

Sam's Club Ads Platform Terms of Use

Effective Date: April 26, 2022

This Sam's Club Ads Platform Terms of Use (this "**Agreement**") applies to your access to and use of the self-serve advertising services provided by Sam's Club (the "**Services**").

BY SIGNING BELOW, REGISTERING FOR OR BY USING THE SERVICES, YOU (ON BEHALF OF YOURSELF OR THE BUSINESS OR OTHER LEGAL ENTITY YOU REPRESENT) AGREE THAT YOU HAVE READ AND UNDERSTAND AND AGREE TO BE BOUND BY ALL TERMS AND CONDITIONS OF THIS AGREEMENT (INCLUDING THE SAM'S CLUB POLICIES) WITHOUT CHANGE, AS THIS AGREEMENT MAY BE UPDATED FROM TIME TO TIME. YOU FURTHER REPRESENT AND WARRANT THAT (1) ALL THE INFORMATION YOU PROVIDE AS PART OF THE REGISTRATION PROCESS WILL BE ACCURATE AND COMPLETE; (2) IF YOU ARE EXECUTING THIS AGREEMENT ON BEHALF OF AN ENTITY, YOU HAVE THE REQUISITE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE ENTITY YOU REGISTER AS A PARTNER; AND (3) YOU ARE OF THE AGE OF MAJORITY AND LAWFULLY ABLE TO ENTER INTO CONTRACTS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT OR DO NOT HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER THIS AGREEMENT, SAM'S CLUB DOES NOT GRANT YOU ANY RIGHT TO USE THE SERVICES AND YOU SHOULD NOT ACCESS OR USE THE SERVICES.

1. Definitions

Certain capitalized terms used but not otherwise defined in this Agreement have the meanings set forth in Exhibit A.

2. Participation in the Sam's Club Ads Program

- (a) Registration. The Services allow you to advertise and promote Your Products and Your Brand through Sam's Club Sites. In order to use the Services, you must complete Sam's Club's designated registration process. As a part of the registration process, you must provide to Sam's Club all required information that may be requested by Sam's Club, including, without limitation, (i) Your Brand, and (ii) your (or your business's) legal name, address, phone number, and email address. You may also be required to provide the Sam's Club Vendors IDs that correspond to the items that you want to target and measure through the Services. You will ensure that the information that you provide during the Services registration process and that is otherwise associated with your account, including your email address and other contact information and identification of Your Brand, is at all times complete, accurate, and up-to-date. All information provided by you (or on your behalf) during the registration process and your ownership of Your Brand is subject to verification by Sam's Club. Sam's Club reserves the right to reject your registration in its sole discretion.
- (b) Your Ads. In connection with the Services, Sam's Club reserves the right to allow and to determine and control the placement and display of Your Ads on any Site in its sole discretion. Sam's Club will use commercially reasonable efforts to deliver Your Ads to the audience you specify or to achieve the outcome you select, however Sam's Club does not guarantee (i) that Your Ads will be displayed on, or made available through, any Site, (ii) that Your Ads will appear in any particular position or rank on any Site, or (iii) that Your Ads will generate any value as a result of their placement in the Services. If you request that Sam's Club cancel any campaign for Your Ads, Sam's Club will do so as soon as reasonably practical following receipt of your request in accordance with Section 16(d). For any cancelled campaign of Your Ads (1) you will not be entitled to a refund of any fees previously paid in connection with the cancelled campaign, and (2) all fees accrued under this Agreement in connection with the cancelled campaign as of the date of termination will be deemed due and payable to Sam's Club.

3. Scope and Modification of Terms

- (a) Terms Applicable to the Services. You must comply with all guidelines, rules, policies, and terms and conditions applicable to the Services (including applicable third-party terms of agreement) that may be posted by or on behalf of Sam's Club on the Site or otherwise communicated by or on behalf of Sam's Club to you from time to time. Such guidelines, rules, policies, and terms and conditions, including those references through a hyperlink in this agreement, as amended from time to time by Sam's Club (collectively, "**Sam's Club Policies**"). The WalmartConnect and Sam's Club Privacy Policies are incorporated in this Agreement by reference.
- (b) Modification. Sam's Club may change the terms and conditions of this Agreement at any time in its sole discretion. Sam's Club will provide notice of the modifications in a manner that Sam's Club reasonably determines to be appropriate, including posting on the Sites or providing notice in accordance with Section 16(e). You are responsible for reviewing notifications and postings and any applicable changes. Your continued use of the Services constitutes your acceptance of the applicable changes. If you do not agree to any noticed or posted changes, your sole recourse is to terminate this Agreement and to cease accessing and using any Services.
- (c) Order of Precedence. If there is any conflict between the Sam's Club Policies on the one hand, and this Agreement, on the other hand, this Agreement will prevail with respect to the Services.

4. Access to the Sam's Club Ads Services

- (a) Your Materials. You will provide or make available Your Materials to Sam's Club in connection with the Services in the format and using the interface, feeds, APIs, or other mechanisms Sam's Club may require. You will ensure that Your Materials are complete, accurate, and up-to-date. You are responsible for making copies of all of Your Materials and Sam's Club will have no responsibility to maintain back-ups of Your Materials, and expressly disclaims any liability for loss of Your Materials or any information for any reason.
- (b) Restrictions on Your Materials. You will ensure that Your Materials do not relate to, contain, or otherwise seek to advertise or promote any products or services that are prohibited by the Sam's Club Policies. You covenant, represent, and warrant that Your Materials will not (i) be false, inaccurate, or misleading; (ii) contain personally identifiable information or any other confidential information of yourself or others without consent; (iii) violate any local, state, federal, or international laws, rules or regulations; (iv) infringe on the rights of others, including patents, copyrights, Trademarks, trade secrets, publicity or privacy rights; (v) be unlawful, obscene, derogatory, defamatory, threatening, harassing, abusive, slanderous, hateful, or embarrassing to any other person or entity as determined by Sam's Club in its sole discretion; (vi) contain advertisements, solicitations or spam links to other web sites or individuals, without prior written permission from Sam's Club; (vii) contain or reference chain letters or pyramid schemes; (viii) impersonate another business, person or entity, including Sam's Club, its related entities, employees and agents; (ix) contain viruses or other harmful computer code; (ix) victimize, harass, degrade, or intimidate an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability, or (x) be directed to children younger than 13 years of age.
- (c) Restricted Conduct. You will not and represent and warrant that you will not engage or aid or abet in any fraudulent, impermissible, inappropriate, or unlawful activities in connection with the Services, whether directly or indirectly, including: (i) generating fraudulent, repetitive, or otherwise invalid clicks, impressions, queries, or other interactions, whether through the use of automated applications or otherwise; (ii) other than through reporting offered by Sam's Club under the Services, collecting any user information or Personal Information from any Site including through any of Your Ads or retrieving, extracting, indexing, or caching any portion of any Sites or services, whether through the use of automated applications or otherwise; (iii) engaging in any acts or practices that are unfair or deceptive in connection with Your Ads; (iv) interfering with the proper working of any Site, the Services, or Sam's

Club's systems; (iv) transmitting any viruses, "Trojan horses," or other harmful code; (v) violating any of the Sam's Club Policies or any other Sam's Club policy or applicable Law; or (vi) interfering with the use of the Sam's Club Sites by others, (vii) using the Sam's Club Services other than as permitted by this Agreement, or (viii) assisting others to do the foregoing or attempting to bypass any functionality or technical limitations Sam's Club may use to detect, prevent, or inhibit the foregoing activities;

- (d) Your Account. You are solely responsible for maintaining accurate, current, and complete account information, for maintaining the secrecy of any account credentials and passwords used in connection with the Services, and for all activities that occur under your account.
- (e) Authorized Users. Subject to Sam's Club's consent (which Sam's Club may grant or withdraw at any time in Sam's Club's sole discretion) and through the means as determined solely by us, you may authorize Authorized Users to access or use the Services on your behalf through an application program interface or other means as Sam's Club may designate from time to time. You will require each of your Authorized Users and service providers (if any), to be bound by all of the conditions and restrictions of this Agreement. All restrictions on your access and/or use of the Services include access and/or use of the Services by your Authorized Users and service provider(s) (if any). You will remain solely responsible and liable for (and Sam's Club has no responsibility to you or to any third party for) all acts and omissions (including any loss or damage that Sam's Club may suffer) of your Authorized Users, and your employees, contractors, service provider(s), and any other persons who may have access to the Services through you (whether or not such access is authorized by you or by Sam's Club), including any breaches of this Agreement. Any act or omission by your Authorized Users or service provider(s) amounting to a breach of this Agreement will be deemed a breach by you. Except as set forth in this Section, all license rights (under any applicable Intellectual Property Right) granted to you by Sam's Club are not sublicensable, transferable, or assignable. If Sam's Club provides you with unique login credentials for your Authorized Users or anyone else authorized to access the Services, you are responsible for all activity that occurs under the credentials associated with your account and credentials may not be shared. You must timely notify Sam's Club if an account should be disabled for any reason (e.g. due to termination of an employee or if access to the Services is no longer required of an employee).
- (f) Changes to Services. Sam's Club reserves the right to modify or discontinue all or any portion of the Sites or the Services (or any portion thereof or functionality therein) for any or no reason, and Sam's Club bears no responsibility or liability for such changes. Sam's Club may at any time in its sole discretion and at any time without notice to you (i) re-design, modify, discontinue offering, or restrict access to any or all aspects of the Sites and the Services, (ii) remove you from the Sites or Services or suspend, reject, or remove any of Your Materials or Your Ads without notice. Sam's Club reserves the right to release subsequent versions of the Services (or any portion thereof) and to require you to use the most recent version thereof, and it is your responsibility to ensure, at your own cost, that your access to and use of the Services is compatible with Sam's Club's then-current requirements. Without limiting the generality of the foregoing, Sam's Club may limit the availability of the Services to any geographical area or any language and make backwards incompatible changes to the Services. You acknowledge that Sam's Club and any of its Affiliates may participate in the Services to market any of Sam's Club's or its Affiliates' products and services.
- (g) Monitoring; Enforcement of Terms. Sam's Club has the sole right (but not the obligation) and discretion to monitor your usage of the Service to verify compliance with this Agreement. Sam's Club may take enforcement actions against you if Sam's Club determines in its sole judgment that you or any of your Authorized Users (i) violate this Agreement, (ii) have a security deficiency, or (iii) may otherwise threaten or damage the reputation of any Sam's Club Party. Enforcement actions include, without limitation and as appropriate: (1) disabling or restricting your or your Authorized Users' access to the Sites and/or the Services; (2) terminating some or all of Sam's Club's agreements with you; and (3) performing any other action as Sam's Club in its reasonable discretion deems appropriate. Sam's Club will use commercially reasonable efforts to provide appropriate notice to you in connection with any enforcement actions that it takes.

5. Grant of Rights and Restrictions

- (a) Access License. Subject to and conditioned on your compliance with this Agreement, Sam's Club hereby grants to you, under Sam's Club's Intellectual Property Rights in and to Sam's Club Services, a limited, revocable, non-transferable, non-assignable, non-sublicensable, and non-exclusive license during the Term to use and access the Services solely to the extent necessary to advertise on Sam's Club.com and the Sam's Club mobile application by creating and managing campaigns, onboarding SKUs to be sponsored or displayed and tracking performance reporting ("**Approved Purposes**"). Use of the Services by you for purposes other than the Approved Purposes requires Sam's Club's prior written consent.
- (b) License to Your Materials. By submitting, posting, or displaying Your Materials in or through the Services, you grant the Sam's Club Parties a royalty-free, non-exclusive, worldwide, sublicensable, irrevocable right and license to use, reproduce, perform, display, distribute, adapt, modify, excerpt, analyze, re-format, create derivative works of, and otherwise commercially or non-commercially exploit in any manner, any and all of Your Materials for the purpose of enabling Sam's Club to provide you with the Services in accordance with this Agreement and to promote the Services. Nothing in this Agreement will prevent or impair Sam's Club's 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. All use by Sam's Club of Your Trademarks will inure to your benefit.
- (c) Restrictions on Use of Sam's Club Brands. You are not permitted to use any name, logo, Trademark, or trade name of Sam's Club in any publicity release, promotional material, advertising, marketing, or business-generating effort, whether written or oral, without obtaining Sam's Club's prior written consent, which may be withheld in Sam's Club's sole discretion.
- (d) Feedback. If you provide any Sam's Club Party with Feedback, then such Feedback may be utilized by the Sam's Club Parties without any limitation or obligation to you. The Sam's Club Parties will be free to use, disclose, reproduce, modify, sublicense, transfer, distribute, and exploit Feedback in any manner.

6. Proprietary Rights

- (a) Sam's Club's Rights. As between you and Sam's Club, Sam's Club and its licensors own all right, title, and interest (including all Intellectual Property Rights) in and to the Sam's Club Materials. All rights not expressly granted to you under this Agreement are reserved by Sam's Club and/or its licensors, and you do not have (and will not assert) any licenses or other rights (implied or otherwise) except as expressly set forth in this Agreement.
- (b) Your Proprietary Rights. As between you and Sam's Club, you retain all right, title, and interest in and to Your Materials, except for Sam's Club Materials that may be incorporated in or used by Your Materials. Except for such Sam's Club Materials, Sam's Club claims no ownership over Your Materials, and you retain the copyright and any other rights you already hold in Your Materials. You, and not Sam's Club, are responsible for all obligations, risks, liabilities, and other aspects related to Your Materials and your use of the Services, and any other materials that you or your Authorized Users upload, post, email, or otherwise transmit using the Services. You represent and warrant that: (i) Your Materials do not infringe or misappropriate, and will not infringe or misappropriate, any Intellectual Property Rights or proprietary or other right of any third party or violate any applicable Laws; and (ii) Your Materials are not subject to any restrictions on disclosure, transfer, download, export, or re-export under any applicable Law.

7. Fees

Fees will be determined solely by Sam's Club's metrics. Sam's Club may invoice you for amounts due in accordance with an advertising agreement between you and Sam's Club, or collect payment or

reimbursement from you by any lawful means. All invoices issued by Sam's Club will be payable by you thirty (30) days following receipt of the applicable invoice.

If Sam's Club implements systems capable of automating the invoicing process during the term, you authorize Sam's Club to auto deduct all amounts payable by you to Sam's Club under this Agreement.

8. Privacy & Data Protection

- (a) Sam's Club Privacy Policy. By using the Services, you consent to the collection, use, and disclosure of Personal Information collected from or about you or your Authorized Users as described in the then-current Privacy Policy, including cross-border transfers as described in the Privacy Policy. You will ensure that any Authorized User who accesses the Services has been presented with and agrees to the Privacy Policy, and you will obtain any consents from Authorized Users necessary to permit Sam's Club to collect Personal Information from such Authorized Users.
- (b) Services Data. Without limiting anything in this Agreement, you will maintain Services Data in the strictest confidence and protect it using all reasonable and necessary security measures. As between you and Sam's Club, all right, title, and interest in and to any Services Data will be owned by Sam's Club with the exception of Services Data that is collected directly by you through third party tracking tools that Sam's Club may permit you to use. Sam's Club will determine which, if any, third party tracking tools may be used by you and what information may be collected through any tracking tools, in its sole discretion. You may (i) only use the Services Data to evaluate the performance of the Services solely for your internal purposes; (ii) except as expressly provided in this Agreement, not, and may not allow any third party to, use, distribute, disclose, sell, or otherwise monetize Services Data in any manner.
- (c) You will maintain a privacy policy posted to your websites that accurately describes and discloses your privacy practices and complies with applicable Laws, and you will adhere to your stated privacy practices at all times, including in connection with any data collected by you through Your Ads.

9. Confidential Information

- (a) Confidential Information. You agree that: (i) all Confidential Information will remain Sam's Club's exclusive property; and (ii) you will not (and will not permit anyone else to) (1) use any Confidential Information except as necessary for performance of your obligations and exercise of your rights under this Agreement or (2) disclose any Confidential Information to anyone other than your Authorized Users who need to know such Confidential Information for such purposes. To safeguard the Confidential Information, you will exercise the same degree of care employed by you to prevent the unauthorized use and disclosure of your own confidential information, but in no event employing less than reasonable degree of care.
- (b) Exceptions. Except with respect to Services Data, Confidential Information does not include information which: (i) is rightfully received by you from a third party without restriction on use or disclosure; (ii) is developed by you independently without use of the Confidential Information; or (iii) is or becomes generally known to the public other than as result of a breach by you of this Agreement (or other obligation of you to any Sam's Club Party). In addition, you may disclose Confidential Information to the extent the disclosure has been approved in advance for release by written authorization of Sam's Club.
- (c) Publicity. You may not issue any press release or make any public statement related to the Services, or use Sam's Club's name, trademarks, or logo in any way (including in promotional material) without Sam's Club's prior written consent, or misrepresent or embellish the relationship with Sam's Club in any way.

- (d) Injunctive Relief. Your breach or threatened breach of Section 8 or 9 may cause Sam's Club irreparable harm and significant injury, the amount of which may be difficult to estimate and ascertain, thus making inadequate any remedy at Law or in damages. Therefore, Sam's Club is entitled to injunctive relief from any court of competent jurisdiction to enjoin any threatened or actual breach of this Agreement and any other relief that such court deems appropriate, in addition to any other remedy or remedies available at Law or in equity.

10. Term and Termination

- (a) Term. This Agreement will become effective on your acceptance of this Agreement and the term will extend until it is terminated or expires as described in this Section 10.
- (b) Termination.
- i. Sam's Club may immediately terminate this Agreement and/or discontinue the Service or any portion or feature for any reason and at any time upon notice to you without liability or other obligation to you.
 - ii. You may terminate this Agreement by providing prior written notice of your intent to terminate the Agreement.
- (c) Effect of Termination. When this Agreement expires or is terminated, all rights and obligations of the parties under this Agreement will end, except that (i) fees accrued in connection with the Services as of the date of termination, if any, all interest thereon, and costs of collection must be paid, and (ii) you must immediately destroy any copies of the Confidential Information, and other Sam's Club Materials in your (including your Authorized Users') possession, custody, or control with the exception of any reports provided by Sam's Club or data collected directly by you through your ads placed using the Services. The following provisions of this Agreement will survive expiration or earlier termination and continue to apply indefinitely: 12, 13, 14, 16.

11. Your Representations

You represent and warrant to Sam's Club that: (a) if you are a business or other legal entity, you are a business or other legal entity duly organized, validly existing, and in good standing under the Laws of the country in which your business or other legal entity is registered, and you are registering for or using the Services within such country; (b) you have all requisite right, power, and authority to enter into this Agreement and perform your obligations and grant the rights, licenses, and authorizations you grant hereunder; and (c) you and all of your subcontractors, agents, and suppliers will comply with all applicable Laws in connection with your use of the Services and in your performance of your obligations and exercise of your rights under this Agreement. You also make the representations and warranties set forth elsewhere in this Agreement, including without limitation, Sections 4, 6, 15, and 16.

12. Exclusion of Sam's Club's Warranties

THE SITES AND THE SERVICES, INCLUDING ALL SOFTWARE, FUNCTIONS, MATERIALS, AND INFORMATION MADE AVAILABLE ON OR PROVIDED IN CONNECTION WITH THE SERVICES, ARE PROVIDED "AS IS" AND "AS AVAILABLE." SAM'S CLUB PARTIES MAKE NO, AND HEREBY DISCLAIM ALL, REPRESENTATIONS OR WARRANTIES OF ANY KIND TO ANY PARTY, WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY, WITH RESPECT TO THE SITES, THE SERVICES, THE EFFICACY OF THE SERVICES OR THE CONTROLS OR FEATURES MADE AVAILABLE THROUGH THE SERVICES OR ANY FUNCTIONALITY PROVIDED IN CONNECTION WITH THE SERVICES, INCLUDING ALL WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. SAM'S CLUB PARTIES DO NOT REPRESENT OR

WARRANT THAT THE SERVICES ARE OR WILL BE APPROPRIATE OR AVAILABLE FOR USE IN ANY PARTICULAR JURISDICTION. THIS SECTION WILL BE ENFORCEABLE TO THE MAXIMUM EXTENT ALLOWED BY APPLICABLE LAW. NO INFORMATION OR ADVICE (WHETHER WRITTEN, ORAL, OR OTHERWISE), PROVIDED BY SAM'S CLUB PARTIES OR THEIR REPRESENTATIVES WILL CREATE ANY WARRANTY OR IN ANY WAY AFFECT THE DISCLAIMERS OF WARRANTIES OR LIMITATIONS OF LIABILITY EXPRESSLY PROVIDED IN THIS AGREEMENT.

13. Limitation of Liability

THE SAM'S CLUB PARTIES 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 AND THE SERVICES, EVEN IF THE SAM'S CLUB PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF THOSE COSTS OR DAMAGES. FURTHER, THE SAM'S CLUB PARTIES' AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND THE SERVICES WILL NOT EXCEED AT ANY TIME THE TOTAL AMOUNTS PAID BY YOU TO SAM'S CLUB UNDER THIS AGREEMENT IN CONNECTION WITH THE PARTICULAR SERVICES DURING THE SIX (6) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

YOU UNDERSTAND AND AGREE THAT ALL RIGHTS UNDER SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA AND ANY SIMILAR LAW OF ANY STATE OR JURISDICTION OF THE UNITED STATES ARE HEREBY EXPRESSLY WAIVED BY YOU. SECTION 1542 READS AS FOLLOWS:

"CERTAIN CLAIMS NOT AFFECTED BY A GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

14. Indemnification

You release the Sam's Club Parties and agree to indemnify and hold harmless (and, at Sam's Club's request, defend) the Sam's Club Parties from and against any and all costs, losses, damages, liabilities, judgments, and expenses (including reasonable fees of attorneys and other professionals), arising out of or in connection with any Claim which in any way may result from or arise in any manner out of: (a) your participation in or use of the Services, including Your Ads and reporting offered by Sam's Club under the Services; (b) your actual or alleged breach of any representation, warranty, or obligation in this Agreement or the Sam's Club Policies; (c) your violation of the privacy or publicity rights of any individual or entity or failure to comply with the privacy or data protection Laws ; (d) Your Materials, any actual or alleged infringement or misappropriation of any Intellectual Property Rights or other rights by you or any of Your Materials, and any personal injury, death, or property damage related thereto; (e) your failure to pay any fees for rights, including public performance, guild or union fees, or other fees associated with Your Ads or Your Materials; (f) the pages and sites to which Your Ads link, or (g) use of any products sold through Your Ads or through pages or sites to which they link. Furthermore, if you are an Agent, you release the Sam's Club Parties and agree to indemnify and hold harmless (and, at Sam's Club's request, defend) the Sam's Club Parties from and against any and all costs, losses, damages, liabilities, judgments, and expenses (including reasonable fees of attorneys and other professionals), arising out of any Claim related to any actual or alleged breach of your representations, warranties, or obligations set forth in Section 15. You or Your Agent, if applicable, will, if requested by Sam's Club, use counsel reasonably satisfactory to Sam's Club to defend each indemnified Claim. If Sam's Club asks you to defend a Claim, Sam's Club will have the right to participate in the defense of the Claim with counsel of its own choosing. If at any time Sam's Club reasonably determines that any indemnified Claim might adversely affect Sam's Club, Sam's Club

may take control of the defense at Sam's Club's expense. You may not consent to the entry of any judgment or enter into any settlement of a Claim without Sam's Club's prior written consent.

15. Agents

If you are an Agent, you hereby represent, warrant, and covenant as follows: (a) you have been appointed as an agent of an advertiser under this Agreement (an "Advertiser"), that you are duly authorized to execute this Agreement on behalf of Advertiser and have full power and authority to bind Advertiser to all terms and conditions contained in this Agreement; (b) all of your actions related to this Agreement and the Services will be within the scope of such agency, and this Agreement will be enforceable against Advertiser in accordance with its terms; (c) you will, upon Sam's Club's request, provide Sam's Club written confirmation of the agency relationship between you and Advertiser; (d) you will not make any representation, warranty, promise, or guarantee about the Services, Sam's Club, or your relationship with Sam's Club; (e) you will perform your duties pursuant to the Agreement in a professional manner consistent with any requirements Sam's Club may establish; (f) you will not at any time use information received in connection with the Agreement (including Confidential Information) to conduct any marketing efforts targeted at Sam's Club's existing advertisers and/or Advertisers; and (g) you will abide by all restrictions applicable to the Advertiser under this Agreement (including confidentiality and privacy obligations). Agent will be liable for payment obligations under this Agreement solely to the extent proceeds have cleared from Advertiser to Agent for Services; provided that Agent will be responsible for all payment obligations that may be incurred as a result of Agent's error or exceeding its authority in connection with the Services. Upon Sam's Club's reasonable request, Agent will confirm whether and when Advertiser has paid to Agent funds sufficient to make payments pursuant to this Agreement.

16. General Legal Terms

- (a) Governing Law and Jurisdiction. This Agreement will be governed by and construed in accordance with the Laws of the State of California (and, to the extent controlling, the federal Laws of the United States), which will govern without reference to the conflicts-of-Laws rules thereof. The UN Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act will not apply to (and are excluded from the Laws governing) this Agreement.
- (b) Export Control. Your (including your Authorized Users') access to and use of the Services are subject to compliance with the Export Control Laws. You will be solely responsible for your (including your Authorized Users') compliance with the Export Control Laws and monitoring any modifications to them. You represent and warrant that: (i) you (including all of your Authorized Users) are not a citizen of, or located within, a nation that is subject to U.S. trade sanctions or other significant trade restrictions; (ii) you (including your Authorized Users) are not identified on any U.S. government restricted party lists (including the U.S. Treasury Department's List of Specially Designated Nationals and Other Blocked Persons, the U.S. Department of Commerce's Denied Party List, Entity List, and Unverified List, and the U.S. Department of State's proliferation-related lists); (iii) you (including your Authorized Users) will not, unless otherwise authorized under the Export Control Laws, use the Services or the Sites in any restricted end use, including design, analysis, simulation, estimation, testing, or other activities related to nuclear, chemical/biological weapons, rocket systems, or unmanned air vehicles applications; (iv) no part of Your Materials is subject to any restriction on disclosure, transfer, download, export, or re-export under the Export Control Laws; and (v) 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 U.S. Government, the European Union or its member states, or other applicable government authority; and (vi) 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, U.S. Departments of State, Commerce, or Treasury, or any other applicable government authority. You (including your Authorized Users) will not use the Services to disclose, transfer, download, export, or re-export, directly or indirectly, Your Materials, third-party

content, or any other content or material to any country, entity, or other party which is ineligible to receive such items under the Export Control Laws or under other Laws to which you (including any of your Authorized Users) may be subject.

- (c) General. The parties' relationship to each other under this Agreement is strictly that of independent contractors and nothing in this Agreement will in any way constitute or be construed as evidence of intent to establish any association, partnership, joint venture, or other relationship. Each of the parties will be responsible for covering its costs and expenses in performing its duties and exercising its rights under this Agreement, unless expressly provided otherwise herein. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or any portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible so as to effect the intent of this Agreement and the remainder of this Agreement will continue in full force and effect. The section headings used in this Agreement are for convenience only and will not be given any substantive effect. When used in this Agreement, "includes" or "including" will be deemed to mean "including but not limited to" or "include but are not limited to." Unless the context or construction otherwise requires, all words applied in the plural will be deemed to have been used in the singular, and vice versa. A party may only waive its rights under this Agreement by a written document executed by both parties. Any failure to enforce any provision of this Agreement will not constitute a waiver thereof or of any other provision hereof. You may not assign or transfer (by operation of Law or otherwise) any of your rights or obligations under this Agreement without Sam's Club's prior written consent. Sam's Club may freely assign or transfer any of its rights or obligations under this Agreement. Any unauthorized assignment or transfer will be void.
- (d) Force Majeure. Excluding payment obligations, neither you nor Sam's Club will be liable for delay or default in the performance of either of our respective obligations under this Agreement if such delay or default is caused by conditions beyond the party's reasonable control, including, but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes ("Force Majeure event"). If Sam's Club suffers such a delay or default, Sam's Club will make reasonable efforts within five (5) business days to recommend a substitute transmission for the impacted campaign or time period for the impacted campaign. If no such substitute time period or makegood is reasonably acceptable to you, Sam's Club will charge you only for the campaign up until the time of the Force Majeure event with no further obligation to you. If a Force Majeure event has continued for five (5) business days, Sam's Club and/or you have the right to cancel the remainder of the impacted campaign without penalty.
- (e) Notices. Notices in connection with this Agreement by either party will be in writing. Your notices will be sent by postal service or a delivery service (such as UPS, FedEx, or DHL). Notices from Sam's Club to you may be sent by postal service, a delivery service, or email. Notices from Sam's Club to you will be effective: (a) in the case of notices by email, one (1) day after sending to the email address provided to Sam's Club; or (b) in the case of notices by mail or delivery service, five (5) days after sending by regular post or delivery service to the address provided to Sam's Club. Sam's Club will send all notices and other communications regarding this Agreement and the Services to you at the email address you specify during the registration process for the Services, or by any other means then specified by Sam's Club. You will be deemed to have received all notifications, approvals, and other communications sent to that email address, even if the email address associated with your account is no longer current. Communication with you (including your Authorized Users) will often take place via an email to the contact email address registered to your account. You must ensure that your email address is current and that you do not filter out any such messages. You consent to service of process being effected on you by registered mail sent to your last address known by Sam's Club, if so permitted by applicable Law.
- (f) Communications. When you send emails to Sam's Club, you are communicating with Sam's Club electronically. For contractual purposes, you consent to receive communications electronically from Sam's Club and you agree that all agreements, notices, disclosures, and other communications that Sam's Club provide to you electronically satisfy any legal requirement that such communications be in writing. This condition does not affect your statutory rights.

(g) Entire Agreement. This Agreement (including the Sam's Club Policies) contains the entire agreement between you and Sam's Club with respect to its subject matter and supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written, between you and Sam's Club with respect to the Services.

Exhibit A – Definitions

1. Definitions

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

- (a) **“Advertiser”** means any person or entity registered for use of the Services by an Agent.
- (b) **“Affiliate”** means with respect to any entity, any other entity that directly or indirectly controls, is controlled by, or is under common control with such entity.
- (c) **“Agent”** means an advertising agency or other person or entity that represents an Advertiser as its agent.
- (d) **“Approved Purposes”** has the meaning set forth in Section 5(a).
- (e) **“Authorized Users”** means your individual employees and independent contractors, or other entities, which access and use the Services on your behalf.
- (f) **“Claim”** means any legal claim, suit, or proceeding.
- (g) **“Confidential Information”** means any information, data, and materials of Sam’s Club (i) designated by Sam’s Club as confidential or proprietary (whether in writing or otherwise); (ii) related to Sam’s Club’s business or operations; (iii) received by you during the course of your registration for or use of the Services, including information relating to Sam’s Club or to the Services, including all Services Data, that is not known to the general public; or (iv) received by you by virtue of your relationship with Sam’s Club, including customer information, product plans, product designs, product costs, product prices, product names, finances, marketing plans, business opportunities, personnel, research, development, customer data, or know-how.
- (h) **“Content”** means copyrightable works under applicable Law.
- (i) **“COPPA”** means the Children’s Online Privacy Protection Act (15 U.S.C. §§ 6501-6506) and any regulations promulgated thereunder.
- (j) **“Electronic Communication”** includes email messages, phone communications, text messages, and any other form of non-verbal communication occurring without the use of physical mail.
- (k) **“Export Control Laws”** means United States and other applicable countries’ export control and trade sanctions Laws, including the regulations promulgated by the U.S. Department of Commerce and the U.S. Department of the Treasury.
- (l) **“Feedback”** means any suggestions, proposals, ideas, contributions, or other information provided by you (whether or not or through your Authorized Users) to Sam’s Club regarding the Services or the Sites (including any related Technology or Content).
- (m) **“Intellectual Property Right”** means any patent, Trademark, copyright, domain name, trade secret right, or any other intellectual property or proprietary right arising under any Laws and all related rights, including all rights of registration and renewal and causes of action for violation, misappropriation, or infringement of any of the foregoing.
- (n) **“Laws”** or **“Law”** means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule, law, or other requirement of or by any governmental authority, including COPPA.

- (o) **“Personal Information”** has the meaning set forth in the Privacy Policy.
- (p) **“Privacy Policy”** means Sam’s Club’s Privacy Policy, available at <https://corporate.samsclub.com/sams-club-privacy-policy> (as may be updated by Sam’s Club from time to time).
- (q) **“Services Data”** means all data or information collected, received, or derived by you in connection with the Services whether in isolation from, combination with, or association with any other data or information, including all reporting offered by Sam’s Club under the Services.
- (r) **“Site”** means the Sam’s Club website or portal which provides access to the Services and related information. “Site” also includes (i) any other related website or portal designated by Sam’s Club from time to time; (ii) any website or other online point of presence operated by Sam’s Club; and/or (iii) any other website, device, service, application, feature, or online point of presence through which the Site, any website of any of Sam’s Club’s Affiliates, and/or products or services (including the Services) available thereon are syndicated, offered, merchandised, advertised, or described.
- (s) **“Technology”** means any: (i) ideas, concepts, procedures, methods of operation, processes, systems, principles and discoveries protected or protectable under the Laws of any jurisdiction; (ii) interfaces, protocols, libraries, structured XML formats, specifications, data formats, or other similar materials; and (iii) software, hardware, code, technology, computer programs, or other functional item. For avoidance of doubt, Technology does not include “Your Product.”
- (t) **“Trademark”** means any trademark, service mark, trade dress, trade name, other proprietary logo or insignia, or any other source or business identifier, protected or protectable under any Laws.
- (u) **“Sam’s Club Parties”** means Sam’s Club and its Affiliates; its and their licensors and other suppliers; and the respective officers, directors, employees, and other agents of Sam’s Club and its Affiliates and such licensors and other suppliers.
- (v) **“Sam’s Club”** means Wal-Mart.com USA, LLC, on behalf of itself and its Affiliates.
- (w) **“Sam’s Club Materials”** means the Services, the Sites, the Confidential Information, and any other content, data or materials provided or used in connection with, or generated by, the Services, together with any related Intellectual Property Rights.
- (x) **“Sam’s Club Policies”** has the meaning set forth in [Section 3\(a\)](#).
- (y) **“Your Ad”** means each advertisement delivered in connection with your use of the Services.
- (z) **“Your Brand”** means each brand, including any associated Trademarks, registered to use the Services.
- (aa) **“Your Materials”** means all Technology, Your Trademarks, Content, information, data, photographs, images, videos, and other materials and items provided or made available by you or your Affiliates to Sam’s Club, including for display in Your Ads. Your Materials do not include any Sam’s Club Materials.
- (bb) **“Your Product”** means any product or service that you: (i) offer through the Sam’s Club Site; or (ii) advertise through Your Ads.
- (cc) **“Your Trademarks”** means Trademarks of yours that you provide to us: (i) in non-text form for branding purposes; and (ii) separate from (and not embedded or otherwise incorporated in) any product specific information or materials.