



**MICHAELS TERMS AND CONDITIONS
(INDIRECT)**

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1. **GENERAL.** These Michaels Terms and Conditions (these “**Terms**”) are by and between Michaels Stores Procurement Company, Inc., procuring goods and related services on behalf of its Affiliates (collectively, “**Michaels**”), a Delaware corporation, having its principal office at 3939 West John Carpenter Freeway, Irving, Texas, and a vendor providing Deliverables to Michaels (“**Vendor**”) under a Statement of Work pursuant to which these Terms are incorporated by reference. Michaels and Vendor are each referred to herein individually as a “**Party**” and collectively as the “**Parties**”. These Terms incorporate all further exhibits and attachments referenced in any Statement of Work executed by the Parties.

THE PARTIES EXPRESSLY AGREE AND IT IS THEIR INTENT THAT (A) THE BATTLE OF THE FORMS SECTION OF UNIFORM COMMERCIAL CODE § 2-207 SHALL NOT APPLY TO OVERRIDE THESE TERMS OR ANY STATEMENT OF WORK OR PURCHASE ORDER RELATING TO THESE TERMS, (B) THESE TERMS AND THE STATEMENT OF WORK SHALL EXCLUSIVELY CONTROL THE RELATIONSHIP OF THE PARTIES WITH RESPECT TO ALL DELIVERABLES BEING PURCHASED, PERFORMED OR PROCURED PURSUANT TO THESE TERMS, AND (C) ANY TERMS CONTAINED OR INCORPORATED IN ANY VENDOR QUOTE, ORDER FORM, CONFIRMATION, INVOICE OR OTHER SIMILAR DOCUMENT ARE EXCLUDED AND SUPERSEDED BY THESE TERMS.

2. **CERTAIN DEFINITIONS.** The following terms used herein shall have the following respective meanings:

“**Affiliate**” means, with respect to any entity, any other entity directly or indirectly controlling or controlled by, or under common control with, such entity. For purposes of these Terms, “control” (including the terms “controlling,” “controlled by,” and “under common control with”) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

“**Client Content**” means any information, data, or material that is provided by Michaels to Vendor for inclusion in the Deliverables, whether contained in tangible media or in electronic form, including any existing applications of Michaels, its Affiliates or its licensors which (a) are to be converted by Vendor into a different format pursuant to this Agreement, and/or (b) will interface with the Deliverables.

“**Confidential Information**” means any confidential or proprietary information that is disclosed in any manner and in any media in connection with or as a result of discussions related to these Terms, and which at the time of disclosure either (a) is marked as being “Confidential” or “Proprietary”, (b) is otherwise reasonably identifiable as the confidential or proprietary information of Michaels, or (c) under the circumstances of disclosure should reasonably be considered as confidential or proprietary information of Michaels. Specifically, Confidential Information includes, without limitation all types of proprietary technical or business information, including, but not limited to, data, know-how, formulas, algorithms, processes, designs, drawings, schematics, plans, strategies, specifications, requirements, standards and documentation, reports, pricing, market, marketing or demographic information, software, trade secrets, research, analyses, inventions, ideas, personally identifiable information of employees or customers of Michaels or its Affiliates and other types of nonpublic information. Confidential Information shall also include the Statement of Work, Client Content, and any and all other information transmitted to or stored by Vendor in connection with performance of its obligations under these Terms.

“**Deliverables**” means, collectively, any goods, products and/or services provided to Michaels or provided on behalf of Michaels by Vendor under these Terms, but specifically excluding any Client Content.

“**Documentation**” means the user manuals and operator instructions furnished or made available by

Vendor in either paper or electronic formats.

“**Intellectual Property**” means any and all rights that may exist under patent law, copyright law, publicity rights law, moral rights law, trade secret law, trademark law, unfair competition law or other similar protections, whether or not such rights are registered or perfected.

“**Specifications**” means the functional, performance, operational, compatibility, and other parameters and characteristics of the Deliverable described in the Statement of Work or any other applicable Documentation and such other parameters, characteristics, or performance standards or requirements for the Deliverable as may be agreed in writing between Vendor and Michaels.

“**Statement of Work**” means any document which describes the Deliverable and which, upon signing by both Parties, will be deemed a part of these Terms. Each Purchase Order issued by Michaels and accepted by Vendor in accordance with these Terms shall supplement, constitute and be a part of, the Statement of Work.

3. DURATION. Subject to the provisions and conditions of these Terms, the duration of these Terms (the “**Duration**”) shall commence on the execution of a Statement of Work between the Parties or acceptance of a Purchase Order by Vendor in accordance with the terms hereof (the “**Effective Date**”) and continue until terminated in accordance with Section 14 of these Terms.

4. DELIVERABLES.

4.1 Nature of Deliverables and Engagement. Vendor is an independent contractor engaged to furnish the Deliverables on Michaels’ behalf as set forth in any Statement of Work. Unless otherwise set forth in a Statement of Work, Vendor shall furnish, at Vendor’s own expense, any and all equipment, supplies and/or other materials used to perform or provide the Deliverables. Michaels shall provide Vendor with access to its premises and equipment to the extent necessary for the performance of the Deliverables. To the extent Vendor performs any Deliverables on Michaels’ premises or using Michaels’ equipment, Vendor shall comply with all applicable policies of Michaels relating to business and office conduct, health and safety and use of Michaels facilities, supplies, information technology, equipment, networks and other resources. Unless otherwise indicated in a Statement of Work or Purchase Order, both Parties acknowledge that the relationship between the Parties is non-exclusive, in that Michaels may utilize the services or products of others. There are no minimum unit or dollar volumes of Deliverables guaranteed by Michaels to Vendor hereunder.

4.2 Purchase Orders. Michaels may, at any time, request any Deliverable by submitting to Vendor a written purchase order request specifying the desired Deliverable (a “**Purchase Order**”). Each such Purchase Order will supplement any Statement of Work between the Parties. The Parties do not intend for Purchase Orders to be signed, but instead intend that Vendor’s commencement of work requested in such Purchase Order shall constitute acceptance thereof under these Terms.

4.3 Acceptance Procedure. Michaels will, within thirty (30) days of receipt of each Deliverable (or as otherwise specified in the applicable Statement of Work), notify Vendor of any non-conformities between the Deliverable and the Specifications. Such notice will be in writing and will provide any available information in Michaels’ possession regarding such non-conformity, including all documentation reasonably requested by Vendor to evaluate and correct such non-conformity. Vendor will correct the non-conformities identified hereunder and will thereafter re-submit any such previously non-conforming Deliverable within seven (7) days of Michaels’ notice of non-conformance, or as otherwise agreed between Michaels and Vendor. Acceptance of a Deliverable (“**Acceptance**”) will take place when Michaels provides written notice to Vendor of the conformance of such Deliverable with the Specifications.

4.4 Non-Acceptance. In the event that Vendor fails to deliver a Deliverable that meets the

Specifications on the due date, if any, specified in the Statement of Work or Purchase Order, Michaels may, in its sole discretion, either (a) reject the Deliverable in its entirety and recover amounts previously paid hereunder; (b) issue a partial Acceptance of the applicable Deliverable with an equitable adjustment in the price to account for such deficiency; or (c) conditionally accept the applicable Deliverable while reserving its right to revoke Acceptance if timely correction is not forthcoming.

4.5 Delivery of Title and Risk of Loss. To the extent the Statement of Work contemplates delivery of tangible items, Vendor shall deliver all such Deliverables FOB the Michaels facility specified in the Statement of Work or otherwise directed by Michaels in writing, and title to and risk of loss of such Deliverables will pass to Michaels upon such delivery by the Vendor. Unless otherwise specified, time is of the essence and Vendor shall use best efforts to deliver all Deliverables per Michaels' direction under the Statement of Work and in accordance with the timeframe and deadlines, if any, set forth therein. Until such time as the Deliverable has been delivered and accepted by Michaels, Vendor shall be liable for any losses or damage to such Deliverable.

5. OBLIGATIONS OF VENDOR.

5.1 Invoices. Vendor will issue invoices for all Deliverables against a Statement of Work and/or Purchase Order as directed by Michaels. Unless otherwise approved by Michaels in writing, Vendor will not begin work until a valid Purchase Order is received from, or a Statement of Work is executed by, Michaels. Vendor will electronically issue all invoices no earlier than upon Acceptance of each Deliverable, unless otherwise stated in the Statement of Work. In the event that Michaels disputes an invoice, Vendor shall promptly supply Michaels with documentation to support the validity of any charge disputed by Michaels. Payment due dates and discounts will be computed from the date of receipt of a correct invoice accepted by Michaels. Any invoice that is issued by Vendor more than ninety (90) days after Acceptance of the Deliverables will be paid at Michaels' sole discretion. Vendor will provide hard copies of invoices as requested by Michaels. Upon Michaels' request, Vendor will itemize any charges into separate invoices as directed by Michaels. Michaels may require credit for, or repayment of the amount of any billing errors. As requested by Michaels, Vendor will provide a monthly invoice statement in excel or other mutually agreed alternative format. Vendor shall submit all invoices as outlined in one of the three following invoice options:

- Electronic Data Interchange (EDI)
- eXtensible Markup Language (cXML): cXML requires a URL to post Purchase Order information with the ability to send invoices back to Michaels.
- iSupplier Portal: An internet-based solution which requires an internet connection and a web browser. If iSupplier is approved, Vendor agrees to utilize iSupplier to (a) request changes to Statements of Work or Purchase Orders, (b) request changes to the Vendor record, and (c) view invoice payment status.

5.2 Set-Off. In the event a subcontractor of Vendor notifies Michaels of non-payment by Vendor and attempts to assert a claim against Michaels, Michaels shall have the right to withhold from payment to Vendor and set off against Vendor payables the amount so claimed. In addition, Michaels reserves the right, in its sole discretion, to set off against any payment owed to Vendor the amount of any claim Michaels may have against Vendor arising out of or related to the performance of its obligations hereunder or under any other work provided by Vendor to Michaels.

5.3 Subcontracting. Vendor may not subcontract its obligations hereunder without the prior written approval of Michaels, which approval will not be unreasonably withheld or delayed. In the event that Michaels approves of Vendor's use of a subcontractor, Vendor will remain responsible and liable for

the performance, obligations, acts and omissions of such subcontractors to the same extent as if such performance, obligations, acts and omissions were of Vendor's employees. Vendor shall supervise any of its subcontractors approved hereunder to ensure that such approved subcontractors deal directly and exclusively with Vendor with respect to the provision of services hereunder, and not with Michaels.

5.4 Conduct of Vendor Representatives. Vendor shall be solely responsible and liable for the conduct of its employees, agents, subcontractors and representatives (collectively, "**Vendor Representatives**"), and will ensure that such Vendor Representatives comply with Michaels' site security, information security and personnel conduct rules and procedures, as well as applicable federal, state and local laws, executive orders and regulations. Michaels reserves the right to require the immediate removal from Michaels' premises any Vendor Representative who Michaels believes has failed to so comply, or whose conduct or behavior is unacceptable or unprofessional or results in a security or safety breach. To the extent permitted by law, for purposes of providing any Deliverables to Michaels hereunder, Vendor shall assign only Vendor Representatives for whom Vendor has performed appropriate background checks, including determining whether said Vendor Representative(s) have been convicted of a crime in the county(ies) where such Vendor Representative(s) have lived or worked for the most recent seven year period, up to and including the last three counties such Vendor Representative(s) have lived and the two most recent names such Vendor Representative(s) have had. Vendor also agrees to use, and warrants it has used a background check provider that complies with Federal Consumer Reporting Act ("**FCRA**") and any state-equivalent. The following convictions will be evaluated for job-relatedness before a placement is made at Michaels: (i) murder, (ii) sexual assault, (iii) crimes against children, (iv) violent crimes involving a weapon, (v) theft and (vi) sexual offenders. The Parties further acknowledge and understand that any Vendor Representative who has a break in service on assignment at Michaels of 30 days or more will require a new background check.

5.5 Compliance with Law. Vendor shall comply with (and all Deliverables manufactured, produced, performed, acquired, delivered or supplied by or on behalf of Vendor under these Terms shall comply with) all applicable federal, international, foreign, state, local and provincial laws, statutes, acts, codes, rules, and regulations (collectively, "**Law**"), including but not limited to those which directly or indirectly relate to (i) the labeling, packaging, transportation, importation, exportation, taxation, licensing, approval or certification of any Deliverables; (ii) the transportation of any cargo; (iii) environment or occupational health and safety; (iv) wages, hours and conditions of employment, subcontractor selection, discrimination, or immigration; (v) data protection, data handling or privacy; or (vi) export control, trade sanctions restrictions, the U.S. Foreign Corrupt Practices Act, and other such similar requirements.

5.6 No Co-Employment. Any Vendor Representatives employed or engaged by Vendor in connection with the performance of the Deliverables shall be Vendor's employees or agents only. Vendor will not be eligible to participate in any vacation, group medical or life insurance, disability, profit sharing or retirement benefits or any other fringe benefits or benefit plans offered by Michaels to its employees, and Michaels will not be responsible for withholding or paying any income, payroll, Social Security or other federal, state or local taxes, making any insurance contributions, including unemployment or disability, or obtaining worker's compensation insurance on Vendor's behalf. Vendor will be solely responsible for all matters related to payment of all Vendor Representatives. In addition to Vendor's indemnification obligations hereunder, Vendor shall defend, indemnify, and hold harmless the Michaels Indemnified Parties from and against labor and employment claims or allegations by any Vendor Representatives, including claims or allegations based on (i) payment of wages and benefits, (ii) withholding of payroll taxes, unemployment insurance, workers' compensation, FICA, and FUTA, (iii) compliance with the US Immigration Reform Control Act, or (iv) co-employment or joint employment in connection with any Deliverables.

7. OBLIGATIONS OF MICHAELS.

7.1 Fees. The fees for Deliverables delivered or performed hereunder (the “Fees”) shall be as provided in the Statement of Work. The Fees shall be complete, and no additional charges may be added without Michaels’ express written consent, including, but not limited to, transportation, packaging, customs, duties, storage, insurance, and other expenses. The Fees shall be valid from the Effective Date and only subject to change as mutually agreed in writing by both Parties. If the Parties mutually agree to extend the term of any Statement of Work, and further agree to increase the Fees for such extended term, Vendor agrees that the Fees shall increase by an amount not to exceed the change in The Consumer Price Index for all Urban Consumers (CPI-U) or three percent (3.0%), whichever is less. In addition, for the Duration, Michaels shall have the right to procure additional quantities of Deliverables from Vendor at the same unit pricing therefor as may be specified in a Statement of Work or Purchase Order hereunder.

7.2 Reimbursement of Expenses. Unless otherwise specifically set forth in the Statement of Work, Vendor shall bear all of its own expenses arising from the performance of its obligations under these Terms. To the extent the Statement of Work expressly provides that Michaels shall reimburse certain expenses of Vendor, Vendor must provide sufficient documentation to substantiate such expenses (as determined by Michaels), such expenses shall not include any mark-up by Vendor unless specifically authorized under the Statement of Work, and all such expenses must be incurred in accordance with Michaels Travel and Expense Reimbursement Guidelines provided to Vendor.

5.7 Payment. Michaels shall pay Fees invoiced by Vendor in accordance with these Terms and the Statement of Work within one hundred and twenty (120) days after the receipt of an undisputed invoice, unless otherwise stated in the Statement of Work.

8. TAXES.

8.1 Sales Taxes. For taxable Deliverables, Vendor must charge and separately itemize sales tax for all jurisdictions according to the physical location of services rendered or purchases delivered. If Vendor is unable to charge sales tax due to lack of registration in a jurisdiction, Vendor must bill taxable Deliverables on separate invoice from locations able to charge sales tax. Vendor assumes responsibility for charging correct sales tax rates for physical locations and Deliverables. Michaels will not reimburse Vendor interest or penalties as a result of audit findings due to taxability of Deliverables or incorrect sales tax rates. Michaels reserves the right to challenge taxability of Deliverables due to business intended use. Vendor agrees to supply documentation to support sales tax refund requests or audit positions as requested by Michaels. If a Statement of Work includes reimbursement for travel, lodging, or food expenses, Vendor agrees to charge tax in states which consider the reimbursement part of the service/sales price. If Michaels is assessed tax, interest, penalties or projected fees as a result of an audit finding incorrect billed tax, Vendor agrees to reimburse Michaels for interest, penalties, and/or projected fees. Michaels will not pay Vendor for any taxes not directly related to covered Deliverables, including, but not limited to, income, franchise, and corporation profit taxes. Vendor represents that sales tax collected from Michaels will be paid in full to appropriate jurisdictions on a timely basis.

8.2 Excluded Taxes. Michaels shall not be liable for the payment or reimbursement to Vendor of any franchise taxes or fees, or any taxes measured by or against Vendor’s income or property. Michaels will not withhold taxes or Social Security payments from any sum paid to Vendor under these Terms. Vendor acknowledges and agrees that Vendor is solely responsible for the payment of Vendor’s federal, state and local employment and other taxes. Vendor agrees to indemnify Michaels for all such tax liability, including any related interest and penalties. Additionally, Vendor will honor any tax-exempt certificates provided by Michaels.

8.3 Other Taxes. Each Party agrees to be solely responsible for the applicable taxes in connection with their respective performance hereunder. Should Michaels be required by any jurisdiction to withhold income taxes from payments to Vendor, it will do so unless Vendor provides some official notification or document from a tax authority in the applicable jurisdiction which states or otherwise proves in a conclusive manner that the payments to the Vendor are exempt from such withholding requirements. Should Michaels be assessed withholding or other taxes by any jurisdiction, which are attributable to the amounts paid by Michaels to Vendor, Vendor shall reimburse Michaels for the total amounts assessed, including taxes, penalties and interest and will fully cooperate with Michaels in connection with the assessed amounts, including, but not limited to, filing initial or amended tax returns in the applicable jurisdiction and remitting refunded amounts to Michaels.

9. **WARRANTIES.**

9.1 Deliverables Warranty. Vendor represents and warrants as follows:

(a). The Deliverables will be provided in a professional, timely, and reliable manner with care, skill and diligence, consistent with or above applicable professional standards currently recognized in its profession, and Vendor will be responsible for the professional quality, technical accuracy, completeness and coordination of all Deliverables furnished under these Terms. The Deliverables will meet or exceed the service levels, if any, specified in the Statement of Work.

(b). All Deliverables are new, merchantable, of good material and workmanship, free from defects (to the extent not manufactured pursuant to custom drawings or custom specifications provided to Vendor by Michaels), shall be performed in a good and workmanlike manner utilizing personnel with skill levels appropriate to the task and in full and complete accordance with these Terms, shall fit and be sufficient for the purposes intended by Michaels, and shall comply with applicable Law.

(c). Vendor (including its Vendor Representatives) (i) possesses the expertise, qualified personnel, facilities and equipment to properly and lawfully provide or furnish the Deliverables; (ii) is licensed to the extent required by law or regulation to do business in the locations where it shall furnish the Deliverables; and (iii) has in force and shall maintain (at all times during the Duration of these Terms) all necessary regulatory, third-party and private licenses, permits, approvals, authorizations, permissions, notices, grants and documents to furnish the Deliverables.

(d). Vendor has all necessary rights to provide, sell, distribute or license the Deliverables hereunder.

(e). Michaels will receive good and valid title to all Deliverables, free and clear of all liens, claims, security interests, or other encumbrances.

9.2 Functionality. For a period of one year after Acceptance by Michaels of any Deliverable, or such other warranty period as may be expressly set forth in the Statement of Work (the "**Warranty Period**"), Vendor warrants that the Deliverables will conform to the Specifications. During the Warranty Period, Vendor shall promptly replace, at no cost to Michaels, any Deliverable that does not conform to applicable Specification or is otherwise defective, in Michaels' reasonable discretion. If Vendor is unable to correct such defects within ten (10) days following notification by Michaels, or such other timeframe as may be expressly set forth in the Statement of Work, then, upon Michaels' written request and in its sole discretion, (i) Vendor shall accept a return of such Deliverable, and return all Fees paid for such Deliverable, or (ii) Michaels may elect to perform or cause a third party to perform any remedial work necessary to correct such defects, and the reasonable out-of-pocket cost of such remedial work shall be paid by Vendor.

9.3 General Warranties.

(a). Vendor represents and warrants to Michaels that (i) Vendor is duly organized, validly existing and in good standing under the laws of the State of its organization and has all rights and power necessary to execute, deliver and perform its obligations under the Statement of Work and these Terms; (ii) the execution, delivery and performance of the Statement of Work and these Terms, by Vendor (A) has been approved by any necessary company action and (B) is not contrary to, or in conflict with, the formation and governance documents of Vendor, any material agreement by which Vendor is bound or any applicable Law.

(b). Michaels represents and warrants to Vendor that (i) Michaels is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware and has all rights and power necessary to execute, deliver and perform its obligations under these Terms; and (ii) the execution, delivery and performance of the Statement of Work and these Terms, by Michaels (A) has been approved by any necessary company action and (B) is not contrary to, or in conflict with, the formation and governance documents of Michaels, any material agreement by which Michaels is bound or any applicable law.

9.4 Nature of Warranties. All representations, warranties and conditions shall survive any inspection, test, acceptance or use of the Deliverable, and run to Michaels, its successors, assigns, agents and to all persons to whom the Deliverable may be resold. All warranties shall be construed as conditions as well as warranties and shall not be deemed to be exclusive.

10. RIGHTS IN INTELLECTUAL PROPERTY

10.1 Vendor Intellectual Property. The Parties agree that, as between the Parties, all pre-existing Intellectual Property that was created by or on behalf of Vendor prior to and independent of Vendor providing any Deliverables or otherwise performing any work in connection with the Deliverables (collectively, “**Vendor IP**”) shall remain the property of and be owned exclusively by Vendor. For clarity, Vendor IP does not include any Intellectual Property created by Vendor in connection with the Deliverables. Vendor shall bear the burden of proving that any intellectual property, information or data were independently developed prior to its work on the Deliverables.

10.2 Work Made for Hire. The Parties acknowledge that each Deliverable (whether patentable or not), or any other work product resulting from the Deliverables is intended to be for the sole benefit of Michaels and its Affiliates and is a “specifically ordered or commissioned work” and a “work-made-for-hire” as those terms are defined by the United States Copyright Act. To the extent that any Deliverable does not so qualify, Vendor agrees to and hereby does (a) irrevocably assign and transfer to Michaels all of Vendor’s right, title and interest (including all Intellectual Property with respect to the United States and any other country) therein, and any associated rights of renewal and all reversionary interests thereof, in and to such Deliverables including, without limitation, any software provided by Vendor to Michaels in connection to these Terms and any and all upgrades and enhancements thereto, and all related documentation, source and object code, modifications and other related materials, except to the extent any of the foregoing constitutes Vendor IP or Client Content, and (b) appoint Michaels as Vendor’s attorney in fact for the limited purpose of assigning such right, title and interest to Michaels. At Michaels’ request and expense, Vendor shall execute and deliver such instruments and take such other action as may be requested (including assistance in any proprietary rights application process) by Michaels to perfect or protect Michaels’ rights in the Deliverables and to carry out the assignments contemplated in this Section 10.1.

10.3 Michaels Intellectual Property. Neither Michaels nor any Affiliate of Michaels grants to Vendor any rights with respect to any Intellectual Property of Michaels or any of its Affiliates (“**Michaels Intellectual Property**”) other than the limited right to use such Michaels Intellectual Property strictly and

solely in conjunction with Vendor's performance of the Deliverables

10.4 Third Party IP. In the event Vendor contemplates incorporating any Vendor IP, or any third party-owned intellectual property not provided to Vendor by Michaels (collectively, "**Third Party IP**") into any Deliverables, Vendor shall disclose to Michaels in writing, prior to such incorporation, the nature of such Vendor IP or Third Party IP, its proposed use in connection with the Deliverables, and with respect to any Third Party IP, the applicable license rights under which the Third Party IP would be licensed to Michaels. Michaels may, in its sole discretion, reject any such proposed uses by Vendor of Third Party IP.

10.5 Grant of Rights. Vendor hereby grants to Michaels and its Affiliates and their respective designees a perpetual, irrevocable, transferable, worldwide, royalty-free, fully paid-up license, with the right to grant sublicenses, under any and all intellectual property owned or held by Vendor, to use, reproduce, create derivative works of, distribute, publicly display, publicly perform, use, make, have made, offer for sale, sell or otherwise dispose of, and import any and all Vendor IP and Third Party IP (to the extent Vendor has the right to grant sublicenses in such Third Party IP) that is (a) incorporated into, combined with, or otherwise provided to Michaels in connection with any Deliverables, or (b) deemed by Michaels to be reasonably necessary to allow Michaels and its Affiliates (and/or their designees) to use, maintain, modify, enhance, copy and/or create derivative works of the Deliverables for any and all purposes.

11. INDEMNIFICATION.

11.1 General Indemnity.

(a). Vendor agrees to indemnify, defend, and hold harmless Michaels, and their respective Affiliates and all of their respective officers, directors, owners, and employees, ("**Michaels Indemnified Parties**") for any and all losses, costs, third party claims, and other liabilities incurred, including reasonable attorneys' fees (collectively "**Claims**"), arising out of or relating to: (i) any acts or omissions of Vendor or Vendor Representatives arising in the course of Vendor's (or Vendor Representatives') work pursuant to a Statement of Work and these Terms, (ii) Claims by Vendor Representatives for injuries incurred at a job site or otherwise related to the Deliverables, (iv) breach of any terms or conditions of these Terms and/or any Statement of Work issued hereunder, (v) any actual or alleged infringement or misappropriation of any third party IP rights by any of the Deliverables; provided, however, that Vendor's indemnity obligations hereunder shall not extend to Claims caused solely by the gross negligence, willful misconduct or breach of these Terms by Michaels.

(b). In the event of a Claim pursuant to Section 11.1(a)(v), and in addition to all other obligations of Vendor in this Section 11, Vendor will at its expense and at Michaels' option, either (i) procure for Michaels the right to continue use of such infringing products or services (while substantially preserving its utility or functionality), or any component thereof; or (ii) replace or modify such infringing products or services, or any component thereof, with non-infringing products or services satisfactory to Michaels, provided that Vendor will provide Michaels with a comparable temporary replacement product or reimburse Michaels for the reasonable costs incurred by Michaels in obtaining an alternative product in the event Michaels cannot use the affected product. If Vendor cannot accomplish any of the foregoing within a reasonable time and at commercially reasonable rates, then Vendor shall accept the return of the infringing component of the products or services, along with any other components of any products rendered unusable by Michaels as a result of the infringing component, and refund the price paid to Vendor for such components.

11.2 Indemnification Procedures.

(a). Promptly after a Party seeking indemnification pursuant to this Section 11 (the

“**Indemnified Party**”) obtains knowledge of the existence or commencement of a Claim, the Indemnified Party will notify the Indemnifying Party (the “**Indemnifying Party**”) of such Claim in writing; provided, however, that any failure to give such notice will not waive any rights of the Indemnified Party except to the extent that the rights of the Indemnifying Party are actually prejudiced thereby. The Indemnifying Party will assume the defense and settlement of such Claim with counsel reasonably satisfactory to the Indemnified Party at the Indemnifying Party’s sole risk and expense; provided, however, that the Indemnified Party (i) may join in the defense and settlement of such Claim and employ counsel at its own expense, and (ii) will reasonably cooperate with the Indemnifying Party in the defense and settlement of such Claim. The Indemnifying Party may settle any Claim without the Indemnified Party’s prior written consent (which shall not be unreasonably withheld or delayed) unless such settlement (A) does not include a release of all covered claims pending against the Indemnified Party; (B) contains an admission of liability or wrongdoing by the Indemnified Party; or (C) imposes any obligations upon the Indemnified Party other than payment of monetary damages that are paid in full by the Indemnifying Party.

(b). If the Indemnifying Party fails to assume the defense of such Claim or, having assumed the defense and settlement of such Claim, fails reasonably to contest such Claim in good faith, the Indemnified Party, without waiving its right to Indemnification, may assume the defense and settlement of such Claim, and the Indemnifying Party will reasonably cooperate with the Indemnified Party in the defense and settlement of such Claim. The Indemnified Party may settle such Claim without the Indemnifying Party’s written consent (which shall not be unreasonably withheld or delayed) unless such settlement (i) does not include a release of all covered Claims; (ii) contains an admission of liability or wrongdoing by the Indemnifying Party; or (iii) imposes any obligations upon the Indemnifying Party other than payment of monetary damages. The Indemnifying Party will be liable for any and all costs and expenses incurred by the Indemnified Party in connection with the defense and settlement of any Claim pursuant to this Section 11.2(b).

(c). Upon a determination of liability in respect of this Section 11, the Indemnifying Party will pay the amount so determined within ten (10) business days after the date of such determination or, if such amount was paid by the Indemnified Party, reimburse the Indemnified Party within ten (10) business days of such payment. If there should be a dispute as to the amount or manner of determination of any indemnity obligation owed under these Terms, the Indemnifying Party will nevertheless pay when due such portion, if any, of the obligation that is not subject to dispute.

12. LIMITATION OF LIABILITY

EXCEPT WITH REGARD TO THE INDEMNIFICATION OBLIGATIONS CONTAINED IN THESE TERMS, WITH RESPECT TO EACH OF WHICH LIABILITY WILL NOT BE LIMITED PURSUANT TO THIS SECTION 12, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFIT, INCOME OR SAVINGS, EVEN IF ADVISED OF THE POSSIBILITY THEREOF.

13. CONFIDENTIALITY.

13.1 Treatment and Protection. Vendor agrees (a) to hold in strict confidence all Confidential Information of Michaels, (b) to use such Confidential Information solely to perform or to exercise its rights under these Terms and for no other purpose, and (c) not to transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any third party. Vendor shall take the same measures to protect against the disclosure or use of the Confidential Information as it takes to protect its own proprietary or confidential information (but in any case no less than reasonable measures).

13.2 No Publicity. Vendor shall not publicly refer to Michaels on Vendor's website, client list or similar format, as a customer of Vendor and shall not use Michaels' logo for such purposes. Only upon mutual written consent, shall either Party participate in any marketing or referral activities.

13.3 Exclusions. The term “Confidential Information” shall not include information that is:

- (a) in the public domain through no fault of Vendor or of any other person or entity that is similarly contractually or otherwise obligated;
- (b) obtained independently from a third party without an obligation of confidentiality to Michaels and without breach of these Terms; or
- (c) independently developed by Vendor without reference to the Confidential Information of Michaels.

13.4 Disclosures Required by Law. Vendor may disclose Confidential Information in response to a valid court order, law, rule, regulation (including any securities exchange regulation), or other governmental action provided that (a) Michaels is notified in writing prior to disclosure of the information (to the extent legally permissible), and (b) Vendor assists Michaels, at Michaels’ expense, in any attempt by the other to limit or prevent the disclosure of the Confidential Information. Nothing herein shall be construed to prevent disclosure of Confidential Information as may be required by applicable law or regulation, or pursuant to the valid order of a court of competent jurisdiction or an authorized government agency.

13.5 Remedies Upon Breach. Vendor agrees that Michaels shall have no adequate remedy at law if there is a breach or threatened breach of this Section 13 and, accordingly, that Michaels shall be entitled (in addition to any legal or equitable remedies available to Michaels) to seek injunctive or other equitable relief to prevent or remedy such breach.

13.6 Return or Destruction. Upon the termination or expiration of these Terms or upon the earlier request of Michaels, Vendor shall (a) at its own expense, (i) promptly return to Michaels all tangible Confidential Information (and all copies thereof) of Michaels, or (ii) upon written request from Michaels, destroy such Confidential Information and provide Michaels with written certification of such destruction, and (b) cease all further use of Michaels’ Confidential Information, whether in tangible or intangible form.

14. TERMINATION.

14.1 Termination.

(a). Either Party may terminate these Terms, or any Statement of Work, for cause in the event the other Party fails to cure a material breach of these Terms within thirty (30) days after receiving written notice thereof.

(b). In addition to the foregoing, Michaels may terminate these Terms, or any Statement of Work, at any time (i) for any reason upon ten (10) days prior written notice to Vendor or (ii) immediately if Vendor (A) files for bankruptcy protection; (B) merges with or into or is acquired, in whole or in part, by another entity or sells substantially all of its assets; or (C) in the event Michaels receives any complaint or other objection from any governmental authority that these Terms or any part hereof, whether considered by itself or taken together with other agreements to which Michaels or its Affiliates are a party, places Michaels or its Affiliates in breach of any Laws.

14.2 Effect of Termination. In the event these Terms or any Statement of Work is terminated by Michaels pursuant to Section 14.1, (a) Vendor shall (i) promptly provide to Michaels all Deliverables for which Michaels has paid, and (ii) immediately stop the delivery of Deliverables, cease any work hereunder, and cause its vendors or subcontractors to cease all work relating to such Deliverables; (b) Michaels’ liability shall be limited to the price for all Deliverables delivered to and Accepted by Michaels prior to the effective date of such termination; (c) Vendor shall promptly pay to Michaels any Fees prepaid by Michaels in respect of Deliverables to be furnished following the date of such termination, and (d) Vendor will

reasonably cooperate with Michaels, at no additional cost, for an orderly transition of the Deliverables contemplated by these Terms to Michaels or a Michaels designee. Notwithstanding the foregoing, except in the event of termination by Vendor pursuant to Section 14.1(a), Michaels may, at its option, elect to continue any Statement of Work in effect after such termination to the extent necessary to complete the work thereunder, in which case these Terms will remain in effect solely for the purpose of completing such Statement of Work. Unless otherwise specified by Michaels, the termination by Michaels of a single Statement of Work will not affect the terms of any other Statements of Work then in effect.

14.3 Survival. The following provisions shall survive the expiration or termination of these Terms: Section 5.6 (No Co-Employment); Section 9 (Warranties); Section 10 (Rights in Intellectual Property), Section 11 (Indemnification); Section 12 (Limitation of Liability); Section 13 (Confidentiality); Section 16 (General); and this Section 14.3 (Survival).

15. INSURANCE. Vendor shall purchase from and maintain with a company or companies with a rating of "A" or better by AM Best or equivalent, and lawfully authorized and licensed to do business in the jurisdiction in which Michaels is located insurance in at least the following amounts and coverages: (a) Workers' Compensation insurance or self-insurance as required by law, and Employer's Liability coverage with a minimum limit of \$500,000 each accident, \$500,000 disease-each employee and \$500,000 disease-policy limit; (b) General Liability insurance with a minimum limit of \$1,000,000 each occurrence and \$2,000,000 annual aggregate bodily injury and property damage, which insurance shall be written on a comprehensive form and include coverage for (i) premises and operations, including coverage for independent contractors liability; (ii) products and completed operations; (iii) personal injury liability; (iv) broad form property damage liability and (v) contractual liability to cover liability assumed under these Terms; (c) commercial umbrella/excess liability insurance with a minimum limit of \$5,000,000 each occurrence and annual aggregate; and, if applicable; (d) Professional Liability insurance with a minimum limit of \$1,000,000; (e) Automobile Liability insurance in a minimum amount of \$1,000,000; and (f) if Vendor is providing information technology services or if the Deliverables involve Client Content, then a minimum of \$5,000,000 cyber liability insurance. All such insurance shall cover the acts and omissions of Vendor and its employees, agents or subcontractors providing goods or performing services hereunder, and this Section 15 shall not be construed as limiting in any way the extent to which Vendor may be held liable for payment for damages to persons or property resulting from its activities under these Terms or the activities of any of Vendor's employees or other persons for which Vendor is otherwise responsible. Coverage under such policies shall be primary without any right of contribution from any insurance maintained by the additional insureds and, with the exception of Worker's Compensation insurance, Michaels and its employees, directors and officers thereof shall be included as additional insureds. Such insurance policies shall (A) be maintained in full force and effect without interruption during the Term, and (B) provide that Michaels shall be given prior written notice of any cancellation, non-renewal or adverse material change in such policies and that any such cancellation or adverse material change shall not be effective as to Michaels for at least thirty (30) days after receipt of such written notice. Vendor will provide Michaels with evidence of such insurance coverage upon execution of the Statement of Work.

16. GENERAL.

16.1 Scope of Rights. Each of Michaels and its Affiliates will have the right to use the Deliverables for the benefit of itself and its Affiliates and customers. Vendor further authorizes agents of Michaels who are under contract with Michaels to provide outsourcing services including, but not limited to, providing application development services, data processing or facilities management services for the benefit of Michaels and its Affiliates, to use the Deliverables in accordance with the terms and conditions set forth in this Agreement.

16.2 Relationship of Parties. Vendor is an independent contractor and not the agent of Michaels. Vendor is solely liable for injury to, or the death of persons, and damage to or destruction of property, resulting from its performance under these Terms. Vendor is solely responsible for all tax contributions and related employee benefits, immigration and licensing matters for its employees. Nothing in these Terms is intended or will be construed to create or establish any agency, partnership or joint venture relationship between the Parties. The Parties expressly disclaim such relationship, agree that they are acting solely as independent contractors hereunder and agree that the Parties have no fiduciary duty to one another or any other special or implied duties that are not expressly stated herein. Vendor has no authority to incur any obligations on behalf of or in the name of Michaels or its Affiliates.

16.3 EDI. If the Parties operationally agree to use electronic data interchange (“EDI”), such communication is acceptable as a signed writing to the extent permissible under applicable law. A mutually agreed upon identification code contained in an electronic document is sufficient to verify the sender’s identity and the document’s authenticity. These Terms will apply to the EDI transaction, even if not referenced in the data of the transmission.

16.4 Successors and Assigns. These Terms will be binding upon, and will inure to the benefit of, the permitted successors and assigns of each Party hereto. Vendor may not assign, delegate or otherwise convey these Terms, or any of its rights and obligations hereunder, to any other entity without the prior written consent of Michaels, and any such attempted assignment or delegation without consent will be void. Michaels may assign these Terms to any Affiliate or any successor in interest to all or any part of Michaels’ operations, so long as the assignee agrees in writing to be bound by the terms and conditions of these Terms. Michaels shall not act as a guarantor of any assignee’s obligations under these Terms. Michaels may, from time to time, by written notice to Vendor, delegate one or more of Michaels’ duties hereunder to an Affiliate of Michaels.

16.5 Notices. All notices, reports and other communications required or permitted hereunder to be given to or made upon either Party in writing will be addressed as provided below and will be considered as properly given if: (a) sent by an express courier delivery service which provides signed acknowledgments of receipt; or (b) deposited in the U.S. certified or registered first class mail, postage prepaid, return receipt requested. All notices will be effective upon receipt. For the purposes of notice, the addresses of the Parties will be as set forth below; provided, however, that either Party will have the right to change its address for notice hereunder to any other location by giving not less than five (5) days’ prior written notice to the other Party in the manner set forth above.

If to Michaels:

Michaels Stores Procurement Company, Inc.
3939 West John Carpenter Freeway
Irving, TX 75063
Attn: Non-Merchandise Procurement - Contracts
Phone: 972-409-1300

with a copy to:

Michaels Stores Procurement Company, Inc.
3939 West John Carpenter Freeway
Irving, TX 75063
Attn: General Counsel
Phone: 972-409-1300

If to Vendor:

As set forth in the applicable Statement of Work

16.6 Governing Law; Interpretation. These Terms shall be governed by and construed in accordance with the laws of the State of Texas, excluding its choice of law provisions; provided, however, that during the Term, the Uniform Computer Information Transaction Act will not apply even if adopted as part of the laws of the State of Texas. Both Parties hereby consent and submit to the jurisdiction of the state and federal courts in Dallas County, Texas in all questions and controversies arising out of these Terms. The Parties expressly disclaim the application of the United Nations Convention on Contracts for the International Sale of Goods to these Terms.

16.7 MBE/WBE Participation. At Michaels' request, Vendor shall use commercially reasonable efforts to work in good faith with Michaels to subcontract portions of its performance under these Terms to minority or women owned business enterprises, and to participate in Michaels' quality assurance process programs.

16.8 Construction. The headings appearing in these Terms are inserted for convenience only, and will not be used to define, limit, or enlarge the scope of these Terms or any of the obligations herein. Unless the context of these Terms clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) "or" has the inclusive meaning frequently identified with the phrase "and/or," (iii) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (iv) references to "hereunder," "herein" or "hereof" relate to these Terms as a whole. Any reference in these Terms to any statute, rule, regulation or agreement, including these Terms, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The Parties agree that these Terms shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either Party and that ambiguities shall not be interpreted against the drafting Party.

16.9 Entire Agreement; Amendment. These Terms, the Statement of Work any Purchase Order issued thereunder, and any Exhibits and Attachments thereto constitute the entire agreement between the Parties with respect to the subject matter and supersede any prior or contemporaneous agreement or understanding, whether written or oral, if any, between the Parties. The Parties specifically agree that any language or provisions contained on either Party's website (with the exception of these Terms) or product schedule, or contained in any "shrinkwrap" or "clickwrap" agreement, shall be of no force and effect and shall not in any way supersede, modify or amend these Terms. As a material inducement for Michaels to enter into these Terms, Vendor represents and warrants that if any agreement relating to the same subject matter existed between Vendor and Michaels or Vendor and any other party before the effective date of these Terms, there are no undischarged liabilities of Michaels, nor any claims of any kind, asserted or unasserted, by Vendor against Michaels, arising out of such agreement, and Vendor will be estopped from asserting otherwise. These Terms are the result of both Parties' review, discussion and negotiation; therefore, any uncertainties or ambiguities will not be interpreted against a Party by virtue of its actual role in preparing these Terms. These Terms may be modified only by a further written agreement signed by both Parties; provided that Michaels reserves the right to amend, revise, modify, cancel and/or reissue these Terms and will make any such amended, revised, modified and/or reissued Terms available on its website at www.michaels.com/supplier-portal. Vendor agrees that, by continuing to do business with Michaels, it agrees to be bound by any such amended, revised, modified

and/or reissued Terms that Michaels may propagate.

16.10 Order of Precedence. In the event of a conflict of terms in these Terms, the following is the order of precedence in interpretation: (a) these Terms, (b) the Statement of Work and any Exhibits and Attachments thereto (as applicable) and (c) any Purchase Order issued thereunder, except to the extent expressly set forth in these Terms or the applicable Statement of Work, Exhibit or Attachment.

16.11 Severability. If any one or more of the provisions of these Terms, or the application thereof in any circumstance, is held to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and the remaining provisions of these Terms will be unimpaired, and these Terms will continue in full force and effect, unless the provisions held invalid, illegal or unenforceable will substantially impair the benefits of the remaining provisions hereof.

16.12 Waiver. The failure of either Party to insist upon strict performance or to seek remedy for breach of any term or condition of these Terms, or to exercise any right, remedy or election set forth herein or permitted by law or equity, shall not constitute nor be construed as a waiver or relinquishment in the future of such term, condition, right, remedy or election. Any consent, waiver or approval by either Party of any act or matter shall only be effective if made in writing and signed by an officer of the consenting, waiving or approving Party.

16.13 Force Majeure.

(a). Unless otherwise specified in these Terms, neither Party will be liable for delays or failure in its performance hereunder if and only to the extent that such delay or failure is caused by an event beyond the reasonable control of that Party, including, but not limited to, war, natural disaster, fire, pandemic, quarantine restriction or act of government (a "**Force Majeure Event**"); provided that the Party failing to perform timely was not a cause of such event or otherwise at fault or negligent and; provided, further, that such cause could not have been prevented or mitigated through commercially reasonable precautions. The Party declaring a Force Majeure Event shall make all reasonable efforts to continue to meet its obligations throughout the duration of the Force Majeure Event and shall notify the other Party promptly when the Force Majeure Event begins (including an explanation of the nature of the Force Majeure Event), and when such Force Majeure Event has terminated. The suspension of any obligations shall only last during the time the Force Majeure Event continues (and such reasonable time thereafter to allow said Party to respond to such Force Majeure Event). In the event a Force Majeure Event continues for more than thirty (30) days within any six (6) month period, the other Party shall have the right, at its option, to immediately terminate these Terms by giving the Party whose performance is so delayed or fails written notice of such election to terminate. In addition, Michaels' payment obligations hereunder shall be suspended for any period that Vendor's performance hereunder is delayed or fails due to a Force Majeure Event.

(b). If Vendor is the non-performing Party and if requested by Michaels, Vendor shall, within ten (10) days of such request, provide adequate assurances that the delay or failure to perform shall not exceed thirty (30) days. In the event of a delay or failure of Vendor to perform its obligations as a result of a Force Majeure Event, Vendor shall use commercially reasonable efforts to provide the Deliverables to Michaels, and in no event shall Vendor provide the Deliverables to Michaels any later than similar goods or services, as applicable, provided by Vendor to its other customers. If the delay or failure to Vendor to perform its obligations caused by the Force Majeure Event lasts (or is reasonably believed by Michaels that it shall last) more than thirty (30) days or Vendor does not provide adequate assurances that the delay or failure to perform shall cease within thirty (30) days, Michaels may immediately, in its sole discretion, (i) cancel or modify any and all outstanding Statement of Works; or (ii) adjust, suspend (in

whole or in part) or modify the performance of Vendor under the these Terms, all in an effort to adjust the timing and quantity of Deliverables being furnished by Vendor to Michaels to account for the Force Majeure Event.

(c). In the event of any delay, Michaels shall have the right to immediately acquire substitute or replacement Deliverables from one (1) or more alternate sources (“**Alternative Deliverables**”). Michaels may elect to have the quantities of Deliverables under the applicable contract documents reduced by the same amount of Deliverables as the quantity of Alternative Deliverables, unless otherwise notified by Michaels in a separate contract document. Michaels shall have no obligation to pay Vendor for Deliverables replaced by Alternative Deliverables.

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