

## WALMART DATA VENTURES GLOBAL TERMS & CONDITIONS

THESE WALMART DATA VENTURES GLOBAL TERMS & CONDITIONS LOCATED AT [WWW.WALMARTDATAVENTURES.COM/TERMS](http://WWW.WALMARTDATAVENTURES.COM/TERMS) (“TERMS & CONDITIONS”) GOVERN ALL OFFERINGS YOU USE, SUBSCRIBE TO, RECEIVE FROM, OR ARE LICENSED BY WALMART. CLIENT INDICATES AGREEMENT TO THESE TERMS & CONDITIONS EITHER BY CLICK-THROUGH ACCEPTANCE, EXECUTING AN ORDER FORM OR SOW THAT REFERENCES IT OR UPON USAGE OF THE OFFERINGS. IF AN INDIVIDUAL IS ACCEPTING THESE TERMS & CONDITIONS ON BEHALF OF CLIENT, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS & CONDITIONS. IF THE SIGNATORY DOES NOT HAVE SUCH AUTHORITY, OR IF THEY DO NOT AGREE WITH THESE TERMS & CONDITIONS, THEY MUST NOT ACCEPT THEM AND THE CLIENT ORGANIZATION MAY NOT USE THE OFFERINGS.

### 1. DEFINITIONS

- 1.1** Capitalized terms and phrases used herein and not otherwise defined will have the meaning given to them in this section.
- 1.2** “**Access Credentials**” means any username or number, password, or other security key, token, PIN, method, technology, or device made available to verify an Authorized User’s identity and authorization to access and use the Offering.
- 1.3** “**Addendum**” or “**Addenda**” means the additional product-specific terms and conditions applicable to the Offerings.
- 1.4** “**Affiliate**” means a corporation, partnership or other legal entity that directly or indirectly controls, is controlled by or is under common control of a party, but only so long as such control continues to exist. For purposes of this definition, “control” means ownership, directly or indirectly, of at least fifty percent (50%) of the voting rights in such entity (or, in the case of a noncorporate entity, equivalent rights). Walmart Affiliates also include any legal entity: (a) under a contractual relationship with Walmart where Walmart is the primary provider of operational retail services, including, but not limited to, purchasing, store planning and inventory control; (b) under the primary operational control of Walmart through an operating agreement; (c) that is a franchisee of either Walmart or an Affiliate (as specified in subsections (a) and (b) above); or (d) in which Walmart has an equity stake of at least twenty-five percent (25%) of the equity having the power to vote on or direct the affairs of the entity, in any case for so long as the entitlement subsists.
- 1.5** “**Agreements**” means the Addenda, Order Form(s), Statements of Work, Service Provider Access Agreement, annexes, exhibits or other agreements that incorporate these Terms & Conditions by reference.
- 1.6** “**Authorized User**” means an employee of Client or Client Group that is permitted to access the Offerings on the Client’s behalf.
- 1.7** “**Client**” means the entity that has entered into a written agreement for the Offering, usually by Order Form, with the relevant Walmart entity.
- 1.8** “**Client Group**” means Client and Client Affiliates or third parties approved in writing by Walmart.
- 1.9** “**Documentation**” means the user guides and policies, operating manuals, training materials, and technical specifications related to the Offerings that Walmart (or its subcontractors or service providers) makes available to Authorized Users.
- 1.10** “**Feedback**” means any suggestions, ideas, comments, feedback, materials, or other information regarding the Offerings (including identifying errors and potential improvements).
- 1.11** “**Industry Standard**” means the administrative, technical, organizational, and physical safeguards that a prudent organization of similar size and risk profile in the same industry, handling data of similar sensitivity, would implement to protect the confidentiality, integrity, and availability of systems and data. Such measures include maintaining a risk-based, documented security program aligned with widely recognized frameworks (e.g., NIST Cybersecurity Framework, ISO/IEC 27001, SOC 2, or CIS Controls). Industry Standard security measures evolve and refer to then-current practices and any successor or comparable frameworks providing equivalent or greater protection. If the relevant Agreements or applicable law requires more protective safeguards, the higher standard controls.
- 1.12** “**Intellectual Property Rights**” or “**IPR**” means the rights in and to all: (a) patents and patent applications; (b) copyrights and all other rights with respect to works of authorship and industrial designs; (c) information and materials, including trade secrets and other confidential and proprietary data, materials, ideas, concepts, know-how, formulae, techniques and other information; (d) trademarks, trade names, logos, service marks, symbols, and internet domain names; and (e) any rights equivalent or similar to any of the foregoing.
- 1.13** “**Order Form**” means the ordering document (including an online order), utilizing Walmart-approved templates, signed by the parties specifying the relevant commercial terms related to Offering to be provided by Walmart to Client.
- 1.14** “**Offering**” or “**Offerings**” means the products or services being purchased as described in the relevant Addenda, SOW, or Order Form. For clarity, Walmart Data and Documentation is considered part of the Offering.
- 1.15** “**Scintilla Platform**” means Walmart’s proprietary software-as-a-service product known as Scintilla.
- 1.16** “**Services**” means any professional services purchased as part of the Offering, which may include but is not limited research services or consulting services.
- 1.17** “**Statement of Work**” or “**SOW**” means the ordering document (including an online order) that specifies the Services, deliverables, and any other applicable commercial terms being provided as part of the Services.
- 1.18** “**Third Party Products**” means the products and services made available by Walmart or its subcontractors or third parties as part of the Offering, which may include data, APIs, software, services, hardware, support and maintenance, training, implementation, installation, integration, and professional or other services.
- 1.19** “**Walmart**” means the Walmart contracting entity that is party to the applicable Addendum, Order Form or SOW.
- 1.20** “**Walmart Background IP**” means Walmart’s pre-existing and independently developed intellectual property, including but not limited to tools, Services, Scintilla Platform, the Customer Spark Community, Documentation, software, APIs, models, algorithms, templates, libraries, methodologies, know-how, other technology and materials owned or developed by or for Walmart, including improvements, modifications, and derivative works.
- 1.21** “**Walmart Data**” means all data owned by Walmart and made available through the Offerings.
- 1.22** “**Walmart Privacy Notices**” means the then-current generally available version of the Walmart privacy notice and any other privacy notices applicable to the Offering.

## 2. TERMINATION

**2.1 Termination for Cause.** Either party may terminate an Order Form or SOW by written notice to the other party: (a) if the other party (and in the case of Client, an Authorized User thereof) materially breaches the Agreements (including the failure to pay undisputed fees), and does not cure the breach within thirty (30) days of receiving written notice of the breach (if the breach is curable, otherwise termination will be immediate); (b) immediately upon receiving such written notice if and when Client no longer supplies products or services through Walmart, to the extent applicable to the specific Offering; or (c) to comply with court orders, rules, laws and government regulations applicable to the relevant party or the applicable Walmart Privacy Notices. In the case of Client, a breach of Client's supplier agreement with Walmart may be considered a material breach and grounds for termination of the Agreements.

**2.2 Termination for Restructure.** If Client divests a portion of its business to one or more organizations that are not a Client Affiliate, or if an entity ceases to be a Client Affiliate, (such divested business unit or such entity, a "Divested Business"), then Walmart has no further obligation to provide access to the Offerings to the Divested Business but may in its discretion do so to the extent: (a) the applicable fees, if any, are timely paid; and (b) the Divested Business or, if the assets of the Divested Business are transferred, the acquiror of the Divested Business agrees in writing to be bound by the relevant Agreements. Additionally, if Client acquires, is acquired by, or merges with a competitor of Walmart or a company with a competing offering, Walmart may, in its discretion and upon notice, terminate or suspend access to the Offerings for Client and/or any successor entity.

**2.3 Termination for Insolvency.** Either party may terminate all Order Forms or SOWs immediately upon written notice to the other party if the other party: (a) becomes insolvent; (b) files a petition in bankruptcy or is adjudicated bankrupt; (c) makes an assignment for the benefit of creditors; (d) has a receiver appointed for its business or assets; or (e) takes advantage of any law for the benefit of debtors or is subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, which is not dismissed within sixty (60) days of filing. Termination under this section shall be in addition to, and not in lieu of, any other rights or remedies available at law or in equity.

**2.4 Effect of Termination.** Upon any expiration or termination of an Order Form or SOW, the Client's (and any Authorized User's) right to access or use the Offerings will automatically terminate. Upon expiration or termination, Client will, and will ensure that any Authorized Users will, promptly destroy any materials including any Walmart Data or nonpublic information regarding or constituting the Offerings and, at Walmart's request, certify in writing such destruction. For clarity, the termination or expiration of an Order Form or SOW will not automatically terminate any other Order Forms or SOWs in existence.

## 3. PAYMENT TERMS

**3.1 Fees.** In consideration for Walmart making the Offering available to Client, Client will pay Walmart those fees set forth in the applicable Agreements. Unless otherwise stated in the applicable Agreements, payment shall be made no later than thirty (30) days after the date of Walmart's invoice. In accordance with Client's Walmart supplier agreement, if Client's payment has not been received by the applicable due date, Walmart may deduct the amounts due for such invoice from any amounts owed by Walmart to the Client and/or Client's Affiliates under any agreement related to the supply of merchandise from Client and/or Client's Affiliates to Walmart or any of Walmart's Affiliates whether or not related to the Agreements.

**3.2 Fee Disputes.** If Client disputes any portion of an invoice in good faith, Client shall notify Walmart in writing within fifteen (15) days of receipt of the disputed invoice, specifying in reasonable detail the nature of the dispute and the amount in question. Client shall pay all undisputed amounts in accordance with the terms of the Agreements. The parties shall use commercially reasonable efforts to resolve any such dispute promptly. If the parties are unable to resolve the dispute within thirty (30) days after Walmart's receipt of Client's written notice, either party may pursue any remedies available under these Terms & Conditions or at law. Failure to timely notify Walmart of a fee dispute shall be deemed a waiver of such dispute.

**3.3 Expenses.** If the relevant Agreements provide for reimbursement of certain Walmart expenses, then Client will pay, in addition to the fees, the reasonable, pre-approved, out-of-pocket expenses of Walmart.

**3.4 No Deductions or Setoffs.** All amounts due by Client to Walmart under the Agreements will be paid in full. Client may not reduce amounts it is obliged to pay under the Agreements with any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason.

**3.5** All fees are non-cancellable and non-refundable unless a pro-rated refund applies as provided in the applicable Agreements.

## 4. DATA TRANSFER & PROTECTION

**4.1 Walmart Data.** Client will (and will use commercially reasonable efforts to cause Authorized Users to) only use Walmart Data for Client's internal business purposes and to collaborate with Walmart.

**4.2 Data Transfer.** Any approved transfer of Walmart Data shall be conducted using secure methods consistent with Industry Standards, including APIs, BI Link, SFTP, encrypted email, secure cloud-based file sharing platforms, or other secure electronic means.

**4.3 Security Measures.** Client shall maintain appropriate administrative, physical, and technical safeguards to protect the integrity, confidentiality, and security of Walmart Data under the Agreements, including encryption in transit and at rest, as applicable, and any additional requirements specified by Walmart. At a minimum, such safeguards shall include:

4.3.1. **Access Controls:** Access limited to personnel with a legitimate business need, who are bound by confidentiality obligations and terms at least as protective as these Terms & Conditions.

4.3.2. **Data Storage:** Storage only on secure systems protected by Industry Standard measures, including firewalls, encryption, and regular security patching.

4.3.3. **Data Segregation:** Logical or physical segregation of Walmart Data from other customer or third-party data to prevent unauthorized access or commingling.

4.3.4. **Security Controls:** Reasonable security controls and procedures designed to protect against unauthorized access, use, disclosure, alteration, or destruction, including intrusion detection, vulnerability assessments, and incident response processes.

**4.4 Application Program Interfacing (API).** Subject to the Agreements, Walmart grants Client a limited, non-exclusive, non-transferable, and non-sublicensable right to access and use Walmart APIs solely to integrate Client's systems with the Offerings in accordance with applicable Documentation. Client is responsible for safeguarding API keys and Access Credentials and must promptly notify Walmart of any unauthorized use. Walmart may impose reasonable usage limits and suspend or revoke access for exceeding them. Client shall not exceed the permitted scope, violate applicable laws, reverse engineer, create competing products, or disrupt the APIs or Offerings. Walmart may modify the APIs and will use commercially reasonable efforts to provide advance notice of material, non-backward compatible changes. Client is responsible for required system updates.

**4.5 Artificial Intelligence.** Walmart may, at its sole discretion, utilize artificial intelligence (AI) technologies to enhance the Offerings or for any other purposes it reasonably deems necessary to provide the Offerings under the Agreements. Such use of AI shall be subject to Walmart's internal policies and

applicable laws and regulations. Client's use of AI shall be subject to the terms in the Offering-specific Addendum.

**4.6 Compliance with Laws.** All data transfers must comply with applicable laws, regulations, and Industry Standards, including data protection and privacy laws. Client shall not use or permit use of Walmart Data in violation of antitrust or competition laws, including to collude, coordinate, or share competitively sensitive information with competitors. Client shall not disclose Walmart Data to any competitor or use it to restrict competition and shall promptly notify Walmart of any actual or suspected breach of this section.

**4.7 Incident Notification.** Client shall promptly notify Walmart in writing of any actual or reasonably suspected unauthorized access, acquisition, use, or disclosure of Walmart Data and reasonably cooperate in investigation and remediation, which shall be at Walmart's sole cost.

## **5. INTELLECTUAL PROPERTY**

**5.1 Ownership of the Offering.** Walmart owns and will retain worldwide ownership of all right, title and interest in and to the Offerings and Walmart Background IP, including all related IPR. With respect to any Third Party Products included in the Offering, the applicable third party providers own and retain ownership of all worldwide right, title and interest in and to the Third Party Products, including all related IPR. Except for the rights expressly granted to Client in the Agreements, Client will not acquire or claim any right, title or interest in or to the Offerings and Walmart Background IP, including related IPR, whether by implication, estoppel, operation of law or otherwise.

**5.2 Use of Marks.** Neither party may use the other party's names, logos, trademarks, service marks, trade dress, domain names, social media handles, or other brand identifiers (collectively, "Marks") for any purpose without the prior express written consent of the owning party. No license to use any Marks is granted or implied by these Terms & Conditions. Any permitted use of a party's Marks will be subject to that party's written brand guidelines and quality-control requirements, as provided from time to time, and all goodwill arising from such use will inure solely to the benefit of the owning party. The owning party may revoke its consent to use its Marks upon written notice, and upon expiration or termination of such consent (or the Agreements), the other party will promptly cease all use of the Marks. Nothing in this provision permits registration, reservation, or use of any confusingly similar marks, domain names, or social media handles.

**5.3 Feedback.** Client is not obligated to provide Walmart with Feedback, but if Client chooses to provide Feedback, Client hereby grants to Walmart a perpetual, irrevocable, global, assignable and royalty-free license to use the Feedback for any purpose.

## **6. THIRD PARTIES**

**6.1 General.** Third party access (including service providers) to the Offering is only permitted to the extent such third party has entered into the necessary written access agreement with Walmart.

**6.2 Third Party Products.** The Offerings may contain or link to open source software and certain Third Party Products which are subject to the terms and conditions of the applicable third party licenses and other terms and conditions. In that event, the use of such open source software and Third Party Products by the Client Group and any Authorized User will be governed by such licenses and terms and conditions.

**6.3 Subcontracting.** Walmart may subcontract any of its obligations, as well as delegate any of its rights, under the Agreements to Affiliates and non-Affiliate third parties; however, Walmart will remain liable for the acts and omissions of such third parties.

**6.4 Third Party Beneficiaries.** There are no third-party beneficiaries under the Agreements.

## **7. PRODUCT TESTING (BETAS)**

**7.1 Non-Production Use Only.** From time to time, Walmart may make available to Client Group certain products, features, services, or functionalities that are designated as alpha, beta, proof of concept, pilot, limited release, non-production, or by a similar description ("Non-GA Products"). Client acknowledges that Non-GA Products are made available solely for evaluation and testing purposes, and not for production use. Walmart has no obligation to provide support, maintenance, or service level commitments for Non-GA Products. Walmart may suspend, limit, or terminate Client Group's access to any Non-GA Products at any time and for any reason, without notice or liability. Client acknowledges that all information regarding Non-GA Products, including their existence, features, and performance, is Walmart's confidential information.

**7.2 NON-GA PRODUCTS ARE PROVIDED "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. WALMART SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY LAW.**

**7.3 Limitation of Liability.** WALMART SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY HARM OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH CLIENT GROUP'S USE OF NON-GA PRODUCTS. CLIENT ASSUMES ALL RISKS ASSOCIATED WITH THE USE OF NON-GA PRODUCTS.

## **8. REPRESENTATIONS & WARRANTIES**

**8.1 Mutual Representations & Warranties.** Each party represents and warrants to the other party that: (a) it is a legal entity duly organized and validly existing under the applicable law of the jurisdiction in which it was formed; and (b) it has all requisite power and authority to execute, deliver, grant the rights, and perform its obligations under the Agreements.

**8.2 Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THE AGREEMENTS, THE OFFERINGS ARE PROVIDED BY WALMART TO CLIENT "AS IS", WITH NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AND TO THE FULL EXTENT PERMITTED BY LAW, WALMART DISCLAIMS ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR TRADE USAGE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WALMART DOES NOT WARRANT TO THE CLIENT GROUP OR ANY AUTHORIZED USER THAT USE OF THE OFFERINGS WILL BE UNINTERRUPTED, ERROR FREE OR SECURE, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF CLIENT'S OTHER PRODUCTS, SOFTWARE, SYSTEMS, OR SERVICES, OR THAT ALL DEFECTS WILL OR CAN BE CORRECTED.

## **9. INDEMNIFICATION**

**9.1 Indemnification by Walmart.** Walmart will defend Client against any third-party claim, demand, suit or proceeding ("Claim") brought against Client alleging that Client's use of the Offering in accordance and connection with the Agreements infringe or misappropriate a third-party's IPR or otherwise fails

to comply with applicable law or government regulation. Walmart will promptly notify Client of the legal counsel that Walmart proposes to engage to defend such Claim, and such counsel will be subject to Client's reasonable approval, which Client will not unreasonably withhold. Walmart will pay all damages finally awarded against Client by a court of competent jurisdiction or reasonable settlement amounts approved by Walmart, such approval not to be unreasonably refused or delayed, resulting from such Claim, subject to the other terms and conditions of the Agreements. For the sake of clarity, a Client Affiliate will not be considered a third-party for any purpose under this section. Without limiting Walmart's obligations above, Client may, at its option and sole cost, appoint its own counsel to defend Client against such Claim.

**9.2 Indemnification by Client.** Client will defend Walmart against any Claim brought against Walmart: (a) alleging that Client Group's, an Authorized User's, or an approved service provider's use of the Offering other than in accordance with the Agreements infringes or misappropriates a third-party's IPR or otherwise fails to comply with applicable law or government regulation or the applicable Client privacy policy; or (b) arising out of the Client Group's, an Authorized User's, or an approved service provider's failure to comply with the restrictions set forth in the Agreements. Client will promptly notify Walmart of the legal counsel that Client proposes to engage to defend such Claim, and such counsel will be subject to Walmart's reasonable approval, which Walmart will not unreasonably withhold. Client will pay all damages finally awarded against Walmart by a court of competent jurisdiction or reasonable settlement amounts approved by Client, such approval not to be unreasonably refused or delayed, resulting from such Claim, subject to the other terms and conditions of the Agreements. Without limiting Client's obligations above, Walmart may, at its option and sole cost, appoint its own counsel to defend Walmart against such Claim.

**9.3 Indemnification Process.** The party seeking indemnification will: (a) provide prompt written notice to the indemnifying party of any Claim for which indemnification is sought; and (b) provide full cooperation and assistance to the indemnifying party, at the indemnifying party's cost, with respect to the defense and settlement of such claim.

**9.4 Limitations.** Notwithstanding the foregoing, Walmart has no obligation to indemnify Client with respect to Claims arising out of: (a) the Client Group's or any Authorized User's use of the Offerings in a manner that is not permitted under the Agreements or that is inconsistent with the Documentation; (b) modifications to the Offerings made by anyone other than Walmart (or a third party acting on Walmart's behalf); or (c) the use of Client provided information, data, products or materials for the purposes of facilitating the Offering. If a Claim is made or appears likely to be made, for which Walmart will be the indemnifying party, Walmart may, at its option and expense, modify the affected portion of the Offering, or replace it with substantially functionally equivalent technology or documentation. If Walmart determines that neither option is reasonably feasible, Walmart may terminate the Agreements with respect to the affected portion of the Offering and refund Client any prepaid but unused transaction-based fees, pro-rated as necessary. The obligations set forth in this section constitute each party's sole and exclusive remedy, and such party's entire liability, with respect to any Claim that is subject to an indemnification obligation under this section. For the avoidance of doubt, nothing in this section will limit either party's rights under the Termination provisions of these Terms & Conditions.

## **10. LIMITATION OF LIABILITY**

**10.1 IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING BUSINESS INTERRUPTION OR LOSS OF INCOME, DATA, PROFITS, OR REVENUE, OR COSTS OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES, ERRORS OR INNACURRACY IN THE OFFERING OR SERVICES, OR ARISING OUT OF OR RELATING TO THE AGREEMENTS. EACH PARTY'S TOTAL CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENTS WILL BE LIMITED TO DIRECT DAMAGES ACTUALLY INCURRED AND WILL NOT EXCEED AN AMOUNT EQUAL TO THE FEES PAID OR PAYABLE BY CLIENT TO WALMART FOR THE OFFERING IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY. THE LIMITATIONS OF LIABILITY IN THIS SECTION: (A) WILL APPLY REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND REGARDLESS OF WHETHER EITHER PARTY HAS BEEN ADVISED OF OR COULD FORESEE THE POSSIBILITY OF SUCH LOSS OR DAMAGE; AND (B) WILL NOT LIMIT THE LIABILITY OF A PARTY ARISING OUT OF ITS INDEMNIFICATION OBLIGATIONS OR OF CLIENT FOR ITS PAYMENT OBLIGATIONS UNDER THE AGREEMENTS OR FOR ITS BREACH OF THE RESTRICTIONS SECTION IN THE RELEVANT ADDENDUM.**

## **11. GENERAL TERMS**

**11.1 Changes to Agreements.** The terms of the Order Form or SOW may only be amended by mutual written agreement of the parties. Walmart may update these Terms & Conditions and the Addenda at any time. Walmart will endeavor to provide reasonable notice of material changes such as by email or by posting a notice on the Offering, and the updated Terms will take effect ninety (90) days from the date of notice. Notwithstanding the foregoing, updated Terms & Conditions or Addendum will take effect sooner to the extent they are changed to comply with law or address material business risk. Client's continued use of the Offering after the effective date constitutes acceptance of the updated Terms & Conditions and Addenda.

**11.2 Force Majeure.** Except for payment and confidentiality obligations, neither party will be liable for any action or inaction resulting from circumstances beyond their reasonable control, including but not limited to acts of terror, war, civil unrest, epidemics, pandemics, natural disasters, labor strikes, government actions, power or telecommunications failures, internet or third-party service disruptions, financial institution closures, or computer malfunctions.

**11.3 Order of Precedence.** Any conflict or inconsistency among or between the terms of the Agreements shall be resolved according to the following order of precedence, from the document with the greatest control to the least: (1) the relevant SOW; (2) the relevant Order Form; (3) the relevant Addendum; (4) these Terms & Conditions. Notwithstanding this order of precedence, a Client issued purchase order or SOW shall have no force or effect whatsoever and shall not modify the terms of the documents indicated herein.

**11.4 Independent Contractors.** The parties are independent contractors. The Agreements do not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**11.5 Assignment.** Client may not assign, delegate, or otherwise transfer to any entity any of its rights or obligations under the Agreements without Walmart's written consent, which shall not unreasonably be withheld. A Change of Control of Supplier will be deemed to constitute an assignment (or purported assignment). Any purported assignment in violation of this provision will be void and shall constitute a breach of the Agreements. For the purpose of this provision, "Change of Control" means an event by which any person or entity, other than person(s) or entity(ies) having Control of Supplier as of the Effective Date, acquires Control of Supplier. "Control" means having direct or indirect power to direct, or cause the direction of, the management and policies of an entity, whether through the ownership of voting securities (even if less than majority ownership), contract, or otherwise.

- 11.6 Attorneys' Fees.** If either party commences any action or proceeding to enforce the terms of these Terms & Conditions, the prevailing party shall be entitled to an award of all reasonable attorneys' fees, costs, and expenses incurred in connection with such action or proceeding (including any mediation or arbitration, and at all levels of trial and appeal), as well as in connection with the enforcement of any resulting judgment or order.
- 11.7 Audit.** Walmart may, at its sole expense and upon thirty (30) days' notice to Client, conduct remote or onsite audits of Client's (and its Authorized Users') facilities, systems, and records to verify compliance with the Agreements, including with respect to access to, use or disclosure of the Offerings (including Walmart Data) and Client's security obligations. Audits will occur during regular business hours, and Walmart will use commercially reasonable efforts to minimize interference with Client's operations. Walmart may engage an independent third party to perform the audit, subject to a reasonable non-disclosure agreement if requested by Client. Absent reasonable suspicion of non-compliance, audits will occur no more than once per calendar year. At Walmart's request, Client will provide reasonable cooperation in connection with any audit.
- 11.8 Counterparts.** The Agreements as applicable may be signed in any number of counterparts and each part shall be considered part of the whole and valid, legally binding document.
- 11.9 Notice.** All notices under the Agreements must be in writing and may be delivered by personal delivery, certified mail (return receipt requested), overnight courier, or email. Notices sent by mail or courier are effective upon receipt. Notices sent by email are effective when sent, provided no delivery failure notice is received. Notices must be sent to the addresses or email addresses designated by each party in the signature block of the Order Form. A party may update its contact information by providing notice in accordance with this section.
- 11.10 Headings.** The section headings used in the Agreements are for information purposes only and shall not affect the interpretation of any provision of the Agreements.
- 11.11 Severability.** In the event any term or provision contained in the Agreements shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreements.
- 11.12 Waiver.** No party will be deemed to have waived any of its rights under the Agreements unless such waiver is in writing and signed by such party. The failure by a party to enforce any provision of the Agreements will not constitute a waiver by such party of any other right under the Agreements or of any subsequent enforcement of that or any other provision.
- 11.13 Entire Agreement.** The Agreements shall comprise the entire agreement as pertaining to the subject matter thereof and all other prior representations, proposals, and other such information exchanged by the parties concerning the subject matter is superseded in their entirety by the Agreements.