (if the Elected Country is Japan).

**"MX Amazon Site"** means the website, the primary home page of which is identified by the url [www.amazon.com.mx](http://www.amazon.com.mx), and any successor or replacement of such website.

**"MWS Site"** means that website (and any successor or replacement of such website), the primary homepage of which is currently located at <http://developer.amazonservices.com/>.

**"Optional Coverage Plans"** means warranties, extended service plans and related offerings, in each case as determined by us, that you offer.

**"Order Information"** means, with respect to any of Your Products ordered through an Amazon Site, the order information and shipping information that we provide or make available to you.

**"Person"** means any individual, corporation, partnership, limited liability company, governmental authority, association, joint venture, division, or other cognizable entity, whether or not having distinct legal existence.

**"Program Policies"** means all terms, conditions, policies, guidelines, rules, and other information on the applicable Amazon Site, on Seller Central, or on the MWS Site, including those shown on the "Policies and Agreements" section of Seller Central or elsewhere in the "Help" section of Seller Central (and, for purposes of the Fulfillment by Amazon Service, specifically including the [FBA Guidelines](#)).

**"Sales Proceeds"** means the gross proceeds from any of Your Transactions, including (a) all shipping and handling, gift wrap and other charges; (b) taxes and customs duties to the extent specified in the applicable [Tax Policies](#); and (c) in the case of invoiced orders, any amounts that customers fail to pay to us or our Affiliates on or before the applicable invoice due date.

**"Seller Central"** means the online portal and tools made available by Amazon to you, for your use in managing your orders, inventory, and presence on a particular Amazon Site or any other online point of presence.

**"Service"** means each of the following services: Selling on Amazon, Fulfillment by Amazon, Amazon Clicks (including Amazon Sponsored Products), the Marketplace Web Service, and, if the Elected Country for a Service is the United States, the Transaction Processing Services, together in each case with any related services and materials we make available.

**"Service Terms"** means the service terms applicable to each Service, which are made part of this Agreement upon the date you elect to register for or use the applicable Service, and any subsequent modifications we make to those terms.

**"Technology"** means any: (a) ideas, procedures, processes, systems, methods of operation, concepts, principles, and discoveries protected or protectable under the Laws of any jurisdiction; (b) interfaces, protocols, glossaries, libraries, structured XML formats, specifications, grammars, data formats, or other similar materials; and (c) software, hardware, code, technology, or other functional item.

**"Trademark"** means any trademark, service mark, trade dress (including any proprietary "look and feel"), trade name, other proprietary logo or insignia, or any other source or business identifier, protected or protectable under any Laws.

**"US Amazon Site"** means that website, the primary home page of which is identified by the url www.amazon.com, and any successor or replacement of such website.

**"Your Materials"** means all Technology, Your Trademarks, Content, Your Product information, data, materials, and other items or information provided or made available by you or your Affiliates to Amazon or its Affiliates.

**"Your Personnel"** means any third party warranting, administering or otherwise involved in the offer, sale, performance, or fulfillment of Your Products, including any of your employees, representatives, agents, contractors, or subcontractors.

**"Your Product"** means any product or service (including Optional Coverage Plans) that you: (a) have offered through the Selling on Amazon Service; (b) have made available for advertising through the Amazon Clicks Service; or (c) have fulfilled or otherwise processed through the Fulfillment by Amazon Service.

**"Your Sales Channels"** means all sales channels and other means through which you or any of your Affiliates offers products or services, other than physical stores.

**"Your Taxes"** means any and all sales, goods and services, use, excise, premium, import, export, value added, consumption, and other taxes, regulatory fees, levies (specifically including environmental levies), or charges and duties assessed, incurred, or required to be collected or paid for any reason (a) in connection with any advertisement, offer or sale of products or services by you on or through or in connection with the Services; (b) in connection with any products or services provided for which Your Products are, directly or indirectly, involved as a form of payment or exchange; or (c) otherwise in connection with any action, inaction, or omission of you or your Affiliates, or any Persons providing products or services, or your or their respective employees, agents, contractors, or representatives, for which Your Products are, directly or indirectly, involved as a form of payment or exchange. Also, if the Elected Country is the United States, Mexico, Canada, or Japan as it is used in the Fulfillment by Amazon Service Terms, this defined term also means any of the types of taxes, duties, levies, or fees mentioned above that are imposed on or collectible by Amazon or any of its Affiliates in connection with or as a result of fulfillment services including the storage of inventory or packaging of Your Products and other materials owned by you and stored by Amazon, shipping, gift wrapping, or other actions by Amazon in relation to Your Products pursuant to the Fulfillment by Amazon Service Terms.

**"Your Trademarks"** means Trademarks of yours that you provide to us: (a) in non-text form for branding purposes; and (b) separate from (and not embedded or otherwise incorporated in) any product specific information or materials.

**"Your Transaction"** means any sale of Your Product(s) through an Amazon Site.

### ***Selling on Amazon Service Terms***

The Selling on Amazon Service ("**Selling on Amazon**") is a Service that allows you to offer certain products and services directly on the Amazon Sites.

These Selling on Amazon Service Terms are part of the Agreement, but, unless specifically provided otherwise, concern and apply only to your participation in Selling on Amazon. BY REGISTERING FOR OR USING THE SELLING ON AMAZON SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE SELLING ON AMAZON SERVICE TERMS. **NOTWITHSTANDING THE PREVIOUS SENTENCE, IF YOU HAVE ENTERED INTO A SEPARATE AGREEMENT THAT PERMITS YOU TO OFFER YOUR PRODUCTS THROUGH A PARTICULAR AMAZON SITE (E.G., A MERCHANTS@ AMAZON.COM PROGRAM AGREEMENT, MERCHANTS @AMAZON.CO.JP PROGRAM AGREEMENT OR ANY PREDECESSOR OF THOSE AGREEMENTS), THEN TO THE EXTENT THAT YOU CONTINUE TO LIST AND SELL**

**YOUR PRODUCTS ON THAT AMAZON SITE PURSUANT TO SUCH SEPARATE AGREEMENT, TRANSACTIONS OF YOUR PRODUCTS ON THAT AMAZON SITE AND ANY TAX SERVICES WE MAKE AVAILABLE UNDER THAT AGREEMENT ARE GOVERNED BY THE TERMS OF THAT AGREEMENT AND NOT BY THESE SELLING ON AMAZON SERVICE TERMS.**

## **S-1 Your Product Listings and Orders.**

**S-1.1 Products and Product Information.** You will provide in the format we require accurate and complete Required Product Information for each product or service that you offer through any Amazon Site and promptly update that information as necessary to ensure it at all times remains accurate and complete. You will also ensure that Your Materials, Your Products (including packaging) and your offer and subsequent sale of any of the same on any Amazon Site comply with all applicable Laws (including all minimum age, marking and labeling requirements) and do not contain any sexually explicit (except to the extent expressly permitted under our applicable Program Policies), defamatory or obscene materials. You may not provide any information for, or otherwise seek to offer any Excluded Products on any Amazon Sites; or provide any URL Marks for use, or request that any URL Marks be used, on any Amazon Site. If you offer a product for sale on an Amazon Site that requires a warning under California Health & Safety Code Section 25249.6 (a "Proposition 65 Warning") you (a) will provide us with such warning in the manner specified in our Program Policies, (b) agree that our display of a Proposition 65 Warning on a product detail page is confirmation of our receipt of that warning, and (c) will only revise or remove a Proposition 65 Warning for a product when the prior warning is no longer legally required.

**S-1.2 Product Listing; Merchandising; Order Processing.** We will enable you to list Your Products on a particular Amazon Site, and conduct merchandising and promote Your Products as permitted by us (including via the Amazon Associated Properties or any other functions, features, advertising, or programs on or in connection with the applicable Amazon Site). We may use mechanisms that rate, or allow shoppers to rate, Your Products and your performance as a seller and Amazon may make these ratings and feedback publicly available. We will provide Order Information to you for each order of Your Products through the applicable Amazon Site. We will also receive all Sales Proceeds on your behalf for each of these transactions and will have exclusive rights to do so, and will remit them to you in accordance with these Selling on Amazon Service Terms. We may permit certain customers to place invoiced orders for Your Products, in which case remittance of Sales Proceeds may be delayed according to each customer's invoicing terms. You will accept and fulfill invoiced orders in the same manner as you accept and fulfill non-invoiced orders, except as otherwise provided in this Agreement.

**S-1.3 Shipping and Handling Charges.** For Your Products ordered by customers on or through an Amazon Site that are not fulfilled using Fulfillment by Amazon, you will determine the shipping and handling charges subject to our Program Policies and standard functionality (including any category-based shipping and handling charges we determine, such as for products offered by sellers on the Individual selling plan and BMVD Products generally). When we determine the shipping and handling charges, you will accept them as payment in full for your shipping and handling. Please refer to the Fulfillment by Amazon Service Terms for Your Products that are fulfilled using Fulfillment by Amazon.

**S-1.4 Credit Card Fraud and Unpaid Invoices.** We will bear the risk of (a) credit card fraud (i.e., a fraudulent purchase arising from the theft and unauthorized use of a third party's credit card information) occurring in connection with Your Transactions, and (b) late payments or defaults by customers in connection with invoiced orders for Your Products, except, in each case, in connection with Seller-Fulfilled Products that are not fulfilled strictly in accordance with the Order Information and Shipment Information. You will bear all other risk of fraud or loss. We may in our sole discretion withhold for investigation, refuse to process, restrict shipping destinations for, stop, and/or cancel any of Your Transactions. You will stop or cancel orders of Your Products if we ask you to do so. If you have already transferred Your Products to a carrier or shipper when we ask you to stop or cancel an order, you will use commercially reasonable efforts to stop or cancel delivery of that order. You will refund any customer (in accordance with [Section S-2.2](#)) that has been charged for an order that we stop or cancel.



## **S-2 Sale and Fulfillment; Refunds and Returns.**

**S-2.1 Sale and Fulfillment.** Other than as described in the Fulfillment by Amazon Service Terms for each Amazon Site for which you register or use the Selling on Amazon Service, you will: (a) source, offer, sell and fulfill your Seller-Fulfilled Products, and source and, offer and sell your Amazon-Fulfilled Products, in each case in accordance with the terms of the applicable Order Information, this Agreement, and all terms provided by you or us and displayed on the applicable Amazon Site at the time of the order and be solely responsible for and bear all risk for those activities; (b) package each of Your Products in a commercially reasonable manner complying with all applicable packaging and labeling requirements and ship each of Your Products on or before its Expected Ship Date; (c) retrieve Order Information at least once each business day; (d) only cancel Your Transactions as permitted pursuant to your terms and conditions appearing on the applicable Amazon Site at the time of the applicable order or as may be required under this Agreement; (e) fulfill Your Products throughout the Elected Country (except to the extent prohibited by Law or this Agreement); (f) provide to Amazon information regarding fulfillment and order status and tracking (to the extent available), in each case as requested by us using the processes designated by us, and we may make any of this information publicly available; (g) comply with all Street Date instructions; (h) ensure that you are the seller of each of Your Products; (i) include an order-specific packing slip, and, if applicable, any tax invoices, within each shipment of Your Products; (j) identify yourself as the seller of each of Your Products on all packing slips or other information included or provided in connection with Your Products and as the Person to which a customer may return the applicable product; and (k) except as expressly permitted by this Agreement, not send customers emails confirming orders or fulfillment of Your Products. If any of Your Products are fulfilled using Fulfillment by Amazon, the Fulfillment by Amazon Service Terms for the applicable Amazon Site will apply to the storage, fulfillment, and delivery of such Amazon-Fulfilled Products.

**S-2.2 Cancellations, Returns, and Refunds.** The Amazon Refund Policies for the applicable Amazon Site will apply to Your Products. Subject to [Section F-6](#), for any of Your Products fulfilled using Fulfillment by Amazon, you will promptly accept, calculate, and process cancellations, returns, refunds, and adjustments in accordance with this Agreement and the Amazon Refund Policies for the applicable Amazon Site, using functionality we enable for your account. Without limiting your obligations, we may in our sole discretion accept, calculate, and process cancellations, returns, refunds, and adjustments for the benefit of customers. You will route any payments to customers in connection with Your Transactions through Amazon. We will make any payments to customers in the manner we determine, and you will reimburse us for all amounts we pay.

## **S-3 Problems with Your Products.**

**S-3.1 Delivery Errors and Nonconformities; Recalls.** You are solely responsible for any non-performance, non-delivery, misdelivery, theft, or other mistake or act in connection with the fulfillment of Your Products, except to the extent caused by: (a) credit card fraud for which we are responsible under [Section S-1.4](#); or (b) our failure to make available to you Order Information as it was received by us or resulting from address verification. Notwithstanding the previous sentence, for those of Your Products that are fulfilled using Fulfillment by Amazon, if any, the Fulfillment by Amazon Service Terms for the applicable Amazon Site will apply to non-delivery, misdelivery, theft, or other mistake or act in connection with the fulfillment of those of Your Products. You are also responsible for any non-conformity or defect in, any public or private recall of, or safety alert of any of Your Products or other products provided in connection with Your Products. You will notify us promptly as soon as you have knowledge of any public or private recalls, or safety alerts of Your Products or other products provided in connection with Your Products.

**S-3.2 A-to-z Guarantee and Chargebacks.** If we inform you that we have received or initiated a claim under the "A-to-z Guarantee" offered on a particular Amazon Site, or any chargeback or other dispute, concerning one of Your Transactions, you will deliver to us in a format and manner we specify: (a) proof of fulfillment of Your Product(s) (as applicable); (b) the applicable Amazon order identification number; (c) a description of Your Product(s) (as applicable); and (d) any terms provided by you or us and displayed on the Amazon Site at the time of the transaction in question. If you fail to

comply with the prior sentence, or if the claim, chargeback, or dispute is not caused by: (i) credit card fraud for which we are responsible under Section S-1.4; or (ii) our failure to make your Order Information available as the same was received by us or resulting from address verification, then you will promptly reimburse us in accordance with the Service Fee Payments section of this Agreement for the amount of the customer purchase (including the Purchase Price, all associated shipping and handling charges and all taxes, but excluding any associated Referral Fees retained and not subject to refund by Amazon) and all associated credit card association, bank, or other payment processing, re-presentment and/or penalty fees associated with the original purchase and any chargeback or refund, in each case to the extent paid or payable by us or our Affiliates. If the Elected Country is Japan and we receive or initiate a claim under the "A-to-z Guarantee" concerning one of Your Transactions and we determine that we are responsible for that claim then we will purchase the returned products from the customer.

#### **S-4 Parity with Your Sales Channels.**

Subject to this Section S-4, you are free to determine which of Your Products you wish to offer on a particular Amazon Site. You will maintain parity between the products you offer through Your Sales Channels and the products you list on any Amazon Site by ensuring that : (a) the Purchase Price and every other term of offer or sale of Your Product (including associated shipping and handling charges, Shipment Information, any "low price" guarantee, rebate or discount, any free or discounted products or other benefit available as a result of purchasing one or more other products, and terms of applicable cancellation, return and refund policies) is at least as favorable to Amazon Site users as the most favorable terms upon which a product is offered or sold via Your Sales Channels (excluding consideration of Excluded Offers); (b) customer service for Your Products is at least as responsive and available and offers at least the same level of support as the most favorable customer services offered in connection with any of Your Sales Channels (this requirement does not apply to customer service for payment-related issues on Your Transactions, which we will provide); and (c) the Content, product and service information, and other information under Section S-1.1 regarding Your Products that you provide to us is of at least the same level of quality as the highest quality information displayed or used in Your Sales Channels. If you become aware of any non-compliance with (a) above, you will promptly compensate adversely affected customers by making appropriate refunds to them in accordance with Section S-2.2. For Amazon-Fulfilled Products, if the shipping and handling charges associated with the sale and fulfillment of any of Your Products offered on an Amazon Site are included (and not separately stated) in the item price listed for Your Product (collectively a **"Shipping Inclusive Purchase Price"**), then the parity obligation in (a) above will be satisfied if the Shipping Inclusive Purchase Price and each other term of offer or sale for the product on the Amazon Site are at least as favorable to Amazon Site users as the purchase price and each other term of offer or sale for the product (including any and all separately stated shipping and handling charges) pursuant to which the product or service is offered or sold via any of Your Sales Channels.

#### **S-5 Compensation.**

You will pay us: (a) the applicable Referral Fees; (b) any applicable Variable Closing Fee; (c) the non-refundable Selling on Amazon Subscription Fee in advance each month; and (d) any other applicable fees described in this Agreement (including any applicable Program Policies). **"Selling on Amazon Subscription Fee"** means the fee specified as such on the Selling on Amazon Fee Schedule for the applicable Amazon Site at the time such fee is payable. With respect to each of Your Transactions: (i) **"Sales Proceeds"** has the meaning set out in this Agreement; (ii) **"Variable Closing Fee"** means the applicable fee, if any, as specified on the Variable Closing Fee Schedule for the applicable Amazon Site; and (iii) **"Referral Fee"** means the applicable fee based on the Sales Proceeds from Your Transaction through the applicable Amazon Site specified on the Selling on Amazon Fee Schedule for that Amazon Site at the time of Your Transaction, based on the categorization by Amazon of the type of product that is the subject of Your Transaction; provided, however, that Sales Proceeds will not include any shipping charges set by us in the case of Your Transactions that consist solely of products fulfilled using Fulfillment by Amazon.

#### **S-6 Remittance of Sales Proceeds & Refunds.**

Except as otherwise stated in this Agreement, we will remit to you your available balance on a bi-weekly (14 day) (or at our option, more frequent) basis, which may vary for each Elected Country. For each remittance, your available balance is equal to any Sales Proceeds not previously remitted to you as of the applicable Remittance Calculation Date (which you will accept as payment in full for Your Transactions), less: (a) the Referral Fees; (b) the applicable Variable Closing Fee; (c) any Selling on Amazon Subscription Fees; (d) any other applicable fees described in this Agreement (including any applicable Program Policies); (e) any amounts we require you to maintain in your account balance pursuant to this Agreement (including payments withheld pursuant to [Section 2 of the General Terms, Section S-1.4](#), and applicable Program Policies); and (f) any taxes that Amazon automatically calculates, collects and remits to a tax authority according to applicable law, as specified in the Tax Policies.

We may establish a reserve on your account based on our assessment of risks to Amazon or third parties posed by your actions or performance, and we may modify the amount of the reserve from time to time at our sole discretion.

When you either initially provide or later change Your Bank Account information, the Remittance Calculation Date may be deferred by up to 14 days. For sellers that registered after October 30, 2011 and are on the Individual selling plan, the remittance amount will not include Sales Proceeds from the 14-day period before the date of remittance. If you refund money to a customer in connection with one of Your Transactions, and the refund is routed through us (or our Affiliate), on the next available Remittance Calculation Date we will refund to you the amount of the Referral Fee paid by you to us attributable to the amount of the customer refund (including refunded taxes and customs duties only to the extent specified in the applicable [Tax Policies](#)), less the Refund Administration Fee for each of Your Products refunded that is not a BMVD Product, which amount we may retain as an administrative fee; provided, however, that in the case of a complete refund of Sales Proceeds for a Media Product, we will refund to you the full amount of any Variable Closing Fee paid by you to us (and in the case of a partial refund of Sales Proceeds for a Media Product, we will not refund to you any portion of any Variable Closing Fee paid by you to us). We will remit any amounts to be refunded by us pursuant to this subsection from time to time together with the next remittance to be made by us to you.

**"Refund Administration Fee"** means the applicable fee described on the [Refund Administration Fee Schedule](#) for the applicable Amazon Site.

Net Sales Proceeds from non-invoiced orders will be credited to your available balance when they are received by us or our Affiliates. Sales Proceeds from invoiced orders will be credited to your available balance: (a) if you have elected in advance to pay a fee to accelerate remittance of Sales Proceeds from invoiced orders, on the day all of Your Products included in an invoiced orders are shipped; or (b) otherwise, no later than the seventh day following the date that an invoiced order becomes due.

## **S-7 Control of Amazon Sites.**

We have the right in our sole discretion to determine the content, appearance, design, functionality, and all other aspects of the Amazon Sites, including by redesigning, modifying, removing, or restricting access to any of them, and by suspending, prohibiting, or removing any listing.

## **S-8 Effect of Termination.**

Upon termination of these Selling on Amazon Service Terms in connection with a particular Amazon Site, all rights and obligations of the Parties under these Selling on Amazon Service Terms with regard to such Amazon Site will be extinguished, except that the rights and obligations of the Parties with respect to Your Transactions occurring during the Term will survive the termination or expiration of the Term.

## **Selling on Amazon Definitions**

**"Amazon-Fulfilled Products"** means any of Your Products that are fulfilled using the Fulfillment by Amazon Service.

**"Amazon Refund Policies"** means the return and refund policies published on the applicable Amazon Site and applicable to products and services offered via that Amazon Site.

**"BMVD Product"** means any book, magazine or other publication, sound recording, video recording, and/or other media product in any format, including any subscription, in each case excluding any software product, computer game, and/or video game.

**"Excluded Offer"** means any discount, rebate, promotional offer, or other term of offer and/or sale that you: (a) have attempted to make available through a particular Amazon Site but that we do not honor or support (but only until such time as we honor or support the same on such Amazon Site); or (b) make available solely to third parties that either (i) purchase products solely for resale and who are not end users of such products (i.e., wholesale purchasers), or (ii) if the Elected Country is Canada, Mexico, or the United States, have affirmatively elected and opted-in to participate in your or one of your Affiliates' membership-based customer loyalty or customer incentive programs.

**"Expected Ship Date"** means, with respect to any of Your Products, either: (a) the end of the shipping availability period (which begins as of the date on which the relevant order is placed by the customer), or the shipping availability date, as applicable, specified by you in the relevant inventory/product data feed for Your Product; or (b) if you do not specify shipping availability information in such inventory/product data feed or that Your Product is in a product category that Amazon designates as requiring shipment within two (2) business days, two (2) business days after the date on which the relevant order is placed by the customer.

**"Media Product"** means any book, magazine or other publication, sound recording, video recording, software product, computer game, videogame, or other media product in any format, including any related subscription, offered through an Amazon Site.

**"Purchase Price"** means the total amount payable or paid for Your Product (including taxes and shipping and handling charges only to the extent specified in the applicable Tax Policies).

**"Remittance Calculation Date"** is the date that is two (2) business days prior to the date of remittance (the **"Remittance Calculation Date"**).

**"Required Product Information"** means, with respect to each of Your Products in connection with a particular Amazon Site, the following (except to the extent expressly not required under the applicable Program Policies): (a) description, including as applicable, location-specific availability and options, scheduling guidelines and service cancellation policies; (b) SKU and UPC/EAN/JAN numbers, and other identifying information as Amazon may reasonably request; (c) information regarding in-stock status and availability, shipping limitations or requirements, and Shipment Information (in each case, in accordance with any categorizations prescribed by Amazon from time to time); (d) categorization within each Amazon product category and browse structure as prescribed by Amazon from time to time; (e) digitized image that accurately depicts only Your Product, complies with all Amazon image guidelines, and does not include any additional logos, text or other markings; (f) Purchase Price; (g) shipping and handling charge (in accordance with our standard functionality); (h) any text, disclaimers, warnings, notices, labels, warranties, or other content required by applicable Law to be displayed in connection with the offer, merchandising, advertising, or sale of Your Product; (i) any vendor requirements, restocking fees or other terms and conditions applicable to such product that a customer should be aware of prior to purchasing the product; (j) brand; (k) model; (l) product dimensions; (m) weight; (n) a delimited list of technical specifications; (o) SKU and UPC/EAN/JAN numbers (and other identifying information as we may reasonably request) for accessories related to Your Product that is available in our catalog; (p) the state or country Your Product ships from; and (q) any other information reasonably requested by us (e.g., the condition of used or refurbished products; and invoices and other documentation demonstrating the safety and authenticity of Your Products).

**"Seller-Fulfilled Products"** means any of Your Products that are not fulfilled using the Fulfillment by Amazon Service.

**"Shipment Information"** means, with respect to any of Your Products, the estimated or promised shipment and delivery date.

**"Street Date"** means the date(s), if any, specified by the manufacturer, distributor, and/or licensor of a product as the date before which specified information regarding such product (e.g., title of a book) should not be disclosed publicly, or such product should not be delivered or otherwise made available to customers.

**"URL Marks"** means any Trademark, or any other logo, name, phrase, identifier, or character string, that contains or incorporates any top level domain (e.g., .com, .edu, .ca, .fr, .jp) or any variation of a top level domain (e.g., dot com, dotcom, net, or com).

**"Your Transaction"** is defined in the General Terms of this Agreement; however, as used in these Selling on Amazon Service Terms, it means any and all such transactions through Selling on Amazon only.

## **Fulfillment by Amazon Service Terms**

Fulfillment by Amazon ("**FBA**") provides fulfillment and associated services for Your Products.

These FBA Service Terms are part of the Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in FBA. BY REGISTERING FOR OR USING FBA, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE FBA SERVICE TERMS. You expressly agree that Amazon may engage its Affiliate(s) or a third party in order to complete one or more of the fulfillment and associated services outlined below.

If the Elected Country is Japan, the following applies to you: Notwithstanding anything to the contrary in the Agreement, if there should be any subject matter specified in the "Standard Storage Bailment Terms and Conditions (Hyoujun Soko Kitaku Yakkan – Otsu)" that is not specified in the Agreement, including these FBA Service Terms, upon your request, such provision will be determined by discussion and mutual agreement of the parties.

## **Fulfillment Services**

### **F-1 Your Products**

Once you are accepted into FBA, you must apply to register each product you offer that you wish to include in the FBA program. We may refuse registration in FBA of any product, including on the basis that it is an FBA Excluded Product or that it violates applicable Program Policies. You may at any time withdraw registration of any of Your Products from FBA.

### **F-2 Product and Shipping Information**

You will, in accordance with applicable Program Policies, provide in the format we require accurate and complete information about Your Products registered in FBA, and will provide Fulfillment Requests for any Units fulfilled using FBA that are not sold through an Amazon Site ("**Multi-Channel Fulfillment Units**"). You will promptly update any information about Your Products in accordance with our requirements and as necessary so that the information is at all times accurate and complete.

### **F-3 Shipping to Amazon**

**F-3.1** Except as otherwise provided in [Section F-3.4](#) and [Section F-5](#), FBA is limited to Units that are shipped to and from fulfillment centers located within the applicable Elected Country, to be delivered to customers in the same Elected Country only. You will ship Units to us in accordance with applicable Program Policies. You will be responsible for all costs incurred to ship the Units to the shipping destination (including costs of freight and transit insurance) and Amazon will not pay any shipping costs. You are responsible for payment of all customs, duties, taxes, and other charges. In the case of any improperly packaged or labeled Unit, we may return the Unit to you at your expense (pursuant to [Section F-7](#)) or re-package or re-label the Unit and charge you an administrative fee.

**F-3.2** You will not deliver to us, and we may refuse to accept, any shipment or Unsuitable Unit.

**F-3.3** We may, at our option, allow you to ship Units at your expense (as described in [Section F-9.2](#)) to fulfillment centers using discounted shipping rates that we may make available to you for certain carriers. In such event, you will use the processes and supply the information that we require for you to obtain such discounted rates. You also must comply with standard operating procedures, weight and size restrictions, and other shipping requirements of the applicable carriers. If we provide you with the estimated shipping costs prior to shipment, you acknowledge and agree that actual shipping costs may vary from such estimates. In addition, if the weight of the Unit, as determined by the applicable carrier, differs from that submitted by you to us for purposes of determining the estimated shipping costs, then: (a) you may be charged more than the estimated shipping costs if the carrier determines that such Unit weighs more than as submitted by you; or (b) you may be charged the full amount of the estimated shipping costs even if the carrier determines the weight to be less than that submitted by you. You will not use carrier account information (e.g., carrier account number, amount of shipping rates, etc.) for any purpose, nor disclose such information to any third party, and you will protect such information as Amazon's confidential information in accordance with Section 11 of the General Terms of this Agreement. As between you, us, and the applicable carrier, you will be the shipper of record, and we will make payment to the carrier with respect to the shipment of all Units using such discounted rates. Title and risk of loss for any Unit shipped using discounted rates provided by us under this Section will remain with you, and our provision of such shipping rates will not create any liability or responsibility for us with respect to any delay, damage, or loss incurred during shipment. You authorize the applicable carrier to provide us with all shipment tracking information.

**F-3.4** If you ship Units from outside the applicable Elected Country to fulfillment centers, you will list yourself as the importer/consignee and nominate a customs broker. If Amazon is listed on any import documentation, Amazon reserves the right to refuse to accept the Units covered by the import documents and any costs assessed against or incurred by Amazon will be collected from Your Bank Account, deducted from amounts payable to you, or by other method at our election.

## **F-4 Storage**

We will provide storage services as described in these FBA Service Terms once we confirm receipt of delivery. We will keep electronic records that track inventory of Units by identifying the number of Units stored in any fulfillment center. We will not be required to physically mark or segregate Units from other inventory units (e.g., products with the same Amazon standard identification number) owned by us, our Affiliates or third parties in the applicable fulfillment center(s). If we elect to commingle Units with such other inventory units, both parties agree that our records will be sufficient to identify which products are Units. We may move Units among facilities. If there is a loss of or damage to any Units while they are being stored, we will, as your sole remedy, reimburse you in accordance with the [FBA Guidelines](#), and you will, at our request, provide us a valid tax invoice for the compensation paid to you. If we reimburse you for a Unit, we will be entitled to dispose of the Unit pursuant to [Section F-7](#). This reimbursement is our total liability for any duties or obligations that we or our agents or representatives may have and is your only right or remedy. At all other times, you will be solely responsible for any loss of, or damage to, any Units. Our confirmed receipt of delivery does not: (a) indicate or imply that any Unit has been delivered free of loss or damage, or that any loss or damage to any Unit later discovered occurred after confirmed receipt of delivery; (b) indicate or imply that we actually received the number of Units of Your Product(s) specified by you for such shipment; or (c) waive, limit, or reduce any of our rights under this Agreement. We reserve the right

to impose, and change from time to time, scheduling restrictions and volume limitations on the delivery and storage of your inventory in fulfillment centers, and you will comply with any of these restrictions or limitations.

## **F-5 Fulfillment**

As part of our fulfillment services, we will ship Units from our inventory of Your Products to the shipping addresses in the Elected Country included in valid customer orders, or submitted by you as part of a Fulfillment Request. We may ship Units together with products purchased from other merchants, including any of our Affiliates. We also may ship Units separately that are included in a single Fulfillment Request. If you participate in our export fulfillment services, we will also ship Your Products that we determine to be eligible (each, a **"Foreign-Eligible Product"**) to Foreign Addresses within countries we determine to be eligible for foreign shipments, subject to the additional terms on foreign shipments in the applicable [FBA Guidelines](#).

## **F-6 Customer Returns**

**F-6.1** You will be responsible for and will accept and process returns of, and provide refunds and adjustments for, any Multi-Channel Fulfillment Units in accordance with the Agreement (including the applicable Program Policies).

**F-6.2** We will receive and process returns of any Amazon Fulfillment Units that were shipped to addresses within the Elected Country in accordance with the terms of your Seller Agreement, these FBA Service Terms, and the Program Policies. Any Sellable Units that are also Amazon Fulfillment Units and that are properly returned will be placed back into the inventory of Your Products in the FBA Program. We may fulfill customer orders for Your Products with any returned Amazon Fulfillment Units. Except as provided in [Section F-7](#), you will retake title of all Units that are returned by customers.

**F-6.3** Subject to [Section F-7](#), we will, at your direction, either return or dispose of any Unit that is returned to us by a customer and that we determine is an Unsuitable Unit.

**F-6.4** If Amazon receives a customer return of a Multi-Channel Fulfillment Unit, you will direct us to return or dispose of the Unit at your own cost failing which we may dispose of the Unit as provided in [Section F-7](#).

## **F-7 Returns to You and Disposal**

**F-7.1** You may, at any time, request that Units be returned to you or that we dispose of Units.

**F-7.2** We may return Units to you for any reason, including upon termination of these FBA Service Terms. Returned Units will be sent to your designated shipping address. However, if (a) the designated shipping address we have for you is outdated or incorrect, (b) you have not provided or, upon our request, confirmed a designated shipping address in the Elected Country, or (c) we cannot make arrangements for you to pay for the return shipment, then the Unit(s) will be deemed abandoned and we may elect to dispose of them in our sole discretion.

We may dispose of any Unsuitable Unit (and you will be deemed to have consented to our action): (i) immediately if we determine in our sole discretion that the Unit creates a safety, health, or liability risk to Amazon, our personnel, or any third party; (ii) if you fail to direct us to return or dispose of any Unsuitable Unit within thirty (30) days after we notify you that the Unit has been recalled; or (iii) if you fail to direct us to return or dispose of any Unsuitable Unit within thirty (30) days (or as otherwise specified in the applicable Program Policies) after we notify you. In addition, you will reimburse us for expenses we incur in connection with any Unsuitable Units.

**F-7.3** We may dispose of any Unit we are entitled to dispose of (including any Unsuitable Units) in the manner we prefer. Title to each disposed Unit will transfer to us at no cost to us as necessary for us to dispose of the Unit, and we will retain all proceeds, if any, received from the disposal.

**F-7.4** You will promptly notify us of any recalls or potential recalls, or safety alerts of any of Your Products and cooperate and assist us in connection with any recalls or safety alerts, including by initiating the procedures for returning items to you under our standard processes. You will be responsible for all costs and expenses you, we or any of our or your Affiliates incur in connection with any recall or potential recall or safety alerts of any of Your Products (including the costs to return, store, repair, liquidate, or deliver to you or any vendor any of these products).

## **F-8 Customer Service**

**F-8.1** For Multi-Channel Fulfillment Units we will have no customer service obligations other than to pass any inquiries to your attention at the contact you provide, and to make available a reasonable amount of information regarding the status of the fulfillment of Your Products if you request it and if and to the extent we possess the requested information. You will ensure that all of your policies and messaging to your customers regarding shipping of Your Products and other fulfillment-related matters, reflect our policies and requirements, including with regard to shipping methods, returns, and customer service; and, you will conspicuously display on your website(s), in emails or in other media or communications any specific disclosures, messaging, notices, and policies we require.

**F-8.2** We will be responsible for and have sole discretion regarding all customer service issues relating to packaging, handling and shipment, and customer returns, refunds, and adjustments related to Amazon Fulfillment Units. We will have the right to determine whether a customer will receive a refund, adjustment or replacement for any Amazon Fulfillment Unit and to require you to reimburse us where we determine you have responsibility in accordance with the Agreement (including these FBA Service Terms and the Program Policies). Except as provided in this [Section F-8](#) regarding any Amazon Fulfillment Units, customer service will be handled in accordance with your Seller Agreement.

**F-8.3** In situations relating to Amazon Fulfillment Units where the wrong item was delivered or the item was damaged or lost or is missing, unless we determine that the basis for such request is caused by you or any of your employees, agents, or contractors, we will, as your sole and exclusive remedy and at our option: (a) for any Amazon Fulfillment Unit, (i) ship a replacement Unit to the customer and reimburse you in accordance with the [FBA Guidelines](#) for the replacement Unit, or (ii) process a refund to the customer and reimburse you in accordance with the FBA Guidelines for the Unit; or (b) for any Multi-Channel Fulfillment Unit, reimburse you in accordance with the FBA Guidelines for the Unit (and you will, at our request, provide us a valid tax invoice for the compensation paid to you). Any customer refund will be processed in accordance with the Selling on Amazon and the Transaction Processing Service Terms (if the Elected Country for a Service is the United States). Notwithstanding the Selling on Amazon Service Terms, we will be entitled to retain the applicable fees payable to us under the Selling on Amazon Service Terms and these FBA Service Terms, respectively. Except as expressly provided in this Section F-8.3, you will be responsible for all costs associated with any replacement or return.

**F-8.4** If we provide a replacement Unit or refund as described in [Section F-8.3](#) to a customer and that customer returns the original Unit to us, we will be entitled to dispose of the Unit pursuant to [Section F-7](#), or, if it is a Sellable Unit, we may, at our option, place such Unit back into your inventory in accordance with [Section F-6](#). If we do put a Unit back into your inventory, you will reimburse us for the applicable Replacement Value (as described in the FBA Guidelines) of the returned Unit. Any replacement Unit shipped by us under these FBA Service Terms will be deemed to be, and will be treated in the same manner as, an order and sale of such Unit from you to the customer via the applicable Amazon Site or Service in accordance with, and subject to, the terms and conditions of this Agreement and your Seller Agreement.

## **F-9 Compensation for Fulfillment Services**



**F-9.1 Handling and Storage Fees.** You will pay us the applicable fees described in the applicable Fulfillment by Amazon Fee Schedule. You will be charged the Storage Fees beginning on the day (up to midnight) that the Unit arrives at a fulfillment center and is available for fulfillment by Amazon (or in the case of any Unsuitable Unit, the arrival day (up to midnight)), until the earlier of: (a) the day (up to midnight) we receive a valid customer order for such product or a request from you to return or dispose of the Unit; or (b) the day (up to midnight) we actually ship the Unit to your designated return location or dispose of the Unit.

**F-9.2 Shipping and Gift Wrap.** For any Amazon Fulfillment Units we will determine the amounts charged to the customer for shipping and gift wrap services for the Units that we fulfill through the FBA Program. As between you and us, these charges will be your charges to the customer, and we will report them to you. We will charge you (and you will pay us) a fee equal to the amount of such charges to the customer. In the case of shipments of Units sold through the Amazon Site that qualify for the "Free Shipping" promotion, the amounts charged to the customer for shipping the Selling on Amazon Units that Amazon fulfills will first be charged to the customer and will next be deducted from the total charges to the customer as your promotion and Amazon will not charge you the fee described above. If you ship Units to us using the shipping rates that we may make available pursuant to Section F-3.3, you will reimburse us for the actual amounts charged to us by the applicable carrier for such shipments.

**F-9.3 Proceeds.** We may keep all proceeds of any Units that we dispose of or to which title transfers, including returned, damaged, or abandoned Units. You will have no security interest, lien, or other claim to the proceeds that we receive in connection with the sale, fulfillment, and/or shipment of these Units.

## **F-10 Indemnity**

In addition to your obligations under Section 6 of the General Terms of this Agreement, you also agree to indemnify, defend, and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives, and agents against any Claim that arises from or relates to: (a) the Units (whether or not title has transferred to us, and including any Unit that we identify as yours pursuant to Section F-4 regardless of whether such Unit is the actual item you originally sent to us), including any personal injury, death, or property damage; (b) the shipment, export, or delivery of Your Products to Foreign Addresses (including with respect to any classification data and other information provided by you to us in connection therewith, and notwithstanding any rights we have under Section F-5 or any certifications we may make in connection with the shipment, export, or delivery of Your Products); (c) any of Your Taxes or the collection, payment, or failure to collect or pay Your Taxes; and, if applicable (d) any sales, use, value added, personal property, gross receipts, excise, franchise, business, or other taxes or fees, or any customs, duties, or similar assessments (including penalties, fines, or interest on any of the foregoing) imposed by any government or other taxing authority in connection with the shipment of Foreign-Eligible Products to Foreign Addresses (collectively, "**Foreign Shipment Taxes**").

## **F-11 Release**

You, on behalf of yourself and any successors, subsidiaries, Affiliates, officers, directors, shareholders, employees, assigns, and any other person or entity claiming by, through, under, or in concert with them (collectively, the "**Releasing Parties**"), irrevocably acknowledge full and complete satisfaction of and unconditionally and irrevocably release and forever fully discharge Amazon and each of our Affiliates, and any and all of our and their predecessors, successors, and Affiliates, past and present, as well as each of our and their partners, officers, directors, shareholders, agents, employees, representatives, attorneys, and assigns, past and present, and each of them and all Persons acting by, through, under, or in concert with any of them (collectively, the "**Released Parties**"), from any and all claims, obligations, demands, causes of action, suits, damages, losses, debts, or rights of any kind or nature, whether known or unknown, suspected or unsuspected, absolute or contingent, accrued or unaccrued, determined or speculative (collectively, "**Losses**") which the Releasing Parties now own or hold or at any time have owned or held or in the future may hold or own against the Released Parties,

or any of them, arising out of, resulting from, or in any way related to the shipment, export, or delivery of Your Products to Foreign Addresses, including any tax registration or collection obligations. You, on behalf of yourself and all other Releasing Parties, recognize that you, and each of them, may have some Losses, whether in tort, product liability, contract, warranty, or otherwise, against the Released Parties of which you, or any of them, are totally unaware and unsuspecting, or which may arise or accrue after the date you register for or use FBA, which the Releasing Parties are giving up by agreeing to these FBA Service Terms. It is your intention in agreeing to these FBA Service Terms that these FBA Service Terms will deprive the Releasing Parties of each and all such Losses and prevent the Releasing Party from asserting any such Losses against the Released Parties, or any of them. In addition to the foregoing, you acknowledge, on behalf of yourself and all other Releasing Parties that you are familiar with Section 1542 of the Civil Code of the State of California, as follows:

**"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."**

You, on behalf of yourself and all other Releasing Parties, expressly waive and relinquish any rights that you had or may have under Section 1542 of the Civil Code of the State of California or any similar provision of the law of any other jurisdiction, to the full extent that you may lawfully waive all such rights pertaining to the subject matter of these FBA Service Terms.

#### **F-12 Disclaimer**

IN ADDITION TO THE DISCLAIMER IN SECTION 7 OF THE GENERAL TERMS OF THIS AGREEMENT, WE DISCLAIM ANY DUTIES OF A BAILEE OR WAREHOUSEMAN, AND YOU WAIVE ALL RIGHTS AND REMEDIES OF A BAILOR (WHETHER ARISING UNDER COMMON LAW OR STATUTE OR OTHERWISE), RELATED TO OR ARISING OUT OF ANY POSSESSION, STORAGE, OR SHIPMENT OF YOUR PRODUCTS BY US OR OUR AFFILIATES OR ANY OF OUR OR THEIR CONTRACTORS OR AGENTS.

#### **F-13 Effect of Termination**

Following any termination of the Agreement or these FBA Service Terms in connection with a particular Elected Country, we will, as directed by you, return to you or dispose of the Units held in that Elected Country as provided in Section F-7. If you fail to direct us to return or dispose of the Units within thirty (30) days (or as otherwise specified in the applicable Program Policies) after termination, then we may elect to return and/or dispose of the Units in whole or in part, as provided in Section F-7, and you will be deemed to have consented to our actions. Upon any termination of these FBA Service Terms in connection with a particular Elected Country, all rights and obligations of the parties under these FBA Service Terms in connection with such Elected Country will be extinguished, except that the rights and obligations of the parties under Sections F-1, F-2, F-3, F-4, F-5, F-6, F-7, F-8, F-9, F-11, F-12, and F-13 with respect to Units received or stored by Amazon as of the date of termination will survive the termination.

#### **F-14 Tax Matters**

You understand and acknowledge that storing Units at fulfillment centers may create tax nexus for you in any country, state, province, or other localities in which your Units are stored, and you will be solely responsible for any taxes owed as a result of such storage. If any Foreign Shipment Taxes or Your Taxes are assessed against us as a result of performing services for you in connection with the FBA Program or otherwise pursuant to these FBA Service Terms, you will be responsible for such Foreign Shipment Taxes and Your Taxes and you will indemnify and hold Amazon harmless from such Foreign Shipment Taxes and Your Taxes as provided in Section F-10 of these FBA Service Terms.

#### **F-15 Additional Representation**

In addition to your representations and warranties in [Section 5](#) of the General Terms of this Agreement, you represent and warrant to us that: (a) you have valid legal title to all Units and all necessary rights to distribute the Units and to perform under these FBA Service Terms; (b) you will deliver all Units to us in new condition (or in such condition otherwise described by you in the applicable Your Product listing) and in a merchantable condition; (c) all Units and their packaging will comply with all applicable marking, labeling, and other requirements required by Law; (d) no Unit is or will be produced or manufactured, in whole or in part, by child labor or by convict or forced labor; (e) you and all of your subcontractors, agents, and suppliers involved in producing or delivering Units will strictly adhere to all applicable Laws of the Elected Country, its territories, and all other countries where Units are produced or delivered, regarding the operation of their facilities and their business and labor practices, including working conditions, wages, hours, and minimum ages of workers; and (f) that all Foreign-Eligible Products (i) can be lawfully exported from Canada, Mexico, Japan, or the United States, as applicable, without any license or other authorization; and (ii) can be lawfully imported into, and comply with all applicable Laws of, any eligible country.

## **FBA Definitions**

**"Amazon Fulfillment Units"** means Units fulfilled using FBA that are sold through an Amazon Site. For avoidance of doubt, if you have successfully registered for or used both the FBA and Selling on Amazon Services, then the term "Amazon Fulfillment Units" and the defined term "Amazon Fulfilled Products" in the Selling on Amazon Service Terms both refer to the same items.

**"FBA Excluded Product"** means any Unit that is an Excluded Product or is otherwise prohibited by the applicable [Program Policies](#).

**"Foreign Address"** means (a) if the Elected Country is the United States, any mailing address that is not (i) within the fifty states of the United States or Puerto Rico, or (ii) an APO/FPO address; and (b) if the Elected Country is not the United States, any mailing address that is not within the Elected Country.

**"Fulfillment Request"** means a request that you submit to us (in accordance with the standard methods for submission prescribed by us) to fulfill one or more Multi-Channel Fulfillment Units.

**"Multi-Channel Fulfillment Units"** has the meaning in [Section F-2](#).

**"Sellable Unit"** means a Unit that is not an Unsuitable Unit.

**"Seller Agreement"** means the Selling on Amazon Service Terms, the Merchants@ Program Agreement, the Marketplace Participation Agreement, any successor to any of these agreements, or any other similar agreement (as determined by Amazon) between you and us that permits you to offer products and services via a particular Amazon Site.

**"Shipping Information"** means with respect to any purchased Unit(s), the following information: the name of the recipient, the shipping address, the quantity of Units to be shipped, and any other shipping-related information we may reasonably request.

**"Unit"** means a unit of Your Product that you deliver to Amazon in connection with the FBA Program.

**"Unsuitable Unit"** means a Unit: (a) that is defective, damaged, unfit for a particular purpose, or lacking required label(s); (b) the labels for which were not properly registered with Amazon before shipment or do not match the product that was registered; (c) that is an FBA Excluded Product or does not comply with the Agreement (including applicable Service Terms and Program Policies); (d) that Amazon determines is unsellable or unfulfillable; or (e) that Amazon determines is otherwise unsuitable.

## Amazon Clicks Service Terms

Amazon Clicks, including Amazon Sponsored Products ("**Amazon Clicks**"), is a Service that allows you to advertise Your Products on Amazon Network Properties.

These Amazon Clicks Service Terms are part of the Agreement, and, unless specifically provided otherwise, concern and apply only to your participation in Amazon Clicks. BY REGISTERING FOR OR USING AMAZON CLICKS, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE AMAZON CLICKS SERVICE TERMS.

### **C-1 Amazon Clicks**

Your Ads may be displayed or made available on Amazon Network Properties as we determine. We do not guarantee that Your Ads will be displayed or made available on any Amazon Network Property, or that Your Ads will appear in any particular position or rank. Notwithstanding any other provision of the Agreement, we may in our sole discretion restrict, modify or otherwise determine the content, appearance, design, functionality and all other aspects of Your Ads, and we may remove any of Your Ads without notice. Except to the extent expressly stated in the Agreement, you are solely responsible for all obligations, risks and other aspects pertaining to the sale of any of Your Products referred to in Your Ads, including without limitation order processing, order fulfillment, returns, refunds, recalls, misdelivery, theft, customer service, and collection of taxes. In addition, you are solely responsible for all ad content, URLs and any other information you submit to us in connection with Your Ads, and the websites and/or other properties to which Your Ads direct users (other than the Amazon Site).

We may use mechanisms that rate, or allow users to rate, Your Products and/or your performance, and we may make these ratings and feedback publicly available. We may use any means we determine necessary to review and monitor Your Ads to improve our service and ad quality.

### **C-2 Product Information**

You will, in accordance with applicable Program Policies, provide, in the format we require, accurate and complete information for each of Your Ads. You will update this information as necessary to ensure that it is at all times accurate and complete. You will not provide any information for, or otherwise seek to advertise for sale on any Amazon Network Property, any products that are unlawful or are otherwise prohibited by applicable Program Policies.

### **C-3 Amazon Clicks Requirements**

Using the highest industry standards, you will treat users and customers who link to Your Products via any of Your Ads with courtesy and respect during all stages of the buying process and resolve to our and their satisfaction in a timely and professional manner any related customer service matters we or they bring to your attention. You will ensure that Your Materials and your advertisement, offer, sale and fulfillment of Your Products comply with all applicable Laws and Program Policies. You will not, directly or indirectly, engage in any fraudulent, impermissible, inappropriate or unlawful activities in connection with your participation in Amazon Clicks, including: (a) sending multiple listings of identical products in the same feed or sending multiple feeds under different accounts; (b) generating fraudulent, repetitive or otherwise invalid clicks, impressions, queries or other interactions, whether through the use of automated applications or otherwise; (c) collecting any user information from any Amazon Network Property or retrieving, extracting, indexing or caching any portion of any Amazon website or services or the websites or services of our Affiliates, whether through the use of automated applications or otherwise; (d) targeting communications of any kind on the basis of the intended recipient being a user of any Amazon Network Property; (e) interfering with the proper working of any Amazon Network Property, Amazon Clicks or our systems; or (f) attempting to bypass any mechanism we use to detect or prevent any of the activities described in this paragraph.

### **C-4 Payment and Tax Matters**

You will pay us the applicable fees we calculate for your use of the Amazon Clicks Service. Any per Click fee will be determined solely by Amazon based on the amount you bid for each of Your Ads, consistent with any applicable product category minimums and Program Policies. You agree to pay us the applicable fees we calculate for your use of the Amazon Clicks Service in the applicable Local Currency only. In addition to any other means permitted by the Agreement, we may collect the applicable fees: (a) in accordance with the payment ladder described in the Program Policies; and (b) on a recurring monthly basis for any remaining unpaid fees accrued after the last ladder payment charged each month. If we choose to invoice you for amounts due to us under the Agreement, you will pay the invoiced amounts within 30 days of the date of the applicable invoice. We may require payment of interest at the rate of 1.5% per month compounded monthly (19.56% compounded annually) or the highest legally permissible rate, whichever is lower, on all amounts not paid when due until paid in full. You will reimburse us for all fees incurred in connection with our collection of amounts payable and past due. You waive all claims related to the fees we charge (including without limitation fees based on suspected invalid Clicks on or invalid impressions of Your Ads), unless claimed within 60 days after the date charged. You understand third parties may generate impressions or Clicks on Your Ads for improper purposes, and you accept this risk. Your sole and exclusive remedy for any suspected invalid impressions or Clicks is to request advertising credits within the timeframe set out above.

## **C-5 Effect of Termination**

Upon any termination of the Term of the Agreement or these Amazon Clicks Service Terms, all rights and obligations of the parties under these Amazon Clicks Service Terms will terminate, except that Sections C-1, C-2, C-4, C-5, C-6 and C-7 will survive termination.

## **C-6 Agents**

If you are an Agent: (a) you represent and warrant that you have been appointed as an agent of an Amazon Clicks Participant, that you are duly authorized to enter into this Agreement on behalf of the Amazon Clicks Participant and have full power and authority to bind the Amazon Clicks Participant to this Agreement, that all of your actions related to this Agreement and the Amazon Clicks Service will be within the scope of this agency, and that the Agreement including these Amazon Clicks Service Terms will be enforceable against the Amazon Clicks Participant in accordance with its terms; (b) you will, upon our request, provide us written confirmation of the agency relationship between you and the Amazon Clicks Participant, including, for example, the Amazon Clicks Participant's express acknowledgment that you are its Agent and are authorized to act on its behalf in connection with Amazon Clicks; (c) except as set forth in the Agreement, you will not make any representation, warranty, promise or guarantee about Amazon Clicks, us or your relationship with us; (d) you will perform your duties pursuant to the Agreement including these Amazon Clicks Service Terms in a professional manner consistent with any requirements we may establish; (e) you will not at any time use information received in connection with Amazon Clicks to conduct any marketing efforts targeted at our existing advertisers or Amazon Clicks Participants; (f) you and the Amazon Clicks Participant are each responsible for all payment obligations under these Amazon Clicks Service Terms, and you and the Amazon Clicks Participant each waive any rights that might require us to proceed against one or more of you prior to proceeding against the other; and (g) you will abide by all restrictions applicable to the Amazon Clicks Participant under this Agreement, including without limitation confidentiality and non-use obligations (e.g., you will not disclose any Confidential Information generated or collected in connection with Amazon Clicks to any person or entity other than to the Amazon Clicks Participant to which such data or information relates, and you will not use any Confidential Information generated or collected in connection with Amazon Clicks for any purpose other than creating, managing, and reporting advertising campaigns on Amazon Network Properties on behalf of the particular Amazon Clicks Participant that has expressly authorized you to do so).

## **C-7 Miscellaneous**

### **C-7.1 Representations**

In addition to your representations and warranties in Section 5 of the Agreement, you represent and warrant to us that: (a) on any website to which Your Ads link (other than on the Amazon Site), you will at all times post and comply with a privacy policy that complies with all applicable Laws; and (b) Your Materials and any information displayed on your website or on any website to which Your Ads link (for the Amazon Site, only to the extent such information is based on Your Materials) comply with all applicable Laws (including without limitation all marking and labelling requirements) and do not contain any false, misleading, infringing, defamatory, obscene or sexually explicit materials (except to the extent expressly permitted under applicable Program Policies).

### **C-7.2 Indemnification**

In addition to your obligations under Section 6 of the Agreement, you agree to indemnify, defend and hold harmless us, our Affiliates, and our and their respective officers, directors, employees, representatives and agents against any Claim arising from or related to: (a) your participation in Amazon Clicks, including without limitation the display of any of Your Ads, any Content, data, materials or other items or information to which Your Ads link, or any actual or alleged infringement of any Intellectual Property Rights by any of the foregoing; (b) your actual or alleged breach of any representation, warranty, or obligation set forth in these Amazon Clicks Service Terms or the Program Policies; or (c) if you are an Agent, any breach or alleged breach of Section C-6 or your other representations, warranties, or obligations set forth in these Amazon Clicks Service Terms.

### **C-7.3 Disclaimers**

IN ADDITION TO THE DISCLAIMERS IN SECTION 7 OF THE AGREEMENT, WE AND OUR AFFILIATES DISCLAIM AND YOU WAIVE ALL CLAIMS REGARDING ANY GUARANTEES ABOUT TIMING, POSITIONING, ADJACENCY, PERFORMANCE, QUANTITY OR QUALITY OF (AS APPLICABLE): PLACEMENTS, TARGETING, IMPRESSIONS, CLICKS, CLICK RATES, CONVERSION RATES, AUDIENCE SIZE, DEMOGRAPHICS OR ADVERTISING COSTS.

### **C-7.4 API Partner**

You may authorize another entity ("**API Partner**") to access or use the Amazon Clicks Service on your behalf through an application program interface or other means as we may designate. Your authorization of an API Partner to access or use the Amazon Clicks Services is conditioned on our consent, which we may grant or withdraw at any time in our sole discretion. You will require your API Partner to be bound by, and your API Partner will comply with, all restrictions applicable to you under this Agreement (including without limitation your confidentiality and non-use obligations). As between you and us, you will be fully responsible for the acts, omissions, and obligations of your API Partner as if such acts, omissions, and obligations were your acts, omissions, and obligations.

### **Amazon Clicks Definitions**

**"Agent"** means an advertising agency or other person or entity who represents an Amazon Clicks Participant as its agent.

**"Amazon Clicks Participant"** means any person or entity enrolled in Amazon Clicks by you if you are the Agent of that person or entity.

**"Amazon Network Properties"** means: (a) the Amazon Site; (b) any website, device, service, feature or other online point of presence operated by Amazon or any of our Affiliates; and (c) any Amazon Associated Properties.

**"Click"** means each time a user clicks on any of Your Ads as determined solely by Amazon.

**"Your Ads"** means any advertisement for Your Product based upon Your Materials that is displayed through Amazon Clicks.

## Transaction Processing Service Terms

BY REGISTERING FOR OR USING ANY SERVICE OTHER THAN AMAZON CLICKS FOR WHICH THE ELECTED COUNTRY IS THE UNITED STATES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THESE TRANSACTION PROCESSING SERVICE TERMS FOR THAT SERVICE. **NOTWITHSTANDING THE FOREGOING, IF A SEPARATE AGREEMENT GOVERNS THE OFFER, SALE OR FULFILLMENT OF YOUR PRODUCTS ON THE US AMAZON SITE, THE TERMS OF THAT AGREEMENT WILL CONTINUE TO GOVERN THE PROCESSING OF YOUR TRANSACTIONS TO THE EXTENT DESCRIBED IN THAT AGREEMENT.**

### P-1 Payments Processing Agency Appointment

For non-invoiced orders, you authorize Amazon Payments, Inc. to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, receiving and holding Sales Proceeds on your behalf, remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates. For invoiced orders, you authorize: (a) Amazon Capital Services, Inc. to act as your agent for purposes of processing payments, refunds and adjustments for Your Transactions, and receiving and holding Sales Proceeds on your behalf; and (b) Amazon Services LLC to act as your agent for purposes of remitting Sales Proceeds to Your Bank Account, charging your Credit Card, and paying Amazon and its Affiliates amounts you owe in accordance with this Agreement or other agreements you may have with Amazon Affiliates. Amazon Payments, Inc., Amazon Capital Services, Inc., and Amazon Services LLC are each an **"Amazon Payments Agent"**. The applicable Amazon Payments Agents provide the services described in these Transaction Processing Service Terms and the related services described in Sections S-1.4, S-2.2, S-6, and F-8.3 of the Agreement (collectively, the **"Transaction Processing Services"**).

When a buyer instructs us to pay you, you agree that the buyer authorizes and orders us to commit the buyer's payment (less any applicable fees or other amounts we may collect under this Agreement) to you. You agree that buyers satisfy their obligations to you for Your Transactions when we receive the Sales Proceeds. We will remit funds to you in accordance with this Agreement.

### P-2 Remittance

Subject to Section 2 of the General Terms of this Agreement, the applicable Amazon Payments Agents will remit funds to you in accordance with Section S-6 of the Agreement and these Transaction Processing Service Terms. Each applicable Amazon Payments Agent's obligation to remit funds collected or received by it or otherwise credited to your available balance in connection with Your Transactions is limited to funds in your available balance that have become available in accordance with this Agreement less amounts owed to Amazon and any taxes that Amazon automatically calculates, collects and remits to a tax authority according to applicable law, as specified in the Tax Policies, subject to chargeback or reversal or withheld for anticipated claims in accordance with this Agreement. Without limiting Amazon's rights to collect any amounts you owe, the applicable Amazon Payments Agent's receipt of Sales Proceeds or crediting of Sales Proceeds to your available balance discharges your obligation to pay applicable fees and other amounts under this Agreement to the extent the Sales Proceeds received or credited equal or exceed the fees and other amounts you owe and the Sales Proceeds are applied to the payment of those fees and amounts.

### P-3 Your Funds

Your Sales Proceeds will be held in an account with the applicable Amazon Payments Agent (a **"Seller Account"**) and will represent an unsecured claim against that Amazon Payments Agent. Your Sales Proceeds are not insured by the Federal Deposit Insurance Corporation, nor do you have any right or

entitlement to collect Sales Proceeds directly from any customer. Prior to disbursing funds to you, an Amazon Payments Agent may combine Sales Proceeds held with the funds of other users of the Services, invest them, or use them for other purposes permitted by applicable Laws. You will not receive interest or any other earnings on any Sale Proceeds. To the extent required by applicable Laws, an Amazon Payments Agent will not use any funds held on your behalf for its corporate purposes, will not voluntarily make such funds available to its creditors in the event of bankruptcy or for any other purpose, and will not knowingly permit its creditors to attach such funds.

#### **P-4 Verification**

We may at any time require you to provide any financial, business or personal information we request to verify your identity. You authorize us to obtain from time to time consumer credit reports to establish or update your Seller Account or in the event of a dispute relating to this Agreement or the activity under your Seller Account. You agree to update all Seller Account information promptly upon any change. The [Amazon Payments Privacy Notice](#) applies to transactions processed by Amazon Payments, Inc.

#### **P-5 Dormant Accounts**

If there is no activity (as determined by us) in connection with your Seller Account for the period of time set forth in applicable unclaimed property laws and we hold Sales Proceeds on your behalf, we will notify you by means designated by us and provide you the option of keeping your Seller Account open and maintaining the Sales Proceeds in your Seller Account. If you do not respond to our notice(s) within the time period we specify, we will send the Sales Proceeds in your Seller Account to your state of residency, as determined by us based on the information in your Seller Account. If we are unable to determine your state of residency or your Seller Account is associated with a foreign country, your funds may be sent to the State of Delaware.

#### **Marketplace Web Service Terms**

The Marketplace Web Service ("**MWS**") is a Service that enables your systems to interface with certain features or functionality available to Sellers. These MWS Service Terms are part of the Agreement, but, unless specifically provided otherwise, concern and apply only to your participation in MWS.

BY REGISTERING FOR OR USING THE MARKETPLACE WEB SERVICE, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS YOU REPRESENT) AGREE TO BE BOUND BY THE AGREEMENT, INCLUDING THESE MARKETPLACE WEB SERVICE TERMS.

#### **MWS-1 Description of the Marketplace Web Service.**

We may make available to you MWS Materials that permit your systems to interface with certain features or functionality available to Sellers. MWS and MWS Materials are provided by us at no charge, subject to the General Terms of this Agreement and the Marketplace Web Service Terms. All terms and conditions applicable to MWS and MWS Materials are solely between you and us. MWS Materials that are Public Software may be provided to you under a separate license, in which case, notwithstanding any other provision of this Agreement, that license will govern your use of those MWS Materials. For the avoidance of doubt, except to the extent expressly prohibited by the license governing any MWS Materials that are Public Software, all of the non-license provisions of this Agreement will apply.

#### **MWS-2 License and Related Requirements.**

**MWS-2.1 Generally.** Subject to your completion of our online registration process for MWS and compliance with the terms of this Agreement, including all applicable Program Policies, we grant you a limited, revocable, non-exclusive, non-sublicenseable, nontransferable license to do the following: (a)



access and use MWS, and install, copy, and use MWS Materials, solely in support of your use of the Services covered by this Agreement in accordance with any applicable MWS Specifications, or (b) access and use MWS, and install, copy, use, and distribute MWS Materials, for the purpose of integrating or enhancing a Seller's systems with the features and functionality permitted by us to be accessed through MWS, but solely in support of Sellers who (i) we approve as participating in good standing in the applicable Services covered by this Agreement, and (ii) have specifically authorized you to provide support services for their Selling Account under an agreement between you and the applicable Seller.

**MWS-2.2 Selling Account.** You must maintain a Selling Account (which may be a Staging Account) in good standing at all times during the Term.

**MWS-2.3 License Restrictions.** You may use and access MWS and applicable MWS Materials only through MWS APIs documented and communicated by us to you. You may not and may not authorize any other party to do any of the following with MWS or MWS Materials: (a) reverse engineer, decompile, or disassemble them; (b) modify or create derivative works based upon them in whole or in part; (c) distribute copies of them; (d) remove any proprietary notices or labels on them; (e) use any Public Software in any manner that requires, pursuant to the license applicable to such Public Software, that MWS or any MWS Materials be disclosed, licensed, distributed, or otherwise made available to anyone; (f) resell, lease, rent, transfer, sublicense, or otherwise transfer rights to them; (g) access or use them in a way intended to avoid incurring any applicable fees or exceeding usage limits or quotas; or (h) engage in any activities we otherwise prohibit. In addition, all licenses granted in these Marketplace Web Service Terms are conditional on your continued compliance with this Agreement, and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement.

**MWS-2.4 Account Identifiers and Credentials.** To access MWS APIs, you must use your Account Identifiers and Credentials in accordance with these Marketplace Web Service Terms. Your Account Identifiers and Credentials are for your personal use only and you must maintain their secrecy and security. You are solely responsible for all activities that occur using your Account Identifiers and Credentials, regardless of whether the activities are undertaken by you or a third party (including your employees, contractors, or agents). You will provide us with notice immediately if you believe an unauthorized third party may be using your Account Identifiers and Credentials or if your Account Identifiers and Credentials are lost or stolen. We are not responsible for unauthorized use of your Account Identifiers and Credentials.

**MWS-2.5 Security of Your Information.** You are solely responsible for the development, content, operation, and maintenance of Your Information, and for properly configuring and using MWS and taking your own steps to maintain appropriate security, protection and backup of Your Information, including using encryption technology to protect them from unauthorized access and routinely archiving them. We are not responsible for any unauthorized access to, alteration of, or the deletion, destruction, damage, loss, or failure to store any of Your Information in connection with MWS (including as a result of your or any Seller's or other third party's errors, acts, or omissions).

**MWS-2.6 MWS Applications.** Prior to making your MWS Application available for commercial use, you must thoroughly test your MWS Application to ensure that it operates properly with MWS and MWS Materials, including, without limitation, that it complies with MWS Specifications.

**MWS-2.7 Information and System Access.** To the extent you access or use MWS or MWS Materials for the purposes set forth in [Section MWS-2.1](#) of this Agreement, you will not access or use any Selling Account unless and only for so long as the access and use is (a) approved beforehand in writing by the Seller as part of a binding agreement between you and the Seller, and (b) required to deliver or operate an MWS Application to or on behalf of the Seller in accordance with that agreement. You may not modify the account settings, Content, or offers of any Selling Account or make any other change to a Selling Account except to the extent authorized in writing by the Seller as part of a binding agreement between you and the Seller. You will not access or use any MWS Transaction Information or Personal Information for any purpose other than the delivery or operation of an MWS

Application to or on behalf of the Seller. You may not reproduce or disseminate or disclose to any third party any MWS Transaction Information or Personal Information for any purpose. Without limiting the foregoing, you will (i) take appropriate technical and organizational measures to protect against unauthorized or unlawful processing or use of MWS Transaction Information or Personal Information and against accidental loss or destruction of, or damage to, MWS Transaction Information or Personal Information, (ii) maintain all MWS Transaction Information and Personal Information logically separate from all other information, and (iii) at all times ensure that you are aware of and have documentation of the location of all copies of any MWS Transaction Information or Personal Information stored by or for you.

### **MWS-3 Termination.**

**MWS-3.1 Termination of Your Access to MWS and MWS Materials.** Without limiting the parties' rights and obligations under the Agreement, we may limit, suspend, or terminate your access to MWS and all MWS Materials at any time and for any reason upon notice to you, including but not limited to circumstances where your access to any other Service is suspended or terminated, where the access of any Seller you support to use one or more Services is suspended or terminated, or if we determine:

- your use of MWS or MWS Materials (a) poses a security risk to MWS or MWS Materials or any Seller or other of our customers, (b) may harm our systems or any Seller or other of our customers, or (c) may subject us or any third party to liability;
- you are using MWS or MWS Materials for fraudulent or illegal activities; or
- our provision of any aspect of MWS or MWS Materials to you is prohibited by law.

Upon any suspension or termination of your access to MWS, you will immediately cease use of MWS and all MWS Materials. Upon any termination of your access to MWS, you will also immediately destroy all MWS Materials. Upon any suspension or termination of your access to MWS, we may cause your Account Identifiers and Credentials to cease to be recognized by the Amazon Network for the purposes of MWS and MWS Materials.

**MWS-3.2 Effect of Termination.** Upon termination of these Marketplace Web Service Terms, all rights and obligations of the Parties under these Marketplace Web Service Terms will be extinguished, except that Sections MWS-1, MWS-3, MWS-4, MWS-5, MWS-6, MWS-7, MWS-8, MWS-9, and MWS-10 survive termination.

### **MWS-4 Modifications to MWS or MWS Materials.**

We may change, deprecate, or discontinue MWS or MWS Materials (including by changing or removing features or functionality of MWS or MWS Materials) from time to time.

### **MWS-5 Notices.**

For notices made by you to us under these Marketplace Web Service Terms and for questions regarding this Agreement, MWS, or MWS Materials, you may contact us at the Contact Address.

### **MWS-6 Suggestions.**

If you suggest to us improvements to MWS or MWS Materials (collectively, "**MWS Suggestions**"), in addition to the rights you grant to us in the General Terms, we will own all right, title, and interest in and to the MWS Suggestions, even if you have designated the MWS Suggestions as confidential. We will be entitled to use the MWS Suggestions without restriction. You irrevocably assign to us all right, title, and interest in and to the MWS Suggestions and agree to provide us any assistance we may require to document, perfect, and maintain our rights in the MWS Suggestions. We reserve the right to contact Sellers in order to conduct periodic surveys to ascertain Sellers' general level of satisfaction

with the MWS and MWS Materials and with your delivery of related services to Sellers, and you agree that we may publically report the results of surveys without restriction.

#### **MWS-7 Rights in MWS, MWS Materials, MWS Specifications, and the Amazon Network.**

As between you and us, we or our licensors own all right, title, and interest in and to MWS, MWS Materials, MWS Specifications, and the Amazon Network. Except as provided in Section MWS-2 of this Agreement, you obtain no rights under this Agreement from us or our licensors to MWS, MWS Materials, MWS Specifications, or the Amazon Network, including any related intellectual property rights.

#### **MWS-8 Indemnification.**

In addition to your obligations under the General Terms of this Agreement, you agree to defend, indemnify, and hold harmless us, our Affiliates, our and their licensors, and each of our and their respective employees, officers, directors, and representatives from and against any Claims arising out of or relating to: (a) your use of MWS or MWS Materials (including any of Your Materials you upload, transfer, or otherwise make available to or through MWS); (b) Your Information or the combination of Your Information with other applications, Content, or processes, including any claim involving alleged infringement or misappropriation of third party rights or the use, development, design, production, advertising, or marketing of Your Information; or (c) any dispute between you and any Seller. If we or any of our Affiliates are obligated to respond to a third party subpoena or other compulsory legal order or process in connection with your use of MWS or MWS Materials (including as described in clause (a) above), you will also reimburse us for reasonable attorneys' fees, as well as our or their employees' and contractors' time and materials spent responding to the third party subpoena or other compulsory legal order or process at our or their then-current hourly rates. For Claims outlined in clauses (a) through (c) above, you must: (i) defend against any Claim with counsel of your own choosing (subject to our prior written consent); or (ii) settle the Claim as you deem appropriate, provided that you obtain our prior written consent before entering into any settlement. We may also assume control of the defense and settlement of the Claim at any time.

#### **MWS-9 Disclaimers.**

IN ADDITION TO THE DISCLAIMERS IN THE GENERAL TERMS OF THIS AGREEMENT, MWS AND MWS MATERIALS ARE PROVIDED "AS IS". WE AND OUR AFFILIATE COMPANIES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE REGARDING MWS OR MWS MATERIALS, INCLUDING ANY WARRANTY THAT MWS OR MWS MATERIALS WILL BE UNINTERRUPTED, ERROR FREE, OR FREE OF HARMFUL COMPONENTS, OR THAT ANY SOFTWARE, DATA, TEXT, AUDIO, VIDEO, IMAGES, OR OTHER CONTENT YOU ACCESS, USE, STORE, RETRIEVE, OR TRANSMIT IN CONNECTION WITH MWS, INCLUDING YOUR INFORMATION, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (A) THE INABILITY TO USE MWS OR MWS MATERIALS, INCLUDING AS A RESULT OF ANY TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO MWS OR MWS MATERIALS; (B) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (C) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO MWS OR MWS MATERIALS; OR (D) ANY TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO MWS OR MWS MATERIALS. WE AND OUR AFFILIATE COMPANIES AND LICENSORS MAY DISCONTINUE PROVIDING OR DEPRECATE MWS AND ANY MWS MATERIALS, AND MAY CHANGE THE NATURE, FEATURES, FUNCTIONS, SCOPE, OR OPERATION OF MWS AND ANY MWS MATERIALS FROM TIME TO TIME, AND YOU AGREE THAT NEITHER WE NOR ANY OF OUR AFFILIATE COMPANIES OR LICENSORS WILL BE LIABLE TO YOU FOR ANY OF THE FOREGOING ACTIONS.

## **MWS-10 Other Terms.**

### **MWS-10.1 Non-Exclusive Rights.**

The rights we grant you in this Agreement are nonexclusive, and we reserve the right (a) to develop or have developed for us products, services, concepts, systems, or techniques that are similar to or compete with any of the products, services, concepts, systems, or techniques that you may develop or use in connection with MWS or MWS Materials and (b) to hire, appoint, or assist third party developers or systems integrators who may offer products, services, concepts, systems, or techniques that are similar to or compete with yours. Each of us will be free to establish our own pricing for our products and services. As between you and us, you will be solely responsible and liable for payment of all costs and expenses of any nature incurred by you or your employees in connection with the performance of your obligations and exercise of your rights under these Marketplace Web Service Terms or under any agreement you enter into with any Seller or other third party.

### **MWS-10.2 Confidentiality.**

You agree not to disclose any Confidential Information we make available under these Marketplace Web Service Terms. However, you will not be required to maintain the confidentiality of any information we make available under these Marketplace Web Service Terms that: (a) is or becomes publicly available without breach of this Agreement; (b) can be shown by documentation to have been known to you at the time of your receipt from us without breach of this Agreement or any other agreement between you and us; (c) is received from a third party who did not acquire or disclose the same by a wrongful or tortious act; or (d) can be shown by documentation to have been independently developed by you without reference to Confidential Information.

### **MWS-10.3 Import and Export Compliance.**

In using MWS and MWS Materials, you will comply with all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control.

### **MWS-10.4 No Third Party Beneficiaries.**

Except as expressly set forth in these Marketplace Web Service Terms, these Marketplace Web Service Terms do not create any third party beneficiary rights in any individual or entity that is not a party to these Marketplace Web Service Terms.

## **Marketplace Web Service Definitions**

**"Account Identifiers and Credentials"** means account IDs and any unique public key/private key pair issued by us or an Affiliate Company that enables you to access and use MWS or MWS Materials.

**"Amazon Network"** means our and our Affiliate Companies' internal data center facilities, servers, networking equipment, and host software systems (e.g., virtual firewalls) that are within our or their reasonable control and are used to provide MWS or MWS Materials.

**"API"** means an application programming interface.

**"Contact Address"** means: mws-admin@amazon.com, with a copy to P.O. Box 81226, Seattle, WA 98108-1226, Attn: Marketplace Web Service Support.

**"MWS Application"** means a software application or website that interfaces with MWS or MWS Materials.

**"MWS Materials"** means any software, data, text, audio, video, images, or other Content we make available in connection with MWS, including APIs, related documentation, software libraries, and other supporting materials, regardless of format.

**"MWS Specifications"** means any technical and operational specifications, security protocols and other documentation or policies provided or made available by us with respect to MWS or MWS Materials.

**"MWS Transaction Information"** means any information, data, or Content relating to any Selling Account, to any customer, or to any transactions processed by or for the Amazon Contracting Party or any of its Affiliate Companies or on any website.

**"Personal Information"** means all personally identifiable information relating to Sellers and customers and other third parties including, but not limited to, name, address, e-mail address, phone number, survey responses, and purchases.

**"Public Software"** means any software, documentation, or other material that contains, or is derived (in whole or in part) from, any software, documentation, or other material that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including but not limited to software, documentation, or other material licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (a) the GNU General Public License (GPL); Lesser/Library GPL (LGPL), or Free Documentation License; (b) The Artistic License (e.g., PERL); (c) the Mozilla Public License; (d) the Netscape Public License; (e) the Sun Community Source License (SCSL); (f) the Sun Industry Standards License (SISL); (g) the BSD License; and (h) the Apache License.

**"Seller"** means any person or entity (including you, if applicable) that is participating in a service covered by this Agreement.

**"Selling Account"** means the password protected account we make available to a Seller in support of its participation in one or more Services covered by this Agreement.

**"Staging Account"** means a Selling Account with status "in staging" that we make available to a third party service provider whom we allow to access our online portals and tools provided to Sellers for the purpose of integrating or enhancing a Seller's systems with the features or functionality made accessible by us through MWS or MWS Materials.

**"Your Information"** means the software, data, text, audio, video, images, or other Content that you use in connection with MWS or MWS Materials, that you cause to interface with MWS, or that you upload to MWS.

# **EXHIBIT B**

This article applies to selling in: **United States**

[Help](#) / [Manage inventory](#) / [Manage your prices](#) / [Pricing your item](#) / [Amazon Marketplace Fair Pricing Policy](#)

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# Amazon Marketplace Fair Pricing Policy

Sellers are responsible for setting their own prices on Amazon marketplaces. In our mission to be Earth's most customer-centric company, Amazon strives to provide our customers with the largest selection at the lowest price, and with the fastest delivery as sellers play an important role.

Amazon regularly monitors the prices of items on our marketplaces, including shipping costs, and compares them with other prices available to our customers. If we see pricing practices on a marketplace offer that harms customer trust, Amazon can remove the Buy Box, remove the offer, suspend the ship option, or, in serious or repeated cases, suspending or terminating selling privileges.

Pricing practices that harm customer trust include, but are not limited to:

- Setting a reference price on a product or service that misleads customers;
- Setting a price on a product or service that is significantly higher than recent prices offered on or off Amazon; or
- Selling multiple units of a product for more per unit than that of a single unit of the same product.
- Setting a shipping fee on a product that is excessive. Amazon considers current public carrier rates, reasonable handling charges, as well as buyer perception when determining whether a shipping price violated our fair pricing policy.

**Related articles**[Automate Pricing](#)[Match Low Price](#)[Amazon Policy on Reference Prices](#)[Amazon Marketplace Fair Pricing Policy](#)[Pricing Health](#)[How to determine Price Per Unit](#)**Need more help?**[See more on Seller Central](#)[Visit Seller Forums](#)**Reach Hundreds of Millions of Customers**[Start Selling On Amazon](#)

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