



NON-MERCHANDISE PURCHASE ORDER TERMS & CONDITIONS

The terms and conditions contained herein shall be effective for all goods, products, and materials (collectively, “**Goods**”) and services (“**Services**”) sold by Seller (as defined below) to Kohl's, Inc. (“**Kohl's**”).

These terms and conditions, together with the terms contained in, or otherwise incorporated by reference, the following: Kohl's Purchase Order or other similar order form or invoice as agreed upon between the parties, Kohl's Vendor Partnership Requirements (as defined herein) and Kohl's Terms of Engagement for Kohl's Business Partners, each as amended by Kohl's, in its sole discretion and without notice, from time to time (copies of which Seller acknowledges it has received and the terms of which Seller acknowledges it has reviewed) are collectively referred to herein as the “**Purchase Order**.” These Terms and Conditions, Kohl's Vendor Partnership Requirements and the Terms of Engagement for Kohl's Business Partners may be found on the Internet at <https://link.kohls.com> and/or <http://www.kohlssuppliers.com>.

- 1. PURCHASE ORDERS.** Seller, as a vendor (including all of Seller's agents, subcontractors, or suppliers) desiring to sell Goods and/or provide Services to Kohl's (as used herein, “**Seller**”) shall be bound by this Purchase Order in addition to Kohl's Terms of Engagement for Kohl's Business Partners as set forth on <https://www.kohlssuppliers.com>. Kohl's offer to purchase Goods and/or Services from Seller is expressly limited to the terms and conditions set forth herein. Any deviation by Seller from Kohl's Purchase Order or demand by Seller for additional or different terms and conditions, or any statement made by Seller in an invoice or otherwise attempting to make Seller's acceptance conditional on Kohl's assent to additional or different terms and conditions shall be of no effect and are objected to and expressly rejected. Seller agrees that all prior negotiations with regard to the Goods and/or Services ordered herein are merged herein and that this Purchase Order shall constitute the complete and exclusive contract between Kohl's and Seller with respect to such Goods and/or Services. Any estimate or forecasts of Kohl's future needs for Goods or Services that may be provided to Seller by Kohl's are for long-range planning purposes only and shall in no way represent a commitment by Kohl's. Kohl's shall have no responsibility or liability for any actions taken by Seller based on such estimates or forecasts. If this Purchase Order is referenced as part of a request for proposal or bidding event, this Purchase Order will become binding only if Seller is expressly awarded business by Kohl's.

The Purchase Order and all documents incorporated therein may not be modified by course of dealing or course of performance. Any oral communication between Kohl's and Seller or any response by Seller, whether oral or in writing, to modify or supplement the terms of the Purchase Order issued by Kohl's shall be ineffective unless such response is in writing executed by Kohl's. Seller's receipt of Kohl's vendor partnership requirements, including those for logistics, routing, store-ready requirements, and other requirements provided from time to time (collectively, “**Vendor Partnership Requirements**”) or Seller's acceptance of Kohl's Purchase Order shall constitute notice to Seller and Seller's assent to the Purchase Order as the terms governing all purchases made by Kohl's from Seller.

- 2. SHIPPING AND DELIVERY.** Time is of the essence as to the dates specified herein for shipment and delivery of Goods and performance of Services. If Goods are not shipped and/or Services are not performed in accordance with the dates specified, Kohl's may, without any liability, cancel the Purchase Order by a written notice to the Seller due to a material breach. In the event the Goods are not shipped and/or Services are not performed exactly as specified in the Purchase Order, in addition to all other available remedies, Kohl's may assess Seller a charge equal to five percent (5%) of the invoice as liquidated damages. Acceptance of any part of the Purchase Order shall not bind Kohl's to accept future Services or future shipments of Goods nor deprive Kohl's of the right to return Goods and/or Services already accepted. Goods and/or Services rejected by Kohl's will be treated as defective Goods and Services as defined below. Seller hereby waives any right to cure improper tender that might otherwise be available under law.

Each shipment must be carefully packed and the packing slip, shipping label, invoice, and any other documents pertaining to this Purchase Order must accompany each shipment showing this Purchase Order number, item numbers, and complete description of contents. Any damage or loss caused by Seller's failure to pack properly shall be paid by Seller. No separate charges for packing, drayage, or storage shall be made, and Kohl's is responsible for only the lowest rate of transportation on shipment unless otherwise specified herein. Separate Purchase Orders shall not be combined on one packing slip. The invoice shall be mailed separately from shipment to the address set forth at the end of this Purchase Order. Invoices dated after the twenty-fourth day of

the month will be billed as of the first day of the following month. Kohl's shall not be responsible for any shipments of excess Goods and/or performance of any excess Services above the quantities set forth in a Purchase Order. Seller acknowledges and agrees that any such excess Goods shall become the sole and exclusive property of Kohl's with no additional payments owed from Kohl's to Seller for such excess Goods. Kohl's reserves the right to impose a reasonable charge for storage and/or additional handling due to early delivery of Goods caused by Seller's untimely shipping.

Seller shall furnish Kohl's with proof of delivery at Kohl's request without charge. In the event of Seller's failure to notify Kohl's Accounts Payable Department in writing within six months following shipment of Goods or completion of Services of non-payment of Seller's invoices pursuant to this Purchase Order, Kohl's shall have no further obligation to pay Seller for Goods shipped or Services provided pursuant to this Purchase Order.

3. **PRICE AND PAYMENT.** The price specified in Kohl's Purchase Order shall include all costs of packing Goods and all costs of delivery of Goods and/or Services to the free on board shipping point ("**F.O.B. point**") or other delivery point specified in the applicable Purchase Order, including the following: (a) all duties and taxes (including excise and withholding taxes) payable in any country where production or delivery takes place; (b) any commissions to selling agents; and (c) other incidental charges, whether or not such charges are itemized separately on invoices to Kohl's. Seller shall not make any substitutions without Kohl's prior written approval. Seller shall bill Kohl's for the Goods and/or Services at the price specified in the applicable Purchase Order.
4. **PAYMENT TERMS.** Unless payment terms are otherwise specified in this Purchase Order, Kohl's may choose to make payment for any Goods provided and/or Services performed hereunder in a lump sum or in installments. If payment is made in a lump sum, payment will be made within 60 days after the provision of Goods and completion of all Services covered by this Purchase Order and the receipt of Seller's application for payment. If payment is made in installments, payment of each installment will be made within 60 days after the provision of all Goods and completion of all Services covered by this Purchase Order and the receipt of Seller's application for payment. If payment is made in installments, payment of each installment will be made within 60 days after receipt of Seller's application for payment ("**Invoice**"). The amount of each installment shall not be more than 90% of the portion of the contract price attributable to the Services in place or the Goods provided as of the 25th day of the preceding month as determined by Kohl's less the aggregate of all previous payments. The final payment will be made within 60 days after provision of all Goods and completion of all Services covered by this Purchase Order and the receipt of Seller's final Invoice. Any provision herein for delivery of Goods and/or Services in installments shall not be construed as making Seller's obligations severable. Shipments of Goods sent C.O.D. without Kohl's written consent will not be accepted and will be at Seller's risk. If applicable, each application for payment shall include appropriate sworn statements and waivers or releases of mechanic's liens from all subcontractors and material suppliers relating to the Goods and Services for which payment is requested, together with such other documentation as Kohl's may reasonably request. Upon Kohl's request, Seller shall provide monthly reports, in a form that complies with Kohl's instructions, to track Goods and Services ordered by Kohl's.
5. **PRICE PROTECTION.** If, before the date of final delivery or final performance under this Purchase Order, Seller offers to sell or sells Goods or Services substantially similar to that ordered herein to another similarly situated purchaser at a lower price and/or on terms more favorable to such purchaser than are stated herein, the terms of this Purchase Order are hereby revised to equal the lowest price and/or most favorable terms at which Seller sells such Goods or Services, and payment hereunder shall be made accordingly. Seller shall meet lower prices of legitimate competition or in lieu thereof, accept cancellation of this Purchase Order.
6. **TERMS OF ENGAGEMENT.** Seller acknowledges that Kohl's has provided Seller with access to a copy of Kohl's Terms of Engagement, which Seller has read and understood. Seller (including any of Seller's subcontractors and suppliers) shall comply with and support the Terms of Engagement and shall not take any action that will violate the Terms of Engagement. Seller shall report to Kohl's any violations or attempted violations of the Terms of Engagement and certify Seller's compliance (including compliance by any of Seller's subcontractors and suppliers) with Kohl's Terms of Engagement as requested to do so by Kohl's.
7. **CHANGE IN SPECIFICATIONS.** Kohl's may change, add to, delete from or otherwise modify or revise its specifications for Goods and/or Services by notice to Seller and such notice shall be effective upon Seller's receipt.
8. **NO ASSIGNMENT; NO SUBCONTRACTING.** Seller may not assign, transfer, or subcontract any rights or delegate any duties that Seller may have under this Purchase Order, in whole or in part, without the express written consent of Kohl's.
9. **CANCELLATION.** Kohl's may cancel this Purchase Order in whole or in part without Seller's authorization and at Kohl's sole and absolute discretion and return at any time at our discretion, for full credit at Seller's expense (including, but not limited to, cost of packing and transportation to and from source) and risk, all or any part of Goods shipped and Services provided hereunder in the event of any of the following, each of which it is agreed will substantially impair the value of the whole Purchase Order to Kohl's: (a) there is any breach of Seller's warranties or obligations hereunder; (b) there is any delay in delivery or performance or departure from delivery and/or routing instructions; (c) there is any variation or deviation from the quantities, quality, specifications, samples,

assortment, prices, sizes, colors, and/or styles ordered or other terms and conditions specified in this Purchase Order or implied by law; (d) the Goods or Services are defective in material, design, or workmanship or infringe upon (or are alleged to infringe upon) the rights of any third party; (e) the Goods or Services become the subject of any Claim (as defined herein) by any third party; (f) Seller becomes insolvent or makes an assignment for the benefit of creditors, a receiver for Seller's assets or business is appointed, or Kohl's reasonably believes Seller may become insolvent or subject to bankruptcy proceedings; or (g) in the event of acts of God (including, but not limited to, natural disasters, fire, flood, earthquake, or disease outbreaks), lock-out, strike, war, civil commotion or disturbances, acts of public enemies, government restrictions, riots, insurrections, sabotage, blockage, embargo, or other causes beyond Kohl's reasonable control. In such event, Seller shall immediately stop all Services and provision of Goods and observe any instruction from Kohl's as to Services or Goods in process. Cancellation for any of the foregoing reasons shall constitute "**For Cause**" and shall not subject Kohl's to any liability, cost, or charge whatsoever. In the event of such cancellation, or any cancellation for cause, Kohl's may take possession of the Goods and any materials and equipment being used by Seller and may cause the Goods or Services to be completed in such manner as Kohl's shall determine, and Seller shall reimburse Kohl's for the cost of completion, or may treat the Goods and Services as defective Goods and Services as further defined below. Kohl's may also cancel this Purchase Order in whole or in part without cause at any time. In the event of cancellation without cause, Kohl's liability to Seller shall be limited to the contract price of that portion of this Purchase Order fully and properly performed by Seller and received by Kohl's prior to such cancellation.

- 10. WORK PRODUCT.** Kohl's shall at all times have title to specifications, designs, artwork, negatives, programs, software, photographs, plates, and other work in progress furnished and intended for use in connection with this Purchase Order (collectively "**Work Product**"). Any Work Product, Goods manufactured solely for Kohl's, or other Services performed by Seller in connection with this Purchase Order shall be deemed to be "**Work Made for Hire.**" Any Work Product or Work Made for Hire shall be the sole property of Kohl's and shall not be utilized by Seller in any way without the express written consent of Kohl's. Seller shall use the Work Product or Work Made for Hire only in connection with this Purchase Order and shall not disclose Work Product or Work Made for Hire to anyone other than Kohl's or, on a need-to-know basis, Seller's employees, subcontractors, or government inspectors. Seller shall not sell or deliver or cause to be sold or delivered to any party other than Kohl's any Work Product or Work Made for Hire, or Goods bearing any Work Product or Work Made for Hire, including, but not limited to, overruns, seconds, or irregular Goods that Kohl's has refused to accept or has returned to Seller. Seller shall, upon Kohl's request or upon completion of the Purchase Order, promptly return all Work Product and Work Made for Hire to Kohl's.
- 11. HOSTED OR LICENSED SERVICES.** In the event Seller is providing hosted or licensed Services (including software) under this Purchase Order, the following shall apply. (a) *License Grant and Restrictions:* Seller hereby grants to Kohl's and Kohl's employees, affiliates, consultants, and contractors a limited, non-exclusive, non-transferrable (except as provided herein), worldwide right to access and use the Seller Technology and Hosting Services for Kohl's own internal business purposes. In this Purchase Order, "**Seller Technology**" means all of Seller's proprietary technology, including software, data, products, processes, algorithms, user interfaces, know-how, techniques, designs, and other tangible or intangible technical material or information licensed to Kohl's by Seller as a Service, and "**Hosting Service(s)**" means the hosting Services that Seller provides to Kohl's in a technical operating environment, including for the Seller Technology, such as any software-as-a-service-based solution or any other particular computer software application(s). Seller Technology and Hosting Services are a subset of Services under this Purchase Order. (b) *Intellectual Property Ownership:* As between Seller and Kohl's, and notwithstanding Work Product or Work Made for Hire, the Seller Technology, Hosting Service, and all intellectual property rights therein or related thereto are and shall remain the exclusive property of Seller or its licensors, and all Kohl's data, information, or material provided or submitted by or on behalf of Kohl's, Kohl's suppliers, customers, employees, affiliates, consultants, or contractors in the course of using the Services shall be and remain the exclusive property of Kohl's. (c) *Representations and Warranties:* In addition to all other representations and warranties set forth in this Purchase Order, Seller represents and warrants that (i) Seller owns or has procured all of the necessary rights, title, and authority to license the Seller Technology and/or Hosting Services, and all components thereof, to Kohl's, as contemplated in this Purchase Order; (ii) the Services, Seller Technology, and Hosting Services provided hereunder, and Kohl's use as contemplated in this Purchase Order, do not currently and shall not infringe upon or violate any copyrights, patents, trademarks, trade secrets, contractual rights, or other proprietary rights of any third party; (iii) the Services will conform to Seller's published documentation or other written specifications and descriptions, subject to the terms of this Purchase Order; (iv) any software provided as part of the Service is free from material defects and does not otherwise contain any Disabling Devices, whereby "**Disabling Devices**" shall include but not be limited to any of the following: software, document, message, or other material that contains a computer virus, worm, Trojan horse, time-bomb, or other device that may erase, scramble, lock, or disable software or equipment or may prevent users from using any website or any other item of hardware or software. Seller will use diligent, commercially-reasonable efforts to immediately remedy any breach of these representations and warranties; and (v) the terms and conditions set forth in any performance level or service level commitments that Seller agrees to meet for availability, speed, handling capacity, uptime, downtime, throughput, or any other such measurement of the Service and any applicable credit that will become due to Kohl's for Seller's failure to meet such commitment shall be set forth in this Purchase Order or other mutually-agreed upon document and shall be incorporated herein by reference.

12. COMPLIANCE WITH LAWS; SELLER COVENANTS. Seller certifies, represents, warrants, and covenants that (a) Seller (including its subcontractors and suppliers) has complied and will comply with all Applicable Laws relevant to Seller's performance under this Purchase Order; (b) all Goods and Services purchased pursuant to this Purchase Order fully comply with all Applicable Laws, including, but not limited to, being produced, processed, manufactured, tested, represented, described, packaged, labeled, packed, advertised, sold, performed, invoiced, and transported in full compliance with all Applicable Laws; and (c) neither Kohl's purchase of the Goods nor Kohl's utilization of the Services shall violate Applicable Laws. "**Applicable Law(s)**" shall include, but not be limited to: (i) all existing laws, regulations, standards, orders, and rulings, as amended, together in all standards, rules, and guides of all United States Federal, state, and local governments (and all departments, boards, bureaus, and commissions thereof), including, but not limited to, the Federal Trade Commission Act, Fair Labor Standards Act, the Tariff Act of 1930, the Consumer Product Safety Act, the Consumer Product Safety Improvement Act of 2008, the Flammable Fabrics Act, the Textile Fiber Products Identification Act, and regulations relating to statement of fiber content of rayons, wool, linens, and other textiles contained in such Goods, the Wool Products Labeling Act, the Care Labeling Rule, the Fair Packaging and Labeling Act, the Magnusson-Moss Warranty Act, the Federal Hazardous Substances Act, the Poison Prevention Packaging Act, the Radiation Control for Health and Safety Act, the Food, Drug and Cosmetics Act, the Federal Child Labor Act, the Occupational Safety and Health Act, the Fur Products Labeling Act, California's Proposition 65, the California Air Resource Board Composite Wood Regulations, the Clean Diamonds Trade Act, the Kimberly Process Certification, the Bank Secrecy Act (and any other anti-money laundering regulations), the Foreign Corrupt Practices Act, the Office of Foreign Assets Control's sanctions program, and all United Nations' resolutions; and (ii) the laws, regulations, and rules of all countries in which Goods are produced, stored, delivered, and/or transported to, from, and/or through and in which Services are performed. Seller certifies that the country of origin of all Goods will be as listed on the Goods labels. All electrical products shipped to Kohl's must be certified and approved by Underwriters Laboratory or ETL SEMKO. As to Goods manufactured outside the United States, Seller shall also comply with all applicable laws of the country where the Goods were manufactured.

Seller agrees to execute and affix to its invoice, any certificates, laboratory results, or other reasonable documents in a form satisfactory to Kohl's that Kohl's may require to evidence Seller's compliance with the foregoing. In addition, Seller will maintain and provide to Kohl's, together with the Goods and Services or immediately upon request thereof, any and all materials or records necessary for Seller to demonstrate that the Goods and Services are in compliance with all Applicable Laws. Seller agrees to furnish Kohl's with any continuing guaranty filed with the Federal Trade Commission or Consumer Product Safety Commission indicating that the Goods covered by Kohl's Purchase Order are properly labeled in accordance with the particular law and regulations pertaining thereto and comply with applicable standards or tests relating thereto. Seller's failure to provide any documents, certificates, warranties, or laboratory results that Kohl's requests to verify or warrant Kohl's compliance with Applicable Law shall be deemed to be a material breach of the terms and conditions of Kohl's Purchase Order.

Seller represents and warrants that its workers are treated fairly and who in all cases are performing work voluntarily, not put at risk of physical harm, fairly compensated, and allowed the right of free association and not exploited in anyway. In addition to representing and warranting that Seller will fully comply with Kohl's Terms of Engagement for Kohl's Business Partners, Seller further certifies, represents, and warrants that Seller and any of its subcontractors or suppliers have not: (a) utilized child labor (child is a person who is younger than 15 (or 14 where the law of that country permits) or younger than the age for completing compulsory education in the country where such age is higher than 15); (b) utilized prison or forced labor (forced labor is work or service which is extracted from any person through the use of force, fraud, coercion, or under the threat of penalty for his or her nonperformance and for which the worker does not offer himself or herself voluntarily and includes without limitation, prison and slave labor or any form of human trafficking for the purposes thereof); (c) engaged in discriminatory practices on the basis of gender, age, disability, sexual orientation, racial characteristics, age, cultural, or religious beliefs; (d) permitted the use of corporal punishment, harassment, coercion, abuse, or intimidation; (e) engaged in bribes, kick-backs, or other similar unlawful or improper payments to any person or entity to obtain or retain business; and (f) engaged in, or have any knowledge of, illegal transshipment or willful manipulation of country of origin or U.S. Customs category information related to the Services provided and Goods sold to Kohl's. Seller represents and warrants that all wages, benefits, and working hours set by Seller and any and all of Seller's subcontractors and suppliers to process, manufacture, label, or ship the Goods and provide Services will comply with all Applicable Laws and other requirements in Kohl's Terms or Engagement for Kohl's Business Partners. Seller further represents and warrants that its workers are covered by workers compensation insurance to the full extent required by Applicable Law. Seller agrees to defend, indemnify, and hold Kohl's, its parent, subsidiaries and affiliates, their respective successors and assigns, and each of the foregoing entity's respective directors, officers, employees, agents, and representatives ("**the Kohl's Indemnitees**") harmless from Seller's breach of these warranties and representations or any other representations or warranties contained in the Purchase Order. If Seller breaches these warranties and representations, Kohl's may take all appropriate corrective action, which may include cancellation of this Purchase Order or any other Purchase Orders placed with Seller by Kohl's, or treating the Goods and Services as defective Goods and Services, in addition to any other remedies at law or in equity.

All of Seller's representations, warranties, certifications, and/or covenants set forth herein shall survive any delivery, inspection, acceptance, or payment of or for the Goods and Services. Further, all of Seller's representations, warranties, certifications, and/or covenants set forth herein are cumulative and in addition to any other warranty provided by law or equity.

- 13. INDEMNIFICATION.** In addition to any other indemnification obligations set forth herein (which, in addition to such obligations contained in this Section, shall survive the expiration or termination of the Purchase Order), Seller shall defend, indemnify, and hold harmless the Kohl's Indemnitees from any and all allegations, demands, claims, charges, liabilities (including, without limitation, strict liability), damages, causes of actions, suits, proceedings, judgments, awards, orders, decrees, fines, penalties, debts, losses, costs, or expenses, including, but not limited to, attorneys' fees, court costs, and costs of settlement (collectively "**Claims**") of any kind, that Kohl's may suffer, sustain, or become subject to arising out of, resulting from, occurring by reason of, or in any manner based upon Seller's breach of any representation(s) and/or warrant(ies), Seller's or its subcontractor's performance or nonperformance under this Purchase Order, the Goods and/or Services (including, without limitation, the use thereof and/or any defect therein or condition thereof), any Claim for unfair competition or alleged infringements of patents, copyrights, trade secrets, trademark, or other intellectual property right, and/or on account of Seller's violation of any of the terms of this Purchase Order, including, but not limited to, compliance with all Applicable Law. Seller also agrees to defend, indemnify, and hold the Kohl's Indemnitees harmless against any Claim that Kohl's may suffer, sustain, or become subject to arising out of, resulting from, occurring by reason of, or in any manner based upon: (a) any act, omission, or negligence by Seller, Seller's employees, agents, affiliates, subcontractors, and/or suppliers; (b) damage to or destruction of personal or real property of the Kohl's Indemnitees or any third party or the injury or death to persons, including, without limitation, employees or invitees of any of the Kohl's Indemnitees and Seller, Seller's employees, agents, affiliates, subcontractors, and/or suppliers; (c) any personal injury (including death), property damage or loss of any nature whatsoever alleged to have occurred as a result of the use or performance of any Goods or Services; and/or (d) any defect in material, workmanship, or design. Seller understands and expressly acknowledges that the defense and indemnification obligations set forth herein are without regard to any of the Kohl's Indemnitees' involvement, if any, in the creation and development of the designs and inventions, or the development of the Goods and Services or whether Kohl's inspected the Goods or Services. Seller is ultimately responsible, and solely liable, for the Goods and/or Services sold to Kohl's under this Purchase Order regardless of who actually designs, manufacturers, or supplies the Goods or Services in whole or in part.

Seller acknowledges and agrees that Seller will promptly respond to Kohl's notification of any Claim and shall promptly confirm Seller's defense and indemnification of the Kohl's Indemnitees as required herein and resolve the Claim on the Kohl's Indemnitees' behalf. In addition to any other rights or remedies set forth herein, in the event Seller fails to promptly respond to Kohl's notification of any Claim and/or fails to promptly confirm its defense and indemnification of the Kohl's Indemnitees as required herein, Seller will be responsible to reimburse the Kohl's Indemnitees any fees they may incur including attorneys' fees and costs to pursue Seller's compliance (or compliance of any of Seller's subcontractors and suppliers) to the terms, conditions, representations, and warranties set forth in this Purchase Order. At no time shall Seller attempt to bind any of the Kohl's Indemnitees to any settlement agreement that contains restrictions or other material limitations on any of the Kohl's Indemnitees and/or includes any admission of liability without first receiving Kohl's prior written authorization, which may be withheld at Kohl's sole and absolute discretion.

- 14. WARRANTIES.** Without limiting Seller's liability under any other warranties contained in this Purchase Order, Seller represents and warrants that the Services will be performed in a safe and workmanlike manner and that the Goods will be sound, fit, and suitable for the purposes intended and free and clear from any and all liens and other encumbrances. In addition to the warranties given by Seller in this Purchase Order, Seller hereby assigns to Kohl's any rights under warranty that Seller may have with respect to any Goods, that are incorporated in the Services, or that are provided as part of the Services. Seller agrees to provide as many copies of any such additional warranties as may be required by Kohl's from time to time. Any such additional warrant(ies) shall be incorporated herein and deemed a part of this Purchase Order; provided, however, such warrant(ies) shall not contain any language that is inconsistent with this Purchase Order nor in any way lessen any of Seller's certifications, warranties, covenants, representations, liabilities, and/or obligations hereunder.

- 15. DEFECTIVE OR INFRINGING GOODS AND/OR SERVICES.** Seller represents and warrants that the Goods ordered herein and Services provided hereunder shall be free from any defects in design, material, or workmanship and be merchantable at the time of delivery to Kohl's and at the time of use and that the Goods shall be delivered and Services performed in the quantity ordered, consistent with samples and specifications provided, and fit and safe for the particular purposes for which they are intended to be used. Seller represents and warrants that the Goods and Services do not currently and shall not infringe or encroach upon the contractual or proprietary rights of any other person, firm, or corporation, including without limitation, the patents, designs, trademarks, trade names, trade dress, copyrights, rights of privacy and publicity, trade secrets, or other proprietary and/or intellectual property right of a third party. Seller understands and accepts the responsibility to ensure that all Goods and Services that Seller provides to Kohl's meet the requirements set forth herein regardless of who actually designs, manufacturers, or provides the Goods or Services. In the event Seller fails to accept or facilitate Kohl's return of defective and/or damaged Goods or Services within a

reasonable period of time after receiving Kohl's notice or Kohl's determines that such return is not practical under the circumstances, then Kohl's shall, in addition to all other rights and remedies set forth herein or available under law or equity, have the right to sell, dispose, or otherwise handle the defective and/or damaged Goods or Services as Kohl's sees fit at your expense and Seller waives all rights to the defective and/or damaged Goods or Services thereafter. Kohl's reserves the right (but shall not be obligated) to repair any defects and debit Seller's account with the expenses involved when in Kohl's sole judgment the cost of making such repairs would be less than the cost of replacement by Seller or cancellation of Kohl's Purchase Order.

- 16. REMEDIES.** If Seller fails to perform as specified in this Purchase Order, Kohl's may, without limitation, and in addition to other remedies set forth herein or provided at law or in equity, (a) cancel this Purchase Order in whole or in part as permitted by and in accordance with the Cancellation terms herein; or (b) obtain the Goods or Services ordered herein from another source with any loss incurred and excess costs therefrom chargeable to Seller. Any sums payable to Seller shall be subject to all Claims and defenses of Kohl's, whether arising from this or any other transaction, and Kohl's may set-off and deduct any such sums against Seller or Seller's parent, subsidiary, affiliate, predecessor, or successor (separately or collectively, "**Affiliates**") under any present or future invoices or amounts owed to Seller or Seller's Affiliates by Kohl's. Seller has no right to set-off whatsoever. Seller shall be barred from commencing an action against Kohl's for any loss, damage, or other Claim of any kind unless a lawsuit is filed within one (1) year from the time Seller's loss, damage, or Claim accrues. At no time shall Kohl's be liable for indirect, punitive, exemplary, incidental, consequential, or special damages, including lost profits, lost income, lost revenues, business interruption, or lost business arising out of this Purchase Order or the transactions or relationship with Kohl's, even if Kohl's has been advised of the possibility of the damages and regardless of any prior course of dealing between the parties.

If any provision of any Purchase Order is held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, then such provision shall be deemed modified only to the extent necessary to make such provision enforceable by such court, and the invalidity, in whole or in part, of any portion of this Purchase Order shall not impair or affect the validity or enforceability of the remaining provisions of such agreements. All of Kohl's rights and remedies under this Purchase Order are cumulative and the exercise by Kohl's of any right or remedy herein provided shall be without prejudice to Kohl's right to exercise any other right or remedy provided for herein or at law or in equity or otherwise.

- 17. NO WAIVER.** Kohl's rights herein are reserved and may be exercised at any time as long as any breach of any of the terms or conditions hereof shall occur and/or continue, and shall not be deemed waived by delay or by waiver of such condition or any other condition hereof in previous transactions between the Parties. No waiver to this Purchase Order is effective unless it is in writing, identified as a waiver to this Purchase Order and signed by both Parties. Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion. A delay or omission by either Kohl's or Seller to exercise any right or power under the Purchase Order will not be construed to be a waiver thereof.

- 18. CONFIDENTIALITY.** In addition to any Non-Disclosure Agreement ("**NDA**") between Kohl's and Seller, the following confidentiality terms of this Purchase Order shall apply. All Proprietary Information (as hereinafter defined) is confidential and Kohl's sole and exclusive property, notwithstanding how Seller was provided access to it by Kohl's. Seller represents and warrants that Seller shall not in any manner use, reproduce, or disclose, directly or indirectly, to any of Seller's employees, agents, affiliates, subcontractors, suppliers, or any third party at any time any Proprietary Information except in connection with Seller's performance under a Purchase Order and then only to the minimum extent necessary on a need-to-know basis. Upon demand by Kohl's, Seller shall deliver to Kohl's immediately all materials containing Proprietary Information in Seller's possession (whether prepared by Kohl's or Seller). To the extent Seller receives any personal information (whether relating to a Kohl's customer or otherwise), Seller represents and warrants that Seller shall not sell, retain, use, or disclose such information for any commercial or non-commercial purpose outside of the direct business relationship between the Parties. Such personal information shall constitute Proprietary Information and may only be used as described herein for the benefit of Kohl's and solely to the extent required for Seller's performance hereunder. Seller further agrees to immediately delete such personal information upon written or verbal request from Kohl's and/or the individual to which the information relates. Seller hereby certifies that Seller understands and agrees to comply with all of the confidentiality requirements set forth in this Section and that Seller's noncompliance may constitute a breach of this Purchase Order and a violation of Applicable Law(s), including, without limitation, the California Consumer Privacy Act and any other state and federal data security and privacy laws (and foreign laws, if and to the extent they apply).

"**Proprietary Information**" shall include the following: (a) all information relating to Kohl's sales, pricing, costs, inventory, operations, plans, programs, Goods purchased by Kohl's from Seller, Services provided to Kohl's by Seller, and all information related to such Goods and/or Services, including but not limited to, shipment and transportation thereof and reports relating thereto; (b) all of Kohl's trade secrets including any and all customer information, customer survey responses and any other information concerning any of Kohl's customers; (c) specifications to the extent furnished by Kohl's; (d) all intellectual property applications, including but not limited to, patent, copyright, and trademark applications and other Kohl's intangible/intellectual property owned by or licensed to Kohl's; (e) all information provided by Kohl's to Seller via Kohl's website, including, but not limited to, any on-

boarding documentation; (f) this Purchase Order; and (g) any other information provided by Kohl's to Seller that is not publicly available regardless of where located or the manner or medium by which Seller has been provided access to it by Kohl's.

Seller acknowledges that Seller is or has been authorized to access certain Proprietary Information through Kohl's secure website <https://link.kohls.com> or www.kohlssuppliers.com, and Seller warrants and agrees to comply with Kohl's Information Security policies (located in the files tab of such site) relating to such Proprietary Information, as such policies may be amended or modified by Kohl's, in its sole discretion and without notice, from time to time. Seller warrants to use Seller's best efforts to prevent unauthorized access to Kohl's website and access to any databases or other sensitive material generated from or used in conjunction with Kohl's website. Seller warrants that Seller shall only provide access to or disclose information or data contained on Kohl's website to any employee, agent, affiliate, subcontractor, supplier, or any third party who is authorized by Kohl's to view this information or data and ensure that such use is only as permitted. Seller warrants that Seller will use Seller's best efforts to ensure that authorized persons abide by Kohl's Terms of Use on the website and do not disclose Proprietary Information to others without Kohl's express, prior written permission. Seller warrants that Seller will immediately notify Kohl's at is-securitytech@kohls.com in the event Seller discovers any security breaches relating to Kohl's Proprietary Information. In the event of a security breach or an unauthorized disclosure, Seller warrants that it shall cooperate to the fullest extent to help Kohl's regain possession of Kohl's Proprietary Information, prevent its further use or disclosure, and notify Kohl's end consumers (if and as applicable).

Seller agrees to defend, indemnify, and hold the Kohl's Indemnitees harmless from Seller's breach of the warranties and representations contained herein and any unauthorized disclosure of Proprietary Information by any of Seller's employees, agents, affiliates, subcontractors, suppliers, and authorized third parties. The provisions of this Section shall survive the cancellation or termination of any Purchase Order.

19. NO PUBLICITY. Seller expressly acknowledges and agrees that it shall not disclose the existence or terms of this Purchase Order or use Kohl's name or refer to Kohl's directly or indirectly in any media release, public announcement, or public disclosure, including in any marketing materials, websites, customer information, referral lists, or business presentations, without the prior written consent of Kohl's, which must be issued by Kohl's office of Communications and Public Relations. All requests should be sent in writing per the Notice provisions below. Any violation of this provision shall be considered a material breach of this Purchase Order and shall confer upon Kohl's the right to terminate this Purchase Order immediately without penalty, and without any right to cure such breach on the part of Seller.

20. WORK SITE; KOHL'S FACILITIES; ASSUMPTION OF RISK. Seller shall keep its worksite free from waste and rubbish and shall leave the site in a clean and workmanlike condition. Seller acknowledges that it is familiar with all conditions relating to the performance of Services and the site and with all other matters and conditions that would affect its performance under this Purchase Order, and Seller assumes all risk with respect thereto. Commencement of Services or provision of Goods constitutes Seller's acknowledgment that all plans, specifications, and other contractual documents relating thereto are sufficient for the completion of Seller's Services and/or provision of Goods.

Seller is fully responsible for all losses and damages incurred as a result of Seller's performance of any Services at Kohl's facilities, whether performed by Seller, Seller's employees, agents, affiliates, subcontractors, and/or suppliers. Seller shall, by entering upon and using any Kohl's facilities, be deemed to have accepted the Kohl's facilities in their then-condition. Kohl's assumes no liability for damage to or loss of Seller's property or the property of Seller's employees, agents, affiliates, subcontractors, and/or suppliers while at Kohl's facilities. Seller acknowledges that any Services that Seller conducts at Kohl's facilities are conducted entirely at Seller's own risk, and Seller hereby releases the Kohl's Indemnitees from any Claims occurring in connection with Seller's presence at Kohl's facilities. Seller agrees to use best efforts not to hinder any of Kohl's operations or to detract from Kohl's customer experience while at Kohl's facilities. Seller shall immediately remove all materials, equipment, and rubbish that Seller places at, around, and/or on Kohl's facilities and restore, at Seller's sole cost and expense, Kohl's facilities to the condition that they were in immediately prior to Seller's entrance thereon.

For the avoidance of doubt, Seller is fully responsible for all Claims, including all losses and damages, incurred as a result of Seller's performance or nonperformance of any Services or provision of Goods, whether performed or provided by Seller, Seller's employees, agents, affiliates, and/or subcontractors.

21. INDEPENDENT CONTRACTOR STATUS. All Services performed shall be done as an independent contractor and the persons performing Services shall not be considered employees of Kohl's. No provision of this Purchase Order is or shall be deemed or construed to create any other relationship between the parties such as employer and employee, principal and agent, partners, joint venturers, or any other association other than that of independent contractors. Accordingly, Seller is not and shall not be deemed to be an agent of Kohl's, and Seller is without any authority to enter into any contract or take any action on behalf of Kohl's so as to obligate Kohl's or any Kohl's affiliates. Except as otherwise specified herein, Seller shall have exclusive control and direction over the manner, means, details, and methods by which Seller shall provide the Goods and perform the Services hereunder and shall be

solely responsible for the provision of all tools, equipment, and facilities necessary for the performance and for the payment of all licenses and other fees applicable to Seller's performance. Seller shall be solely responsible for all compensation, benefits, and insurance for its employees, agents, and representatives. Seller shall pay all taxes imposed by reason of the employment of such persons, including, but not limited to, any payroll taxes, social security taxes, and unemployment compensation taxes. Seller warrants that it has the authority to enter into this Purchase Order and to lawfully make the disclosures contemplated hereunder.

22. **AUDIT.** During normal business hours and without prior notice, Kohl's shall have the right to inspect and audit, either directly or through Kohl's designated agent, Seller's records and documents concerning any Goods or Services pursuant to this Purchase Order to ensure that Seller is in compliance with the terms and conditions of this Purchase Order.
23. **SUPPLIES, EQUIPMENT, LICENSES, ETC.** Unless otherwise specified in this Purchase Order, Seller shall furnish all materials, supplies, equipment, and labor necessary to complete the Services and/or provide the Goods that are the subject of this Purchase Order in accordance with the schedule established by Kohl's. Seller shall, at its expense, obtain all licenses and permits and shall pay all inspection fees necessary to complete the Services and/or provide the Goods.
24. **INSURANCE.** Without limiting any of Seller's certifications, warranties, covenants, representations, liabilities, and obligations within this Purchase Order (including, but not limited to Seller's indemnification obligations), for a period of at least two (2) years after Seller's fulfillment of each Purchase Order, Seller agrees to maintain, at its own expense, general liability insurance providing broad form coverage in each case to afford protection to the limits of not less than that customarily maintained by comparable vendors and suppliers, but, in any event, the minimum amount of \$1,000,000 per occurrence and \$2,000,000 aggregate. Seller shall also maintain workers' compensation insurance, as required by law, and employers liability in the minimum amount of \$1,000,000. Limits may be obtained through any combination of primary and excess carriers. Upon request and in a manner determined by Kohl's, Seller shall provide Kohl's with proof of the acquisition of all of the insurance coverage required hereunder in the form of one or more Certificates of Insurance. Seller shall provide Kohl's with thirty (30) days prior written notice of any material change in the policy(ies). All required insurance policies shall be maintained with recognized insurance carriers with an A.M Best rating of "A-" or better, shall name the Kohl's Indemnitees as additional insureds for all required insurance policies, excluding workers' compensation. All policies shall be primary and non-contributory to any insurance maintained, available to, or provided by Kohl's, and Seller shall cause its insurers to waive their right of subrogation against the Kohl's Indemnitees. The insurance coverage required herein shall not limit the extent of Seller's responsibilities or liabilities as specified in this Purchase Order and/or as required by law.
25. **GUARANTEE.** Without limiting Seller's liability under any warranties contained in this Purchase Order, Seller guarantees the Services and Goods for a period of one year from and after completion of all Services and provision of all Goods covered by this Purchase Order, or for such longer period as may be provided in any of the other terms of this Purchase Order. In the event any of the Goods or Services covered by this Purchase Order requires repair, replacement, or adjustment during the guarantee period, Seller shall promptly make all necessary repairs, replacements, or adjustments at its sole cost. The foregoing is in addition to any other remedies that Kohl's may have hereunder.
26. **COMPLETION OF SERVICES.** Seller agrees to provide the Goods and complete the Services within the period of time required or specified. Any overtime or extra personnel required to meet Kohl's schedule shall be solely at Seller's expense. No price increase shall be permitted by reason of any claim of extra Goods or Services unless the extra Goods or Services were performed pursuant to a written order by Kohl's setting forth the amount of the price increase. Seller represents and warrants that it and its personnel have the capability, experience, certifications, and means required to perform the Services and performance hereunder will not conflict with any other agreement, prohibition, or outside activity to which Seller is subject.
27. **RIGHT TO INSPECT.** Payment of freight charges shall not determine passage of title or which party bears the risk of loss in transit. Until Kohl's has inspected the Goods shipped and the Services performed under this Purchase Order and accepted the Goods and/or Services as being in conformity with the Purchase Order and all representations and warranties made by Seller with respect to the Goods and/or Services, Seller's delivery obligations shall not be deemed complete, nor shall title pass to Kohl's. Notwithstanding the foregoing, Kohl's has no obligation to inspect the Goods and/or Services, and Kohl's payment or retention of the Goods and/or Services shall not constitute an acceptance of non-compliant Goods and/or Services and shall not affect Kohl's right to reject or return the same. Any such nonconforming Goods shall be treated as defective Goods, as set forth herein.
28. **ACCEPTANCE; TITLE; RISK OF LOSS.** Upon Kohl's acceptance of the Goods and Services, and notwithstanding Seller's rights of ownership to Seller Technology or Hosting Services, all title, interest, and rights of Seller in and to the Goods and Services including, but not limited to, any intellectual property incorporated in the Goods or Services shall be transferred to Kohl's, free and clear of all claims and liens whatsoever. Risk of loss and damage to Goods shall pass from Seller to Kohl's only upon Kohl's receipt, inspection, and acceptance (if so desired by Kohl's) of the Goods at its designated receiving facility or store location, regardless of which party pays the transportation costs.

29. **ENTIRE AGREEMENT; AMENDMENT.** This Purchase Order, including attachments and material incorporated herein by reference, constitutes the entire agreement of the parties as to its subject matter. It supersedes all prior representations or agreements, oral or otherwise, with respect thereto. No obligation to enter into any further transaction may be implied from this Purchase Order. This provision is applicable in all circumstances, without regard to whether this Purchase Order establishes a new transaction, confirms an existing arrangement, or prior course of dealing between Kohl's and Seller. Any and all modifications to this Purchase Order must be in writing and signed by Kohl's. Verbal communications shall not be considered against Kohl's as a valid method of amending, modifying, or terminating a Purchase Order or granting or making any waiver by Kohl's. For purposes of clarification, electronic mail (i.e., e-mail) shall not be a valid method of amending this Purchase Order.
30. **MISCELLANEOUS.** *Construction:* Each party has participated in negotiating and drafting this Purchase Order, such that if any ambiguity or question of intent or interpretation arises, this Purchase Order shall be construed as if the parties had drafted it jointly, as opposed to being construed against a party because it was solely responsible for drafting one or more provisions of this Purchase Order. *Delivery and Execution:* Delivery of an executed Purchase Order by electronic mail, in portable document format (.pdf), or by any other electronic means shall constitute effective execution and delivery of this Purchase Order and may be used in lieu of the paper Purchase Order for all purposes. Electronic Signatures of the Parties shall be deemed to be their original signatures for all purposes and shall have the same force and effect as manual signatures. **"Electronic Signature"** means any electronic sound, symbol, or process attached to or logically associated with a record, whether digital or encrypted, and including, but not limited to, clicking on an agree button, and executed and adopted by a party with the intent to sign such record. *Equitable Relief:* Seller acknowledges and agrees that any breach of its obligations hereunder may cause Kohl's irreparable injury for which there are no adequate remedies at law and that Kohl's shall be entitled to equitable relief in addition to all other remedies available to it. *Headings:* The headings used in this Purchase Order are for the convenience of the parties only and shall not be deemed a part of, or referenced in, construction of this Purchase Order. *Non-Exclusivity:* Nothing contained herein shall require Kohl's to promote or use Seller's Goods and/or Services exclusively. Kohl's may enter into other agreements to license, use, and/or promote non-Seller Goods and Services. *Notices:* All notices between the Kohl's and Seller (other than routine operational communications) shall be in writing and shall be considered to have been given if sent by a nationally-recognized overnight carrier. Notices to Kohl's shall be sent to the address below. *Survival:* Any provision of the Purchase Order that contemplates performance or observance subsequent to termination or expiration thereof will survive termination or expiration of the Purchase Order and continue in full force and effect. *Governing Law; Venue:* This Purchase Order shall be governed by the laws of the State of Wisconsin. Seller hereby agrees that any and all disputes arising under this Purchase Order shall be subject to adjudication only in the state courts of Waukesha County, Wisconsin or the United States District Court in Milwaukee, Wisconsin, and Seller hereby consents to the exclusive jurisdiction of those courts. In any dispute brought by you hereunder, you shall reimburse Kohl's attorneys' fees if Kohl's is the prevailing party in any proceeding.

NOTICES:
Kohl's, Inc.
N56 W17000 Ridgewood Drive
Menomonee Falls, WI 53051

CONTACT US:
Website: www.kohlssuppliers.com
Email: legal@kohls.com

***Copy to Kohl's General
Counsel at the same address.**