

VENDOR TERMS AND CONDITIONS

THESE VENDOR TERMS AND CONDITIONS, together with any Purchase Orders issued to Vendor by zulily, llc ("zulily"), located at 2601 Elliott Avenue, Suite 200, Seattle, WA 98121, and such other written specifications as zulily may from time to time determine in its sole discretion (together, the "Agreement") shall govern and control zulily's purchase from Vendor of any goods or services described in a Purchase Order or to be offered by Vendor for sale ("Goods"). VENDOR'S SHIPMENT OF GOODS PURSUANT TO A PURCHASE ORDER OR ITS EARLIER USE OF ZULILY'S VENDOR PORTAL SHALL CONSTITUTE ITS ACCEPTANCE OF AND AGREEMENT TO THESE TERMS. zulily and Vendor are each referred to in this Agreement individually as a "party" and together as the "parties". The parties agree as follows:

1. **ZULILY OBLIGATIONS.** zulily may purchase Goods from Vendor and provide related services necessary to offer the Goods for sale (the "Offer"). All aspects of the Offer or any other sale of the Goods shall be within zulily's exclusive control. Any purchase of Goods by zulily will be made by issuing a written purchase order describing the specific Goods intended for purchase (each, a "Purchase Order"). Nothing herein shall obligate zulily to any minimum purchase or future purchase of Goods from Vendor.
2. **VENDOR OBLIGATIONS.**
 - a) **Inventory.** Vendor acknowledges that it holds a sufficient quantity of the Goods identified on zulily's Vendor Portal website at <https://portal.zulily.com/> ("Vendor Portal") or otherwise identified, as required in order to ship the Goods immediately upon receipt of a Purchase Order from zulily. Vendor shall not post a quantity of Goods for sale to the Vendor Portal or otherwise approve a quantity of Goods for sale unless it has an equivalent quantity of goods in its possession, in the same style and stock keeping unit ("SKU") as the goods posted to the Vendor Portal or otherwise approved.
 - b) **Shipment of Goods.** Timely delivery of the Goods is of the essence. Upon receipt of a Purchase Order, Vendor agrees to ship all Goods within two (2) business days of zulily's issuance of the Purchase Order. For any Goods Vendor is drop shipping, Vendor shall provide shipment notification and tracking information to zulily within twenty-four (24) hours of shipment.
 - c) **Packaging and Shipping.** Goods shall be packed and secured in such a manner as to reach the destination in good condition under normal conditions of transport. Vendor shall comply with all requirements specified in zulily's Shipping & Routing Guide as may be amended by zulily from time to time ("Routing Guide") and available on zulily's Vendor Portal, and all applicable laws, regulations, carrier tariffs and classification related to packing and shipping, as well as any additional rules and procedures established by the commercial carrier chosen by zulily for the shipment.
 - d) **Samples.** Vendor agrees to provide samples of Goods ("Samples") without charge in the amount and style requested by zulily prior to the Offer. Vendor will pay all cost of shipping Samples and agrees Samples will not be used to fulfill Purchase Order quantities. Samples must be of the same quality and appearance, including color, design, fabric and style, as the Goods shipped pursuant to any Purchase Order. Samples remain the property of Vendor at all times and, unless otherwise agreed by the parties, Vendor instructs zulily to donate or destroy all Samples after zulily completes its use of the Samples.
 - e) **Excess or Substitute Items.** Vendor agrees to fulfill only those quantities on the Purchase Order. Unless agreed to in writing by Vendor and zulily, no additional or substitute items will be shipped.
 - f) **Inspections.** Vendor agrees that upon reasonable notice (e-mail notice is permissible), zulily will have the right to have its representatives visit Vendor's premises, or, where applicable, the premises of Vendor's manufacturer for quality assurance purpose and to conduct compliance or other inspections, audits and investigations reasonably necessary to ensure that Vendor's production, testing, storage and shipping of Goods comply with this Agreement; provided that such activities will not unreasonably interfere with Vendor's or Vendor's manufacturer's operations, as applicable. Vendor will cooperate in any such inspection, audit or investigation.
3. **LOGISTICS CONTACTS.** Each party shall appoint and have in place a logistics point of contact responsible for managing the respective party's obligations in the Purchase Order.
4. **TITLE AND RISK OF LOSS.** Title to the Goods shall not transfer to zulily until the Goods are received and accepted by zulily at its designated fulfillment center. Notwithstanding any agreement by zulily to pay freight or other transportation charges, the risk of loss or damage to Goods in transit shall be borne by Vendor. Vendor agrees to insure the Goods against all risks of loss prior to delivery and promptly pursue all shipping carrier claims relating to loss or damage occurring while the Goods are in transit.
5. **INVOICING AND PAYMENT.** Upon receipt of a Purchase Order, Vendor agrees to invoice zulily only for Goods shipped as authorized in the Purchase Order. Vendor's invoice shall reflect the prices shown in the Purchase Order and no additional charges shall be added by Vendor without zulily's prior written consent. If there is a mistake in the Purchase Order, Vendor must contact zulily prior to submitting an invoice. Invoices shall include: Unique invoice number and date, ship date, remittance address, purchase order number, payment due date, item description, price and quantity shipped. If Vendor has Electronic Data Interchange ("EDI") capabilities, invoices shall be submitted to zulily using EDI, but only if the EDI is compatible with zulily's invoice payment system. Otherwise, Vendor shall submit invoices via the Vendor Portal. Vendor further agrees to provide zulily with any requested tax information, including Forms W-9 or W-8BEN. zulily agrees to pay Vendor within sixty (60) days of zulily's receipt of invoice or receipt of goods, whichever is later.
6. **CHARGEBACK POLICY.** Vendor acknowledges that each item ordered through a Purchase Order represents a zulily customer order. If Vendor is unable to fulfill a Purchase Order completely or unable to ship items within the agreed upon shipping timeframe, zulily may issue a chargeback to Vendor as provided in the Routing Guide, in addition to any other remedy identified in this Agreement.
7. **TERM AND TERMINATION.**
 - a) **Term.** This Agreement shall commence on the earlier of the date of a Purchase Order or Vendor's first use of the Vendor Portal, and shall remain in effect until all parties' obligations are performed or until terminated by either party as set forth in this Agreement ("Term").
 - b) **Termination.** Either party may terminate this Agreement upon thirty (30) days' written notice to the other party. Either party may terminate this Agreement if the other party is in material breach of this Agreement and has failed to cure that breach within 10 days after written notice thereof. Additionally, zulily may terminate this Agreement immediately upon written notice to Vendor if Vendor: (i) makes an assignment in violation of Section 15(d); (ii) ceases or threatens to cease to carry on its business, liquidates or dissolves its business, or disposes of a substantial portion of its assets; (iii) becomes insolvent or makes an assignment for the benefit of creditors, or fails generally to pay its debts as they become due or otherwise is likely to become insolvent; or (iv) voluntarily or involuntarily becomes the subject of any proceeding relating to bankruptcy, insolvency, receivership, liquidation, or other similar proceeding. Either party may terminate this Agreement as permitted under the Agreement without prejudice to any other right or remedy.
 - c) **Effect of Termination.** Upon termination or expiration of this Agreement, (a) zulily's rights under Section 8 will survive with

respect to Goods that zulily may sell; (b) the rights and obligations of the parties under Sections, 5, 6, 7(c), 9, 10, 12, 13, 14 and 15 will survive; and (c) Vendor will, within five (5) days of zulily's written request, return or destroy, and retain no copies of, all zulily Confidential Information in its possession at the time of such request.

8. **LICENSE.** Vendor owns or is properly licensed to promote, market and sell the Goods to be purchased by zulily and advertised for sale, and hereby grants to zulily and zulily's Affiliates a limited, worldwide, non-exclusive, royalty-free right and license to display, reproduce, distribute, transmit, broadcast and create derivative works of all trademarks, service marks, logos, copyrighted materials and proprietary ad copy relating to the Goods and the marketing, advertising, and promotion of its Offer or the Goods including any blog posts, social media, email communications, and media related to the Offer or the sale of the Goods. Except for the limited license granted herein, Vendor retains all proprietary rights in and to all of its intellectual property and zulily's or its Affiliate's use of such property pursuant to the license herein granted shall inure to the benefit of Vendor. zulily retains all proprietary rights in and to all of zulily's intellectual property, including all business information of any kind that is generated by or accessible through zulily's desktop and mobile websites and mobile applications (collectively, "Site") and the Vendor Portal, all rights relating to any services provided by zulily hereunder (including all software, source codes, modifications, updates and enhancements thereof or any other aspect of its systems related to the Site, the Vendor Portal or other business operations of zulily), all original copy and photographic images created by zulily for the purpose of offering Vendor's Goods for sale, and the name "zulily," with all derivatives thereof, and all other trademarks and logos owned or controlled by zulily. No implied licenses are granted herein.

9. **REPRESENTATIONS, WARRANTIES, AND INDEMNIFICATION.**

a) **Mutual Representations and Warranties.** Each party represents and warrants that (i) it has full power and authority to enter into this Agreement; and (ii) its entrance into and performance of this Agreement does not violate, conflict with, or result in a material default under any other contract or agreement to which it is a party, or by which it is bound.

b) **Vendor's Representations and Warranties.**

Vendor represents and warrants that:

i) all Goods delivered (a) are identical in appearance and equal in quality to Samples and/or product images submitted to zulily; (b) are free from defects in design, material, construction and workmanship; (c) are fit for the particular purpose for which such Goods ordinarily are used; (d) present no risk of damage to property or injury, harm or illness to any person when used for their intended purpose; (e) do not infringe upon the intellectual property rights of any third party; (f) do not infringe on any person's right of privacy or publicity; and (g) comply with all other requirements in this Agreement.

ii) it owns, or is an authorized licensee of the owner of, all brands, trademarks, patents, designs, copyrighted images or other intellectual property depicted on or represented by the Goods, has obtained appropriate model and property releases for any images it provides, and the rights granted to zulily in Section 8 are sufficient to permit zulily's promotion and resale of the Goods without infringing upon the intellectual property or other rights of any third party, and Vendor will promptly address, defend and attempt to resolve in good faith any allegations of infringement asserted against zulily relating to the Offer or its sale of the Goods;

iii) all Goods comply with applicable federal, state, provincial, or local laws, statutes, rules, regulations, ordinances, and orders, including (a) laws, rules or regulations preventing

transshipments intended to circumvent regulations or unfair trade practices as defined by the customs law, such as dumping, promulgated by the United States or other jurisdictions to which the Goods are shipped, (b) laws, rules and regulations and industry standards related to health, safety, labeling, product claims, product safety, product composition, adulteration and intended use (including all applicable FDA rules and regulations, in particular related to labeling and ingredients, and all equivalent rules and regulations in other jurisdictions to which the Goods are shipped), including the country of origin marking and care labeling requirements of Section 304 of the Tariff Act of 1930, as amended, the Wool Products Labeling Act, Textile Fiber Products Identification Act, the Lanham Act, Hazardous Substances Labeling Act, Flammable Fabrics Act, Food, Drug & Cosmetics Act, Consumer Product Safety Act, the Consumer Product Safety Improvement Act, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Federal Trade Commission Act, FTC Guidelines, Trade Practice Rules and Regulations, the United States Consumer Products Safety Commission, and the California Air Resources Board 93120 standard. Vendor also represents and warrants that all Goods containing electrical components shall be listed by either the Underwriters Laboratories, Inc. or by ETL SEMKO in compliance with applicable electrical codes, and that all Goods which are subject to the provisions of applicable state bedding and furniture laws shall conform to the provisions of such laws. Vendor shall provide and make available to zulily a Children's Product Certificate or Certificate of Conformity pursuant to the United States Consumer Product Safety Act for each shipment of applicable Goods pursuant to a Purchase Order under this Agreement and shall maintain all relevant testing documents in accord with all applicable laws and regulations;

iv) in the event Goods are sold in Canada, such Goods comply with applicable federal, provincial, or local laws, statutes, rules, regulations, ordinances, and orders, promulgated by Canada or other jurisdictions to which the Goods are shipped including (a) laws, rules or regulations preventing transshipments intended to circumvent regulations or unfair trade practices as defined by the customs law, such as dumping, (b) laws, rules and regulations and industry standards related to health, safety, labeling, product claims, product safety, product composition, adulteration and intended use (including all applicable Health Canada rules and regulations and equivalent rules and regulations in other jurisdictions to which the Goods are shipped), including the country of origin markings under the Customs Act, the Textile Labelling Act, the Technical Standards and Safety Act, the Food and Drugs Act Canada, the Canada Consumer Product Safety Act, The Hazardous Products Act, the Federal Competition Act, the Consumer Packaging and Labelling Act (Canada), and the rules and regulations of Health Canada's Consumer Product Safety Directorate. Vendor shall provide and make available to zulily a certificate that the Goods have been tested according to, and meet the requirements of, the Canada Consumer Product Safety Act for each shipment of applicable Goods pursuant to a Purchase Order under this Agreement, as required by the jurisdiction to which the product is shipped and shall maintain all relevant testing documents in accord with all applicable laws and regulations;

v) in the event Goods are sold in Mexico, such Goods comply with applicable federal, state, or local laws, statutes, rules, regulations, ordinances, and orders, promulgated by Mexico or other jurisdictions to which the Goods are shipped including (a) laws, rules or regulations preventing transshipments intended to circumvent regulations or unfair trade practices as defined by the customs law, such

as dumping, (b) laws, rules and regulations and industry standards related to health, safety, labeling, product claims, product safety, product composition, adulteration and intended use (including applicable rules promulgated by the Protection Federal Agency of the United Mexican States ("PROFECO") and the Mexican Health Ministry, and all equivalent rules and regulations in other jurisdictions to which the Goods are shipped), including the labelling requirements under Norma Oficial Mexicana ("NOM") (Official Mexican Standard) NOM-001-SCFI-1993, Electronic appliances – safety requirements and test methods for household electronic appliances powered by different sources of electricity, NOM-004-SCFI-2006, Commercial Information - Labeling of Textiles, Clothing, Accessories and Blancos, NOM-015-SCFI-2007-Commercial - labeling information for toys, NOM-020-SCFI-1997, Commercial Information – Labeling of hides and leathers cured naturally and synthetic or artificial materials with that appearance, footwear, leather goods, as well as the products prepared with said materials, NOM-024-SCFI-2013, Commercial Information for packaging, instructions and guarantees of electronic, electric and electrical domestic products, NOM-030-SCFI-2006, Commercial Information – Declaration of quantity on label, NOM-050-SCFI-2004, Commercial Information – General Labeling of products, PROY-NOM-141-SSA/SCFI-2012, Labelling of Pre-Packaged Cosmetic Products, Health and Commercial Labelling. Vendor shall provide and make available to zulily a certificate that the Goods have been tested according to, and meet the requirements of, all applicable NOMs for each shipment of applicable Goods pursuant to a Purchase Order under this Agreement, as required by the jurisdiction to which the product is shipped and shall maintain all relevant testing documents in accord with all applicable laws and regulations. Compliance with these regulations is Vendor's sole responsibility;

- vi) all Goods are accurately described in Vendor-approved copy and promotional content provided to zulily by Vendor, fully comply with the claims and labeling set forth thereon and relating thereto, fully comply with statements, claims and warranties made by Vendor with respect to such Goods, and that all such copy, promotional content, statements, labeling, claims and warranties associated with the Goods fully comply with all applicable advertising or other laws or regulations;
- vii) it has received, read and will comply with the requirements set forth in the Routing Guide, Vendor Compliance Manual, and the Vendor Portal Terms of Use, and will access and use the Vendor Portal, as required by zulily, solely for the purposes of fulfilling its obligations to zulily under this Agreement;
- viii) all Goods comply with any laws, rules or regulations of both the country of manufacture and the United States governing wages (including, but not limited to, the Fair Labor Standards Act) and the use of child labor, slave labor, and human trafficking, and/or governing the importation into the United States of merchandise produced with child labor, slave labor, and that no prison labor or human trafficking is utilized in the production of any Goods;
- ix) it will provide zulily with an accurate suggested retail price for the Goods, based on the genuine price offered elsewhere for identical goods or comparable goods of similar quality to enable zulily to establish an accurate point of reference for the discounted pricing zulily offers to customers;
- x) except as it has specifically informed zulily in writing, the Goods do not require any special storage conditions, are intended to be stored in a warehouse at room temperature, are not perishable and do not have a limited shelf-life;
- xi) except as it has specifically informed zulily in writing, all Goods may be shipped using standard commercial carriers

without any special permissions or approvals or special handling instructions;

- xii) the retail consumer has the right to rely on these warranties and enforce the same as against Vendor, and;
 - xiii) if the Goods include items related to child or infant safety, including but not limited to strollers, cribs, child car seats and carriers, and any such Goods are returned to zulily by consumers for reasons other than their failure to meet safety requirements, Vendor will accept the return of any such item from zulily to recertify their safety prior to any subsequent sale.
- c) **Indemnification.** Each party (each, an "Indemnifying Party") shall defend, indemnify and hold the other party and its officers, directors, employees, agents, sublicensees, and subcontractors (each, an "Indemnified Party" or collectively "Indemnified Parties") harmless from and against any and all damages, liabilities, penalties, interest, fines, losses, costs and expenses, including reasonable attorneys' fees arising out of or related to any third party allegation, complaint, claim, suit or proceeding (together "Claim") arising out of or relating to: (a) any breach of the Indemnifying Party's obligations, representations or warranties set forth herein; and (b) the negligence or willful misconduct of the Indemnifying Party or any of its employees, personnel or agents. Additionally, Vendor shall also defend, indemnify and hold the zulily Indemnified Parties harmless from Claims arising out of or relating to: (c) claims of infringement, misappropriation, or misuse of any third-party intellectual property relating to any Goods; (d) actual or potential product liability relating to any Goods, including claims of injury, illness, death or damage to any person as a result of use or contact with any such Good; or (e) a recall of the Goods under Section 10. An Indemnifying Party's obligations under this Section 9(c) are conditioned on (i) the Indemnified Party promptly providing notice in writing of the Claim; and (ii) the Indemnifying Party is given primary control of, and all reasonably requested assistance (at the Indemnifying Party's cost) for, the defense of any such Claim (with counsel reasonably satisfactory to the Indemnified Parties), if it has accepted the obligation to indemnify without reservation, provided that no settlement requiring admission of any liability or wrongdoing, or any action or forbearance on the part of the Indemnified Party shall be entered into without the prior written consent of the Indemnified Party, which shall not be unreasonably withheld or delayed. If the Indemnifying Party has reserved any rights with respect to indemnity and/or defense, fails to timely act or if the Indemnified Party or parties reasonably conclude that the Indemnifying Party has conflicting interests or different defenses available with respect to such Claim or Claims, then, the Indemnified Party shall be permitted to retain independent counsel which shall be paid for by the Indemnifying Party. Notwithstanding anything in this Section 9(c), in the event zulily is the Indemnified Party, zulily shall, additionally, at its sole option, be permitted to either (i) retain independent counsel which shall have primary control over defense of the matter and be paid for by the Indemnifying Party on an ongoing basis every thirty (30) days; or (ii) tender its defense directly to the Indemnifying Party.
- 10. VENDOR'S RECALL OBLIGATIONS.** In the event all or any portion of the Goods are (a) under investigation for potential recall, (b) recalled voluntarily, or (c) recalled by order or at the direction of any government entity, Vendor shall: (i) immediately notify zulily's compliance team at compliance@zulily.com, and (ii) cooperate fully with zulily and the government entity to expeditiously complete such recall. Vendor is solely liable for any and all obligations, liabilities, damages, costs, expenses and notifications related to or arising from any such recall of the Goods. Vendor shall immediately reimburse zulily for any and all such obligations, liabilities, damages, costs, or other expenses incurred by zulily related to any recall of the Goods, as well as all additional costs incurred by zulily to refund customer purchases and recall the Goods,

including costs of destruction, transportation, demurrage, inspection, handling, repacking, commissions, insurance and taxes, as well as all actual damages to zulily.

11. **INSURANCE.** Vendor shall obtain and maintain, at its expense, policies of commercial general liability insurance, including products liability and completed operations liability insurance covering liabilities relating to the Goods. The insurance shall include a broad form Vendor's endorsement naming zulily as an additional insured party, in those amounts and containing such other provisions satisfactory to zulily; but in no event shall such insurance be in amounts less than:
- a) **For non-children apparel, wearable accessories and other goods not included in 11(b), below:** (A) Commercial General Liability insurance, including contractual liability, on an occurrence form, with limits no less than \$US 1,000,000 each occurrence, \$US 2,000,000 in the General Aggregate, and \$US 2,000,000 Products-Completed Operations Liability Aggregate; and (B) Umbrella liability insurance, including products liability-completed operations liability, with limits no less than \$US 3,000,000.
 - b) **For children apparel, baby gear, toys, electronics, cosmetics, consumables or products with small parts that could pose a choking hazard:** (A) Commercial General Liability insurance, including contractual liability, on an occurrence form, with limits no less than \$US 1,000,000 each occurrence, \$US 2,000,000 in the General Aggregate, and \$US 2,000,000 Products-Completed Operations Liability Aggregate; and (B) Umbrella liability insurance, including products liability-completed operations liability, with limits no less than \$US 5,000,000.
 - c) Such coverage shall be primary over any and all other insurance maintained by zulily and shall include severability or separation of insured's provision. Such coverage shall have a "world-wide" territory provision including lawsuits brought in the United States, and shall be placed with insurers with a current A.M. Best rating of A VIII or better. Such coverage shall not be terminated during the term of this Agreement or thereafter without at least 30 days prior written notice to zulily. Certificates of insurance evidencing such coverage and including a copy of the additional insured endorsement shall be submitted in advance of or concurrent with the acceptance of a Purchase Order, upon each policy renewal, and upon request by zulily.
12. **REMEDIES.** At zulily's sole discretion and without prejudice to any other right or remedy, in the event of Vendor's failure to perform, anticipatory breach, or breach of representation or warranty, or breach of any Vendor obligation under this Agreement, zulily may:
- a) Reject in whole or part, and demand replacement of, or return for full reimbursement, refund and/or credit, any Goods.
 - b) Charge to Vendor all direct and indirect costs and expenses for Goods returned to zulily because of any defect in, or non-conformity of the Goods.
 - c) Cancel or suspend zulily's performance (in whole or in part), under the applicable Purchase Order, or any other Purchase Order.
 - d) Charge, deduct or withhold payment from, or offset against any monetary obligations to Vendor under any Purchase Order, all refunds, credits, return costs, chargebacks, costs (including legal fees), penalties, damages (including zulily's lost profits on completed sales that are cancelled due to Vendor's failure to perform or breach) and other monetary obligations owed by Vendor to zulily or its Affiliates. Any installment payment or advance made by zulily to Vendor in respect to any Purchase Order or this Agreement or any other agreement while any of Vendor's monetary obligations are outstanding shall be deemed to be an overpayment and shall be subject to recoupment and/or set off by zulily. Without limiting the foregoing, zulily shall have the right, at all times, to deduct any Vendor's monetary obligations from any amounts owed to Vendor by zulily, and to pay only the net sum due, if any.

13. **LIMITATION OF LIABILITY.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR IN ANY PURCHASE ORDER, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OF THE SERVICES HEREUNDER FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. ZULILY SHALL NOT BE LIABLE FOR THE CONTENTS OF ANY OFFER OR THE SUCCESS OF ANY OFFER. NEITHER PARTY WARRANTS AGAINST AND EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY UNAVAILABILITY OR INOPERABILITY OF THE SERVICES, TELECOMMUNICATIONS SYSTEMS OR THE INTERNET, TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION, OR OTHER SIMILAR INJURY, DAMAGE OR DISRUPTION OF ANY KIND. EXCEPT FOR VENDOR'S OBLIGATIONS UNDER SECTIONS 9 (c), 10, 11 and 14 HEREOF, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES IN ANY WAY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES' RELATIONSHIP, OR THE BUSINESS BETWEEN THEM, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF BUSINESS OPPORTUNITIES, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. ZULILY'S MAXIMUM AGGREGATE LIABILITY HEREUNDER SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY ZULILY TO VENDOR UNDER ANY OPERATIVE PURCHASE ORDER DURING THE SIX (6) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE.

14. **CONFIDENTIALITY.**

Each party undertakes to retain in confidence the terms of this Agreement. Confidential Information (defined below) is and shall remain the sole property of the disclosing party ("Disclosing Party"). The receiving party ("Receiving Party") recognizes and agrees that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information of the Disclosing Party. The Receiving Party undertakes to retain in confidence all information, technology, materials and know-how of the Disclosing Party disclosed to or acquired by the Receiving Party pursuant to or in connection with this Agreement that is either designated as proprietary or confidential or, by the nature of the circumstances surrounding disclosure, ought in good faith to be treated as proprietary or confidential, including all non-public information available to the parties through the Vendor Portal (the "Confidential Information"); provided that each party may disclose Confidential Information and the terms and conditions of this Agreement to its immediate legal and financial consultants or Affiliates in the ordinary course of its business provided that the party to whom such information is disclosed is bound by confidentiality provisions at least as protective as the terms of this Agreement. Confidential Information of the Disclosing Party will not be used by the Receiving Party for any purpose other than to carry out the activities contemplated by this Agreement. Each party agrees to use commercially reasonable efforts to protect Confidential Information of the Disclosing Party. The Receiving Party will notify the Disclosing Party promptly in writing in the event that the Receiving Party learns of any unauthorized use or disclosure of any Confidential Information that it has received from the Disclosing Party, and will cooperate in good faith to remedy such occurrence to the extent reasonably possible. The restrictions set forth in this Section 14 will not apply to any information that: (a) was known by the Receiving Party without obligation of confidentiality prior to disclosure thereof by the Disclosing Party; (b) was in or entered the public domain legally and through no fault of the Receiving Party; (c) is disclosed to the Receiving Party by a third party legally entitled to make such disclosure without violation

of any obligation of confidentiality; (d) is required to be disclosed by applicable laws or regulations (but in such event, only to the extent required to be disclosed, and provided that the Disclosing Party is given the opportunity to review and redact the information prior to disclosure); or (e) is independently developed by the Receiving Party without reference to any Confidential Information of the Disclosing Party. Upon request of the Disclosing Party, the Receiving Party will return to the Disclosing Party all materials, in any medium, that contain or reveal all or any part of any Confidential Information of the Disclosing Party. The Receiving Party acknowledges that breach of this Section 14 by it would result in irreparable harm to the Disclosing Party, for which money damages would be an insufficient remedy, and therefore that the Disclosing Party will be entitled to seek injunctive relief to enforce the provisions of this Section 14, without any obligation to post a bond or other security.

15. **MISCELLANEOUS.**

- a) **Governing Law/Attorneys' Fees.** This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly disclaimed. This Agreement shall be governed by the laws and precedent of the State of Washington and its courts, without regard to its choice of law provisions. The parties irrevocably and unconditionally consent and submit to exclusive venue and jurisdiction in the state and federal courts sitting in King County, Washington, and expressly disclaim and release any and all right to institute litigation in any other forum. The prevailing party in any dispute between the parties arising from this Agreement or other matter shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with such dispute.
- b) **Affiliates.** An "Affiliate" of a party means any other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such party. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a party, whether through the ownership of voting securities, by contract or otherwise.
- c) **Notices.** Except as otherwise provided for herein, all notices or reports permitted or required under this Agreement shall be in writing and shall be delivered in person or mailed by first class mail, postage prepaid, (registered or certified) to the party to receive the notice at the address set forth on the Purchase Order or such other address supplied by the receiving party in the Vendor Portal. All such notices shall be effective upon the earlier of three days after dispatch or upon actual receipt. Any notices delivered to zulily must include a cc: to zulily's Legal Department.
- d) **Assignment.** Vendor may not assign, transfer, or subcontract this Agreement or any portion of its duties hereunder without zulily's express, prior written consent. Any attempted assignment in contravention of this provision will be null and void. This Agreement will be binding on all permitted assignees and successors in interest.
- e) **Force Majeure.** If performance of any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision will be suspended to the extent necessary by such event. "Force Majeure" includes acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, and acts of terrorism or wars. The excused party will use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and will proceed to perform with reasonable speed

whenever such causes are removed or ceased. An act or omission will be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its affiliates or their respective representatives. The party affected by the other party's delay may elect to (a) suspend performance and extend the time for performance for the duration of the Force Majeure event, or (b) cancel all or any part of the unperformed part of this Agreement.

- f) **Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in a signed writing to be effective. Except as expressly stated in this Agreement, no exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.
- g) **Independent Contractors.** The relationship between the parties hereunder is that of independent contractors and nothing herein will be deemed to create a joint venture, partnership, or agency relationship between the parties for any purpose.
- h) **Severability.** If any provision of this Agreement is invalid or unenforceable in any jurisdiction, the other provisions of this Agreement will remain in full force and effect in such jurisdiction and will be liberally construed in order to effectuate the purpose and intent of this Agreement, and the invalidity or unenforceability of any provision of this Agreement in any jurisdiction will not affect the validity or enforceability of any such provision in any other jurisdiction.
- i) **Construction.** For purposes of this Agreement, the terms "include," "includes," and "including" will be deemed to be followed by the words "without limitation."
- j) **Entire Agreement.** This Agreement, the Routing Guide, the Vendor Compliance Manual, and all Purchase Orders constitute the sole and entire agreement between the parties regarding the subject matter contained herein, and those documents are expressly incorporated by reference by the parties into this Agreement. To that end, this Agreement merges and cancels any and all actual or alleged representations, warranties, promises or other statements allegedly made with respect to the subject matter of the Agreement and the parties expressly acknowledge and agree that the terms herein supersede all previous understandings and agreements between the parties, oral or written. Moreover, for the sake of complete clarity, Vendor expressly acknowledges and agrees that : (1) it has not received any promises or representations other than those expressly stated in writing in this Agreement; and (2) it has not relied upon any such alleged promises or representations when determining whether to enter into this Agreement. This Agreement or a related Purchase Order may not be amended, except by a writing signed by both parties. The terms of this Agreement may be revised by zulily from time to time in its sole discretion. Any updates or revisions by zulily will be made available to Vendor by posting the Agreement, as revised, on the Vendor Portal. Unless otherwise provided in the revised Agreement, the revised Agreement, shall take effect immediately after Vendor's first use of the Vendor Portal after a revised Agreement is posted in the Vendor Portal. IF ANY MODIFICATION IS UNACCEPTABLE TO VENDOR, VENDOR'S ONLY RECOURSE AND REMEDY IS TO TERMINATE THE AGREEMENT AS PROVIDED HEREIN. VENDOR EXPRESSLY ACKNOWLEDGES AND AGREES THAT VENDOR'S CONTINUED USE OF THE VENDOR PORTAL AND ANY SALE OF GOODS FOLLOWING THE MODIFICATION OF THE TERMS WILL CONSTITUTE VENDOR'S BINDING ACCEPTANCE OF AND AGREEMENT TO THE TERMS, AS AMENDED. IN THE EVENT OF ANY CONFLICT BETWEEN THESE TERMS AND A PURCHASE ORDER, THESE TERMS SHALL GOVERN.
- k) **No Reliance.** This Agreement is the product of arms-length negotiations and, per Section 15(j) above, each of the parties

attest and agree that they are not relying on any representations or promises outside of what is expressly stated in this Agreement in entering into the Agreement. Each party to this Agreement: (a) has instead reviewed the Agreement; (b) understands the rights and obligations created by this Agreement; (c) attests and agrees that they have each had a reasonable opportunity to review this Agreement; (d) confirms by signing below that they have actually done so; (e) confirms that they have had a reasonable opportunity to have counsel of their choosing review this Agreement; and (f) that they are each voluntarily entering into this Agreement with full knowledge and understanding of the obligations imposed upon them by the Agreement.

v.5 3/2017