

1. DEFINITIONS

1.1 The following definitions and rules of interpretation apply in this Agreement:

“**Action**” means a Transaction, Lead, Click or Ad Impression, or other event on which Commissions may be based under this Agreement;

“**Ad Impression**” means a display of an advertisement of the Advertiser by a Participating Publisher, as reported by the Tracking Code only;

“**Additional Country Agreement**” has the meaning given in clause 9;

“**Advertiser Downtime**” means any failure of the Tracking Code to properly record, amongst other things, web traffic and Actions as a result of the Advertiser’s breach of clause 2.2.1 or 3.2.4;

“**Advertiser Materials**” means any trade marks, advertising content, images, text, video, data or other material provided by or on behalf of the Advertiser to the Company, a Participating Publisher or a Sub-publisher;

“**Advertiser URLs**” means, from time to time, any websites, apps or services of the Advertiser which are (i) set out in the Interface or (ii) made subject of this Agreement in accordance with the Tracking Policy;

“**Advertising Standards**” means any applicable advertising law, regulations or standards, data laws relating to advertising (including the Children’s Online Privacy Protection Act), any generally accepted self-regulatory codes of practice, and any related guidance or best practice advice;

“**Approved Lead**” means (i) a Lead approved by the Advertiser in accordance with clause 5; or (ii) a Lead in respect of which the Pending Sales Period has expired;

“**Approved Transaction**” means (i) a Transaction approved by the Advertiser in accordance with clause 5; or (ii) a Transaction in respect of which the Pending Sales Period has expired;

“**Bonus**” means an ad hoc payment by the Advertiser to a Participating Publisher in return for a specific promotion or other marketing activity;

“**Business Day**” means a day other than a Saturday, Sunday or national public holiday in the United States of America;

“**Campaign**” means a designated period for the provision of the Services during the Term;

“**Click**” means the following of a Link by a Visitor as part of a Campaign or Program charged on a CPC basis, as reported by the Tracking Code only.

“**Commission**” means a fee payable to the Publisher, calculated as a percentage of the Approved

Transaction, valid Click, approved Lead or per one thousand Ad Impression, as set out in the Interface.

“**Confidential Information**” means any information disclosed by or relating to a party, including: information arising during the term of this Agreement; information about a party’s business affairs; any reports generated by the use of the Interface; information about a party’s operations, products or trade secrets; information about a party’s technology (including any know-how and source code) and any derivatives of any part of any of them and which (i) is marked or identified as confidential; or (ii) would be regarded as confidential by a reasonable business person;

“**Country**” means the country set forth in the Interface;

“**CPA**” means a Commission charged per Approved Transaction;

“**CPC**” means a Commission charged per valid Click;

“**CPL**” means a Commission charged per approved Lead;

“**CPM**” means a Commission charged per one thousand Ad Impressions;

“**Date Live**” means the actual date of the Advertiser’s bona fide Program launch on the Network, being open to publisher applications (whether under this or a previous agreement between the Company and the Advertiser or its predecessors or assignors);

“**Data Regulation**” means any data protection, privacy or similar local laws that apply to Personal Data Processed in connection with this Agreement, including any regulations or restrictions under (i) the Electronic Communications Privacy Act (ECPA) , (ii) Children’s Online Privacy Protection Act of 1998 (COPPA), (iii) the GDPR and any regulations implementing the GDPR or ePrivacy for programs operating in the EU;

“**Effective Date**” means the date on which the Agreement enters into effect in accordance with the Interface;

“**ePrivacy**” means the Privacy and Electronic Communications Directive 2002/58 (including any replacing or superseding legislation);

“**Fees**” means the **Setup Fee**, the **Monthly Fee** and the **Network Fee** as set out in the Interface, and if applicable, the **Reintegration Fee**;

“**GDPR**” means the EU General Data Protection Regulation 2016/679;

“**Group Company**” means any holding company or subsidiary of a party or any of its holding companies. A company is a “**subsidiary**” of another company, its “**holding company**”, if that other company (i) holds a majority of the voting rights in it, or (ii) is a member of it and has the right to appoint or remove a majority of its

board of directors, (iii) or is a member of it and controls alone, pursuant to an agreement with other members, a majority of the voting rights in it;

“**Initial Term**” a period of 12 months starting from the Effective Date;

“**Intellectual Property Rights**” means all copyright and related rights, patents rights to inventions, utility model trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights (including any database rights in the Network), topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

“**Interface**” means the intranet and software platform provided by the Company as part of the Services in the Country and any functionality accessed or made available through such platform;

“**Lead**” means a sales lead of the Advertiser generated in the Tracking Period, as reported by the Tracking Code only;

“**Link**” means a hyperlink from a Publisher Website to an Advertiser URL;

“**Monthly Minimum Fee**” means the minimum fee payable by the Advertiser per Program per month as specified in the Interface;

“**Network**” means the marketing network of publishers and advertisers provided by the Company or its Group Companies to facilitate, amongst other things, affiliate and performance marketing;

“**Network Fee**” means the fee payable to the Company, calculated as a percentage specified in the Interface of total Commissions and Bonuses due (unless the Interface specifies another method for calculating such fee);

“**Participating Publisher**” means any Publisher marketing the Advertiser or any Products under this Agreement;

“**Pre-payment Amount**” means amount specified in the Interface, to be held to the Advertiser’s account as a deposit against future Network Fees, Commissions and Bonuses;

“**Product**” means a product, service or equivalent offered for sale by the Advertiser on any Advertiser URL;

“**Program**” means the ongoing provision of the Services in respect of an Advertiser URL for the Term;

“**Publisher**” means (i) the operator of a website, application or service, which has joined the Network to market advertisers or their products as an affiliate, or (ii) a Publisher Network;

“**Publisher Network**” means the operator of a marketing network of further publishers to facilitate, amongst other things, affiliate and performance marketing, that has joined the Network to market advertisers or their products as an affiliate;

“**Publisher Website**” means a website, application or service operated by a Publisher to market advertisers or their products;

“**Reintegration**” means the reintegration of the Tracking Code into an Advertiser URL, required after the Date Live through no fault of the Company;

“**Reintegration Fee**” means \$500 per Reintegration;

“**Renewal Term**” a period equal to the Initial Term, starting from the end of the Initial Term, or preceding Renewal Term if applicable, pursuant to clause 17.1.

“**Services**” means the services or assistance provided by the Company and any Company Group Company under this Agreement;

“**Set-Up Fee**” means the fee payable by the Advertiser per Program as specified in the Interface;

“**Sub-publisher**” means the operator of a website, application or service, which has agreed with the Publisher Network to market advertisers or their products;

“**Term**” means the term of this Agreement from the Effective Date until its termination or expiry in accordance with clause 17 or 20.3;

“**Transaction**” means the agreed purchase of a Product by a Visitor in the Tracking Period, as reported by the Tracking Code only;

“**Tracking Code**” means the software code (from time to time) provided by the Company for the recording of, amongst other things, web traffic and Actions;

“**Tracking Policy**” means the tracking policy at clause 2.7; and

“**Visitor**” means any person who follows a Link.

- 1.2 In this Agreement:
- 1.2.1 the terms "Personal Data", "Process(ed)" and "Processing" have the meanings given to them in the GDPR;
  - 1.2.2 "include" or "including" is without limitation;
  - 1.2.3 the singular will include reference to the plural and vice versa;
  - 1.2.4 a "person" includes an individual, company, partnership or unincorporated association;
  - 1.2.5 a statute, order, regulation or other similar instrument will include any amendments to it or replacements of it;
  - 1.2.6 subheadings shall not affect the interpretation of this Agreement; and
  - 1.2.7 "writing" and "written" includes emails but not faxes.
- 1.3 By submitting an application form either via the Company's set-up procedure or by accessing the Interface ("**Application Form**"), the person named in the Application Form (the "**Advertiser**") is offering to participate in the Network in accordance with the terms of the Application Form, these Standard Terms and the Data Processing Agreement ("**DPA**") (together, the "**Agreement**").
- 1.4 Acceptance of the Application Form is subject to the sole discretion of Shareasale.com, Inc. of 15 W. Hubbard Street, Suite 500, Chicago IL 60654 with company EIN number 364470129 (the "**Company**"). Acceptance or rejection of the Application Form will be notified to the proposed Advertiser by email.
- 1.5 On acceptance of the Application Form by the Company, the legally binding Agreement is entered into between the Advertiser and the Company.
- 1.6 .
- 2. SET-UP**
- 2.1 Promptly following the Effective Date, the Company will provide the Advertiser:
- 2.1.1 access to the Tracking Code; and
  - 2.1.2 any information, assistance or access reasonably requested to enable the proper integration of the Tracking Code into the Advertiser URLs by the Advertiser.
- 2.2 Within 15 Business Days of the Effective Date the Advertiser will:
- 2.2.1 properly integrate the Tracking Code into the Advertiser URLs, in accordance with the Company's Tracking Policy and clause 2.7; and
  - 2.2.2 provide the Company the Advertiser Materials.
- 2.3 The Company may test the integration of the Tracking Code into the Advertiser URLs, by placing a test order for the purchase of Products. The Company will notify the Advertiser of any test order, which shall be cancelled by the Advertiser within 48 hours of such notice. The costs of the Company arising from uncanceled test orders, including the purchase price and any delivery charges, shall be charged to the Advertiser in accordance with clause 8.6.
- 2.4 Advertiser shall ensure that the Tracking Code is not implemented on any Advertiser URL designed to create a static or persistent Transaction confirmation page URL in respect of the Visitor enabling the Company (or any person in possession of such URL) to access Personal Data of a Visitor or otherwise access data in respect of that Transaction.
- 2.5 If the Advertiser does not complete:
- 2.5.1 integration of the Tracking Code in accordance with 2.2; or
  - 2.5.2 the Date Live within 20 days of the Effective Date;
- any discounts applied to the Set-Up Fee shall be lost.
- 2.6 The Advertiser acknowledges that:
- 2.7.1 the Company depends on proper use of the Tracking Code to ensure Actions are tracked and recorded;
  - 2.7.2 to achieve optimal tracking and recording of Actions, the Advertiser shall implement the Tracking Code as instructed by the Company;
  - 2.7.3 the Advertiser will integrate the Tracking Code on the Advertiser URLs and any iterations of the Advertiser URLs (including mobile websites, mobile applications and any iterations constituting Advertiser URLs on integration) so as to allow the Tracking Code to track any Action (or other event, as applicable) in real time and identify the respective Participating Publisher to which the Action (or other event, as applicable) is attributed.
- 3. PROVISION AND USE OF THE SERVICE**
- 3.1 Subject to the Advertiser's compliance with clause 2.2, the Company will provide to the Advertiser:
- 3.1.1 the Services;
  - 3.1.2 access to the Interface; and
  - 3.1.3 updates to the Tracking Code it makes generally available.
- 3.2 During the Term, the Advertiser will:
- 3.2.1 provide the Company the Advertiser Materials;
  - 3.2.1 ensure any Advertiser Materials shall be legally compliant in every respect associated with the advertisement, age group, and industry, including but not limited to being truthful, non-deceptive, and substantiated. If the Advertiser provides marketing guidelines to the Company, the Company may approve on behalf of the Advertiser advertising content prepared by a Participating Publisher in accordance with those guidelines, provided that the Company shall assume no liability for material reasonably approved in compliance with those guidelines.
  - 3.2.2 promptly select and approve Publishers to act as Participating Publishers;
  - 3.2.3 maintain the proper integration of the Tracking Code into the Advertiser URLs, including any updates, in accordance with the Company's Tracking Policy;
  - 3.2.4 use all reasonable efforts to inform the Company, in advance where possible, of any

- circumstances likely to prevent the Tracking Code accurately recording Actions;
- 3.2.5 provide the Company any information, assistance or access reasonably requested to enable the supply of the Services;
- 3.2.6 ensure any information it provides to the Company is accurate and up to date; and
- 3.2.7 notify the Company of any actual (and to the extent possible, anticipated) downtime of any of the Advertiser URLs.

**4. MANAGING CAMPAIGNS AND PROGRAMS**

- 4.1 Programs will commence as soon as practicable after completion of the obligations at clause 2.
- 4.2 Services to be provided under Campaigns will be provided by the Company for the period, budget and other terms set out in writing, agreed by the Advertiser and Company from time to time. The Advertiser will provide the Company any Advertiser Materials relevant to the Program or Campaign as applicable.
- 4.3 The Company will:
  - 4.3.1 suggest appropriate Participating Publishers; and
  - 4.3.2 on the Advertiser's request:
    - (a) prevent any Publisher from acting as a Participating Publisher; and
    - (b) use reasonable efforts to procure Participating Publishers remove Advertiser Materials or Links from Publisher Websites;
- 4.4 The Advertiser will:
  - 4.4.1 permit Publishers to market the Advertiser and its Products;
  - 4.4.2 inform Participating Publishers of any:
    - (a) information relevant to the promotion of the Advertiser or any Products;
    - (b) Advertising Standards applicable to the promotion of the Products or the Advertiser;
    - (c) Advertiser Materials which are directed to children;
    - (d) terms and conditions, or other requirements, applied by the Advertiser to the promotion of the Advertiser or any Products from time to time;
  - 4.4.3 alert the Company in writing to any Advertiser Materials directed to children or related to a child-directed or mixed use application or website as described in COPPA.
  - 4.4.4 inform the Company of any complaints made to the Advertiser in respect of any Participating Publisher;
  - 4.4.5 comply with any terms and conditions, or other requirements, applied by a Participating Publisher to its promotion of the Advertiser or any Products from time to time.
- 4.5 Any terms and conditions, or other requirements, applied by the Advertiser to the promotion of the

Advertiser or any Products shall be subject to the terms of this Agreement.

- 4.6 Subject to clause 11, the Advertiser may not reject Publishers which are permitted to promote the Advertiser on other affiliate marketing networks in the Country, or as part of an in-house or personal affiliate marketing campaign or program.
- 4.7 The Advertiser may delegate the day-to-day operation of Campaigns and Programs to a third party on written notice to the Company, provided that the Advertiser shall remain primarily liable for the acts or omissions of that third party.

**5. TRACKING**

- 5.1 Subject to clause 7, the Tracking Code and Tracking Policy will be the sole basis for recording and determining Actions and Commissions.
- 5.2 Each Transaction and Lead will be deemed to have been approved by the Advertiser at the end of the respective pending sales period ("**Pending Sales Period**"), unless declined in accordance with clauses 5.3-5.4.
- 5.3 The Pending Sales Period is by default set to zero and may be adjusted by the Advertiser on prior written notice to the Company. Where applicable, the Advertiser shall use all reasonable efforts to review Transactions and Leads within the Pending Sales Period. Within the Pending Sales Period, the Advertiser may only decline:
  - 5.4.1 Transactions which the Advertiser can evidence to the Company's reasonable satisfaction were cancelled in accordance with applicable statutory consumer rights of cancellation or terms of business; or
  - 5.4.2 Transactions and Leads which the Advertiser can evidence to the Company's reasonable satisfaction were:
    - (a) generated in breach of any terms and conditions, or other requirements, applied by the Advertiser to the promotion of the Advertiser or any Products; or
    - (b) the result of a fraud committed by a Participating Publisher.
- 5.5 The Advertiser agrees and acknowledges that it has no right whatsoever to recover from the Company or any Participating Publisher any Fees or Commissions paid to the Company in respect of Approved Transactions or Approved Leads (including those deemed approved under clause 5.2), or any Clicks or Ad Impressions. The Advertiser hereby waives and releases the Company and any Participating Publisher from any claims the Advertiser may have for recovery of paid Fees or Commissions.
- 6. **ACTIONS, COMMISSIONS AND BONUSES**
- 6.1 The amount of any Commissions is as displayed on the Interface. CPA Commissions in respect of Approved Transactions will be determined as either:
  - 6.1.1 a percentage of the purchase price of the Product(s) subject of the Approved Transaction, as set out on the Interface; or
  - 6.1.2 a fixed amount, irrespective of the purchase price of the Product(s) subject of the

- Approved Transaction, as set out on the Interface.
- 6.2 The Advertiser may commit to pay additional Commissions, on terms set out on the Interface, at its discretion.
  - 6.3 The Advertiser may commit to pay Bonuses, at terms set out on the Interface, at its discretion.
  - 6.4 The Company will remit the applicable payment to the respective Participating Publisher to whom the Approved Transaction, Approved Lead, Click or Ad Impression is attributed, or to whom the Bonus is due. This payment may be subject to the prior payment of Commission from the Advertiser.
  - 6.5 The Advertiser may vary the Commission on a go-forward basis by using the Interface or by written request to the Company personnel. Commissions and Bonuses applicable to past Actions or other historic marketing activity may not be varied.
  - 6.6 The Advertiser will be bound to pay the Commission as varied, regardless of whether such variations were made by the Advertiser or on its behalf, for any all Actions made after the time of variation.
  - 6.7 Any variations to the Commission are made by operation of this Agreement and do not constitute any amendment to this Agreement or the entry of any additional agreement.
  - 6.8 Subject to clause 11, the Commission may not be less than the equivalent commission offered by the Advertiser on other affiliate marketing networks in the Country, or in-house or personal affiliate marketing programs.
  - 6.9 Any measures to prevent or reduce the amount of any Commission, Network Fee or Bonus incurred or payable in respect of an Action, which are implemented on the basis that the Visitor subject of the Action also visited the Advertiser URL through non-Network sales channels or sources of web traffic, are referred to as “**Deduplication**”. The basis for Deduplication shall be provided to the Company in reasonable time in advance of their implementation.
  - 6.10 Deduplication is subject to any conflicting provisions in this Agreement and the Tracking Policy. Deduplication may not be implemented on the basis that, within the Tracking Period, the Visitor subject of the Action also visited the Advertiser URL:
    - 6.10.1 by typing the Advertiser URL into a web browser;
    - 6.10.2 by following links appearing in
      - (a) organic search results;
      - (b) paid-for results of searches on the Advertiser’s brand names;
      - (c) organic social media;
      - (d) price comparison websites;
    - 6.10.3 as a result of internal email marketing or newsletters;
    - 6.10.4 as a result of the retargeting of that Visitor:
      - (a) by email;
      - (b) by telephone;
      - (c) by interstitial or pop-up; or
      - (d) while at the Advertiser URL, as a result that Visitor’s behavior.

- 7. **CLAIMED ACTIONS**
- 7.1 This clause 7 shall have effect on notice by the Company to the Advertiser. The following definitions and rules of interpretation apply:
  - 7.1.1 “**Claimed Action**” means a Claimed Lead or Claimed Transaction.
  - 7.1.2 “**Claimed Lead**” means a sales lead of the Advertiser generated in the Tracking Period and which (i) was not recorded by the Tracking Code and/or not approved by the Advertiser as a Transaction under clause 5; and (ii) a Participating Publisher can demonstrate to the Company’s reasonable satisfaction ought to be have been recorded by the Tracking Code and/or approved by the Advertiser as a Lead under clause 5 of the Standard Terms.
  - 7.1.3 “**Claimed Transaction**” means the agreed purchase of a Product by a Visitor in the Tracking Period and which (i) was not recorded by the Tracking Code and/or not approved by the Advertiser as a Transaction under clause 5; and (ii) a Participating Publisher can demonstrate to the Company’s reasonable satisfaction ought to be have been recorded by the Tracking Code and/or approved by the Advertiser as a Transaction under clause 5 of the Standard Terms.
  - 7.1.4 The terms “**Approved Transaction**” and “**Approved Lead**” shall respectively include a Claimed Transaction and a Claimed Lead approved in accordance with this clause.
- 7.2 The Pending Sales Period for Claimed Actions is 75 days.
- 7.3 The Company will:
  - 7.3.1 enable the Advertiser to approve or decline Claimed Actions; and
  - 7.3.2 as soon as practicable, respond to the Advertiser’s questions regarding Claimed Actions.
- 7.4 The Advertiser shall use all reasonable efforts to approve Claimed Actions within the Pending Sales Period for Claimed Actions.
- 7.5 The Advertiser must approve Claimed Actions in good faith and:
  - 7.5.1 having regard to any information provided by a Participating Publisher to demonstrate the Claimed Actions ought to have been approved by the Advertiser under clause 5 of the Standard Terms; and
  - 7.5.2 in a manner consistent with its historic approach to the approval or decline of Transactions, Leads or Claimed Actions of that type, unless reasonable advance notice is given to Participating Publishers.
- 7.6 The Advertiser may only decline:
  - 7.6.1 Claimed Transactions which the Advertiser can evidence to the Company’s reasonable satisfaction were cancelled in accordance with applicable statutory consumer rights of cancellation or terms of business; or

- 7.6.2 Claimed Actions which the Advertiser can evidence to the Company's reasonable satisfaction were:
- (a) generated in breach of any terms and conditions, or other requirements, applied by the Advertiser to the promotion of the Advertiser or any Products; or
  - (b) the result of a fraud committed by a Participating Publisher.
- 7.7 Claimed Actions will be deemed to have been approved by the Advertiser at the end of the respective Validation Period for Claimed Actions, unless declined in accordance with this clause.
- 8. PAYMENTS, INVOICING**
- Determination of Fees and Commissions*
- 8.1 The amount of the Network Fee is as set out in the Interface. Network Fees are payable in addition to Commissions or Bonuses on which they are based.
- 8.2 The Advertiser will pay the Company, without deduction or set-off:
- 8.2.1 the Set-Up Fee and the Monthly Minimum Fee;
  - 8.2.2 the Network Fees and Commissions in respect of each Approved Transaction, Approved Lead, Clicks or one thousand Ad Impressions;
  - 8.2.3 the Bonuses due; and
  - 8.2.4 the Reintegration Fee in respect of each Reintegration.
- 8.3 During any period of Advertiser Downtime, the Network Fees, Bonuses and Commission will be determined by the Company, having regard to the average value of Fees and Commission payable by the Advertiser (including, where applicable the average value of Fees and Commission payable by the Advertiser during equivalent periods in previous years).
- 8.4 Following any determination of Network Fees, Bonuses and Commission due in respect of Advertiser Downtime, the Company will inform respective Publishers.
- Pre-payment Amount*
- 8.5 On the Effective Date the Company will request payment from the Advertiser of the Pre-payment Amount and the Set-Up Fee in advance, which shall be paid by the Advertiser immediately (unless agreed otherwise). The Advertiser will pay the Set-Up Fee and the initial Pre-payment Amount upon registration to the Network using the methods specified on the Interface.
- 8.6 The Advertiser will be required to replenish the Pre-payment Amount periodically (or alternatively, the Company will automatically initiate replenishment of the Pre-payment Amount where Advertiser has set up its account for automatic replenishment) during the Term, when the remaining amount equals less than half of the initial Pre-payment Amount (or such other proportion as may be agreed by the parties).
- 8.7 In settlement of the Monthly Minimum Fee, the Company will deduct the Monthly Minimum Fee from the Pre-payment Amount on a monthly basis, as well as the Network Fee generated by the Advertiser in the previous calendar month. However, if the Network Fee generated by the Advertiser in the prior calendar month exceeds the Monthly Minimum Fee, the next Network Fee will be waived in full.
- 8.8 In settlement of the Network Fees and Commissions, the Company will deduct from the Pre-payment Amount the Network Fees and Commissions in respect of:
- 8.8.1 Transactions and Leads, on their approval (or deemed approval) in accordance with clause 5; and
  - 8.8.2 Clicks or one thousand Ad Impressions, immediately.
- 8.9 On the agreement of the Bonus, the Company will deduct the Bonus from the Pre-payment Amount in settlement of the Bonus.
- 8.10 No interest is payable in respect of the Pre-payment Amount held by the Company;
- 8.11 The Pre-payment Amount may be varied by written agreement.
- Payments*
- 8.12 Without prejudice to the Company's other rights or remedies, if the Advertiser fails to make any payment when due under this Agreement or any Additional Country Agreement:
- 8.12.1 any discounts applied will be lost and all Fees will revert to the standard rates;
  - 8.12.2 the Company may charge, from the due date for payment until payment is made (whether before or after any judgment), and Advertiser shall pay immediately on demand: (i) interest on such sums from the due date for payment at the rate of 1.5% per month or that allowed by law, whichever is higher, accruing on a daily basis and being compounded quarterly until payment is made, and; and (ii) the costs of recovering such unpaid amounts; and/or
  - 8.12.3 the Company may suspend all Services and licenses, or terminate this Agreement, with immediate effect, until payment is made in full.
- 8.13 All sums payable under this Agreement are exclusive of local, state, federal and international sales, value-added, withholding and other taxes and duties of any kind that are or may become applicable as a result of the provision of the services by Company ("Taxes"). Advertiser shall be responsible for payment of all such Taxes, excluding any taxes or duties on Company's net income, assets or employees. Any Taxes will be charged to the Advertiser and remitted by the Company to the appropriate taxing authority. Without limiting the foregoing, Advertiser shall be responsible for all applicable sales taxes unless it first claims a sales tax exemption by providing Company with an exemption certification acceptable to the appropriate authorities.
- 8.14 All Taxes collected from Advertiser by Company and remitted to the appropriate authorities are non-refundable by Company. Advertiser will need to claim any applicable tax refunds directly through the appropriate authorities.

- 8.15 If payments under this Agreement are subject to withholding tax, the Advertiser is entitled to deduct the appropriate amount from payments to the Company, provided that Advertiser keeps written records of all such deductions as well as associated payments and such records are immediately accessible to Company.
- 8.16 The parties agree to work together on reducing or avoiding any withholding tax, and, upon request, shall provide documents required for any reduction, exemption, reimbursement or deduction of withholding tax.
- 8.17 All amounts payable shall be paid in the currency in which they are invoiced. Any costs of currency conversion or losses caused by exchange rate fluctuations shall be borne by the Advertiser.
- 9. COUNTRIES AND ADDITIONAL COUNTRY AGREEMENTS**
- 9.1 This Agreement is entered in respect of the Country only.
- 9.2 The Advertiser, Advertiser Group Companies and the Company Group Companies may agree in writing to the provision of affiliate marketing services in other Countries.
- 9.3 Each executed written agreement per clause 9.2 shall constitute a separate agreement between the Advertiser (or Advertiser Group Company) and the respective Company Group Company on the terms of this Agreement, as varied in writing by the Parties.
- 9.4 Subject to clause 18, any such agreements shall survive termination of this Agreement and each other.
- 10. THE ADVERTISER'S RELATIONSHIP WITH PUBLISHERS**
- 10.1 The Advertiser will not, directly or indirectly, enter or attempt to enter into any agreement, understanding or other form of arrangement (whether express or implied) with any current or former Participating Publishers:
- 10.1.1 where payments are made to current or former Participating Publishers in respect of any marketing services (including affiliate, display, programmatic, search, email and click-to-call marketing) other than under this Agreement; or
- 10.1.2 which prevents or disincentivizes current or former Participating Publishers from promoting other advertisers.
- 10.2 The Advertiser will pay the Company on demand by way of liquidated damages an amount equal to 30% of all Commissions, Fees or any other amounts paid or due to be paid, directly or indirectly, to current or former Participating Publishers in breach of the restrictions in clause 10.1. The parties acknowledge that the liquidated damages represent a genuine pre-estimation of the loss that would be suffered by the Company as a result of any breach of the restrictions in clause 10.1 and that such liquidated damages are not a penalty.
- 10.3 This clause 10 applies to current and former Participating Publishers, irrespective of any existing relationships between the Advertisers and such Publishers.
- 10.4
- 11. EXCLUSIVITY**
- 11.1 This clause 11 only applies if this Agreement is designated 'exclusive' in the Application Form.
- 11.2 For the Term the Advertiser will not, directly or indirectly, enter or attempt to enter into any agreement, understanding or other form of arrangement (whether express or implied) with the operators of any marketing network, or providers of performance marketing products or services, for the supply of products or services identical or similar to the services provided by or on behalf of the Company under this Agreement.
- 11.3 For the Term the Advertiser will not operate any in-house or personal affiliate marketing program.
- 11.4 The Advertiser will pay the Company, on demand and by way of liquidated damages, an amount equal to 30% of all commissions, fees or any other amounts paid or due to be paid, directly or indirectly, to any publishers or marketing network operators in breach of clause 11.2. The parties acknowledge such liquidated damages represent a genuine pre-estimation of the loss suffered by the Company as a result of a breach of clause 11.2 and that such liquidated damages are not a penalty.
- 12. WARRANTIES**
- 12.1 Each party warrants and undertakes to the other for the Term that:
- 12.1.1 it has full power and authority to enter into this Agreement;
- 12.1.2 it holds all licenses and approvals necessary for the performance of its obligations under this Agreement;
- 12.1.3 it will perform its obligations under this Agreement in accordance with all applicable laws and using reasonable skill and care; and
- 12.1.4 it will not make any false, misleading or disparaging representations or statements regarding the other party.
- 12.2 The Advertiser warrants and undertakes to the Company for the Term that:
- 12.2.1 all Advertiser Materials comply with all Advertising Standards; and
- 12.2.2 all variations to Commissions under clause 6 will be made by authorized personnel.
- 13. INTELLECTUAL PROPERTY**
- 13.1 The Advertiser hereby grants to the Company a non-exclusive, transferable, royalty-free, worldwide license to publish the Advertiser Materials on the Interface and to use the Advertiser Materials to:
- 13.1.1 operate the Network;
- 13.1.2 enable Participating Publishers to market the Advertiser and its Products;
- 13.1.3 market its business, with the Advertiser's prior consent;
- 13.1.4 otherwise carry on its website traffic, consumer behavior tracking and transaction reporting business from time to time.
- 13.2 The Company may grant sublicenses of the license at clause 13.1 to Participating Publishers to the extent necessary to enable Participating Publishers to market the Advertiser and its Products on the Network.
- 13.3 A sublicense granted to a Publisher Network under clause 13.2 shall be further sublicensable by the

- Participating Publisher to Sub-publishers on terms equivalent to clause 13.2.
- 13.4** A sublicense granted by a Publisher Network under clause 13.3 shall not be capable of further sublicense by the Sub-publisher without the Advertiser's prior written consent.
- 13.5** The Company hereby grants to the Advertiser a non-exclusive, non-sublicensable, non-transferable, royalty free worldwide license to:
- 13.5.1** use the Tracking Code on the Advertiser URLs; and
- 13.5.2** use the Interface;
- to the extent necessary for the Advertiser to participate in the Network and perform its obligations under this Agreement.
- 13.6** The Advertiser will not, and will not attempt to, change, reverse engineer or create derivative works of the Interface or the Tracking Code.
- 13.7** Each party reserves all of its right, title and interest to any of its Intellectual Property Rights licensed under this clause 13, or which it creates under this Agreement.
- 13.8** The Advertiser will indemnify, defend and hold harmless the Company and any of its Group Companies (including their directors, employees, agents or contractors), from and against any claims, costs, damages, losses, liabilities and expenses (including legal fees) relating to any claims, actions, suits or proceedings by third parties against the Company arising out of or related in any way to the Company's, or any Participating Publisher's, use of the Advertiser Materials in accordance with this Agreement.
- 14. CONFIDENTIALITY**
- 14.1** Each party will only use Confidential Information to enjoy its rights or comply with its obligations under this Agreement. Save as set out in this Agreement, neither party will disclose any Confidential Information. Confidential Information shall be kept confidential.
- 14.2** The obligations of confidentiality in this Agreement will not apply to Confidential Information to the extent it:
- 14.2.1** is in the public domain (other than as a result of a breach of this Agreement);
- 14.2.2** can be demonstrated as having been independently developed by the receiving party;
- 14.2.3** is published on the Interface in the receipt or provision of the Services in accordance with this Agreement;
- 14.2.4** is required to be disclosed by law or a court order.
- 14.3** The Company may disclose Confidential Information to Group Companies.
- 14.4** This clause will survive termination for five years.
- 15. DATA PROTECTION AND COOKIES**
- 15.1** The Company and the Advertiser will comply with all respective legal obligations under Data Regulation. Each party will provide the other party any co-operation reasonably requested to enable the other party's compliance with this clause 15.1.
- 15.2** The Company and the Advertiser will each comply with any data processing agreement or arrangement entered into by them in connection with Personal Data published under this Agreement.
- 15.3** The Advertiser shall not use any reports generated by use of the Interface to create Visitor profiles, as defined under GDPR where applicable.
- 15.4** The Advertiser will not do or omit to do any act which may cause the Company to be in breach of any of its obligations under the Data Regulations.
- 15.5** The Advertiser will, on behalf of the Company to comply with ePrivacy, obtain the prior, freely-given, specific, informed, unambiguous and revocable consent of Visitors and other users of Advertiser URLs to cookies or other tracking technologies of the Company served under this Agreement.
- 16. LIMITATION OF LIABILITY**
- 16.1** This clause 16 sets out the entire liability of the Company and its Group Companies under or in connection with the Agreement.
- 16.2** Neither the Company nor any of its Group Companies will be liable for any losses of the Advertiser if the Company's compliance with the Agreement is prevented by the acts or omissions of the Advertiser.
- 16.3** Neither the Company nor any of its Group Companies will be liable to the Advertiser for: losses of profits, business, goodwill, anticipated savings, goods, contract, use or data; losses arising from the acts or omissions of a Publisher; or for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 16.4** The total liability of the Company and its Group Companies in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the Agreement will be limited to the amount of Network Fee actually received by the Company from the Advertiser in the 12 month period preceding the date on which the claim arose.
- 16.5** Except as expressly stated otherwise in this Agreement, all warranties, conditions and other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 16.6** The Network, the Interface, the Tracking Code, the Services, their use and the results of such use are provided "as is" to the fullest extent permitted by law. The Company disclaims all express or implied warranties, including warranties of satisfactory quality and fitness for a particular purpose, which may be implied in respect of the Network, the Interface, the Tracking Code, the Services, their use and the results of such use. The performance of the Network and the Interface relies on third parties beyond the Company's control. The Company specifically disclaims any warranty:
- 16.6.1** that the use or operation of the Network, the Interface or the Tracking Code will be uninterrupted or error-free;
- 16.6.2** that defects will be corrected;
- 16.6.3** that the Network, the Interface or the Tracking Code are free of viruses or malicious code;
- 16.6.4** that any security methods employed will be sufficient;
- 16.6.5** in respect of any Publisher or its technology; and

- 16.6.6 regarding correctness, accuracy, or reliability.
- 16.7 Nothing in this Agreement limits or excludes the liability of the Company or any of its Group Companies for death, personal injury, fraud, fraudulent misrepresentation or fraudulent misstatement.
- 17. TERMINATION**
- 17.1 This Agreement will start on the Effective Date and continue for the Initial Term. After the Initial Term, this Agreement will automatically renew for successive Renewal Terms.
- 17.2 The Company may terminate this Agreement immediately on written notice to the Advertiser if the Advertiser fails:
  - 17.2.1 to comply with its obligations under clauses 2.2.1, 3.2.3 or 3.2.4 of this Agreement or the equivalent clauses of any Additional Country Agreement;
  - 17.2.2 to provide assistance reasonably requested by the Company; or
  - 17.2.3 through no fault of the Company, to commence bona fide participation in the Network within 90 days of the Effective Date.
- 17.3 The Company may suspend this Agreement for the period of the Advertiser's non-compliance with clauses 3, 5.2- 5.5, 6.10, 8.5, 8.6, 8.13, 8.14, 10 or 11 of this Agreement or the equivalent clauses of any Additional Country Agreement.
- 17.4 Either party may terminate this Agreement on at least three months' written notice to the other party, such notice to take effect at the end of the Initial Term or any the Renewal Term then in effect.
- 17.5 The notice period in 17.4 shall be extended to the minimum extent necessary to enable the completion of any ongoing Campaigns.
- 17.6 Without prejudice to its other rights or remedies, a party may terminate the Agreement immediately on written notice to the other party, if:
  - 17.6.1 the other party materially breaches this Agreement and (if remediable) fails to remedy that breach within 14 days of a written request to do so;
  - 17.6.2 the other party materially breaches any data processing agreement or arrangement entered into in connection with Personal Data published under this Agreement.
  - 17.6.3 the other party is deemed unable to pay its debts; steps are made to wind up, or appoint an administrator over, the other party; a third party becomes entitled to appoint a receiver over the assets of the other party; the other party negotiates with all or a class of its creditors, or proposes or enters a compromise with such creditors; or any similar or analogous event occurs.
- 17.7 Without prejudice to its other rights or remedies, the Company may terminate the Agreement immediately on written notice to the Advertiser if an Advertiser Group Company materially breaches an Additional Country Agreement and (if remediable) fails to remedy that breach within 14 days of a written request to do so.

**18. CONSEQUENCES OF TERMINATION**

- 18.1 Termination of this Agreement will not affect any existing rights or remedies. Clauses 1, 5, 6, 7, 8, 9.4, 11, 13.6, 13.7, 13.8, 14, 15, 16, 18, 19, 20 and 21 will survive termination.
- 18.2 On termination of the Agreement:
  - 18.2.1 all licenses will terminate;
  - 18.2.2 where the remaining Pre-payment Amount is sufficient to cover all outstanding payments owed by Advertiser, the Company will settle all outstanding payments by deducting from the Pre-payment Amount and return the remainder of the Pre-payment Amount to the Advertiser;
  - 18.2.3 each party will return or at the other party's option destroy all Confidential Information in its possession within five Business Days; and
  - 18.2.4 the Advertiser will immediately pay all outstanding Fees and Commissions due to the Company.
- 18.3 Where any payment is made to the Advertiser pursuant to 18.2.2 and that payment is returned to the Company and remains unclaimed or uncashed (e.g. in the case of payment by check) after a period of 365 days, the Advertiser will irrevocably forfeit its right to the payment in question.
- 19. NOTICES**
- 19.1 Notices given under this Agreement will be in writing and:
  - 19.2 delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its notice address for the Company as set out in these Standard Terms and for the Advertiser as set out in the Interface; or
  - 19.3 sent by email to the other party's notice email address for the Company as set out in these Standard Terms and for the Advertiser as set out in the Interface.
- 19.4 A notice delivered by hand will be deemed to have been received when delivered (or if delivered outside business hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received two Business Days after posting. A notice sent by email will be deemed to have been received at the time of transmission as shown by the sender's records (or if sent outside business hours, at 9 am on the first Business Day following despatch).

**20. SEVERANCE**

- 20.1 If any part of this Agreement (including as a result of any amendment) be wholly or partially unenforceable or void, or if this Agreement appears to contain omissions, the remainder of the Agreement shall remain in full force and effect and it is the express intention of the parties that remainder of the Agreement shall so remain, notwithstanding any legal or statutory presumptions to the contrary,
- 20.2 In the event of any avoidance, unenforceability or absence, as set out in clause 20.1 above, the parties shall

negotiate in good faith a replacement provision that, to the greatest extent possible, achieves the intended legal and commercial result of the original provision, having regard to the spirit and purpose of the Agreement at the time it was originally entered, and being as close as permissible to any specifications (including timeframes and quantities) set out in the original provision.

20.3 This Agreement shall automatically and immediately terminate if compliance with its terms (in whole or in part) were to cause one or both parties an unacceptable hardship as a result of a failure to reach agreement on a replacement provision following negotiations under clause 20.2.

## 21. GENERAL

21.1 If the Advertiser has instructed an agent to represent the Advertiser, the Advertiser warrants to the Company that the agent has full authority to bind the Advertiser. The Advertiser remains liable for all acts, representations and agreements of the agent, including the payment of all monies due to under this Agreement.

21.2 This Agreement will survive any termination of the appointment of the agent (if any).

21.3 The Company may set off any liability of the Advertiser against any liability of the Company or any monies held by the Company to the Advertiser's account.

21.4 Time for performance of clause 2.2 and for the making of payments due under this Agreement are of the essence of this Agreement.

21.5 No party will be liable for any breach of this Agreement arising from circumstances beyond its reasonable control (a "**Force Majeure Event**"). If a Force Majeure Event continues for six months, the unaffected party may terminate this Agreement by giving 30 days' written notice to the other party.

21.6 The Advertiser may not assign or subcontract its rights or obligations under this Agreement without the Company's prior written consent. The Company may assign or subcontract its rights or obligations under this Agreement.

21.7 Nothing in the Agreement constitutes a partnership or joint venture between the parties, nor constitutes a party the agent of the other. No party has authority to bind the other.

21.8 A person who is not a party to this Agreement will not have any statutory rights under or in connection with it.

21.9 A counterpart of this Agreement executed and/or transmitted electronically shall be treated as fully binding and with full legal force and effect.

21.10 No variation of this Agreement shall be effective unless it is in writing and signed, or otherwise agreed electronically by use of the Interface, by the parties (or their authorized representatives).

21.11 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of the State of New York without reference to its conflicts of laws principles.

21.12 The parties irrevocably agree that the state and federal courts in the count of New York, New York shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Agreement or its subject matter.