



# Kepler Group LLC

## Amazon Advertising Services Order Form

### Terms and Conditions

Updated: June 26, 2023

By signing the Amazon Advertising Services Order Form (the “**Order Form**”) which incorporates these terms and conditions (the “**Terms and Conditions**” and collectively, with the Order Form, the “**Agreement**”), the Client (as defined in the Order Form) hereby confirms that it expressly accepts the Terms and Conditions as its agreement with Kepler Group LLC (“**Kepler**”), governing the Client’s use of Kepler’s services to manage the Client’s marketing efforts on the Amazon Inc. advertising platform (the “**Amazon Platform**”). The Client acknowledges that these Terms and Conditions may be updated from time to time. By Client’s execution of the Order Form, Client represents that it is authorized to accept the Terms and Conditions on behalf of the Client. If you do not have such authority, or if you do not agree with the terms and conditions of this Agreement, you must not sign the Order Form.

1. **Services; Obligations.** Kepler shall serve as Client’s agency for planning and buying digital and digitally-enabled media using the Amazon Platform as described herein (“**Media Services**”) on a non-exclusive basis (i.e., Client may use one or more other parties/agencies and may purchase media on its own) as set forth in the Order Form. In connection with any Media Services, upon receipt of written approval (including by way of e-mail) by the authorized Client contact as set forth on the Order Form, which may be updated from time to time, Kepler is hereby authorized to purchase Media (as defined in the Order Form) on Client’s behalf as Client’s agent pursuant to Order Forms or other written arrangements with digital media outlets and partners (including, without limitation: media placement and production companies, ad networks, digital partners, DMPs, DSPs, technology platforms, social networks, and data providers, hereinafter referred to as “Vendors”) in accordance with Client’s written instructions. Client’s written instructions may be given by way of the terms of this Agreement or an e-mail by the Client Contact listed in the Order Form. For purposes of clarification, Client shall be named as “advertiser” and Kepler shall be named as Client’s “agent” for all such media placement requests and Client agrees that it shall perform in accordance with its obligations as “advertiser” under the Vendor agreements. Kepler may subcontract any services hereunder, in whole or in part, to a third party subcontractor (a “**Subcontractor**”), provided that Kepler requires that each Subcontractor complies with terms at least as protective to Client as the relevant terms of this Agreement. For purposes of clarity, Subcontractors do not include Vendors.

2. **Vendor Payments for Media Services.** Upon Kepler’s request, Client will provide Kepler with (a) a signed letter to be provided to Vendors outlining Client’s financial responsibility, and including, without limitation, Client’s ultimate liability for payment of all amounts due to such Vendors for which Client has authorized an Order Form and (b) credit information to be provided to Vendors. Once Client pays Kepler the amount due to a particular Vendor (each such amount, a “**Vendor Payment**”), Kepler shall assume full financial responsibility for remitting such Vendor Payment to such Vendor in a timely manner. If Client fails to remit Vendor Payment to Kepler, financial responsibility for such payment shall lie with Client rather than Kepler. Client hereby agrees that, with respect to all media purchased by Kepler following receipt of an authorized Order Form, Kepler shall be solely liable to Vendor for Vendor Payments only to the extent such payments have been actually and fully received by Kepler, and Client shall be solely liable to Vendor to the extent such payments have not been actually and fully received by Kepler.



- a. Except in the event of Kepler's gross negligence or willful misconduct, Kepler shall not be liable or responsible for (i) any delay, omission or error in any advertisement or broadcast, (ii) any failure of proper performance by Vendors or other third parties (except Subcontractors).
- b. Nothing in this Agreement shall be deemed to require Kepler to undertake a campaign or prepare any advertising or publicity which in Kepler's reasonable judgment is misleading, libelous, unlawful, indecent or otherwise prejudicial to Kepler or Client.
- c. Client hereby acknowledges and agrees that Kepler cannot guarantee that biddable Media meeting Client's criteria will be available, or that it will be available in the volume desired by Client, or that Kepler will be the successful bidder for such inventory.

3. Fees. Client will pay Kepler for Media Services the fees defined and described in the Order Form (collectively, the "**Fees**"), all in accordance with the payment terms set forth herein and as detailed in the Order Form. All Fees owed by Client to Kepler are due within thirty (30) days of Client's receipt of Kepler's undisputed invoice and any applicable supporting documentation, which invoice shall be generated once a month. Client's payment of Kepler's invoices shall in no way be conditioned upon or delayed pending Client's receipt of payment from any third party. Unpaid Fees shall accrue interest at the rate of 1.5% per month or the highest rate allowed by law. Additionally, Kepler shall be entitled to expenses incurred in its efforts to collect unpaid Fees, if necessary, including without limitation, court costs and reasonable attorneys' fees. The Fees do not include any applicable federal, state, local or other taxes, tariffs, duties, or governmental charges, all of which will be borne exclusively by Kepler other than such charges that are required by law to be paid by Client.

4. Change Requests. Client may request changes or cancellations or stop work in progress that has been authorized by an Order Form, provided these are within Kepler's contractual obligations and such requests are made in writing by the Client. In the event such previously approved work has incurred charges, Client shall reimburse Kepler for unrecoverable charges or expenses arising from requested changes or cancellations according to the payment terms defined in Section 3.

5. Term.

- a. Term. The Term of this Agreement is set forth on the Order Form ("**Term**"), unless it is terminated earlier in accordance with the terms of this Agreement, and provided that any Order Form entered into during the Term and which, by their nature extend beyond the Term shall continue in full force and effect under the terms hereof until completion, absent mutual written agreement to the contrary..
- b. Termination. Either party may terminate this Agreement and/or any Order Forms for any reason or no reason, upon fourteen (14) days' prior written notice. In addition, either party may terminate this Agreement and/or any Order Forms immediately upon written notice to the other party if the other party commits a material breach hereof and fails to cure such breach within ten (10) business days following such written notice; provided, however, that any breach by either party of its confidentiality or Kepler of its exclusivity obligations is hereby acknowledged and agreed to not be capable of cure, and so termination by Kepler or Client, as applicable for breach of those duties shall be immediate upon written notice by Kepler or Client, as applicable. Further, either party may immediately terminate this Agreement upon prior notice if the other party (i) becomes insolvent; (ii) makes a general assignment for the benefit of creditors; (iii) is adjudicated bankrupt; or (iv) becomes the subject of any voluntary or involuntary proceeding in bankruptcy, liquidation, dissolution, receivership, attachment or composition or general assignment for the benefit of creditors, provided however that such involuntary proceeding was not dismissed within thirty (30) days after it was instituted.
- c. Effect of Termination. Termination of this Agreement will be effective as of the effective date of termination (if any) and, as promptly as reasonably practicable:



- (i) Kepler will invoice Client for all amounts remaining due and accrued under this Agreement as of the effective date of termination and Client will pay any such undisputed amounts in accordance with payment terms set forth herein; and
  - (ii) Kepler will transfer to Client, and Client will accept, all rights and obligations under existing contracts or commitments validly entered into by Kepler on Client's behalf; and, as a consequence, Kepler shall be relieved of any and all further responsibility or liability with respect thereto.
- d. Survival. Any provision of this Agreement that by its terms contemplates survival will survive the termination or expiration of this Agreement, including without limitation, Sections 6, 7, 8, 9, 10, 11, 12 and 13.

6. Trademarks and Intellectual Property; Client Content. Client hereby grants to Kepler a limited, non-exclusive license to use, reproduce, and display the Client Content (defined below) in connection with Kepler's performance of its obligations and exercise of its rights hereunder. Client represents and warrants to Kepler that Kepler is authorized to use, reproduce and display the entire Client Content in media campaigns contemplated hereunder and otherwise as necessary to effectuate Kepler's performance of its obligations and exercise of its rights hereunder. Client shall be responsible for obtaining any permissions necessary to use the Client Content that is supplied to Kepler. The cost of obtaining any such rights, licenses, clearances, releases, or other permissions shall be borne solely by Client. "**Client Content**" means all copy, artwork, graphics and other materials and content, including without limitation, trademarks, service marks, logos, trade names, photographs, product claims, and audiovisual materials, including any "creative content" (i.e. photographs, articles, audiovisual materials, and other content which is to appear as part of the substantive content and made accessible to end users of the deliverables, if any) to be provided by Client hereunder. Client shall indemnify Kepler for any loss, cost or damage (including reasonable attorneys' fees and expenses) arising out of or on account of any claim alleging that Client Content infringes or misappropriates any third party intellectual property right.

7. Ownership of Data; Data Collection and Usage. As between Client and Kepler, Client shall retain ownership of or licensing rights to all data provided by or on behalf of Client to Kepler, or collected from Client's campaigns or websites, and Kepler ("**Client Data**"). The Client hereby grants to Kepler all rights and permissions in or relating to the Client Data as are necessary for Kepler to provide the Media Services to Client during the Term. Kepler agrees that it shall use, store, share, and otherwise process the Client Data in accordance with this Agreement, will not expose Client Data to other Kepler clients, and delete the Client Data upon expiration of the Agreement unless otherwise required for Kepler to comply with applicable laws or protect its rights. Notwithstanding the above, to the extent permitted by applicable law, Client further grants Kepler the perpetual right and permission (even after the Term) to use, store, share, and otherwise process, any de-identified, aggregate, or anonymized data derived from the Client Data solely: (a) to improve, maintain and support Kepler's products, services, and internal business operations and (b) to promote Kepler's services in its general marketing and press release materials, it being understood that Kepler shall not refer to Client in such materials without Client's prior written consent.

8. Representations and Warranties. Each party represents and warrants to the other party that: (i) such party has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, do not and will not violate any agreement to which such party is a party or by which it is otherwise bound; (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; (iv) such party acknowledges that the other party makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement; (v) use of a party's intellectual property as provided by such party to the other party as permitted by and used in accordance with this Agreement shall not infringe any third party's trademark rights; (vi) its collection, access, use, storage, disposal and disclosure of Personal Information (as defined below) does and will comply with all applicable federal and state privacy and data protection



laws; and (vii) it possesses all authorizations, approvals, consents, licenses, permits, certificates or other rights and permissions necessary to grant the rights granted by it under this Agreement and to perform its obligations as contemplated by this Agreement. **"Personal Information"** means information provided to Kepler by or at the direction of Client or obtained in the course of Kepler's performance under this Agreement that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, e-mail addresses and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, financial account numbers, credit report information, biometric or health data, answers to security questions and other personal identifiers). Client's business contact information is not by itself deemed to be Personal Information.

9. Confidential Information; Data.

- a. During the Term and for the five (5) year period immediately thereafter, each party (as applicable, the **"Receiving Party"**) agrees not to disclose to any person or entity any Confidential Information (as defined below) disclosed by or on behalf of the other party (as applicable, the **"Disclosing Party"**) in connection with the Agreement, and not to use, disseminate or copy any such information for the benefit (financial or otherwise) of any other person or entity; provided, however, that the Receiving Party may disclose Confidential Information disclosed by or on behalf of the Disclosing Party (i) to those of its directors, officers, employees, agents, affiliates, representatives and legal, tax, accounting and financial advisors who need to know such information for the sole purpose of fulfilling such party's obligations under the Agreement and who are bound by obligations of confidentiality and non-use with respect to such information at least as restrictive as those contained herein (collectively, **"Representatives"**); (ii) with the Disclosing Party's prior written consent; and (iii) as may be required by applicable law, rule, regulation, regulatory authority or other applicable judicial or governmental order or legal process, in which case prior to making such disclosure the Receiving Party shall give written notice to the Disclosing Party describing in reasonable detail the proposed content of such disclosure and shall permit the Disclosing Party to review and comment upon the form and substance of such disclosure and allow the Disclosing Party to seek confidential treatment therefor. The Receiving Party shall protect and maintain the confidentiality of the Confidential Information disclosed by or on behalf of the Disclosing Party from prohibited or unauthorized use or disclosure using the same degree of care used to protect and maintain the confidentiality of its own confidential information of a similar nature, which degree of care shall be no less than a reasonable degree of care. The Receiving Party shall be responsible for any breach of the terms of the Agreement by it or its Representatives and agrees, at its sole cost and expense, to take all reasonable measures (including, without limitation, court proceedings) to restrain its Representatives from prohibited or unauthorized use or disclosure of any such Confidential Information.
- b. Following the Term, or at any other time as requested in writing by the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party or, at the Disclosing Party's election, destroy all Confidential Information disclosed by or on behalf of the Disclosing Party and the portions of any materials containing or derived from any such Confidential Information; provided, however, that neither the Receiving Party nor any of its Representatives shall be required to return or destroy any copies of any document or information forming the Confidential Information disclosed by or on behalf of the Disclosing Party that (i) are held pursuant to the bona fide, written policies of the Receiving Party or such Representative regarding automatic electronic archiving or back-up systems applicable to confidential information; or (ii) the Receiving Party or such Representative is required to retain, in the written opinion of its counsel, pursuant to applicable law, rule or regulation; provided, however, that all such copies referenced in (i) and (ii) shall remain confidential for the period specified herein.
- c. For purposes of the Agreement, the term **"Confidential Information"** means any and all technical, financial, economic, marketing, strategic, business, operational, performance and other information or data of a party or any of its affiliates that is confidential, proprietary or otherwise not publicly



available, in whatever form or manner of communication (whether verbal, written, electronic or otherwise), whether disclosed before, on or after the Effective Date, and irrespective of whether such information is marked "confidential" or "proprietary," including, without limitation, all analyses, compilations, copies, summaries, studies or other documents or records prepared by or on behalf of the Receiving Party or any of its Representatives to the extent containing, reflecting or generated from such information. Confidential Information shall not include information that (i) is in or enters the public domain without breach of the Agreement by the Receiving Party or any of its Representatives; (ii) the Receiving Party or its Representatives lawfully receives from a third party without restriction on disclosure and without breach of any nondisclosure obligation, (iii) the Receiving Party or its Representatives can demonstrate it is lawfully in the possession or control of at the time of its disclosure by the Disclosing Party; or (iv) the Receiving Party or its Representatives can demonstrate it developed independently without use of or reference to any Confidential Information.

#### 10. Limitations of Liability; Disclaimer.

- a. LIABILITY. UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM BREACH OF THE AGREEMENT, OR IN CONNECTION WITH THE PERFORMANCE OF THE AGREEMENT, SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS (COLLECTIVELY, "**DISCLAIMED DAMAGES**"). LIABILITY ARISING UNDER THIS AGREEMENT WILL BE LIMITED TO DIRECT, OBJECTIVELY MEASURABLE DAMAGES. THE MAXIMUM LIABILITY OF ONE PARTY TO THE OTHER PARTY FOR ANY CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE FEES ACTUALLY PAID UNDER THIS AGREEMENT IN THE PRIOR SIX MONTH PERIOD (THE "DAMAGES CAP"); PROVIDED THAT EACH PARTY WILL REMAIN LIABLE FOR THE AGGREGATE AMOUNT OF ANY PAYMENT OBLIGATIONS OWED TO THE OTHER PARTY PURSUANT TO THE AGREEMENT (AND SUCH AMOUNTS WILL NOT COUNT AGAINST THE DAMAGES CAP). NOTWITHSTANDING THE FOREGOING, NOTHING IN THIS AGREEMENT WILL LIMIT (A) A PARTY'S LIABILITY ARISING OUT OF ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (B) A PARTY'S OBLIGATION TO INDEMNIFY THE OTHER PARTY PURSUANT TO THE TERMS OF THIS AGREEMENT.
- b. NO ADDITIONAL WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, KEPLER DOES NOT WARRANT THAT ITS SERVICE OR OTHER MATERIALS PROVIDED HEREUNDER WILL MEET ALL OF CLIENT'S REQUIREMENTS.

#### 11. Indemnification

- a. Indemnity. Each party (the "**Indemnifying party**") will defend, indemnify, save and hold harmless the other party and its affiliates and their respective officers, directors, agents, equity holders, and employees (the "**Indemnified Parties**") from and against any loss, cost or damage (including reasonable attorneys' fees and expenses) (collectively, "**Damages**") in connection with any and all third party claims arising out of or on account of (i) the Indemnifying party's breach of any obligation, representation or warranty under this Agreement; (ii) the Indemnifying party's gross negligence or willful misconduct; or (iii) any fraud or misrepresentation by the Indemnifying party. Notwithstanding



the foregoing, neither party shall be required under this Section to defend, indemnify or hold harmless any Indemnified party for any Damages resulting directly from any conduct for which the Indemnified party would be required to indemnify the Indemnifying party as described above.

- b. Claims. If a party entitled to indemnification hereunder becomes aware of any matter it believes is indemnifiable hereunder involving any claim, action, suit, investigation, arbitration or other proceeding against the Indemnified party by any third party (each an “**Action**”), the Indemnified party will give the Indemnifying party prompt written notice of such Action (provided that failure to provide such notice will only relieve the Indemnifying party of its obligation to the extent it can demonstrate material prejudice from the failure). Such notice will (i) provide the basis on which indemnification is being asserted and (ii) be accompanied by copies of all relevant pleadings, demands, and other papers related to the Action and in the possession of the Indemnified party. The Indemnifying party will defend the Action, at its own expense, by counsel reasonably satisfactory to the Indemnified party. The Indemnified party will cooperate, at the expense of the Indemnifying party, with the Indemnifying party and its counsel in the defense and the Indemnified party will have the right to participate fully, at its own expense, in the defense of such Action. The Indemnifying party will not enter into any settlement or compromise that would result in any liability to the Indemnified party, without the Indemnified party’s prior written consent and any such settlement or compromise must include a complete release of the Indemnified Parties, as applicable.

## 12. Data

- a. Privacy and Data Security. Kepler will provide and Client will use the Media Services in compliance with all applicable privacy and data security laws, rules, regulations, and industry standard guidelines, including but not limited to the self-regulatory principles/codes of conduct of the Network Advertising Initiative, the Interactive Advertising Bureau, and the Digital Advertising Alliance (collectively, “**Privacy Regulations and Guidelines**”). Throughout the Term, Client shall have in effect and maintain accessible on the Client’s Sites a clear and conspicuous privacy policy that discloses any relevant data collection and usage resulting from the Media Services and complies with applicable Privacy Regulations and Guidelines. “**Client’s Sites**” means the website(s), apps, or other online services owned, operated and controlled by Client and/or its affiliates. Kepler will maintain at least industry-standard security measures in connection with its provision of the Media Services, and will not share Client Data with third parties except with its Subcontractors, Vendors upon Client’s written instructions, or as permitted by this Agreement or with client’s written consent. Client acknowledges and agrees that Vendors may process Client Data in accordance with their own terms, which are outside the control of Kepler, and Kepler is not responsible for such processing. Client represents and warrants that it has provided proper notice and secured all necessary rights and permissions and a lawful basis to disclose and use (and for Kepler to disclose and use) the Client Data in connection with the Media Services, and Kepler’s permitted use of the Client Data will not violate any Privacy Regulations and Guidelines. Client will honor all opt-out requests as required by applicable Privacy Regulations and Guidelines, and notify Kepler of any changes to the Client reflecting removal of individuals as necessary for Kepler to help effectuate any opt-outs. Client is solely responsible for the accuracy, quality, and legality of the Client Data.
- b. Sensitive Data. Client represents and warrants that it will not transfer to Kepler or cause Kepler to process Sensitive Data, unless the processing is explicitly permitted by an applicable Order Form and Client has a lawful basis for Kepler to receive and process that data. If permitted, Client is responsible for ensuring that Client and Kepler enter into any necessary agreements for the protection of Sensitive Data. “**Sensitive Data**” means (a) clinical data, including coded clinical data; (b) personal medical history, including prescription numbers; (c) information about physical or psychological state of health, medical history, or medical treatment, or diagnosis by a health care provider, including patient-related data; (d) ethnic or racial origin; (e) religious or philosophical beliefs; (f) political opinions; (g) trade union affiliations; (h) criminal arrests, convictions, or proceedings; (i) information concerning sex life or sexual orientation; (j) Social Security Number,



driver's license number, passport number, or other government ID number; (k) payment card number, including credit or debit card number; (l) other financial account numbers; (m) pin code, security code, or other access credentials for a financial account; (n) taxpayer ID; (o) DNA profile, fingerprints, iris scan, or other biometric information; (p) health insurance (including other health service) ID or account number; (q) information concerning children; and (r) any other data defined as sensitive or a special category of data under applicable Privacy Regulations and Guidelines.

- c. International Data. Client represents and warrants that it will not transfer to Kepler or cause Kepler to process any data from outside the United States unless the processing is explicitly permitted by an applicable Order Form and Client has a lawful basis for Kepler to receive and process that data. In the event Client transfers any data defined as personal data under the UK Data Protection Act 2018 and/or Regulation (EU) 2016/679 the General Data Protection Regulation, together with any additional implementation legislation, rules, or regulations that are issued by applicable supervisory authorities (the "**GDPR**") and to which the GDPR applies, Amazon's Data Processing Addendum ("**DPA**") shall govern the rights and obligations of the parties.

13. Miscellaneous Provisions.

- a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to conflicts of law rules that may result in the application of the laws of any other jurisdiction. For any disputes arising out of this Agreement, the parties consent to personal and exclusive jurisdiction of and venue in the state or federal courts within New York City, Borough of Manhattan, and waive the defense of an inconvenient forum.
- b. Assignment. Except as otherwise specified herein, neither party may assign this Agreement without the other party's prior written consent, except that either party may assign this Agreement without prior written consent in connection with a public offering of its securities or in a sale of all or substantially all of its assets, stock or business by sale, merger, consolidation, or similar transaction. Any purported assignment in violation of this Section shall be void. Subject to the foregoing restrictions, this Agreement will bind and benefit the parties and their successors and permitted assigns.
- c. Affiliates.
  - i. Any Affiliates (as defined below) of Client or Kepler may participate in the terms of this Agreement by entering into its own Insertion Order ("**IO**") with either party's Affiliate, including, without limitation, Kepler Group EMEA Limited. Upon execution of the IO by the parties, such IO shall constitute a legally binding agreement between the applicable parties to all of the terms and conditions of this Agreement.
  - ii. Each such Affiliate is solely responsible for its own transactions, liabilities, acts, negligence, conduct and/or responsibilities of any nature (including, without limitation, data privacy obligations), arising by reason of such Affiliate's participation under this Agreement. Any recourse by either party or their Affiliates in connection with a breach of the Agreement will be limited to the breaching entity only who is a party to such IO.
  - iii. Client agrees that Kepler's Affiliates may perform some of the services and produce some of the deliverables under the Agreement, in conjunction with Kepler, as Kepler sees fit in its sole discretion.
  - iv. "**Affiliate**" means any entity that controls, is controlled by or is under common control with a party hereto, where "control" means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies and operations of such entity, whether through ownership of voting securities, by contract, or otherwise.



- d. Entire Agreement; Waiver. This Agreement constitutes the entire agreement between the parties and supersedes any prior understandings or discussions relating to the subject matter of this Agreement. This Agreement may be further amended, modified or supplemented from time to time in writing that is signed by duly authorized representatives of both parties. Each party acknowledges that in entering into this Agreement, it does not rely on and has not relied on any statement, representation, warranty or other provision (whether oral or written, express or implied and whether made before or after the date of this Agreement) of any person that is not expressly set out in this Agreement. No failure or delay on the part of either party in exercising any right or remedy under this Agreement will operate as a waiver, nor will any single or partial exercise of any such right or remedy preclude any exercise of any other right or remedy.
- e. Counterparts. This Agreement may be signed in multiple counterparts, and each such duly signed counterpart shall be deemed to be an original of this Agreement, provided however that each party shall receive a counterpart fully signed by the other party. Signatures delivered via pdf, fax or electronic signature will all constitute originals.
- f. Independent Contractor. Each party is an independent principal in all relationships and actions under (or contemplated by) this Agreement. Except as expressly set forth herein, this Agreement shall not be construed to (i) create any employment, partnership, joint venture, franchise, master-servant, or agency relationship between the parties or (ii) authorize any party to enter into any commitment or agreement binding on another party.
- g. Force Majeure. No party shall be liable under this Agreement for (or deemed in breach of this Agreement by reason of) any failure, delay or interruption in performing any term or condition (except obligations to pay money) of this Agreement due to cause(s) entirely beyond the control of such party; subject however to the condition that such party gives the other party written notice thereof promptly and, in any event, within thirty (30) days of discovery thereof and uses its best efforts to cure such cause. In the event of any such cause, the time for performance shall be extended for a period equal to the duration of such cause. Payment of fees and other amounts due hereunder shall not be subject to this provision.
- h. Enforceability. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, then such portion shall be reformed or eliminated to the minimum extent necessary for this Agreement to be enforceable and legal, and this Agreement shall remain in effect in accordance with its provisions as modified by such reformation or elimination.
- i. Notices. All notices pursuant to this Agreement shall be in writing and delivered either personally, by overnight courier, or certified USPS mail, and sent to the addresses set forth below, or sent by email to the following addresses:

If to Kepler, to:

Kepler Group LLC  
6 East 32<sup>nd</sup> Street, Floor 9  
New York, NY 10016  
Attn: Ruchi Prasad, General Counsel  
Email: [ruchi.prasad@keplergrp.com](mailto:ruchi.prasad@keplergrp.com)  
Telephone: 646-524-6896 x7009

If to Client, to: the address set forth on the Order Form.

- j. Client Testimonials. As part of the consideration for Services under this Order Form, Client agrees to cooperate in mutually agreed public testimonial regarding the Services. Client understands that such testimonial may be used in connection with publicizing and promoting Kepler's Amazon





Advertising Services. Client authorizes Kepler to use Client's trademarks, service marks, trade names, logos, symbols or brand names, and Client representative's name, image, likeness and voice as may be included in such mutually agreed testimonial.

- k. Non-Disparagement. During the Term and at all times thereafter, each party will not, directly or indirectly, make, publish or communicate, or cause to be made, published or communicated, any statement, observation, opinion or information, whether verbal or written, that disparages or is likely in any way to harm the reputation of the other party or its business or any of its officers, directors, employees, contractors, equity holders, members, clients, suppliers, vendors, business partners or other clients; provided, however, that this Section 13(k) does not in any way restrict or impede a party from exercising any protected rights such party may have to the extent that such rights cannot be waived by agreement, or from complying with any applicable law, rule or regulation, or a valid order of a court of competent jurisdiction or an authorized government agency (provided that such compliance does not exceed that required by such law, rule, regulation or order, as applicable), in which case such party will promptly provide written notice of any such order to the other party as set forth in Section 13(i).