

## **KEPLER GROUP EMEA LIMITED**

### **Amazon Advertising Services Order Form**

### **Terms and Conditions**

Updated: 7 September 2022

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 EMEA Limited (“**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 authorised 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.

**THE CLIENT’S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 11 (LIMITATION OF LIABILITY).**

#### **1. INTERPRETATION**

**THE FOLLOWING DEFINITIONS AND RULES OF INTERPRETATION APPLY IN THESE CONDITIONS.**

##### **1.1 Definitions:**

<b>Agreement</b>	The Order Form and these Terms and Conditions collectively form the agreement between Kepler and the Client for the supply of Services.
<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
<b>Fees</b>	the Fees payable by the Client for the supply of the Services in accordance with clause 5 (Fees and payment).
<b>Effective Date</b>	has the meaning given in clause 2.3.
<b>Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of control</b> shall be construed accordingly.
<b>Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures</b>	as defined in the Data Protection Legislation.
<b>Change</b>	an amendment to the scope, nature, volume or execution of the Services under this Agreement.

<b>Change Order</b>	the written record of any Change agreed or to be agreed by the parties pursuant to the Change Control Procedure.
<b>Change Control Procedure</b>	the procedure for agreeing a Change, as set out in clause 6.
<b>Client</b>	the person or firm who purchases Services from Kepler as defined in the Order Form.
<b>Client Authorised Contact</b>	The Client's authorised main contact pursuant to the Order Form which may be updated from time to time by notice to Kepler.
<b>Client Content</b>	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 the Client hereunder.
<b>Client Default</b>	has the meaning set out in clause 3.
<b>Data Controller</b>	has the meaning set out in section 1(1) of the Data Protection Act 1998.
<b>Data Protection Legislation</b>	All applicable UK Data Protection and Privacy Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the General Data Protection Regulation ((EU) 2016/679) ("GDPR"); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.
<b>Intellectual Property Rights</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>Media</b>	Digital and digitally-enabled media using the Amazon Platform as set out in the Specification.
<b>Order Form</b>	the Client's order for Services as set out in the Client's purchase order form.

<b>Services</b>	the services, supplied by Kepler to the Client as set out in the Specification.
<b>Sensitive Data</b>	has the meaning given to it in the Data Protection Legislation.
<b>Specification</b>	the description or specification of the Services provided in the Order Form.
<b>Supplier</b>	Kepler Group EMEA Limited registered in England and Wales with company number 6557376.
<b>Terms and Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 20.

## 1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes faxes and emails.

## 2. BASIS OF AGREEMENT

- 2.1 The Order Form constitutes an offer by the Client to purchase Services in accordance with these Terms and Conditions (together 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 EMEA Limited (“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”).
- 2.2 By executing the Order Form, the Client represents that it is authorised to accept the Terms and Conditions. If the Client does not have such authority, or does not agree with the Terms and Conditions, the Client must not sign the Order Form.
- 2.3 The Agreement shall be deemed to be accepted upon receipt by Kepler of a validly executed Order Form and on the Effective Date stated on the Order Form
- 2.4 Any samples, drawings, descriptive matter or advertising issued by Kepler, and any descriptions or illustrations contained in the Kepler’s catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Agreement or have any contractual force.
- 2.5 These Terms and Conditions apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Kepler shall not constitute an offer and is only valid until the expiry date specified in the Order Form.

## 3. SERVICES; OBLIGATIONS

- 3.1 Kepler shall supply the Services to the Client in accordance with the Specification in all material respects on a non-exclusive basis (i.e., the Client may use one or more other parties/agencies and may purchase Media on its own) as set forth in the Order Form.
- 3.2 In connection with any Services, upon receipt of written approval (including by way of e-mail) by the Client Authorised Contact, Kepler is hereby authorised to purchase Media (as defined in the Order Form) on the Client’s behalf as the Client’s agent pursuant to the Order Form 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 the Client’s written instructions.

- 3.3 The Client’s written instructions may be given by way of the terms of this Agreement or an e-mail by the Client Authorised Contact. For purposes of clarification, the Client shall be named as “advertiser” and Kepler shall be named as Client’s “agent” for all such media placement requests and the Client agrees that it shall perform in accordance with its obligations as “advertiser” under the Vendor agreements.
- 3.4 Kepler shall use all reasonable endeavours to meet any performance dates specified in the Order Form, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.5 Kepler reserves the right to amend the Specification if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Kepler shall notify the Client in any such event.
- 3.6 Kepler warrants to the Client that the Services will be provided using reasonable care and skill.

#### **4. CLIENT’S OBLIGATIONS**

- 4.1 The Client shall:
  - 4.1.1 ensure that the terms and any information it provides in the Order Form are complete and accurate;
  - 4.1.2 co-operate with Kepler in all matters relating to the Services;
  - 4.1.3 provide Kepler with such information and materials as Kepler may reasonably require to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 4.1.4 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - 4.1.5 comply with all applicable laws, including health and safety laws;
  - 4.1.6 comply with any additional obligations as set out in the Order Form.
- 4.2 Upon Kepler’s request, the Client will provide Kepler with
  - 4.2.1 a signed letter to be provided to Vendors outlining the Client’s financial responsibility, and including, without limitation, the Client’s ultimate liability for payment of all amounts due to such Vendors for which the Client has authorised an Order Form; and
  - 4.2.2 satisfactory credit information to be provided to Vendors.
- 4.3 If Kepler’s performance of any of its obligations under the Agreement are prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
  - 4.3.1 without limiting or affecting any other right or remedy available to it, Kepler shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays Kepler’s performance of any of its obligations;
  - 4.3.2 Kepler shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Kepler’s failure or delay to perform any of its obligations as set out in this clause 4.3; and
  - 4.3.3 the Client shall reimburse Kepler on written demand for any costs or losses sustained or incurred by Kepler arising directly or indirectly from the Client Default.

## 5. FEES AND PAYMENTS

- 5.1 Once the 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.
- 5.2 If the Client fails to remit the Vendor Payment to Kepler, financial responsibility for such payment shall lie solely with the Client rather than Kepler.
- 5.3 The Client hereby agrees that, with respect to all Media purchased by Kepler following receipt of the Order Form, Kepler shall be solely liable to the Vendor for Vendor Payments only to the extent that such payments have been actually and fully received by Kepler, and the Client shall be solely liable to the Vendor to the extent such payments have not been actually and fully received by Kepler.
- 5.4 Kepler’s Fees for the Services shall be 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.
- 5.5 Kepler shall invoice the Client monthly in arrears.
- 5.6 The Client shall pay each invoice submitted by Kepler:
- 5.6.1 within 30 days of the date of the invoice; and
- 5.6.2 in full and in cleared funds to a bank account nominated in writing by Kepler, and time for payment shall be of the essence of the Agreement.
- 5.7 All amounts payable by the Client under the Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Agreement by Kepler to the Client, the Client shall, on receipt of a valid VAT invoice from Kepler, pay to Kepler such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.8 From September 1, 2021, all amounts payable by the Client under the Agreement are exclusive of amounts in respect of local Digital Services Taxes (‘DST’). When an ad is served in certain countries and/or for ads purchased by advertisers in certain countries under the Agreement by Kepler for the Client, the Client shall, on receipt of a valid invoice from Kepler, pay to Kepler such additional amounts in respect of DST as are chargeable on the ads served and/or purchased at the same time as payment is due for the supply of the Services.
- 5.9 If the Client fails to make a payment due to Kepler under the Agreement by the due date, then, without limiting Kepler’s remedies under Clause 13, the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 5.8 will accrue each day at 4% a year above the Bank of England’s base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 5.10 All amounts due under the Agreement shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.11 The Client’s payment of Kepler’s invoices shall in no way be conditional upon or delayed pending the Client’s receipt of payment from any third party.

## 6. CHANGE REQUESTS

- 6.1 Either party may submit a written request for Change to the other party in accordance with this Clause 6, but no Change will come into effect until a Change Order has been signed by the authorised representatives of both parties.
- 6.2 The Client may request Changes or cancellations or stop to work in progress that has been authorised by the Order Form or written instructions pursuant to clause 3.2, provided that the Changes or work are within Kepler’s contractual obligations and:
- 6.2.1 the Client submits a written request to Kepler containing as much information as is necessary to enable Kepler to prepare a Change Order;

- 6.2.2 As soon as commercially reasonable, upon receipt of a request, Kepler will, unless otherwise agreed, send to the Client a Change Order;
- 6.2.3 in the event previously approved work has incurred charges, the Client shall reimburse Kepler for unrecoverable charges or expenses arising from the Changes or cancellations or stop to work according to the payment terms defined in Clause 5; and
- 6.2.4 [Intentionally Omitted.].
- 6.3 If Kepler requests a Change, it will send to the Client a Change Order.
- 6.4 A Change Order must contain sufficient information to enable the Customer to assess the Change, including as a minimum:
  - 6.4.1 the title of the Change;
  - 6.4.2 the originator of the Change and date of request;
  - 6.4.3 description of the Change;
  - 6.4.4 details of the effect of the proposed Change on:
    - (a) the Services;
    - (b) the Agreement Price and/or any Vendor Payments;
    - (c) any systems or operations of the Client which communicate with, or are otherwise affected by, the Services; and
    - (d) any other term of this Agreement;
  - 6.4.5 the date of expiry of validity of the Change Order; and
  - 6.4.6 provision for signature by the Client and Kepler.
- 6.5 If, following the Client's receipt of a Change Order pursuant to Clause 6.2 or 6.3:
  - 6.5.1 the parties agree the terms of the relevant Change Order, they will sign it and that Change Order will amend this agreement;
  - 6.5.2 either party does not agree to any term of the Change Order, then the other party may refer the disagreement to be dealt with in accordance with the Dispute Resolution Procedure.
- 7. INTELLECTUAL PROPERTY RIGHTS**
  - 7.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Client.
  - 7.2 The Client grants Kepler a limited, fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, reproduce, display copy and modify any Client Content for the term of the Agreement for the purpose of providing the Services to the Client.
  - 7.3 The Client represents and warrants to Kepler that Kepler is authorised to use, reproduce and display the Client Content in media campaigns contemplated hereunder and otherwise as necessary to effectuate Kepler's performance of its obligations and exercise of its rights under the Agreement.
  - 7.4 The 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 the Client.
  - 7.5 The 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.
- 8. DATA**
  - 8.1 As between the Client and Kepler, the Client shall retain ownership of or licensing rights to all data provided by or on behalf of the Client to Kepler, or collected from the Client's campaigns or websites ("**Client Data**").

- 8.2 Kepler agrees that it shall use, store, share, and otherwise process the Client Data in accordance with this Agreement and specifically this clause 8.
- 8.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the controller and Kepler is the processor.
- 8.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 8.5 Without prejudice to the generality of Clause 8.4, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Kepler for the duration and purposes of the Agreement.
- 8.6 Without prejudice to the generality of Clause 8.4, Kepler shall, in relation to any personal data processed in connection with the performance by Kepler of its obligations under the Agreement:
- 8.6.1 process that personal data only on the documented written instructions of the Client unless Kepler is required by Applicable Laws to otherwise process that personal data. Where Kepler is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Kepler shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Kepler from so notifying the Client;
  - 8.6.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 8.6.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
  - 8.6.4 not transfer any personal data outside of the European Economic Area unless the following conditions are fulfilled:
    - (a) the Client or Kepler has provided appropriate safeguards in relation to the transfer;
    - (b) the data subject has enforceable rights and effective legal remedies;
    - (c) Kepler complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
    - (d) Kepler complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the personal data;
  - 8.6.5 Provide reasonable assistance to the Client, at the Client's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 8.6.6 notify the Client without undue delay on becoming aware of a personal data breach;
  - 8.6.7 at the written direction of the Client, delete or return personal data and copies thereof to the Client on termination of the Agreement unless required by Data Protection Legislation to store the personal data; and

- 8.6.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 8.6 and allow for audits by the Client or the Client's designated auditor and immediately inform the Client if, in the opinion of Kepler, an instruction infringes the Data Protection Legislation.
- 8.7 To the extent permitted by Data Protection Legislation, the Client grants Kepler the perpetual right and permission to use, store, share, and otherwise process, any de-identified, aggregate, or anonymized data derived from the Client Data:
- 8.7.1 to improve, maintain and support Kepler's products, services, and internal business operations; and
- 8.7.2 to promote Kepler's services in its general marketing and press release materials, it being understood that Kepler shall not refer to the Client in such materials without the Client's prior written consent.
- 8.8 **Subprocessors.** The Client hereby provides Kepler with general written authorisation to engage subprocessors in connection with its use of the Services. Kepler shall make available to the Client a current list of subprocessors for the Services upon the Client's written request. The Client may also make a written request that Kepler notify Client of any new subprocessors. If Client makes such written request, Kepler shall provide notification of new subprocessors before authorising any new subprocessors to process Personal Data in connection with the provision of the Services to the Client. The Client may object to Kepler's use of a new subprocessor by notifying Kepler promptly in writing within 30 business days after receipt of Kepler's notice. In the event the Client objects to a new subprocessor, Kepler will use reasonable efforts to make available to the Client a change in the Services or recommend a commercially reasonable change to the Client's configuration or use of the Services to avoid processing of Personal Data by the objected-to new subprocessors without unreasonably burdening Client.
- 8.9 Either party may, at any time on not less than 30 days' notice, revise this Clause 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Agreement).
- 8.10 The 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 the Order Form and the Client has a lawful basis for Kepler to receive and process that data. If permitted, the Client is responsible for ensuring that the Client and Kepler enter into any necessary agreements for the protection of Sensitive Data.
- 9. BREXIT**
- 9.1 For the purposes of this clause 9, a "**Brexit Trigger Event**" means any of the following events occurring after the United Kingdom ceases to be a Member State of the European Union:
- 9.1.1 a substantial adverse impact on a party's ability to perform the Agreement in accordance with its terms and the law;
- 9.1.2 an increase in the costs incurred by a party in performing the Agreement of at least 25% since the Order Form was agreed;
- 9.1.3 the price of the Services under this agreement is at least 25% lower than the market value for similar products or services (an impact on Kepler);
- 9.1.4 the price of the Services under this agreement exceeds the market value for similar products or services by at least 25% (an impact on the Client).
- 9.2 If a Brexit Trigger Event occurs, the impacted party may:
- 9.2.1 require the other party to negotiate in good faith an amendment to this agreement to alleviate the Brexit Trigger Event; and
- 9.2.2 if no such amendment is made to this agreement within 60 days, terminate this agreement by giving the other party not less than 30 days written notice. On termination under this clause, Clause 14 (Consequences of termination) shall apply.



## 10. REPRESENTATIONS AND WARRANTIES.

### 10.1 Each party represents and warrants to the other party that:

- 10.1.1 such party has the full corporate right, power and authority to enter into this Agreement and to perform the acts required of it hereunder;
- 10.1.2 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;
- 10.1.3 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;
- 10.1.4 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;
- 10.1.5 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.

## 11. LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

### 11.1 Nothing in the Agreement limits any liability which cannot legally be limited, including liability for:

- 11.1.1 death or personal injury caused by negligence;
- 11.1.2 fraud or fraudulent misrepresentation; or
- 11.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

### 11.2 SUBJECT TO CLAUSE 11.1, NEITHER PARTY SHALL 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**").

### 11.3 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

- 11.3.1 A PARTY'S LIABILITY ARISING OUT OF ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR
- 11.3.2 A PARTY'S OBLIGATION TO INDEMNIFY THE OTHER PARTY PURSUANT TO THE TERMS OF THIS AGREEMENT.

### 11.4 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 THE CLIENT'S REQUIREMENTS.

- 11.5 Kepler has given commitments as to compliance of the Services with relevant specifications in Clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.
- 11.6 Except in the event of Kepler's gross negligence or wilful 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).
- 11.7 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, libellous, unlawful, indecent or otherwise prejudicial to Kepler or the Client.
- 11.8 The Client hereby acknowledges and agrees that Kepler cannot guarantee that biddable Media meeting the Client's criteria will be available, or that it will be available in the volume desired by the Client, or that Kepler will be the successful bidder for such inventory.

## 12. INDEMNIFICATION.

- 12.1 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:

- 12.1.1 the Indemnifying party's breach of any obligation, representation or warranty under this Agreement;
- 12.1.2 the Indemnifying party's gross negligence or wilful misconduct; or
- 12.1.3 any fraud or misrepresentation by the Indemnifying party.

Notwithstanding the foregoing, neither party shall be required under this Clause 12 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.

- 12.2 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:

- 12.2.1 provide the basis on which indemnification is being asserted; and
- 12.2.2 be accompanied by copies of all relevant pleadings, demands, and other papers related to the Action and in the possession of the Indemnified party.

- 12.3 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 defence and the Indemnified party will have the right to participate fully, at its own expense, in the defence 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.

## 13. TERM AND TERMINATION

- 13.1 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..

- 13.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement by giving the other party 14 days' written notice.
- 13.3 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- 13.3.1 the other party commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 10 days of that party being notified in writing to do so;
  - 13.3.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 13.3.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 13.3.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy.
- 13.4 Without affecting any other right or remedy available to it, Kepler may terminate the Agreement with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under the Agreement on the due date for payment; or there is a change of Control of the Client.
- 13.5 Without affecting any other right or remedy available to it, Kepler may suspend the supply of Services under the Agreement or any other Agreement between the Client and Kepler if the Client fails to pay any amount due under the Agreement on the due date for payment, the Client becomes subject to any of the events listed in clause 13.3.2 to clause 13.3.4 or Kepler reasonably believes that the Client is about to become subject to any of them.

#### **14. CONSEQUENCES OF TERMINATION**

- 14.1 On termination of the Agreement:
- 14.1.1 the Client shall immediately pay to Kepler all of Kepler's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Kepler shall submit an invoice, which shall be payable by the Client immediately on receipt;
  - 14.1.2 the Client shall return all of Kepler Materials and any deliverables which have not been fully paid for. If the Client fails to do so, then Kepler may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.
- 14.2 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 14.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect, including without limitation, Clauses 7, 8, 10, 11, 12 and 15 to 28.

#### **15. FORCE MAJEURE.**

- 15.1 Neither party shall be in breach (or deemed to be in breach) of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement (except obligations to pay money) 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 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.

## **16. ASSIGNMENT AND OTHER DEALINGS.**

16.1 Kepler may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Agreement.

16.2 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.

16.3 The Client shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement without the prior written consent of Kepler.

## **16.4 AFFILIATES.**

16.4.1 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 LLC. 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.

16.4.2 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.

16.4.3 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.

16.4.4 **"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.

## **17. CONFIDENTIALITY.**

17.1 Each party (as applicable, the **"Receiving Party"**) undertakes that it shall not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person or entity any Confidential Information (as defined below) disclosed by or on behalf of the other part (as applicable, the **"Disclosing Party"**) in connection with the Agreement, except as permitted by Clause 17.2.

17.2 Each party may disclose the other party's Confidential Information:

17.2.1 to its directors, employees, officers, agents, Affiliates, representatives, Subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Agreement (collectively **"Representatives"**). Each party shall ensure that its Representatives to whom it discloses the other party's Confidential Information shall comply with this Clause 17;

- 17.2.2 with the Disclosing Party's prior written consent; and
  - 17.2.3 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority 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.
- 17.3 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 unauthorised 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.
- 17.4 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 unauthorised use or disclosure of any such Confidential Information.
- 17.5 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:
- 17.5.1 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
  - 17.5.2 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 17.5.1 and 17.5.2 shall remain confidential for the period specified herein.
- 17.6 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.

**18. PRIVACY.**

- 18.1 Kepler will provide and the Client will use the Services in compliance with all applicable privacy laws, rules, regulations, and industry standard guidelines, including but not limited to applicable self-regulatory principles/codes of conduct (collectively, “**Privacy Regulations and Guidelines**”).
- 18.2 Throughout the Term, the 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 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.

**19. ENTIRE AGREEMENT.**

- 19.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Agreement.

**20. VARIATION.**

Except as set out in these Terms and Conditions, no variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**21. WAIVER.**

A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or default. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**22. SEVERANCE.**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified or reformed to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

**23. NOTICES.**

- 23.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified:
- 23.2 If to Kepler, to:
- Kepler Group LLC  
6 East 32nd 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

- 23.3 Any notice or other communication shall be deemed to have been received:
- 23.3.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 23.3.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
  - 23.3.3 if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 23.3.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

23.4 If to the Client, to: the address set forth on the Order Form or as notified in writing from time to time.

23.5 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## **24. THIRD PARTY RIGHTS.**

24.1 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.

24.2 Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Agreements (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

24.3 The rights of the parties to rescind or vary the Agreement are not subject to the consent of any other person.

## **25. CLIENT TESTIMONIALS.**

As part of the consideration for Services under the Order Form, the Client agrees to cooperate in mutually agreed public testimonial regarding the Services. The Client understands that such testimonial may be used in connection with publicising and promoting Kepler's Amazon Advertising Services. The Client authorizes Kepler to use the Client's trademarks, service marks, trade names, logos, symbols or brand names, and the Client representative's name, image, likeness and voice as may be included in such mutually agreed testimonial.

## **26. NON-DISPARAGEMENT.**

During the Term of the Agreement and at all times thereafter, each party shall 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 Clause 26 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 authorised 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 clause 23.

## **27. GOVERNING LAW.**

The Agreement, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.



**28. JURISDICTION.**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Agreement or its subject matter or formation.

**29. 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.